

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

UNITED STATES OF AMERICA,

v.

WILLIAM BLAUSER, JR., and
PAULINE BAUER,

Defendants.

Case No. 21-cr-386-TNM

APPLICATION FOR ACCESS TO VIDEO EVIDENCE

Pursuant to Local Criminal Rule 57.6 and Standing Order No. 21-28 (BAH), applicants RadicalMedia, LLC and Leroy & Morton Productions, LLC (together, “RadicalMedia”) respectfully seek access, under the First Amendment and common law, to certain video footage and recordings that have been relied on by the Government in its submissions to the Court in this matter. In support of this application, RadicalMedia states as follows:

1. On May 14, 2021, Chief Judge Howell issued Standing Order No. 21-28 (the “Standing Order”), which ordered that “members of the media may access pretrial proceedings in Capitol Cases (the ‘Capitol Cases’), and video exhibits used therein that are not under seal.” *See* Standing Order at 4. The Standing Order also recognizes “[t]he significant media interest in viewing the video exhibits in Capitol Cases in a timely manner has generated media requests for access to, including copies of, the video exhibits in several Capitol Cases, with those requests resolved by the presiding judge on a case-by-case basis.” *See* Standing Order at 2.

2. To accommodate this interest, the Standing Order provides that “[m]embers of the media seeking access to video exhibits submitted to the Court in Capitol Cases may file an application . . . to the presiding judge in the case, or if no judge has been assigned, to the Chief Judge, for determination, and the judge may seek the position of the parties.” *See id.* at 5.

3. The Standing Order further provides that “[u]pon grant of such media application, the government shall make the video exhibit[s] available to any member of the media with necessary access credentials provided by the government, unless the order otherwise limits access.” *See id.* at 5-6. Specifically, the Standing Order states that “[m]embers of the media provided access to video exhibits in a particular case pursuant to such order may view those exhibits” by way of an electronic “drop box” into which the Government has agreed to place videos subject to access orders in the Capitol Cases. *See id.* at 6.

4. This action pertains to Pauline Bauer and William Blausen, Jr., who were charged with several criminal offenses during the January 6, 2021 violent breach of the Capitol. *See* Indictment, Dkt. 11 (charging Defendant Bauer with “obstruction of an official proceeding,” specifically “Congress’ certification of the Electoral College vote,” and charging both Defendants with four counts related to their actions on January 6, including “unlawfully and knowingly enter[ing] and remain[ing] in a restricted area of the U.S. Capitol” and “willfully and knowingly parading, demonstrating and picketing in any US Capitol Building”).

5. The statements of fact attached to the criminal complaints against Defendants reference multiple videos of Defendants as evidence of their involvement in the riot (the “Video Evidence”). *See* Statement of Facts, Dkt. 1-1 at 6-10; Statement of Facts, Dkt. 2-1 at 6-14. In particular, the Government alleges Capitol surveillance footage depicts the Defendants “entering the Capitol building via the east Rotunda door” at 2:43 p.m., after which they “appear to be involved in a brief skirmish with law enforcement.” Dkt. 1-1 at 6-7; Dkt. 2-1 at 9-11. The Government also alleges that in footage from body worn cameras of the Metropolitan Police Department, Defendant Bauer is recorded stating, “Bring Nancy Pelosi out here now. We want to hang that fucking bitch.” Dkt. 2-1 at 12-13.

6. Chief Judge Howell recently informed counsel at a hearing that “having had accusations and seen debate in prior of these January 6th cases about the government cherry-picking excerpts from videotapes,” it is “well within [the court’s] prerogative” to “look at the actual videotapes that are referenced” in Government filings. Aug. 19, 2021 Hr’g Tr. 27:1-8, *United States v. Torrens*, 21-204-2-BAH (D.D.C.). The Chief Judge has accordingly ordered the Government to produce for the Court’s review and for public release videos referenced in several cases. *E.g.*, *United States v. Torrens*, 2021 U.S. Dist. LEXIS 174997, *4-*6, *22 (Sept. 15, 2021) (noting the court asked the Government to submit videos referenced in its Statement of Offense and ordering the videos released to the press over the Government’s objection); *see also* Minute Orders of Oct. 19 and 21, 2021, *United States v. Mattice*, 21-mj-622-ZMF (D.D.C.) (directing the Government to submit “the video evidence described in the government’s Motion for Review of a Release Order” for the court’s review, then ordering the videos be publicly released per Standing Order 21-28).

7. Just like the videos the Chief Judge released in those cases, the videos that RadicalMedia seeks here were “intended to influence the court” in its decision-making, and as a result they are judicial records subject to a “strong presumption in favor of public access.” *Leopold v. United States*, 964 F.3d 1121, 1127-28 (D.C. Cir. 2020) (Garland, J.); *see also Metlife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 667 (D.C. Cir. 2017) (Garland, J.) (judicial records may “affect [the] court’s decisionmaking process even if the court’s opinion never quotes or cites [them]” and therefore are subject to a presumption of public access).

8. Neither the Government nor the Defendant could possibly rebut the presumption of access under the applicable test set out in *United States v. Hubbard*, 650 F.2d 293, 317-21

(D.C. Cir. 1980). *See, e.g., United States v. Jackson*, 2021 U.S. Dist. LEXIS 49841 (D.D.C. Mar. 17, 2021) (Howell, C.J.) (granting access to video exhibits in one of the Capitol Cases).

9. The Court should grant this Application and direct the Government to release the Video Evidence to RadicalMedia’s undersigned counsel via electronic “drop box” within 72 hours.¹

10. The Standing Order provides that “[n]o recording, copying, downloading, retransmitting or further broadcasting of video exhibits in a particular case is permitted, unless such permission is granted by the presiding judge.” *See* Standing Order at 6. RadicalMedia therefore requests that the Court grant permission to record, copy, download, retransmit, and otherwise further publish these Video Exhibits.²

CONCLUSION

For the foregoing reasons, RadicalMedia respectfully requests that the Court order the Government to release the Video Evidence, without restriction, within 72 hours.

¹ To the extent the Court deems it necessary, RadicalMedia requests that the Video Evidence be provided to the Court prior to release in conformity with the Chief Judge’s recent orders.

² RadicalMedia makes this request without conceding that the Standing Order complies with the First Amendment or common law, and expressly reserving the right to challenge this and other portions of the Standing Order in this and other Capitol Cases.

Dated: November 11, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2021, I caused true and correct copies of the foregoing to be served via electronic mail and U.S. Mail on the following:

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