

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	Case Number 21-cr-90-PLF
NATHANIEL DEGRAVE,	:	
	:	
Defendant.	:	

GOVERNMENT’S MOTION TO SEAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court to issue an Order directing that three exhibits proposed to be submitted to the Court in advance of a hearing on the defendant’s motion for bond—i.e., three Capitol building CCTV videos depicting assaults on law enforcement officers by the defendant and his co-conspirators—be placed under seal until further order of the Court. These exhibits have been provided to defense counsel subject to a protective order entered by this Court.

In support of its motion, the government submits that the materials are part of an ongoing grand jury investigation of the Capitol riot and their inclusion on the public docket could endanger the security of the U.S. Capitol and members and staff of Congress who work therein. These materials were provided to the U.S. Attorney’s Office by the U.S. Capitol Police—a Legislative Branch agency—under specific conditions, including that the materials not be disseminated outside of a protective order unless to satisfy the government’s discovery obligations or for use as evidence in the prosecution of a criminal offense.

Government counsel has consulted with defense counsel, who stated that she does not take a position on this motion, though she noted that she believed the proposed exhibits were duplicative of materials already submitted to the Court.¹

Legal Authorities

Documents and other materials filed in court “intended to influence the court” are judicial records. *Leopold v. United States*, 964 F.3d 1121, 1128 (D.C. Cir. 2020) (citation omitted). The exhibits proposed to be submitted to the Court for the purpose of influencing a detention decision are thus judicial records.

There are two interests potentially implicated by sealing judicial records relevant to a criminal case: the common-law right of public access to judicial records and the First Amendment right of access to criminal proceedings. *See, e.g., Press-Enterprise Co v. Superior Court*, 478 U.S. 1, 13 (1986) (holding that “the qualified First Amendment right of access to criminal proceedings applies to preliminary hearings as they are conducted in California”); *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 665 (D.C. Cir. 2017) (discussing common-law right of access to judicial records). The interests implicated depend on the type of filing and stage of the case. *See, e.g., Wash. Post v. Robinson*, 935 F.2d 282, 288 (D.C. Cir. 1991) (holding that First Amendment right of access applies to plea agreements because “such access has historically been available[] and serves an important function of monitoring prosecutorial or judicial misconduct”); *United States v. McVeigh*, 119 F.3d 806, 811 (10th Cir. 1997) (“A number of circuits have concluded that the logic of *Press-Enterprise II* extends to at

¹ The government does not believe the materials are duplicative. Two video exhibits show different angles of the events and from a stable camera—i.e., a camera not being carried by a rioter. Another proposed video exhibit is not duplicative at all, as it depicts another assault by the defendant in which he is part of a mob pushing law enforcement guarding an exterior door from the inside and forcing the exterior door open, allowing other rioters to breach the Capitol. The materials previously submitted to the Court do not show this.

least some categories of court documents and records, such that the First Amendment balancing test there articulated should be applied before such qualifying documents and records can be sealed.”); *United States v. Alcantara*, 396 F.3d 189, 196 (2d Cir. 2005) (explaining that the question whether the First Amendment right of access applies “require[s] examination of both ‘logic’ and ‘experience’ in the public’s and press’s qualified First Amendment right of access”). The Sixth Amendment public trial right does not give the public or the press a right to make copies of evidence introduced during a trial. *See Nixon v. Warner Comm’ns.*, 435 U.S. 589, 610 (1978).

Where the First Amendment right of access is implicated, “the party seeking to close the hearing [or seal the document] must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.” *Waller v. Georgia*, 467 U.S. 39, 48 (1984); *see also id.* at 47 (noting that the test is the same for the Sixth Amendment right to a public trial and First Amendment right of access); *United States v. Brice*, 649 F.3d 793, 796 (D.C. Cir. 2011) (“Where there is a First Amendment right of access to a judicial proceeding, the presumption [of access] can be overridden only if (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.”) (quotation marks omitted). If only the common-law right of public access to judicial records is implicated, there is nonetheless “a ‘strong presumption in favor of public access to judicial proceedings,’ including judicial records.” *Leopold*, 964 F.3d 1121, 1127 (quoting *United States v. Hubbard*, 650 F.2d 293, 317 (D.C. Cir. 1980)). The Court therefore must “weigh: (1) the need for public access to

the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.” *MetLife*, 865 F.3d at 665 (quotation marks omitted).

Under the stricter constitutional test, the D.C. Circuit has suggested that sealing may be allowed to protect (1) ongoing criminal investigations, or the safety of the defendant and his family, *Robinson*, 935 F.2d at 291; (2) risks of violent attacks against a cooperating defendant, *Dhiab v. Trump*, 852 F.3d 1087, 1097 (D.C. Cir. 2017); and (3) substantial amounts of material of an especially personal and private nature relating to the medical, educational, and mental health progress of underage victims, *Brice*, 649 F.3d at 794.

Notwithstanding the above, when Congress has directly spoken on the issue of granting the public access to judicial materials, neither the common-law nor the First Amendment right of access analyses appear to apply. *See, e.g., Leopold*, 964 F.3d at 1129 (“[T]he common-law [right of access] inquiry must yield when Congress has spoken directly to the issue at hand”) (quotation marks omitted); *In re Grand Jury Proceedings (Miller)*, 493 F.3d 152, 154 (D.C. Cir. 2007) (“[T]here is no First Amendment right of access to secret grand jury matters.”).

Argument

The U.S. Capitol Police has expressed a concern that providing unfettered access to sensitive information, such as the location of security cameras on Capitol grounds, to the public could result in the layout, vulnerabilities, and security weaknesses of the U.S. Capitol being collected, exposes, and passed on to those who might wish to attack the Capitol again.

Although the government's proposed exhibits by themselves have not been designated as "security information"² under 2 U.S.C. § 1979 by the U.S. Capitol Police, the Capitol Police's position is that providing access to large sections of the Capitol's CCTV footage would render such information, in the aggregate, "security information" under the statute, as it would provide individuals with a map of where security cameras are located as well as a clear picture of the interior of the Capitol, including entry and exit points, office locations, and the relation of the crucial chambers and offices to other areas of the Capitol. Analogously, the Architect of the Capitol treats its blueprints of the Capitol as "security information" under the statute. Furthermore, the U.S. Capitol Police Department Directive 1000.002, Retrieval of Archived Video, provides that the release of any footage from the Department's CCTV system must be approved by the Assistant Chief of Police for Operations, the agency's second highest sworn officer. *See* Ex. A.

The statute also restricts the release of "security information," allowing release "only if the Capitol Police Board determines in consultation with other appropriate law enforcement officials, experts in security preparedness, and appropriate committees of Congress, that the release of the security information will not compromise the security and safety of the Capitol buildings and grounds or any individual whose protection and safety is under the jurisdiction of the Capitol Police." 2 U.S.C. § 1979(b). The Capitol Police Board is charged with promulgating regulations to carry out this statute, with the approval of certain congressional committees. *Id.* § 1979(d). Because Congress appears to have spoken on the issue, the footage arguably is not subject to disclosure at all. *See, e.g., Leopold*, 964 F.3d at 1129; *In re Grand Jury Proceedings (Miller)*, 493

² "Security information" is defined as "(1) is sensitive with respect to the policing, protection, physical security, intelligence, counterterrorism actions, or emergency preparedness and response relating to Congress, any statutory protectee of the Capitol Police, and the Capitol buildings and grounds; and (2) is obtained by, on behalf of, or concerning the Capitol Police Board, the Capitol Police, or any incident command relating to emergency response." 18 U.S.C. § 1979(a).

F.3d 152, 154.

The government further submits that under the common-law right of access balancing test endorsed by the D.C. Circuit, the proposed exhibits may be sealed, at least temporarily, to “guard against risks to national security interests.” *See United States v. Hubbard*, 650 F.2d 293, 315-16 (D.C. Cir. 1980) (citing, among other cases, *United States v. Wash. Post*, 403 U.S. 943 (1971) (court permitting filing under seal of materials claimed to affect national security)). Under the stricter First Amendment analysis regarding the right of access of the public to criminal proceedings, the government also submits that the facts present an extraordinary situation and a compelling governmental interest that justify the sealing of materials that the government proposes to submit, and no alternatives would adequately protect the compelling interest. *See Brice*, 649 F.3d at 796; *Robinson*, 935 F.2d at 289 n.10; *Hubbard*, 650 F.2d at 316-17. Moreover, the public already has access to a description of the proposed exhibits in the government’s opposition to the defendant’s motion for bond as well as screenshots from one proposed exhibit, thus diminishing its need at this early juncture in the case for the actual footage. *See MetLife*, 865 F.3d at 665. And the Capitol Police, which owns the footage, has strongly opposed its public disclosure for security purposes. *See id.*

In another Capitol riot case, Chief Judge Howell denied a defendant’s motion to seal various video exhibits, including Capitol security camera footage, finding that the *Hubbard* factors described above weighed against sealing and in favor of public access. *See United States v. Emanuel Jackson*, 21-mj-115 (D.D.C. 2021), ECF No. 24, at 11-17. The government concedes that many of the factors the Chief Judge held to weigh in favor of disclosure are present here, such as materials bearing on an issue of “deep national important and public interest,” the availability of screenshots from some footage already being publicly available, and

the purpose of the exhibits—i.e., to influence the Court’s decision on whether to detain the defendant. *See id.* The government nevertheless argues that the compelling governmental interest of protecting national security—that is, protecting the layout and security apparatus of the Capitol from public disclosure just two short months after an insurrection on its grounds—justify the sealing of the proposed exhibits.

For all the foregoing reasons, the government respectfully requests that the three proposed video exhibits be placed under seal until further order of the Court.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY
D.C. Bar No. 415793

By: /s/ Jessica Arco
Jessica Arco
Special Assistant U.S. Attorney
D.C. Bar No: 1035204
U.S. Attorney’s Office for the District of Columbia
555 Fourth Street NW, Fourth Floor
Washington, DC 20530
Jessica.arco2@usdoj.gov
202-431-5198

Date: March 25, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of this pleading to be served upon defense counsel, Joanne Slaight, Esq., this 25th day of March 2021.

/s/

Jessica Arco
Special Assistant United States Attorney

Directive



Retrieval of Archived Video

Directive #: 1000.002
 Initiating Unit: Security Services Bureau
 CALEA: N/A

Effective Date: 02/06/2015
 Review Date: 1st February

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Authority and Coverage

14 The Chief of Police is the chief executive officer of the
 15 United States Capitol Police (USCP) and is
 16 responsible for the day-to-day operation and
 17 administration of the USCP.

18 This policy may be revised at the discretion of the
 19 Chief of Police, consistent with applicable law, rule,
 20 and regulation.

Definition(s)

22 **CP-411 Request for Copy/Review of Video**
 23 **Recordings.** A form created by the USCP to
 24 document and control the request and dissemination
 25 or archived video footage.

General Policy

27 The Department must maintain appropriate internal
 28 controls on the use and duplication of archived video
 29 footage to ensure the chain of custody for all copied
 30 video footage. In support of national security and
 31 legitimate law enforcement purposes, the Department
 32 adjudicates any and all requests for recorded security

33 camera video footage to include the dissemination of
 34 footage through established channels. Prescribed law
 35 enforcement purposes for the CP-411 include:
 36 required for court, subpoena, Office of Professional
 37 Responsibility (OPR), or training, but may include any
 38 authorized investigation. This policy will identify the
 39 parties that are able to request video (USCP sworn
 40 officials or their civilian equivalent) and the role of the
 41 Security Services Bureau (SSB) and Chief of
 42 Operations (COO) in assuring that any request for
 43 disseminating archived video follows an appropriate
 44 business purpose.

45 The USCP was tasked by its statutory oversight
 46 committees to expand the video retrieval capabilities of
 47 the Capitol Complex. The design, installation, and
 48 maintenance of this system are delegated to the SSB.
 49 The Capitol Police Board directed that cameras would
 50 only be used for matters related to national security
 51 and legitimate law enforcement purposes (e.g., serious
 52 crimes). The COO is the sole authority for the approval
 53 of any and all requests for archived video footage, with
 54 the exception of the Office of the Inspector General
 55 (OIG) which has the ability to duplicate archived video
 56 footage for its own investigations.

57 In addition, this policy identifies the expectations for
 58 accessing and using video footage. This policy does
 59 not apply to the use of video as an operational aid
 60 (e.g., supporting the USCP Command Center
 61 Operations during an incident). Instead, this policy is
 62 intended to safeguard against the transfer of archival
 63 video for non-operational activities (e.g., as an aid to
 64 officers in filing reports). Video footage received
 65 through an approved request should not be delivered,
 66 copied, or transmitted to anyone other than necessary
 67 parties (e.g., court, General Counsel) without approval
 68 from the COO.

69 The USCP, through SSB, maintains a sophisticated
 70 closed circuit television system (CCTV) system that
 71 includes cameras strategically placed throughout the
 72 Capitol Complex to provide situational awareness to

1 USCP personnel, supporting national security, and
2 legitimate law enforcement purposes.

3 Requesting Archived Video Footage

4 The CP-411 must be routed through the chain of
5 command and ultimately approved by the COO. A
6 requesting official must also have signed the signature
7 sheet acknowledging they have received and reviewed
8 this policy and relevant standard operating
9 procedures. Requests for archived video footage via
10 the CP-411 must be made at least at the level of
11 Sergeant (or their civilian equivalent) and should be
12 reviewed and approved by the relevant Deputy Chief
13 (or civilian equivalent) before it is sent to the Office of
14 the COO for official approval. The COO will forward
15 the request to the SSB upon approval.

16 Accessing Archived Video Footage

17 Workstations, as well as the requisite access
18 privileges for access to archived video footage from
19 the Video Management System (VMS), are issued by
20 the SSB to officials (mostly at the rank of Captain and
21 above) in the Operational Bureaus. In addition, the
22 SSB provides access privileges to any individual in
23 organizations that frequently require video footage for
24 operational purposes, including the USCP Command
25 Center, Communications, the Criminal Investigations
26 Section, OGC, OPR, OIG, and SSB. Archived video
27 can be used for operational activities, including
28 supporting Command Center Operations during an
29 incident or supporting USCP investigation. USCP
30 personnel should not use or reference archived video
31 in their reports which are used in court proceedings
32 unless they have written approval from the COO.

33 Retrieving, using, or duplicating archived video footage
34 in cases not related to national security or significant
35 law enforcement operations (e.g., traffic stops,
36 accident reporting), could expose the location of our
37 CCTV cameras or identify our surveillance tactics. This
38 presents a threat to national security, as making this
39 information public could be utilized by a potential
40 adversary.

41 Video footage should be used only in the prescribed
42 manner documented in the CP-411 within the strict
43 controls outlined in this policy. If the reason for a
44 request or usage of the video footage changes,
45 another CP-411 form should be completed and

46 provided through the proper chain of command to
47 amend the initial CP-411.

48 Responsibilities/Procedures

49 Security Services Bureau

50 SSB is responsible for the following:

- 51 1. Process an approved request and schedule a time
52 for the requesting official to pick-up the video
53 footage. Only the requesting official or an alternate
54 designated in writing by the requesting official may
55 pick up the video.
- 56 2. Assign a request tracking number to ensure
57 accountability and proper internal controls and
58 record all video requests and custody transfers
59 with the assigned tracking number in an approved
60 location. Any changes to the original request will
61 require a new CP-411.
- 62 3. Stores video footage for 30 days per system
63 capabilities. Officials should be aware that system
64 maintenance or malfunctions may make video
65 unavailable prior to the 30 days. For this reason,
66 video retrieval requests should be made promptly.
67 SSB will maintain an archive of any approved
68 video footage requests.

69 Additional Information

70 Retrieval, use, or duplication of archived video footage
71 would not be in compliance with the intent of Congress
72 when it established the VMS.

73 Cancellation

74 None.

75 Appendices

76 None.



77 **Kim C. Dine**
78 **Chief of Police**



UNITED STATES CAPITOL POLICE
REQUEST FOR VIDEO RECORDINGS

(Please Type or Print Legibly)

TO BE COMPLETED BY REQUESTING EMPLOYEE			
1. TYPE OF RECORDING		<input type="checkbox"/> REVIEW <input type="checkbox"/> CD/DVD <input type="checkbox"/> PHOTO/SHOT	
2. REASON FOR REQUEST		<input type="checkbox"/> COURT <input type="checkbox"/> SUBPOENA <input type="checkbox"/> TRAINING <input type="checkbox"/> OPR <input type="checkbox"/> OGC/OEC <input type="checkbox"/> OTHER (explain) _____	
3. REQUEST DATE		4. DATE NEEDED	
4. TYPE OF EVENT		5. EVENT DATE AND TIME	6. LOCATION OF EVENT
			7. CAMERAS
8. VIDEO START DATE		10. VIDEO END DATE	
9. VIDEO START TIME		11. VIDEO END TIME	
12. CFN		13. CCN	
14. NAME AND UNIT OF OFFICER(S) INVOLVED			15. UNIT
16. REQUESTING OFFICIAL			17. UNIT
18. OFFICE PHONE		19. CELL PHONE	
20. DESIGNATED ALTERNATE (PICK-UP)			21. UNIT
22. OFFICE PHONE		23. CELL PHONE	
CHIEF OF OPERATIONS APPROVAL			
24. SIGNATURE		25. PRINTED NAME	26. DATE
TO BE COMPLETED BY SYSTEM OPERATIONS SECTION (SOS)			
27. SIGNATURE		28. PRINTED NAME	
29. VIDEO REQUEST TRACKING NUMBER		30. DATE COMPLETED	
TO BE COMPLETED BY EMPLOYEE RECEIVING VIDEO			
WARNING: UNAUTHORIZED USE, DUPLICATION OR DISSEMINATION OF INFORMATION CONTAINED ON THIS CD/DVD MAY RESULT IN APPROPRIATE ADVERSE ACTION			
31. EMPLOYEE SIGNATURE		32. EMPLOYEE PRINTED NAME	33. DATE

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

DISTRICT OF COLUMBIA	:	
	:	Docket No.: 2018 CTF 017464
v.	:	Court Date: January 22, 2019
	:	Courtroom 116
	:	
RICKY WISEMAN	:	

PROTECTIVE ORDER CONCERNING THE DISCLOSURE AND USE OF UNITED STATES CAPITOL POLICE SURVEILLANCE VIDEO

It is this _____ day of _____, 201_, hereby

ORDERED that Bryan Brown, attorney for the defendant be permitted to obtain a copy of the street video; and it is

FURTHER ORDERED that Bryan Brown may show the street video in court as necessary to litigate this matter and the video shall not be used for any other case or purpose; and it is

FURTHER ORDERED that Bryan Brown may only show the street video to the defendant and any investigators working on this case and shall not share the street video nor show it to any other person not directly affiliated with this case; and it is

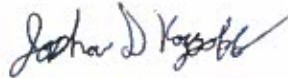
FURTHER ORDERED that neither Bryan Brown, his investigators, nor the defendant are to reproduce, share, disseminate, nor discuss with any person not named in this Order, the depictions shown in the street video; and it is

FURTHER ORDERED that Bryan Brown must return the street video to the Office of the Attorney General after the later of a plea, trial or sentencing in the above-entitled case.

Honorable Judge _____

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of December, 2018, a true copy of the foregoing District of Columbia's Motion for Protective Order Concerning the Disclosure and Use of United States Capitol Police Street Video was sent electronically to Bryan Brown, counsel for the defendant.



JOSHUA KARPOFF
Assistant Attorney General

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

DISTRICT OF COLUMBIA	:	
	:	Docket No.: 2018 CTF 017464
v.	:	Court Date: January 22, 2019
	:	Courtroom 116
	:	
RICKY WISEMAN	:	

**DISTRICT OF COLUMBIA’S MOTION FOR PROTECTIVE ORDER CONCERNING
THE DISCLOSURE AND USE OF UNITED STATES CAPITOL POLICE STREET
VIDEO**

The District of Columbia (“District”), by and through its attorney, the Office of the Attorney General, hereby moves for a protective order concerning the disclosure and use of United States Capitol Police (“USCP”) street video. In support of its motion, the District makes the following representations:

PROCEDURAL BACKGROUND

On November 28, 2018, the defendant was charged with Driving Under the Influence (“DUI”), in violation of D.C. Code § 50-2206.11(2014 Repl.), and Operating a Vehicle While Impaired (“OWI”), in violation of D.C. Code § 50-2206.14 (2014 Repl.). The case is set for status on January 22, 2019. On December 26, 2018, undersigned counsel received a copy of street video footage related to this case. For national security reasons, as indicated below, the District now files its motion for a protective order.

STATEMENT OF FACTS

On November 1, 2018, at approximately 11:01 p.m., Ricky Wiseman (“defendant”) was arrested for impaired driving after he was observed exiting the C-Street garage of the U.S. House of Representatives Cannon building, located at 25 Independence Avenue, S.E., Washington, D.C.

ARGUMENT

THE COURT HAS DISCRETION TO ISSUE THE PROTECTIVE ORDER IN THIS CASE.

The Court has discretion to issue the protective order given the parameters the government requests. *See, e.g., Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 219 (1979) (recognizing the need to protect confidential sources in criminal investigations); *Black v. Sheraton Corp. of America*, 184 U.S. App. D.C. 46, 60-61, 564 F.2d 531, 545-46 (1977) (same). Courts also have recognized the importance of protecting investigative techniques. *Id.* at 60-61, 564 F.2d at 545-46. *Harris v. United States*, 594 A.2d 546, 548-49 (D.C. 1991) is instructive. In *Harris*, the Court issued a protective order to defense counsel prohibiting him from sharing a video-taped statement with the defendant, but allowed defense to speak to the defendant regarding the substance of the information. *Id.* The Court held that “[a] restriction on defense counsel that prevents him from revealing what is possibly *Jencks* material does not materially interfere with counsel's duty to advise a defendant on trial-related matters.” *Id.*, 594 A.2d at 549, citing *State v. Schaeffer*, 217 Neb. 4, 6, 346 N.W.2d 701, 703 (1984) (“It is difficult to equate denial of the right to speak to a client with a prohibition against disclosure of the contents of a nonrelevant document...”). Furthermore, the Court found that this restriction was reasonable. It went on to hold that “the trial court imposed the temporary restriction on defense counsel to allow him the opportunity to review the tape before the trial court ruled on the government's request for a protective order. The trial court's procedure enabled counsel to argue the next day against the issuance of a protective order.” *Id.*, 594 A.2d at 549, relying on *United States v. Eniola*, 282 U.S.App.D.C. 176, 181, 893 F.2d 383, 388 (1990) (“The essence of the sixth amendment threshold is whether defense counsel has demonstrated that the [argued] defense has

legitimate potential such that [defense counsel] is entitled freely to discuss the strategies with his client for attempting to prove the defense.”).

Here, the release of Capitol security street videos could compromise USCP’s ability to protect the Capitol. The USCP’s primary mission is to police the United States Capitol Buildings and Grounds,¹ and it has the power to enforce the laws of the District of Columbia pursuant to 2 U.S.C. §1961. As part of its policing responsibilities, the USCP maintains and controls a series of video surveillance cameras throughout the Capitol Grounds. The purpose of the cameras is to assist in the maintenance of national security by detecting threats to U.S. Congressmen, their staff, and constituents, deterring and preventing terrorism, and providing for the safety and security of the Capitol Buildings and Grounds. The cameras are generally not used to collect evidence in criminal matters.

The release of security information by USCP is governed by 2 U.S.C. § 1979 (b):

Notwithstanding any other provision of law, any security information in the possession of the Capitol Police may be released by the Capitol Police to another entity, including an individual, only if the Capitol Police Board determine in consultation with other appropriate law enforcement officials, experts in security preparedness, and appropriate committees of Congress, that the release of security information will not compromise the security and safety of the Capitol buildings and grounds or any individual whose protection and safety is under the jurisdiction of the Capitol Police.

“Security information” is defined as any information that is “sensitive with respect to the policing, protection, physical security, intelligence, counterterrorism actions, or emergency preparedness and response relating to Congress ... and the Capitol building and grounds” which is obtained by the Capitol Police. 2 U.S.C. § 1979 (a). The locations and capabilities of the

¹ The streets and physical locations included in USCP’s jurisdiction are outlined in 2 U.S.C. § 1967 (b).

street cameras fall under this definition of security information, as this information directly concerns the policing and protection of the Capitol grounds.

Revealing the locations and capabilities of these cameras could jeopardize USCP's mission to protect the Capitol grounds. The dissemination of information concerning the location and technical capabilities, including the ability to focus, pan, and zoom on a moving or stationary object, as well as information about the image quality will aid people who are intent on finding weaknesses in the United States' ability to protect the Capitol buildings, grounds, and individuals whose protection and safety is under the jurisdiction of the Capitol Police. In the past year the District has prosecuted hundreds of impaired driving cases brought by Capitol Police. Even assuming that many of these arrests were not caught on video and that some of the arrests occurred at the same locations, the systematic release of all of these Capitol security videos in the future would compromise the ability of USCP to protect the Capitol.

The District acknowledges that pursuant to its duty under Super Ct. Crim. R. P. 16, street video obtained by USCP may be discoverable. In *Howard v. United States*, 656 A.2d 1106, 1111 (D.C. 1995), the Court also allowed reasonable issuance of a protective order. The Court held

Before trial, the prosecutor, out of concern for his obligations under *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963), informed the court and defense counsel that Derrick Ross was a suspect in an unrelated armed robbery, although there was no basis for believing that Ross was aware he was under suspicion. The court ruled that this information was too attenuated to fall within the demands of *Brady*. The court issued a protective order prohibiting defense counsel from discussing this information with appellant Howard and from using it as a basis for cross-examining Ross. On appeal, Howard contends that this protective order violated his Sixth Amendment right to counsel, as well as his rights under the Confrontation Clause. We find no abuse of discretion in the court's issuance of this protective order.

Howard, 656 A.2d 1106, at 1111 relying on *United States v. Anderson*, 509 F.2d 724, 730 (9th Cir. 1975) ("the district court can and should, when appropriate, place defense counsel under

enforceable orders against unwarranted disclosure of the evidence that he has heard.”). The government seeks to impose a similar reasonable restriction in this case. Preventing the defense from sharing the locations of these cameras does not interfere with the defendant’s rights to confer with counsel or assist with his defense.

The Court should balance the public safety interest of protecting our elected officials with the defendant’s right to prepare his defense by issuing a protective order that permits the defendant to prepare for trial and litigate the case but which limits the defendant, and his counsel, from reproducing the videos or using them for any reason not directly related to the litigation of this matter. Thus, the District respectfully asks this Court to issue a protective order pursuant to Super Ct. Crim. R. P. 16 (d), which would control the disclosure and use of the street camera video by the defendant and defense counsel.

A protective order is required in this case because the release of USCP security street videos could compromise USCP’s ability to protect the Capitol. Therefore, the government requests that the Court order that when the defendant obtains a copy of the street video, he shall not use this video for any other case or purpose and that his defense counsel shall only be allowed to show the video to the defendant and any investigators working on the case. The government also requests that the Court order that neither defense counsel, his investigators, nor the defendant are to reproduce, share, disseminate, nor discuss with any person not named by the Court in the requested protective order, the depictions shown in the street video. This order should include that all shall be identified to the government and they shall sign a protective order to be prepared by the government which precludes the dissemination to any other person of the disclosed information; "disclosed information" includes any later acquired information derived from the initial disclosure. Finally, the government requests that the Court order that defense

counsel must return the street video to the Office of the Attorney General after the later of a plea, trial or sentencing in the above-entitled case.

This protective order would serve the security interests of USCP in protecting our elected officials while allowing the District to comply with its Rule 16 obligations.

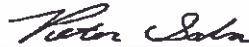
CONCLUSION

Based upon the foregoing facts and arguments, the District respectfully requests that this Court grant the District's motion for a protective order concerning the use, reproduction, and disclosure of the United States Capitol Police street video.

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

TAMAR MEEKINS
Deputy Attorney General, Public Safety Division



PETER SABA [975945]
Chief, Criminal Section



BY: JOSHUA KARPOFF [1015629]
Assistant Attorney General
441 4th Street, N.W., Suite 1060N
Washington, D.C. 20001
PHONE: (202) 727-3398
Joshua.Karpoff@dc.gov



UNITED STATES CAPITOL POLICE
WASHINGTON, DC 20510-7218

Phone 202-224-5151

January 11, 2021

Information Sharing Agreement

Officials and agents of the Metropolitan Police Department of the District of Columbia (MPD) coordinating with the United States Capitol Police (USCP) during the course of investigations related to the events of January 6, 2021 relating to the U.S. Capitol, acknowledge, understand, and agree that the USCP is a legislative branch agency and, as such, all information, to include video, audio, photographic and documentary information, shared by the USCP during these investigations, shall remain in the legal control of the USCP subject to any and all applicable release and non-disclosure requirements of Congress. Information exchanged as part of these investigations shall not be reclassified. All information originating with and provided by the USCP as part of these investigations remains the property of and under the legal control of the USCP, and if provided to MPD will be returned to the USCP at the conclusion of the investigation. This restriction does not apply to any video, audio, photographic or documentary evidence that is used as evidence or discovery as part of any prosecution of any criminal offense.

A handwritten signature in black ink, appearing to read "S. P. Gallagher", written over a horizontal line.

Sean P. Gallagher
Acting Assistant Chief
United States Capitol Police

A handwritten signature in black ink, appearing to read "Carlos Heraud", written over a horizontal line.

Captain Carlos Heraud
Homicide Branch Commander
Metropolitan Police Department of the District of Columbia



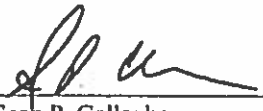
UNITED STATES CAPITOL POLICE
WASHINGTON, DC 20510-7218

Phone 202-224-5151


January 10, 2021

Information Sharing Agreement

Officials and agents of the Federal Bureau of Investigation (FBI) coordinating with the United States Capitol Police (USCP) during the course of investigations related to the events of January 6, 2021 relating to the U.S. Capitol, acknowledge, understand, and agree that the USCP is a legislative branch agency and, as such, all information, to include video, audio, photographic and documentary information, shared by the USCP during these investigations, shall remain in the legal control of the USCP subject to any and all applicable release and non-disclosure requirements of Congress. Information exchanged as part of these investigations shall not be reclassified. All information originating with and provided by the USCP as part of these investigations remains the property of and under the legal control of the USCP, and if provided to the FBI will be returned to the USCP at the conclusion of the investigation. This restriction does not apply to any video, audio, photographic or documentary evidence that is used as evidence or discovery as part of any prosecution of any criminal offense.



Sean P. Gallagher
Acting Assistant Chief
United States Capitol Police



Steven Michael D'Antuono
Assistant Director in Charge
Washington Field Office
Federal Bureau of Investigation

