

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

V.

Case No. 1:21-CR-118 (RCL)

ERIC MUNCHEL and
LISA MARIE EISENHART

DEFENDANTS' JOINT MOTION FOR RECONSIDERATION OR A STAY
OF THIS COURT'S SEPTEMBER 16, 2021 MINUTE ORDER

NOW COME Defendants ERIC MUNCHEL and LISA MARIE EISENHART, by and through undersigned counsel, and move this Court for reconsideration or a stay of the Minute Order issued yesterday, directing the Government to produce to the press certain videos in this case. The Court's Minute Order issued less than three hours after the Press Alliance submitted its Application requesting this relief, and before any party was given fair opportunity to weigh in.

The Defendants ask for a reasonable period of time to research and fully submit their position on this request, as contemplated by the Local Rules. The Defendants note that all of the video exhibits referenced in the Press Alliance's Application were submitted to the Court under seal: none was played in open court; they were viewed only in Chambers. Those exhibits remain under seal even now, likely making the ordered disclosure difficult without an additional unsealing Order. Moreover, most if not all of these exhibits are also subject to the Protective Order entered in this case, and the restrictions contained in that Protective Order have not yet been examined or addressed at all. Meanwhile, other relevant and countervailing videotaped evidence, such as surveillance from January 5, 2021, would unfairly remain behind the wall of the Protective Order. Immediate release of only selected videotapes could well compromise these Defendants' right to a fair trial, by tainting a future jury pool who would prematurely see

what may be the most important evidence in this case, likely only in an incomplete manner and out of context, when these prospective jurors then watch the news and discuss it. To avoid such concerns, Judge Howell's Standing Order appeared to contemplate a more limited procedure in which the press is granted access to such videos but the videos themselves would not be released for publication. That more limited process would still satisfy the press' right of access while also prudently avoiding the aforementioned (and very real) risks of tainting future jurors in this case.

The Defendants request an opportunity to more fully present their positions on this issue, in accord with the deadlines set forth in the Local Rules. No urgency is apparent; these videos were submitted to this Court many months ago, yet the Press Alliance waited over half a year before requesting them in their Application filed yesterday. Its Application was not filed as an Emergency Motion, and it provided no explanation for its previous delay in seeking this relief, with insufficient explanation for why normal procedural rules had to be abandoned so that these videos could be produced within 72 hours, before fair process was afforded to the various party stakeholders. Accordingly, even if reconsideration is not granted, the Defendants request a stay so that this matter can be fully and fairly litigated. If these videos get released to the public, the proverbial toothpaste cannot be put back in the tube. The balancing of equities favors a more deliberate approach with full briefing before any decision renders Defendants' arguments moot.

The Defendant has consulted with the Government about this motion for reconsideration. While the Government takes no position at this time on the substance of this motion, the Government does advise that they would also like an opportunity to consult with equity holders and place their position on the record.

Dated: September 17, 2021

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

/s/

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Respectfully submitted,

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