

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

UNITED STATES OF AMERICA

v.

Case No. 1:21-cr-00331

KENNETH KELLY,

Defendant.

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**MOTION TO REVIEW "HIGHLY SENSITIVE" VIDEO EVIDENCE OF
THE DEFENDANT'S PARTICIPATION
IN THE CRIMINAL ACTIVITY OF JANUARY 6, 2021**

1. The Government in discovery provided the defendant with five CC TV videos dated January 6, 2021, showing the defendant in the Capitol Building. Pursuant to the presentence report and the statement of facts in this matter the defendant was in the Capitol Building for approximately 7 minutes. What he did and how he conducted himself while he was in the Capitol Building is highly relevant to the defendant's position in the memorandum for sentencing provided to this court on January 6, 2022.

2. The defendant, pursuant to Local Criminal Rule 49, will file these videos under seal.

3. The five CC TV videos which the defendant wishes the court to review are approximately 5 minutes long in total. It would not be burdensome for the court to review these videos, for the purpose of sentencing the Defendant.

4. On July 6, 2021; (Doc. 14) this court issued an order pursuant to the consent of the parties entitled "Protective Order Government Discovery". In the body of that order, the court identified "highly sensitive" discovery material. The Government has identified the five CC TV videos which the defendant wishes the court to review *in camera* as "highly sensitive".

5. Paragraph 4.a. of the order limits use of the highly sensitive material to the matters connected to the defense of the case or any other case connected to the events at the United States Capitol on January 6, 2021. Clearly sentencing in this matter falls within the limitation of use of said protective order.

6. On December 27 the Government stated, "It had no objection to the defendant filing the videos under seal". The Government further stated that the defendant could use USA FX or another platform to share the video clips.

WHEREFORE, the Defendant, **KENNETH KELLY**, moves this court to issue an order to comply with the protective order and for the defendant not to inadvertently disclose any matter labeled as "highly sensitive" and that the Government produce these items for the court for *in camera* review.

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