UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 21-CR-40 (TNM)**
	:	
GEOFFREY SILLS,	:	
	:	
Defendants	:	

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby respectfully responds to defendant Geoffrey Sill's motion to compel disclosure of information about his transfer from Northern Neck Regional Jail to USP Lewisburg, ECF No. 533. For the reasons explained below, the Court should deny this motion.

FACTUAL BACKGROUND

On January 6, 2021, Sills traveled to Washington, D.C. from Mechanicsville, Virginia to protest the certification of the Electoral College vote. After attending the "Stop the Steal" rally, Sills marched to the Capitol and approached the West front of the Capitol. While on the West front, Sills threw several pole-like objects at retreating officers. He then followed the officers up to the Lower West Terrace tunnel. At approximately 2:43 p.m., Sills forcefully wrested away a police department-issued baton from an officer defending the entrance door to the U.S. Capitol and exited the tunnel with the baton. He re-entered the tunnel at approximately 2:49 p.m. and pointed a flashing strobe light at the police officers inside the tunnel. After that, from approximately 2:53 p.m. until 2:59 p.m., Sills used the stolen police baton to repeatedly strike at officers on the police line. Sills exited the tunnel around 3:00 p.m. and later left the area.

On August 23, 2022, Sills was convicted of assaulting, resisting, or impeding officers with a dangerous weapon, in violation of 18 U.S.C. §§ 111(a)(1) and (b), obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2); and robbery, in violation of 18 U.S.C. § 2111.

Sills has been in pretrial detention since the inception of this case. During part of this period, he was held at Northern Neck Regional Jail ("NNRJ"), a Virginia state facility utilized by Richmond, Northumberland, and Gloucester Counties. The United States Marshals Service ("USMS"), which is responsible for housing, transporting, and caring for Federal detainees, does not have a Federal Bureau of Prisons facility in its National Capitol Region. Therefore, USMS establishes Intergovernmental Agreements ("IGA") with local facilities to provide housing, transportation, and care for its detainees. Each of these facilities must meet prescribed conditions of confinement standards to house USMS prisoners. NNRJ has an active IGA, meets the conditions of confinement standards, and continues to house USMS prisoners.

The USMS continues to refine and improve its detention operations to be more cost-effective and responsive to its prisoners' requirements, to include medical care and access to discovery. In upholding its responsibility for housing, transporting, and caring for Federal detainees, the USMS reserves the right to relocate prisoners. As part of this process, the USMS elected to transfer Sills from NNRJ to the United States Penitentiary ("USP") in Lewisburg, Pennsylvania, a facility run by the Bureau of Prisons.

On February 21, 2023, Sills filed a motion to compel "documentation illuminating the reasons for the unannounced and unexplained transfer of defendant from Northern Neck Regional Jail to USP Lewisburg." ECF No. 533. In his motion, he complains that "[n]o explanation was given" for the defendant's transfer. *Id.* at 1. Defendant seeks to compel "documentation sufficient

to reveal with particularity the reason/s for the decision to remove all January 6th defendants from NNRJ." *Id.* at 2.

LEGAL STANDARD

When a person has been arrested and ordered detained by a federal court pending trial, Congress has provided under the Bail Reform Act of 1984 that "the court shall direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility. . . . ." 18 U.S.C. § 3142(i)(2). Moreover, the provisions of 18 U.S.C. § 4086 provide:

> United States Marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress, pending commitment to an institution.

See also 28 C.F.R. § 0.111(k)[1]; *United States v. Bingham*, No. 14-CR-20676, 2016 WL 4944138, at *3 (E.D. Mich. Sept. 15, 2016) (finding that Section 4086 governs pretrial detainees' demands for transfer).

Courts around the country have repeatedly held that, absent a finding of a constitutional violation, the USMS has discretion regarding housing decisions. *See, e.g.*, *United States v. Jones*, No. 19-CR-00333-MO-4, 2020 WL 3960439 *2 (D. Oregon, July 13, 2020) (finding the Court lacks authority to order USMS to place defendant in any particular facility); *United States v. Wattenbarger*, No. 1:06CVCR0171, 2007 WL 214565, at *1 (E.D. Cal. Jan. 25, 2007) ("The Court defers to the United States Marshal's Service, which is charged by law with assuring the security of the Court, pretrial detainees, and all persons appearing in the Court."); *United States v. Bigham*,

[1] This regulation states that the Director of the USMS shall direct and supervise all activities of the USMS including "[s]ustention of custody of Federal prisoners from the time of their arrest by a marshal or their remand to a marshal by the court, until the prisoner is committed by order of the court to the custody of the Attorney General for the service of sentence, otherwise released from custody by the court, or returned to the custody of the U.S. Parole Commission or the Bureau of Prisons." 28 C.F.R. § 0.111(k).

No. 14-CR-20676, 2016 WL 738045, at *2 (E.D. Mich. Feb. 25, 2016) ("Defendant has provided no authority empowering a district court to direct the U.S. Marshals Service to house a criminal defendant at any specific location."); *Falcon v. U.S. Bureau of Prison*s, 852 F. Supp. 1413, 1420 (S.D. Ill. 1994), *aff'd*, 52 F.3d 137 (7th Cir. 1995) (holding that the Marshals Service's discretion would not be limited in selecting the appropriate forum for the pretrial detention of a defendant awaiting trial); *United States v. Rosario*, No. CRIM. 90-00201-01, 1990 WL 106587, at *1 (E.D. Pa. July 23, 1990) ("Absent extraordinary circumstances, the court does not believe it should interfere with the determination of the U.S. Marshals Service and Bureau of Prisons as to where persons in custody should be housed."); *Moyers v. Shudan*, No. 3:07-CV-393, 2009 WL 1813969, at *2 (E.D. Tenn. June 24, 2009) (denying the plaintiff's motion to order USMS to house him in a particular institution and noting that the "housing of federal prisoners pending court proceedings is within the discretion of the U.S. Marshals Service and this Court will not interfere with that discretion, absent extraordinary circumstances").

DISCUSSION

The Court should deny Sills' motion to compel, because the requested discovery falls outside of the scope of the government's production obligations and defendant is not entitled to such discovery.

As an initial matter, the facts of the defendant's motion are based largely upon his own interview with a local monthly publication that quoted him at length. *See Northern Neck Sentinel*, Vol. 5, Ed. 11, December 2023, p. 5 (available at https://nnsentinel.com/). Then, citing no legal basis, the sole analysis in support of the defense request is a single conclusory sentence. ECF No. 533 at 2 ("The conditions of Defendant's confinement over the past few years are pertinent to – in fact necessary for – an assessment of defendant's appropriate sentence."). That is insufficiently

developed to warrant consideration. *Cf. Barot v. Embassy of Zambia*, 773 Fed. App'x 6, 6 (D.C. Cir. 2019) ("The court declines to consider the other cursory arguments raised by appellant regarding this claim."); *SEC v. Banner Fund Int'l*, 211 F.3d 602, 613, (D.C. Cir. 2000) (noting that the court may disregard "asserted but unanalyzed" arguments); *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 869 (D.C. Cir. 2001) ("A litigant does not properly raise an issue by addressing it in a cursory fashion with only bare-bones arguments." (internal quotation marks and citations omitted)). Indeed, it is not clear what information defendant seeks. The title of his motion suggests that he seeks information related to his transfer, but the motion itself references the "conditions of confinement." Defendant has a burden to articulate an argument to support his requested motion to compel and he has not. Nor did defendant confer in good faith with the government prior to filing this motion to compel.

In any event, the information that Sills seeks is immaterial and irrelevant. *United States v. Flynn*, 411 F. Supp. 3d 15, 28 (D.D.C. 2019) (acknowledging the government's disclosure obligations under Fed. R. Crim. 16 as limited to evidence that is "material to the preparation of a defense"). The government would not use records related to his transfer at sentencing, nor would they be obtained from or belong to Sills. As a result, the defense must show that these communications are "material to preparing the defense." Fed. R. Crim. P. 16(a)(1)(E). But Sills does not advance any arguments that such records would be material to his defense. Nor is it apparent how such records could be relevant, let alone material, to any issue at sentencing. In fact, courts have cast doubt on such requests under Rule 16 in the sentencing context. *See, e.g.*, *United States v. Matakovich*, *3 (denying defendant's request to "provide all material the Government intends to rely upon at sentencing" because the "request is simply too broad" and holding that,

under Rule 16, there is "no such generalized access to discovery" post-conviction). And the government does not intend to use any such information at sentencing.

Moreover, this type of request is the exact type of fishing expedition that falls outside the confines of the rule. *See Jencks v. United States*, 353 U.S. 657, 667 (1957); *United States v. Brock*, No. 21-140, 2022 WL 3910549, at *9, *11 (D.D.C. Aug. 31, 2022) (denying defendant's motion to compel "evidence of informants, undercover agents, cooperating sources and other persons present at the Capitol" under Rule 16, because such "wide-sweeping discovery" was, in essence, "a fishing expedition"). Therefore, defendant's request should be denied because of his failure to make a preliminary showing that the information sought is material and "bears some abstract logical relationship to the issues in the case," *United States v. Lloyd*, 992 F.2d 348, 350-51 (D.C. Cir. 1993), which is his burden, *U.S. v. Evans*, No. 22-cr-63, 2022 WL 16758553, at *9 (D.D.C. Nov. 8, 2022); *U.S. v. Shoher*, 555 F. Supp. 346, 353 (S.D.N.Y. 1983).

The government is aware that the Court, in deciding to impose a sentence, "may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come." *United States v. Tucker*, 404 U.S. 443, 446 (1972). It would therefore be permissible for the Court to consider the conditions of Sills' pretrial confinement when crafting an appropriate sentence. There are many ways to put this information before the Court that do not involve compelling the USMS to provide internal transfer documentation. For this reason, the defendant's motion should be denied.

CONCLUSION

For the above reasons, the United States respectfully requests that the Court deny Sills' motion to compel.

Respectfully submitted,
MATTHEW M. GRAVES
UNITED STATES ATTORNEY

BY: */s/ Ashley Akers*

ASHLEY AKERS
Trial Attorney
MO Bar No. 69601
U.S. Attorney's Office (Detailee)
601 D Street, N.W.
Washington, D.C.
202-353-0521
Ashley.Akers@usdoj.gov