

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 21-cr-690 (RCL)
	)	
PHILIP SEAN GRILLO,	)	
	)	
Defendant	)	
_____	)	

**DEFENDANT’S RESPONSE TO GOVERNMENT’S MOTION IN LIMINE TO  
LIMIT CROSS-EXAMINATION OF U.S. SECRET SERVICE WITNESS**

Mr. Grillo, through counsel, writes in response to the government’s motion *in limine* to limit the cross-examination of witnesses from the United States Secret Service (ECF No. 47). The government avers that “[t]o meet its burden of proof at trial, the government may call a witness from the United States Secret Service to testify that at the time of the Capitol Breach, Secret Service agents were on duty to protect Vice President Mike Pence and his two immediate family members, all of whom were present at the Capitol.” *Id.* at 1.

The government states that it intends to offer the above testimony to prove Counts Two (Entering and Remaining in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(1)), and Three (Disorderly and Disruptive Conduct in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(2)). *See* ECF No. 47 at 1; ECF No. 27 (Indictment).

While seeking to introduce Secret Service agents’ testimony about their assigned responsibilities that day, the government at the same time argues that the defendant “should be specifically foreclosed from questioning the witnesses about the following:

1. Secret Service protocols related to the locations where protectees or their motorcades are taken at the Capitol or other government buildings when emergencies occur;

2. Details about the nature of Secret Service protective details, such as the number and type of agents the Secret Service assigns to protectees.”

ECF No. 47. at 2.

The government’s request is somewhat unclear, but to the extent that it seeks to preclude any information about any details of the location of former Vice President Pence, its request should be denied as it was previously denied by the court in *U.S. v. Griffin*, 21-cr-92 (TNM), ECF No. 92. In *Griffin*, the government sought a similar exclusion and the court ruled that the defense was permitted to probe the USSS witness as to the location of Mike Pence and that any security related concern by the government did not override the defendant’s sixth amendment rights. *Id.* (citing *United States v. Foster*, 986 F.2d 541, 543 (D.C. Cir. 1993) (“The more important the witness is to the government’s case, the more important the defendant’s right....to cross-examine the witness)). See also *U.S. v. Thomas Webster*, 21-cr-208 (APM), ECF No. 75 (court also allowing defense to cross-examine USSS about location of former Vice President at the times relevant to the defendant’s charges).

As the court in *Griffin* explained, this information is directly relevant to whether or not the defendant was entering or remaining a restricted area where the Vice President was temporarily visiting. An attempt to preclude cross-examination on that point would violate Mr. Grillo’s Sixth Amendment right to confrontation. As to the other government requests to preclude questioning on (1) other buildings where emergencies occur - where the motorcades are taken in those situations, and (2) details about the number and types of agents the Secret service assigns to protectees – Mr. Grillo does not anticipate questions of this nature. However, if it becomes relevant based on the government’s presentation of evidence, the defense will inform the Court.

Respectfully submitted,

By:           /s/ Michael Padden          

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