



U.S. Department of Justice

United States Attorney  
Southern District of New York

Jacob K. Javits Federal Building  
26 Federal Plaza, 37<sup>th</sup> Floor  
New York, New York 10278

June 13, 2024

**VIA Email & ECF**

The Honorable Analisa Torres  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl St.  
New York, NY 10007

**Re: *United States v. Guo*, S3 23 Cr. 118 (AT)**

Dear Judge Torres:

The Government writes in reply to the defendant's June 12, 2024 letter.

*First*, the Government has never intended to ask Roberts his opinion "whether HCN and HDO are cryptocurrencies" or "whether the Himalaya Exchange is a cryptocurrency exchange." Dkt. 375 ("Def. Letter") at 1. Accordingly, there may not even be a dispute among the parties for the Court to resolve.

*Second*, to the extent there is a dispute, Second Circuit law expressly permits lay opinion testimony from a civilian analyst or investigator that is "based on [his] investigation and reflected his investigatory findings and conclusions." *Bank of China, N.Y. Branch v. NBM LLC*, 359 F.3d 171, 181 (2d Cir. 2004) (bank investigator); *see also United States v. Rigas*, 490 F.3d 208, 222-24 (2d Cir. 2007) (financial consultant); *United States v. Tomasetta*, No. 10 Cr. 1205 (PAC), 2012 WL 1080293, at \*2-3 (S.D.N.Y. Mar. 30, 2012) (securities analysts). Guo relies exclusively on cases involving case agents—law enforcement officers who participated in building the case against a trial defendant—giving their opinions from the witness stand, a different circumstance that poses a distinct potential for prejudice absent from the testimony of a businessperson unattached to the government's investigation. *See* Def. Letter at 3 (citing *United States v. Haynes*, 729 F.3d 178 (2d Cir. 2013) (CBP officer), *United States v. Cabrera*, 13 F.4th 140 (2d Cir. 2021) (DEA agent), and *United States v. Garcia*, 413 F.3d 201 (2d Cir. 2005) (DEA agent)).

*Third*, Guo is incorrect to suggest that "Bitgo's decision to terminate its relationship with the Exchange" and its decision-making process "h[as] no relevance to the issues at trial." (*Id.* at 2.) Indeed, Guo previously has argued exactly the *opposite* in support of the relevance of his cryptocurrency expert. In briefing those *Daubert* issues, Guo told the Court that his expert will review and opine on "records related to the Himalaya Exchange's custodial arrangements and capabilities" for the purpose of testifying that the Exchange's vendor relationships are evidence of its *bona fides*. Dkt. 288 at 12 (quoting Sklar disclosure). Having asserted that the Exchange's vendor relationships—specifically, its custodial arrangements, the very services it purported to use with BitGo—are relevant to the jury's understanding of the Exchange, Guo cannot now contend that fact testimony from a percipient witness going directly to those arrangements should be

