

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>Case No. 1:21-cr-179-RCL</b>
	:	
<b>RACHEL POWELL,</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNMENT’S MOTION IN LIMINE TO INTRODUCE EVIDENCE PURSUANT  
TO FEDERAL RULES OF EVIDENCE 803(6) and 902(11)**

The United States of America, by and through its counsel, the United States Attorney for the District of Columbia, respectfully moves this Court for an order admitting certified business records in this case pursuant to Federal Rule of Evidence 803(6) and 902(11). Specifically, the government seeks to admit records authenticating information posted on a certain website, phone records, and jail calls. This motion seeks a ruling from the Court that the United States be permitted to introduce these records in its case-in-chief, pursuant to Federal Rules of Evidence 803 and 902, and established caselaw.

**I. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

At 1:00 p.m., on January 6, 2021, a Joint Session of the United States Congress convened in the United States Capitol building. The Joint Session assembled to debate and certify the vote of the Electoral College of the 2020 Presidential Election. With the Joint Session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. As early as 12:50 p.m., certain individuals in the crowd forced their way through, up, and over erected barricades. The crowd, having breached police officer lines, advanced to the exterior façade of the building. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd

forced entry into the U.S. Capitol. At approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to – and did – evacuate the chambers.

Among other acts, on January 6, 2021, the defendant approached law enforcement officers at the West Plaza, where she repeatedly pushed against bike-rack barricades. After successfully pushing past law enforcement officers, the defendant proceeded to climb to the Lower West Terrace, where the defendant used a large pipe and an ice axe to smash a window in the Capitol building. Through a bullhorn, the defendant instructed others already inside the Capitol about its floor plan, explaining that she had already been inside and stating that the people she addressed should “coordinate together if you’re going to take this building.” The defendant also stated that they “have another window to break.” Recordings captured the defendant as she crawled through an already breached window and entered the Capitol, where she joined the group inside.

On March 3, 2021, the Grand Jury returned an eight-count Indictment charging the defendant with multiple offenses arising from her conduct on January 6, 2021. ECF 12. These offenses include obstruction of an official proceeding and aiding and abetting in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One); destruction of government property causing damage in an amount more than \$1000 in violation of 18 U.S.C. §§ 1361 (Count Two); entering and remaining in a restricted building or grounds with a deadly or dangerous weapon, in violation of 18 U.S.C. § 1752(a)(1) and (b)(1)(A) (Count Three); disorderly and disruptive conduct in a restricted building or grounds with a deadly or dangerous weapon, in violation of 18 U.S.C. § 1752(a)(2) and (b)(1)(A) (Count Four); physical violence in a restricted building or grounds

with a deadly or dangerous weapon, in violation of 18 U.S.C. 1752(a)(4) and (b)(1)(A) (Count Five); disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Six); physical violence in the Capitol grounds or buildings in violation of 40 U.S.C. § 5104(e)(2)(F) (Count Seven) and parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Eight).

A trial date has been set in for May 8, 2023. Motions, including Motions *in Limine*, are due on March 15, 2023.

## **II. THE COURT SHOULD ADMIT BUSINESS RECORDS**

The United States seeks to introduce certified business records at trial from businesses and agencies related to this case, including Verizon, Facebook, and a correctional facility. The Federal Rules of Evidence provide that business records may be admitted into evidence without a live witness if they are accompanied by a written declaration from a custodian of the records certifying that the records were made in accordance with the requirements of Rule 803(6) of the Federal Rules of Evidence. Fed. R. Evid. 803(6), 902(11). The records detailed above are admissible as business records under Federal Rule of Evidence 803(6) because they each contain records of an act, event, condition, made at or near the time by, or from information transmitted by, a person with knowledge, that are kept in the course of a regularly conducted business activity as a regular practice. Fed. R. Evid. 803(6); see also *U.S. v. Fahnbulleh*, 752 F.3d 470, 478 (D.C. Cir. 2014). Additionally, to the extent each record is accompanied by a certification that complies with Rule 902(11), the records are self-authenticating and admissible regardless of whether the declarant is available as a witness. Rule 902 of the Federal Rules of Evidence provides in pertinent part:

Self Authentication: The following items of evidence are self-authenticating, they require no extrinsic evidence of authenticity in order to be admitted:

(11) The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court.....

Fed. R. Evid. 902(11); see also *U.S. v. Adefehinti*, 510 F.3d 319, 325 (D.C. Cir. 2007) (holding admission of business records bank relied on proper when accompanied by certificates with assertions tracking Rule 902(11)'s specifications).

For the records mentioned above, pursuant to Rule 902(11), the Government is hereby providing the defendant notice of its intent to offer these records and has previously provided these records in discovery. As this investigation progresses, if additional records are obtained, they will be provided to the defendant. Furthermore, the government will provide the accompanying certifications of authenticity to the defendant. If necessary, the Government can present to the Court the custodian of records declarations in support of certain business records that it will seek to have admitted in evidence. The Government reserves the right to supplement this notice with additional business records.

### **III. CONCLUSION**

For the foregoing reasons, the government respectfully requests that the Court allow the admission of the documents detailed above, pursuant to Federal Rules of Evidence 803(6) and 902(11).

Respectfully submitted,

MATTHEW GRAVES  
United States Attorney  
D.C. Bar No. 481052

By: /s/ Lucy Sun  
Lucy Sun  
Assistant United States Attorney  
Massachusetts Bar Number 691766

**CERTIFICATE OF SERVICE**

I, Lucy Sun, hereby certify that on this day, March 15, 2023, I caused a copy of the foregoing document to be served on the defendant's attorney, Nicholas Smith, via ECF.

By: /s/ Lucy Sun  
Lucy Sun