

Snell & Wilmer

ONE EAST WASHINGTON STREET
SUITE 2700
PHOENIX, AZ 85004-2556
602.382.6000 P
602.382.6070 F

Brett W. Johnson
(602) 382-6312
bwjohnson@swlaw.com

November 8, 2022

Via ECF Filing

Scott Harris
Clerk
U.S. Supreme Court
1 First Street, NE
Washington, D.C. 20543

Re: *Ward et al. v. Thompson et al.*, Case No. 22A350

Dear Mr. Harris:

On October 28, 2022, T-Mobile filed a Request for a Clarification or, in the alternative, Indicative Ruling (the “Clarification Request”)¹ with the district court, to request clarification concerning the active scope of the Subpoena issued to T-Mobile by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (the “Committee”) and T-Mobile’s production obligations under the Subpoena.

T-Mobile filed the Clarification Request because the district court’s October 7, 2022, Order Denying Plaintiffs’ Motion for Injunction Pending Appeal, or in the Alternative, for an Administrative Injunction (“October 7 Order”) contained statements suggesting a potential misunderstanding between the Committee and the district court about whether the Committee had agreed to narrow the Subpoena to exclude call detail records reflecting Dr. Kelli Ward’s calls involving her medical patients. [Pet’rs’ Appl., Ex. B at 4, 7.] Specifically, the district court’s October 7 Order noted that the Committee had agreed to narrow the Subpoena to exclude such records, while the Committee’s counsel told T-Mobile that it had not narrowed the Subpoena. [*Id.*; *see also* Attach. 1 at 3, 5, Ex. A.] As T-Mobile explained in its Clarification Request, these differing perspectives

put[] T-Mobile in an impossible position. Should Justice Kagan or the Supreme Court lift the administrative injunction, T-Mobile expects the Committee will demand that it promptly comply with the Subpoena by producing *all* responsive records relating to the telephone number ending in 4220, without exception. If T-Mobile complies with that demand, however, it at least conceivably risks running

¹ A copy of the Clarification Request is attached as Attachment 1.

afoul of the spirit of this Court's order, which assumed that the Committee had agreed to narrow the Subpoena to exclude the phone numbers of Dr. Kelli Ward's patients.

[Attach. 1 at 5.] Accordingly, T-Mobile asked the district court to "clarify the degree to which its denial of Plaintiffs' request for an injunction or administrative stay pending appeal was dependent on the Court's belief that the Committee had agreed to further narrow the Subpoena to exclude records of Ward's calls involving telephone numbers associated with her medical patients." [*Id.* at 2.]

On November 4, 2022, the district court issued an indicative ruling in response to T-Mobile's Clarification Request. [Attachment 2.] The district court concluded that, because the case is on appeal, it lacked jurisdiction to immediately clarify its October 7 Order. [*Id.* at 3.] Nevertheless, the court stated that, if the matter was remanded pursuant to Federal Rule of Appellate Procedure 12.1(b), it would clarify its October 7 Order to confirm that the Subpoena had not been narrowed to exclude records involving telephone numbers associated with Dr. Kelli Ward's medical patients. [*Id.* at 3-4 (noting that "if remanded, [the district court] would grant T-Mobile's motion and clarify that T-Mobile shall produce the records listed in Section A of the subpoena [] whether patient or non-patient numbers, for the period of November 1, 2020, to January 31, 2021, but only for Ms. Kelli Ward's number ending in 4220").] The district court also directed T-Mobile to notify the Ninth Circuit and this Court of the district court's indicative ruling. [*Id.* at 4.] To that end, T-Mobile has filed this letter and a corresponding notice with the Ninth Circuit.

Because Justice Kagan has temporarily enjoined T-Mobile from producing records responsive to the Subpoena, T-Mobile does not intend to take any further action pending this Court's resolution of Plaintiffs' underlying application to this Court for an injunction pending appeal. Should this Court ultimately deny Plaintiffs' application and lift the stay that is in place, T-Mobile will, at that time, request that the Ninth Circuit then remand to the district court for the limited purpose of allowing the district court to grant T-Mobile's Clarification Request.

Very truly yours,

Snell & Wilmer

s/ Brett W. Johnson

Brett W. Johnson