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5 **IN THE UNITED STATES DISTRICT COURT**  
6 **FOR THE DISTRICT OF ARIZONA**

7  
8 Daniel Hamilton,

9 Plaintiff,

10 v.

11 Yavapai Community College District, et al.,

12 Defendants.

13 Guidance Academy LLC, et al.,

14 Counterclaimants,

15 v.

16 Daniel Hamilton,

17 Counterdefendant.

18 Daniel Hamilton,

19 Plaintiff,

20 v.

21 Yavapai Community College District, et al.,

22 Defendants.

23 and

24 United States of America,

25 Movant.

No. CV-12-08193-PCT-GMS  
**LEAD CASE**

No. CV-15-08095-PCT-GMS  
(CONSOL. FOR TRIAL)

**ORDER**

26  
27 Before the Court is the United States of America's Motion to Quash Rule 45  
28 Subpoena Issued by Defendants North-Aire Aviation, LLC and Justin and Angela Scott

1 (“NA Defendants”) to Former Assistant United States Attorney Lon Leavitt. (Doc. 775.)  
2 For the following reasons, the motion is granted.

### 3 **DISCUSSION**

#### 4 **I. Legal Standard**

5 Under Rule 45(d)(2)(B)(i) of the Federal Rules of Civil Procedure, a party seeking  
6 enforcement of a subpoena may bring a motion in “the court for the district where  
7 compliance is required for an order compelling production or inspection.” Fed. R. Civ. P.  
8 45(d)(2)(B)(i). Rule 45 also states that a court must quash a subpoena, upon timely motion,  
9 if it “requires disclosure of privileged or other protected matter” or “subjects a person to  
10 undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iii)-(iv). Motions to quash are evaluated in the  
11 context of Rule 26, which states that “[p]arties may obtain discovery regarding any  
12 nonprivileged matter that is relevant to any party’s claim or defense and proportional to the  
13 needs of the case, considering the importance of the issues at stake in the action, the amount  
14 in controversy, the parties’ relative access to relevant information, the parties’ resources,  
15 the importance of the discovery in resolving the issues, and whether the burden or expense  
16 of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

#### 17 **II. Standing**

18 “[A] party lacks standing under Fed. R. Civ. Pro. 45(c)(3) to challenge a subpoena  
19 issued to a non-party unless the party claims a personal right or privilege with respect to  
20 the documents requested in the subpoena.” *G.K. Las Vegas Ltd. P’ship v. Simon Prop.*  
21 *Grp., Inc.*, No. 2:04-cv-1199-DAE-GWF, 2007 WL 119148, at \*4 (D. Nev. Jan. 9, 2007).  
22 Although the United States is not a party, many district courts in the Ninth Circuit have  
23 held that non-parties with a “personal right or privilege” in the information sought by the  
24 subpoena have standing. *See Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965, 274  
25 (C.D. Cal. 2010) (holding that a personal right to the profile or inbox of a social media  
26 profile conferred standing on a non-party to move to quash a subpoena seeking such  
27 information); *Sines v. Kessler*, No. 18-MC-80080-JCS, 2018 WL 3730434, at \*9 (N.D.  
28 Cal. Aug. 6, 2018); *Chevron Corp. v. Donziger*, No. 12-mc-80237 CRB, 2013 WL

1 4536808, at \*5 (N.D. Cal. Aug. 22, 2013) (holding that “[o]wnership of the email addresses  
2 gives the [non-party] Doe movants a personal stake in the outcome of this dispute, and  
3 therefore standing to quash the subpoenas”).

4 Although it is a non-party, the United States has a stake in the outcome of the instant  
5 litigation. AUSA Leavitt worked on behalf of the United States when making the  
6 statements the NA Defendants hope to call him to discuss. It therefore has standing to move  
7 to quash the NA Defendants’ subpoena.

### 8 **III. Timeliness**

9 Although Rule 45 lists specific harms which justify a motion to quash, Courts also  
10 grant motions to quash where a request conflicts with the parties’ discovery obligations.  
11 Subpoenas may not be issued to circumvent or undermine discovery deadlines. *See* § 2108  
12 Compelling Production of Documents and Things, 8A Fed. Prac. & Proc. Civ. § 2108 (3d  
13 ed.) (“subpoenas are not available to circumvent discovery cutoffs”); *see also Whole*  
14 *Woman’s Health v. Paxton*, No. MC 17-00303 JMS-KSC, 2017 WL 4855392, at \*1 & n.1  
15 (D. Haw. Oct. 26, 2017) (finding that the expired discovery deadlines in the underlying  
16 action provided a basis to quash a subpoena of an unnamed witness); *Thornton v. Crazy*  
17 *Horse, Inc.*, No. 3:06-CV-00251-TMB, 2012 WL 13032922, at \*2 (D. Alaska Jan. 3, 2012)  
18 (“It is axiomatic, however, that a trial subpoena may not be used to circumvent a discovery  
19 deadline.”).

20 Here, the NA Defendants failed to timely disclose AUSA Leavitt as a witness. The  
21 discovery deadlines prior to consolidation were November 18, 2016 and June 9, 2017.  
22 (Doc. 275); *Hamilton v. Yavapai Cmty. Coll. Dist.*, 3:15-cv-08095-GMS (D. Ariz. March  
23 14, 2017) (Doc. 106). The NA Defendants disclosed AUSA Leavitt as a potential witness  
24 on September 6, 2017. (Doc. 755-2 at 4.)

25 The NA Defendants assert this timeline is “fundamentally untrue” because it ignores  
26 “the circumstances and the production of emails that Mr. Leavitt authored and received.”  
27 (Doc. 786 at 11.) That the United States was conducting an investigation, and that Mr.  
28 Leavitt was involved in that investigation, however, has long been known to the NA

1 Defendants. In fact, in February 2018, the Court declined to reopen discovery on the  
2 subject, explaining:

3 Defendants have completely failed to establish that they could not have  
4 discovered the contents of any relevant documents through the exercise of  
5 reasonable diligence prior to the close of discovery. Had they exercised  
6 diligence they would have been aware of the contents or the implications of  
7 the documents that they now claim justify additional discovery well within  
8 the discovery period. Defendants were well aware of the government's  
9 involvement in this case prior to the close of discovery. Further, the Guidance  
10 Defendants had the precursor privilege logs with the government and the  
11 relators' explanation of it for eight months prior to the close of discovery in  
12 their case.

13 (Doc. 596 at 4.) AUSA Leavitt is identified several times in these same documents. (Doc.  
14 588 at 4.) Although the parties are now in a different procedural posture, the limits on their  
15 discovery remain. The NA Defendants may not circumvent their failures by subpoenaing  
16 an undisclosed witness for trial.

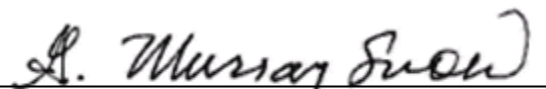
#### 17 CONCLUSION

18 For the reasons set forth above, the United States' Motion to Quash is granted.

19 **IT IS THEREFORE ORDERED** that the United States of America's Motion to  
20 Quash Rule 45 Subpoena Issued by Defendants North-Aire Aviation, LLC and Justin and  
21 Angela Scott to Former Assistant United States Attorney Lon Leavitt. (Doc. 775) is  
22 **GRANTED.**

23 **IT IS FURTHER ORDERED** that, good cause appearing, Plaintiff-Relator Dan  
24 Hamilton's Motion to File Under Seal Doc. 775-1, (Doc. 793) is **GRANTED.** The Clerk  
25 of the Court is directed to file under seal Doc. 775-1 from the public record and file under  
26 seal lodged Doc. 794.

27 Dated this 6th day of April, 2021.

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G. Murray Snow  
Chief United States District Judge