

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

| | | |
|---------------------------------|---|------------------------------|
| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Case No. 21-cr-215-RC |
| | : | |
| JOHN STEVEN ANDERSON | : | |
| | : | |
| Defendant. | : | |

UNITED STATES’ REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

The United States of America hereby respectfully submits its reply in support of its motion for the entry of a protective order governing the production of discovery by the parties in the above-captioned case.

Putting aside the name-calling and histrionics, the Defense does not substantively dispute any of the facts supporting the use of a protective order in this matter. The Defense does not dispute that the investigation and prosecution of those implicated in the Capitol Attack will likely be one of the largest in American history, both in terms of the number of defendants prosecuted and the nature and volume of the evidence. The Defense does not dispute the scope of the charges that are under investigation or the voluminous amounts of information and evidence relating to both charged and uncharged individuals which may be discoverable pursuant to Federal Rules of Criminal Procedure 16 and 26.2, Local Criminal Rule 5.1(a), the provisions of *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Giglio v. United States*, 405 U.S. 150, 153-54 (1972), and the Jencks Act, 18 U.S.C. § 3500. Nor does the Defense dispute the possibility that some of these evidentiary materials may contain sensitive information. (Examples of the types of information that the Government may designate Sensitive or Highly Sensitive are identified in paragraph one of the

proposed order.) Finally, the Defense does not claim that any aspect of the proposed order would be particularly onerous or unworkable.

For these reasons and those stated in its motion, the Government has demonstrated the “good cause” required for the Court to issue a protective order governing the production of discovery in this matter. *See United States v. O’Keefe*, No. 06-CR-0249, 2007 WL 1239204, at *2 (D.D.C. Apr. 27, 2007) (describing the court’s discretion as “vast”); *Cordova*, 806 F.3d at 1090 (“[A] ‘trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against unwarranted disclosure of the materials which they may be entitled to inspect.’” (quoting *Alderman v. United States*, 394 U.S. 165, 185 (1969))).

Many of the Defense’s objections mischaracterize the proposed order as rendering certain categories of evidence as subject to protection. While paragraph one of the proposed order includes an illustrative list of items that could be subject to a sensitivity designation, it does not designate any particular category of items as Sensitive or Highly Sensitive. The same paragraph makes clear that the government will “make every effort to provide discovery in a manner that will allow for most discovery to be produced without such designations.”¹ Paragraph 11 makes clear that the proposed order does not apply to, *inter alia*, materials that are or later become part of the public court record, or that are derived directly from or pertain solely to the defendant.

Further, Paragraph 8 requires the government to make “a good faith effort to resolve any dispute about a sensitivity designation without further order of this Court,” and agree to redaction

¹ Though not mentioned by the Defense, the Government has already produced voluminous discovery in this matter, including agent reports, copies of publicly available videos, and body-worn camera footage from seven Metropolitan Police Department officers, all without any sensitivity designation.

whenever redaction will resolve the basis for which the designation was applied.² Paragraph 10 makes clear that the defendant retains the right to seek modification of the proposed order and to challenge any particular designation before this Court. It also states explicitly that the burden of justifying any designation remains at all times with the Government.

The remainder of the Defense's objections are meritless. The Defense suggests that the proposed order will keep information from the public at pre-trial hearings or at trial (Opp. at 3), but Section 4(e) of the proposed order makes clear that none of the restrictions in the proposed order applies to the use of materials in judicial proceedings, and that any such use will be addressed by the parties and the Court prior to any such proceedings.

The Defense suggests that the Government may seek to designate all body-worn camera footage as sensitive (Opp. at 5), when, in fact, footnote one of the proposed order explicitly states that the Government will not mark the vast amount of body worn camera Sensitive or Highly Sensitive. In fact, as noted in footnote one of this reply, the Government has already turned over body-worn camera footage in this case without claiming any sensitivity designation.

The Defense argues that the Government seeks to prevent the defense from using any security footage from the Capitol cameras in its pleadings unless the Government has already used the same footage in its pleading. First, the proposed order does not make this assertion, and the Government has never made this assertion to the Defense. Second, the Government has no

² The Defense claims that the proposed order is an attempt to shift the burden of "redacting sensitive information" to defense counsel (Opp. at 7). Notably, the Defense does not cite any provision of the proposed order which does this – because there is none. The only reference to "redaction" in the proposed order is in paragraph 8, which provides that Government may agree to redaction of information as a way to resolve the need for a sensitivity designation for a particular piece of evidence, but imposes no obligation on the defense counsel to make any redactions.

objection to the Defense using still shots from footage in pleadings, just as the Government has done. For the reasons stated in Attachment A, the Declaration of Thomas A. DiBiase, General Counsel to the United States Capitol Police (“USCP”), the proposed order does indicate that video footage may be subject to protection. At this juncture, however, as no such footage has been turned over, the objection to such a designation as to any particular excerpt of footage is premature.³

The fact that the defendant is charged individually and not with co-conspirators does not alleviate the need for the proposed protective order. Ultimately, in order to comply with its discovery and disclosure obligations, the Government intends to make voluminous materials available in all pending cases arising out of the events of January 6, 2021, including this one. These materials will include information such as tips, witness statements, and the results of searches performed upon other individuals’ devices and accounts. Given the volume of material that is likely to be made accessible to the defendant here, the proposed order ensures that this information, where appropriate, will be adequately protected.

³ For the reasons described in Attachment A, the Government does intend to mark all surveillance video footage from the USCP surveillance cameras as Highly Sensitive. If such footage is produced to the Defense, and the Defense believes that a Highly Sensitive designation is inappropriate, the Defense will have the opportunity to contest that designation, as described above. At that time, the Defense will have the opportunity to explain to this Court how limiting the disclosure of such materials to the Defendant, his defense counsel, as well as any attorneys, investigators, paralegals, support staff, and expert witnesses he adds to his defense team is “interfering with the attorney-client relationship” (Opp. at 3) or why public disclosure is essential to Mr. Anderson’s defense to the charges. Similarly, if the Defense wishes to use such footage at a hearing in Court, it will be permitted to do so under the proposed order. The order simply requires the Defense to seek the Government’s agreement or to give the Government an opportunity to propose conditions before the footage is disclosed in open court – a decision that ultimately rests with the Court.

While the Opposition contains a section entitled “Defense Proposal” (Opp. at 8), it is clear that the Defense is not actually proposing a constructive alternative, but simply opposes any protective order of any kind.

The Government has established the requisite good cause for the proposed protective order. The proposed order is designed to ensure the Defense has liberal access to discovery while protecting sensitive materials from unwarranted disclosure. The reasonableness of the proposed protective order is also demonstrated by the fact that, with or without minor modifications, the proposed protective order has already been adopted in Capitol Attack cases without opposition by Judges Bates (*see U.S. v. Klein*, 21-cr-236), Berman Jackson (*see U.S. v. Black*, 21-cr-127), Boasberg (*see U.S. v. Jancart*, 21-cr-148), Brown Jackson (*see U.S. v. Fitzimons*, 21-cr-181), Cooper (*see U.S. v. Egtvedt*, 21-cr-177), Friedrich (*see U.S. v. Martin*, 21-cr-201), Friedman (*see U.S. v. Bromley*, 21-cr-250), Hogan (*see U.S. v. Hatley*, 21-cr-98), Kollar-Kotelly (*see U.S. v. Caldwell*, 21-cr-181), Lamberth (*see U.S. v. Munchel*, 21-cr-118), McFadden (*see U.S. v. Fellows*, 21-cr-83), Mehta (*see U.S. v. Wood* (21-cr-223), and Nichols (*see U.S. v. Miller*, 21-cr-119), as well as by Magistrate Judges Faruqui (*see U.S. v. Wilson*, 21-mj-229), Harvey (*see U.S. v. Adams*, 21-mj-291), and Meriweather (*see U.S. v. Hernandez*, 21-mj-73).

For all of the foregoing reasons, the Government has demonstrated good cause for the Court to issue a protective order governing the production of discovery in this matter.

Respectfully submitted,

CHANNING D. PHILLIPS
Acting United States Attorney
DC Bar No. 415793

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CERTIFICATE OF SERVICE

On this 11th day of April 2021, a copy of the foregoing was served upon all parties listed on the Electronic Case Filing (ECF) System.

/s/ Robert Juman
ROBERT JUMAN
Assistant United States Attorney

DECLARATION OF THOMAS A. DIBIASE

I, Thomas A. DiBiase, have personal knowledge of the following facts and will testify to them, if called to do so:

1. I have been the General Counsel for the United States Capitol Police (“USCP” or “Department”) since August of 2020. From October 2019 to August of 2020, I served as the Acting General Counsel, and from April of 2010 to October of 2019, I served as the Deputy General Counsel. Between 1991 and 2010, I worked as a litigator at two District of Columbia law firms and served for 12 years as an Assistant United States Attorney at the United States Attorney’s Office for the District of Columbia.
2. As part of my duties at the USCP, I have authorized the release of camera footage from the Department’s extensive system of cameras on U.S. Capitol Grounds (“Grounds”). These cameras, part of a sophisticated closed circuit video (CCV) system, are resident both inside and outside the buildings including the U.S. Capitol itself and the other Congressional office buildings on the Grounds. This CCV system provides the backbone of the security for the U.S. Capitol Grounds. The CCV system is monitored by sworn police officers 24-7 in our Command Center and is relied upon to provide real time information regarding any incident occurring on the Grounds. The first step whenever an incident occurs is for the Command Center to pull up the CCV cameras closest to the incident. This enables the Department to have a real-time view of the incident and provides an additional layer of safety for our officers when responding to any incident.
3. Access to this CCV system is strictly limited. Because the system is a closed circuit, access to the cameras only occurs from dedicated workstations and monitors located in a handful of locations on the Grounds. Our system is not “in the cloud” and may not be monitored or

hacked by anyone not connected via a dedicated workstation and monitor.

4. The disclosure of any footage from these cameras is strictly limited and subject to a policy that regulates the release of footage. Per Department Directive 1000.002, Retrieval of Archived Video (see Attachment 1), the release of *any* footage from the Department's CCV system must be approved by the Assistant Chief of Police for Operations, the Department's second highest sworn officer. The Directive notes that, "[t]he Capitol Police Board [which oversees the USCP] directed that cameras would only be used for matters related to national security and legitimate law enforcement purposes (e.g., serious crimes). The [Assistant Chief of Police for Operations] is the sole authority for the approval of any and all requests for archived video footage...." The Directive goes on to note that, "[v]ideo footage received through an approved request shall not be delivered, copied, or transmitted to anyone other than necessary parties (e.g., court, General Counsel) without approval from the [Assistant Chief of Police for Operations]."
5. There is a specific Department form, a CP-411 (Attachment 2), which must be completed and signed by several officials including the Assistant Chief of Police for Operations before any camera footage can be released.
6. As part of my duties as General Counsel and my prior duties as the Deputy General Counsel, I have often been consulted regarding the release of camera footage. The Office of the General Counsel has consistently taken a restrictive view of releasing camera footage in cases other than serious crimes or national security. We regularly deny footage to civil plaintiffs who may have been involved in accidents on the Grounds unless they involved serious injuries or death. (Even in those cases, I have only approved an attorney or investigator coming to the USCP and viewing the footage in our offices with a USCP

employee present.) We are also often asked for camera footage related to non-USCP administrative investigations, and we generally do not provide that footage. We will, however, allow investigators from agencies with which we regularly work, such as the Architect of the Capitol, to view such footage in the presence of a USCP employee. Even a member of Congress looking to view footage of our officers' interactions with his staff had to come to our office and view the footage with our employees present.

7. In 2014, the USCP, with the assistance of the District of Columbia's Office of the Attorney General (OAG), litigated the release of USCP camera footage in Driving under the Influence ("DUI") cases. The Department successfully argued that any footage of a DUI defendant, including arrest footage and footage of the defendant being processed in our prisoner processing area, should be subject to a protective order. Since 2015 the Department provides any relevant DUI arrest footage to the OAG who in turn provides it to the defendant subject to a protective order. (A sample protective order in a DUI case along with a sample motion is attached as Attachments 3 and 4.) As noted in this protective order, an attorney for a DUI defendant "may only show the street video to the defendant and any investigators working on this case and shall not share street video nor show it to any other person not directly affiliated with this case...." (Attachment 3 at 1.) The order further notes that the attorney for a DUI defendant may not "reproduce, share, disseminate, nor discuss with any person not named in this Order, the depictions shown in the video; and ... must return the street video to the [OAG] after the later of a plea, trial or sentencing in the above-entitled case." *Id.*
8. As noted in the motion for these protective orders, the OAG argues that:

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, 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.

(Attachment 4 at 3.)

9. It is my understanding that these protective orders are regularly signed by District of Columbia Superior Court judges, and the USCP has provided hundreds of videos pursuant to these orders since 2015.
10. I am familiar with the production of camera footage related to the attempted insurrection at the U.S. Capitol on January 6, 2021. Soon after the events of January 6, the Department knew that its footage of the riots would be essential to both the criminal prosecutions arising out of the events as well as to assist Congress and possibly other entities to understand how such a vast breach of security could occur. The Department immediately preserved all the footage from that date, starting at noon and continuing until 8:00 p.m.¹ This footage² was then provided to two distinct groups: Congressional entities and non-Congressional entities.
11. The two main Congressional entities that requested the eight hours of footage were the Senate Rules Committee (“Rules”) and the Committee on House Administration (“CHA”). Rules and CHA are the primary oversight bodies of the USCP, and the Department provided the total footage from the eight-hour period to them.³ In addition, in response to a request from the House of Representatives General Counsel, the Department provided numerous

¹ Without affirmative preservation, all Department footage is automatically purged within 30 days.

² The total of footage provided is over 14,000 hours.

³ In response to later requests from both committees, the Department provided footage from the entire 24-hour period for January 6, 2021.

clips from our footage to the House Impeachment Managers who were prosecuting the case against former President Donald J. Trump.

12. The Department also provided the complete footage from the eight-hour period to two non-Congressional entities, the Federal Bureau of Investigation (“FBI”) and the D.C.

Metropolitan Police Department (“MPD”), to assist in the investigation and prosecution of the cases arising out of the events of January 6, 2021.⁴ It is our understanding that it is this footage for which the United States now seeks a protective order. When the Department provided its CCV camera footage to the FBI and MPD, it did so subject to several restrictions. The footage was: (a) to remain in the legal control of the USCP; (b) not to be subject to the Freedom of Information Act; and (c) to be returned to the USCP at the conclusion of any investigation. These restrictions did not apply to any footage used as “evidence or discovery as part of any prosecution of any criminal offense.” (Attachment 5 at 1, and Attachment 6 at 1.)

13. The Department has not provided this footage to any other entity other than those listed above. Any public release of this footage, to the extent there has been, is not because of any authorized release by the USCP. (Note that the use of footage by the House Impeachment managers during the trial was permitted since, as a part of the Legislative Branch, the House Impeachment managers have a right to use footage from our cameras for impeachment processes similar to what would be show in a court of law.) It is important to note the wealth of publicly available footage that comes from non-USCP sources such as social media posts, footage recovered from indicted or arrested insurrectionists and footage from body worn cameras from other police departments that responded on January 6, 2021. Notably,

⁴ The Department has provided a very limited number of video clips to the U.S. Attorney’s Office for the District of Columbia for an investigation related to potential January 5th incidents.

published footage that contains sound is not from USCP, as our CCV system does not record sound. Further, USCP officers do not wear body cameras, and thus any published body-worn camera footage is from other police departments.

14. The Department has significant concerns with the release of any of its footage to defendants in the Capitol attack cases unless there are safeguards in place to prevent its copying and dissemination. The Department is aware of efforts made before January 6, 2021, by such defendants and others, to gather information regarding the interior of the U.S. Capitol, including references to the tunnels below the Grounds and maps of the building's layout, which information is generally not publically available.⁵ Our concern is that providing unfettered access to hours of extremely sensitive information to defendants who have already shown a desire to interfere with the democratic process will result in the layout, vulnerabilities and security weaknesses of the U.S. Capitol being collected, exposed and passed on to those who might wish to attack the Capitol again.

15. Pursuant to 2 U.S.C. § 1979, USCP information designated as “security information” may only be released with the approval of the Capitol Police Board. Security information is defined as information that:

- (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.

16. At this juncture, the Department in consultation with the Capitol Police Board, has designated only a small subset, consisting of less than 17 hours of footage, as “security

⁵ Indeed, the Architect of the Capitol treats its “blueprints” of the Capitol as “security information” under 2 U.S.C. §1979, *see below*.

information,” as that footage relates to evacuation of Members from their respective chambers on January 6. In addition, the Department is concerned that defendants may be provided access to large sections of footage or even all of the footage, and would deem such information, in the aggregate, to constitute “security information” under 2 U.S.C. § 1979. The ability of the defendants to copy or disseminate such footage would provide the defendants or others to whom it is released with 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 (such as the Speaker’s Office or Majority Leader’s Office) to other areas of the Capitol.⁶

* * * * *

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17th day of March 2021.



Thomas A. DiBiase

⁶ The aggregating of information as creating a national security risk is known as the Mosaic Theory. See, https://en.wikipedia.org/wiki/Mosaic_theory_of_intelligence_gathering, last accessed March 2, 2021.

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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13 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.

21 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.

26 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

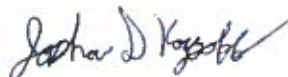
FURTHER ORDERED that neither Bryan Brown, his investigators, nor the defendant are to reproduce, share, disseminate, nor discuss with any person not named in this Order, the depictions shown in the street video; and it is

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 :
 :
 v. : **Docket No.: 2018 CTF 017464**
 : **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.

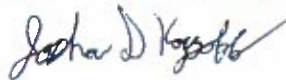
Respectfully submitted,

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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



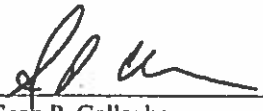
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WASHINGTON, DC 20510-7218

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

