

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

**UNITED STATES OF AMERICA** :  
 :  
 v. : **Criminal No. 1:21-mj-00396-GMH-1**  
 :  
**ERIC DOUGLAS CLARK** :  
 :  
 **Defendant.** :

**MEMORANDUM IN RESPONSE TO THE MOTION TO COMPEL  
DISCOVERY [ECF No. 48]**

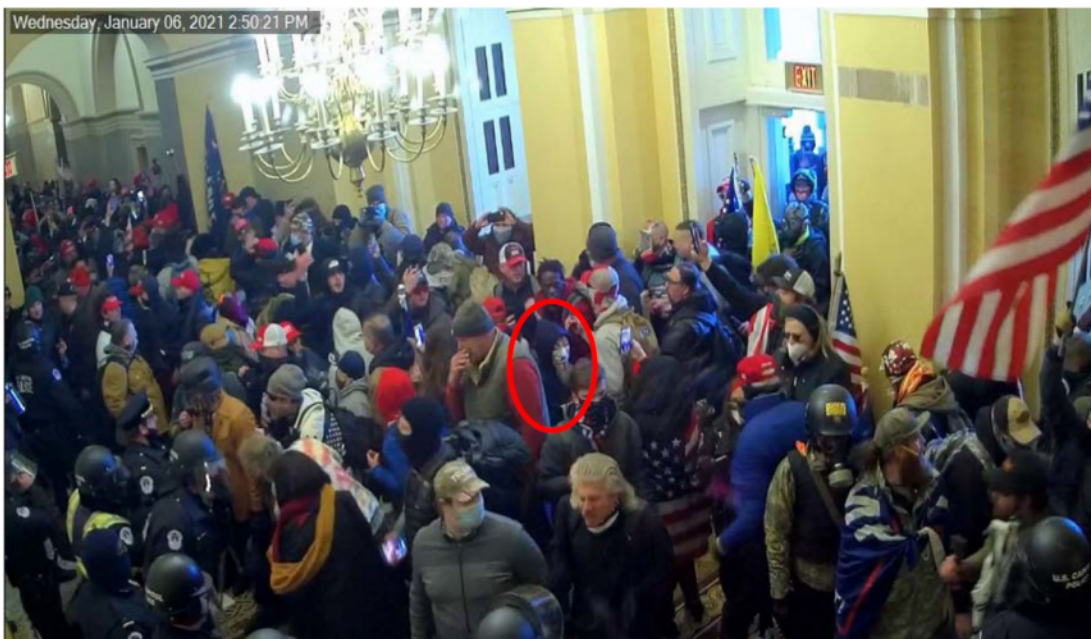
Defendant Eric Clark seeks (ECF No. 48) to compel “access to all discovery databases in connection with the events of January 6th, 2021, all state witness lists, and all credibility reports or information pertaining to all state witnesses. Mr. Clark also formally requests the deposition of one Mr. Ray Epps to the January 6th Select Committee in all its forms and any other testimonies, depositions, or interviews of Mr. Ray Epps.” The defendant, through counsel, has been provided with case specific discovery as it relates to his conduct and presence at the United States Capitol on January 6, 2021 and the defendant, through counsel, has been provided access to the substantial information concerning the riots generally, and the defendant specifically, in Global Discovery. The defendant, through counsel, consented to the entry of a Protective Order covering Sensitive and Highly Sensitive material. See ECF No. 13. The defendant, however, refused to sign attachment A, and continues to refuse to sign his acceptance of the Protective Order provisions, or to acknowledge that he is bound by the Protective Order. Further, the defendant posted on social media that he is not subject to the Protective Order and has offered to provide discovery materials to third parties not covered by the Protective Order. The government does not object to the defendant, as a *pro se* litigant, having access to the discovery materials available to the January 6,

2021 defendants, but requests that the defendant acknowledge and affirm that he is subject to the Protective Order and that he will not access or disseminate materials in violation of the Protective Order.

**FACTUAL BACKGROUND**

On or about April 26, 2021, the defendant was charged via complaint with four misdemeanor offenses related to the events at the United States Capitol on January 6, 2021: entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2); disorderly conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and parading, demonstrating, or picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

These charges stem from Clark's conduct at and in the U.S. Capitol on January 6, 2021, as a Joint Session of Congress convened to certify the 2020 U.S. Presidential Election. The Capitol Building and exterior grounds were closed to the public and surrounded by law enforcement officers, barricades, and signage. As the congressional session convened, Clark and others breached the barricaded perimeter and charged the Capitol Building. Video footage depicts Clark entering the Capitol Building through the Senate Wing door at approximately 2:50 pm.



The defendant was wearing a Guy Fawkes mask, popularized in the movie *V is for Vendetta*.<sup>1</sup>

Through the course of the past 18 months, the government has provided the defendant, through counsel, with case specific discovery as well as access to a tremendous amount of discovery related to the events on January 6, 2021. Most recently, the government provided the defendant, and standby counsel, with information concerning Global Production of Discovery #23. As of December 8, 2022, over 3.89 million files (over 7.06 terabytes of information) have been provided to the defense Relativity workspace. These files include (but are not limited to) the results of searches of 724 digital devices and 402 Stored Communications Act accounts; 2,841 FBI FD-302s and related attachments (FD-302s generally consist of memoranda of interviews and

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<sup>1</sup> *V for Vendetta* is a 2005 dystopian political action film directed by James McTeigue. The film ends with the main character successfully destroying Parliament, the seat of the British legislature. See [https://en.wikipedia.org/wiki/V\\_for\\_Vendetta\\_\(film\)](https://en.wikipedia.org/wiki/V_for_Vendetta_(film)). The movie, and the Guy Fawkes mask, got its inspiration from the Gunpowder Plot of 1605 and Guy Fawkes' attempt to blow up the British Parliament Building. See [https://en.wikipedia.org/wiki/Guy\\_Fawkes](https://en.wikipedia.org/wiki/Guy_Fawkes). The government notes that the defendant uses a variation of the name Guy Fawkes as his e-mail address and he has prominently displayed a Guy Fawkes mask in the background in both of his recent video Court appearances.

other investigative steps); 340 digital recordings of subject interviews; and 129,021 (redacted or anonymous) tips. Over 30,000 files consisting of body-worn and hand-held camera footage from five law enforcement agencies and surveillance-camera footage from three law enforcement agencies and the Hilton Garden Inn, have been shared to the defense evidence.com video repositories. For context, the files provided amount to over nine terabytes of information and would take at least 361 days to view continuously. Specific to the defendant's request for information concerning Ray Epps, on December 13, 2022 the government provided the defendant with information identifying the disclosed information concerning Ray Epps available in the Relativity database, and available to the defendant's standby counsel. In addition, the defendant, through counsel, has been provided case specific discovery that is not subject to a sensitivity designation. That information includes the defendant's confession, as well as the items of clothing the defendant wore at the Capitol on January 6, 2021.<sup>2</sup>

The defendant has previously indicated on social media that he will use his access to protected discovery to disseminate the sensitive information to others not covered by the protective order.

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<sup>2</sup> Including a Guy Fawkes mask.

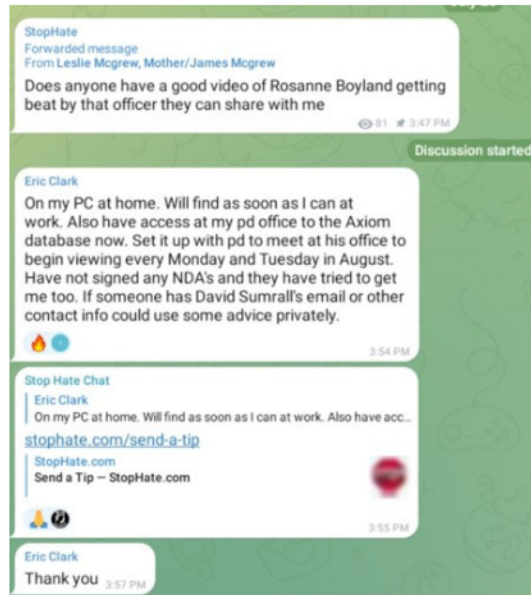


Figure 1: Still of social media chat

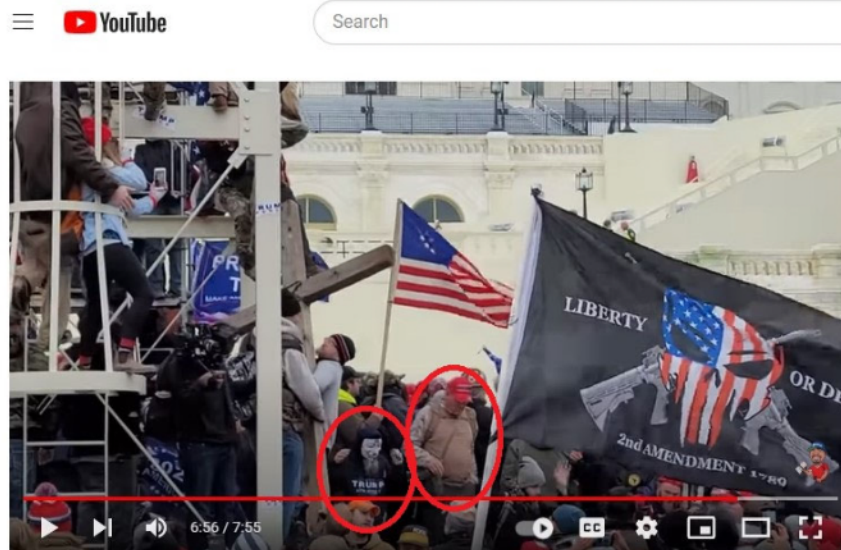
Further, the defendant has refused to sign the protective order, although it has been entered. *See* ECF No. 13. The government notes that other defendants have apparently violated the terms of the protective order by disclosing sensitive information, or their access to sensitive information, to third parties. *See e.g., United States v. McKellop*, NO. 21-cr-268 (CJN), ECF No. 132, pg. 3-4.

On December 2, 2020, the government provided the defendant and counsel with an updated search that identified additional images of Mr. Clark in and around the U.S. Capitol on January 6, 2021. In his motion, the defendant states:

Mr. Clark's proximity to Mr. Epps being within mere inches of him is fully displayed in the most recent discovery photos and videos entered by prosecution and his involvement is relevant to Mr. Clark's defense as to the revealing nature of comments made by Ray Epps to Mr. Clark.

ECF No. 48, pg. 1. Based upon the information provided, the government believes the defendant is referring to the following:





#DC  
**THE STAR SPANGLED BANNER / THE STORM ARRIVED PT. 3**

*Figure 2: Still from open source video, “The Star Spangled Banner/The Storm Arrived Pt. 3” one of a series of videos taken at the Capitol on January 6, 2021 and posted by an individual self-identifying as The Black Conservative Preacher and available at <https://www.youtube.com/watch?v=wRqojW8GZrc>*

As stated, the defendant’s counsel has had access to the Ray Epps specific discovery for quite some time. That access was recently identified specifically to the defendant and his counsel. The government does not object to access to the defendant, as a *pro se* litigant, upon his affirmation and acceptance of the terms and conditions of the Protective Order. The government notes that Mr. Epps has claimed that his life is in danger. *See* N.Y. Times, July 13, 2022, A Trump Backer’s Downfall as the Target of a Jan. 6 Conspiracy Theory, <https://www.nytimes.com/2022/07/13/us/politics/jan-6-conspiracy-theory-ray-epps.html>, last accessed Dec. 15, 2022.

