

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>CASE NO. 21-CR-127 (ABJ)</b>
	:	
<b>JOSHUA BLACK,</b>	:	
	:	
<i>Defendant.</i>	:	

**UNITED STATES' MOTIONS *IN LIMINE***

The United States of America, by and through the United States Attorney for the District of Columbia, respectfully submits this omnibus brief arguing motions *in limine* in advance of the trial in this case scheduled for January 9, 2023. The government offers the authorities and analysis below to promote efficiency and reduce the need to argue objections midtrial. The three motions in this brief address the following issues:

1. Admission of Certain Categories of Multimedia
2. Admission of Certain Provisions of the Constitution, Federal Statutes, and Congressional Records
3. Preclusion of the Defendant's Introduction of His Own Out-of-Court Statements as Inadmissible Hearsay

For each motion herein, the United States asks that the Court grant the requested relief or, if the Court reserves ruling, to consider the below arguments when the relevant issues arise during trial.

**I. BACKGROUND**

On February 17, 2021, the Grand Jury returned an indictment charging the defendant, Joshua Black, with eight counts related to his conduct during the attack on the United States Capitol in Washington, D.C., on January 6, 2021:

1. Count One: Obstruction of an Official Proceeding and Aiding and Abetting (in violation of Title 18, United States Code, Sections 1512(c)(2) and 2))

2. 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));
3. 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));
4. Count Four: Impeding Ingress and Egress in a Restricted Building or Grounds with a Deadly or Dangerous Weapon and Aiding and Abetting (in violation of 18 U.S.C. §§ 1752(a)(3) and (b)(1)(A), and 2);
5. Count Five: Unlawful Possession of a Dangerous Weapon on Capitol Grounds or Buildings (in violation of 40 U.S.C. § 5104(e)(1)(A));
6. Count Six: Entering and Remaining on the Floor of Congress (in violation of 40 U.S.C. § 5104(e)(2)(A));
7. Count Seven: Disorderly Conduct in a Capitol Building (in violation of 40 U.S.C. § 5104(e)(2)(D)); and
8. Count Eight: Impeding Passage through the Capitol Grounds or Buildings and Aiding and Abetting (in violation of 40 U.S.C. §§ 5104(e)(2)(E), 2)

(ECF No. 9.)

The affidavit supporting the complaint against Black details at length the commencement of the Joint Session of Congress to certify the Electoral College vote in the 2020 Presidential Election on January 6, 2021, at around 1:00 p.m. in the Capitol; the breach of and unlawful entry of large crowds into the Capitol; the suspension of the Joint Session while law enforcement worked to restore order and clear the Capitol of the unlawful occupants; and the resumption of the Joint Session around 8:00 p.m., approximately six hours after the crowd breached the Capitol. (ECF No. 1.)

The affidavit and government pleadings filed before a detention hearing in this matter (ECF Nos. 1, 20, 21) detail Black's conduct leading up to, during, and after January 6, 2021. Black traveled from Leeds, Alabama, to attend the "Stop the Steal" rally President Donald Trump held in Washington, D.C., on January 6. Black made his way to the Capitol and was one of the first individuals to breach the police barricades set up in front of the Lower West Terrace on the West Front of the Capitol grounds. Soon after Black positioned himself at the front of the crowd at the West Front, police officers deployed less-than-lethal munitions to control the growing and increasingly violent mob. Black was struck in the left cheek by a munition, causing a gaping wound.

Sometime after he was injured, Black proceeded to the East Front of the Capitol and participated in the breach of the East Rotunda Doors. For several minutes, Black was among a larger group of rioters that screamed at, pushed, grabbed, sprayed chemical irritants at, and wrested a riot shield from a thin line of U.S. Capitol Police (“USCP”) officers defending that entryway. Black participated with several rioters in a heave-ho maneuver designed to breach the doors. Rioters finally breached that entrance, and Black crossed the threshold of the Capitol at approximately 2:40 p.m. After moving between two police officers who could not control the rioters cascading into that entryway, Black walked through corridors leading to the Senate Chamber, eventually entering and remaining on the Senate Floor for over 20 minutes.

While on the Senate Floor, Black and other rioters rifled through at least one Senator’s papers, and he took a cellphone photo of a Congressman and a Senator’s objection to the certification of the Electoral College count vote for the State of Arizona. Black also posed for photos, participated in a prayer at the Senate Floor dais led by another rioter, Jacob Chansley (also known as the “QAnon Shaman”), and sat on the floor talking on his cellphone. A USCP officer asked him and other rioters to leave the Senate Chamber at least twice, but Black did not leave until a column of several Metropolitan Police Department (“MPD”) officers entered the Chamber and forced rioters out at approximately 3:09 p.m. Black exited the Capitol at the Senate Carriage Door at approximately 3:10 p.m.

In the days following January 6, Black admitted participating in the riot in a video testimonial he posted to YouTube and in two voluntary interviews with the Federal Bureau of Investigation (“FBI”). Among other statements about his conduct, he professed his belief that the Presidential election of 2020 and his country had been “stolen”; claimed he wanted to get inside the Capitol to “pray the blood of Jesus over it”; and admitted he was carrying a knife when he entered the building.

During a search of his residence in Alabama on January 14, 2021, the FBI recovered the clothing and knife Black admitted he wore inside the Capitol. The FBI arrested him later that day.

## **II. MOTIONS**

### **A. Motion in Limine to Admit Certain Categories of Multimedia**<sup>1</sup>

The attack on the Capitol was an event of unparalleled size and scope. Much of the event was recorded on video and in photos: on surveillance footage captured by USCP closed-circuit television (“CCTV”) surveillance cameras; on House and Senate Recording Studio cameras; on MPD body-worn cameras (“BWC”); and on cameras and phones carried by journalists, members of the mob, and other persons present at the Capitol grounds and inside the Capitol building on January 6, 2021. The government’s case at trial will rely heavily on such evidence to explain Black’s specific conduct, to contextualize it through other contemporaneous events, and to give the jury a sense of the riot as a whole.

The government has identified and provided to the defense certain categories of photographic and video items that it intends to offer at trial. The following sections provide a legal framework for authenticating and admitting the items, describe each category of evidence, and explain why each is admissible as relevant and authentic.

#### **1. Legal Framework**

Under Federal Rule of Evidence 901(a), “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Rule 901(b) provides a nonexhaustive list of examples of methods for showing authenticity. Those include, as relevant here:

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<sup>1</sup> Counsel for Black and for the government are currently in discussions about whether the parties can stipulate to the admission of some or all of the categories of multimedia identified in this brief.

(1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is claimed to be.

...

(3) *Comparison by an Expert Witness or the Trier of Fact*. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like*. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

...

(9) *Evidence About a Process or System*. Evidence describing a process or system and showing that it produces an accurate result.

Fed. R. Evid. 901(b)(1), (3), (4), (9).

As a general matter, establishing an item's authenticity is not "a particularly high hurdle." *United States v. Ortiz*, 966 F.2d 707, 716 (1st Cir. 1992); *see also United States v. Vidacek*, 553 F.3d 344, 349 (4th Cir. 2009) ("The burden to authenticate under Rule 901 is not high"); *Link v. Mercedes-Benz of N. Am., Inc.*, 788 F.2d 918, 927 (3d Cir. 1986) ("The burden of proof for authentication is slight."); *United States v. Hassanshahi*, 195 F. Supp. 3d 35, 48 (D.D.C. 2016) ("The threshold for the Court's determination of authenticity is not high, . . . and the proponent's burden of proof for authentication is slight[.]") (citation and quotation marks omitted). Rule 901 "requires only a prima facie showing of genuineness and leaves it to the jury to decide the true authenticity and probative value of the evidence." *United States v. Harvey*, 117 F.3d 1044, 1049 (7th Cir. 1997) (citing cases). *See also, e.g., United States v. Belfast*, 611 F.3d 783, 819 (11th Cir. 2010) ("[A]uthentication itself is 'merely . . . the process of presenting sufficient evidence to make out a prima facie case that the proffered evidence is what it purports to be.'" (quoting *United States v. Caldwell*, 776 F.2d 989, 1002 (11th Cir. 1985))); *Vidacek*, 553 F.3d at 349 ("only a *prima facie* showing is required"). Stated differently, "[t]he standard the district court must apply in evaluating a document's authenticity is whether there is enough support in the record to warrant a reasonable person in determining that the evidence is what it purports to be." *United States v.*

*Blanchard*, 867 F.3d 1, 6 (1st Cir. 2017) (quoting *United States v. Paulino*, 13 F.3d 20, 23 (1st Cir. 1994)). Once that showing is made, “[t]he factual determination of whether evidence is that which the proponent claims is ultimately reserved for the jury.” *Vidacek*, 553 F.3d at 349. *See also, e.g., Belfast*, 611 F.3d at 819 (“Once that *prima facie* case is established, the evidence is admitted and the ultimate question of authenticity is decided by the jury.”).

To make out a *prima facie* showing of authenticity, “circumstantial evidence of authenticity can be sufficient.” *United States v. Bruner*, 657 F.2d 1278, 1284 (D.C. Cir. 1981). *See, e.g., United States v. Broomfield*, 591 F. App’x 847, 851 (11th Cir. 2014) (unpublished) (“Authentication may be established ‘solely through the use of circumstantial evidence.’”) (quoting *United States v. Smith*, 918 F.2d 1501, 1510 (11th Cir. 1990)). And, importantly, the party seeking to admit evidence need not “rule out all possibilities inconsistent with authenticity, or to prove beyond any doubt that the evidence is what it purports to be.” *United States v. Holmquist*, 36 F.3d 154, 168 (1st Cir. 1994). Rather, “the government must only ‘demonstrate that, as a matter of reasonable probability, possibilities of misidentification and adulteration have been eliminated.’” *United States v. Celis*, 608 F.3d 818, 842 (D.C. Cir. 2010) (quoting *United States v. Stewart*, 104 F.3d 1377, 1383 (D.C. Cir. 1997)). *See, e.g., United States v. Bowens*, 938 F.3d 790, 794-95 (6th Cir. 2019) (explaining that “[a]nyone could have used the defendants’ Facebook accounts, just as the pictures could have depicted the men smoking tobacco cigars, and ‘getting high’ could have been a reference to skydiving,” but that there was sufficient circumstantial evidence “for the jury to infer that the accounts belonged to the defendants, and that the defendants were the authors of the posts about using marijuana”); *Broomfield*, 591 F. App’x at 852 (finding sufficient evidence of authenticity even though “there was no testimony establishing that the recording equipment was reliable or that the video was not altered or staged”).

In deciding preliminary questions about the admissibility of these videos, “[t]he court is

not bound by evidence rules, except those on privilege.” Fed. R. Evid. 104(a). In other words, the government may rely upon otherwise inadmissible evidence in establishing the authenticity of the video evidence described in this motion. *See, e.g., United States v. White*, 116 F.3d 903, 914 (D.C. Cir. 1997). Of course, even with a pretrial ruling that evidence is authentic, and thus admissible, the government must introduce sufficient evidence at trial from which a reasonable juror could reach the same conclusion regarding authenticity. *See, e.g., United States v. Gammal*, 831 F. App’x 539, 542 n.6 (2d Cir. 2020) (unpublished) (“Insofar as the District Court relied on non-public information to make its preliminary determination, it did not err because it did not do so in lieu of the presentation of sufficient authenticating public evidence later at trial.”); *United States v. Puttick*, 288 F. App’x 242, 246 (6th Cir. 2008) (unpublished) (“It is permissible for the judge to make a preliminary determination as to authentication, admit the evidence conditionally under Rule 104(b), and then allow the jurors to be the final arbiters of whether it was actually authenticated.”); *United States v. Branch*, 970 F.2d 1368, 1371 (4th Cir. 1992) (“Thus, even though the district court may have ruled during an in camera proceeding that the proponent had presented sufficient evidence to support a finding that a tape recording was authentic, evidence that would support this same ruling must be presented again, to the jury, before the tape recording may be admitted.”).

## **2. Analysis**

The government’s evidence will show that all the videos and photos described herein fairly and accurately depict events at the Capitol which are relevant to an issue of consequence in Black’s trial. While admission of USCP, House and Senate Recording Studio, and MPD video footage should be noncontroversial, the following discussion will address the evidentiary basis for authentication of all the videos the government intends to offer at trial, including those “official” sources. The bulk of the discussion focuses on authentication of videos from other sources—“third-party” videos—

the distinctive events and characteristics visible in those videos, and the corroboration of the authenticity of those videos found from other pieces of evidence.

*a. USCP CCTV and Crime-Scene Videos*

The government intends to introduce clips of video from USCP CCTV cameras as both case-specific evidence depicting Black and in a compilation video, to be introduced by an overview witness, that will address certain elements of the charged offenses and will give the jurors an overall picture of what occurred at the Capitol on January 6, 2021.

Admission of footage from the USCP's CCTV surveillance system is straightforward. If CCTV videos are not admitted through stipulations, the government will present a USCP witness to testify about the CCTV system. This witness will be able to explain how the system is used, that it reliably records and depicts the areas where USCP has installed cameras, and the internal characteristics of videos—such as date and time stamps—that allow USCP to identify and retrieve particular segments of video. A USCP witness who was present during the attack on the Capitol will be able to explain that the videos offered by the government in this case accurately show the events that took place.

That testimony will satisfy Federal Rule of Evidence 901(b)(1), “Testimony of a Witness with Knowledge” to show that “an item is what it is claimed to be.” Fed. R. Evid. 901(b)(1). *See American Wrecking Corp. v. Secretary of Labor*, 351 F.3d 1254, 1262 (D.C. Cir. 2003) (photograph of accident site was properly authenticated by credible testimony of site supervisor); *United States v. Childs*, 5 F.3d 1328, 1336 (9th Cir. 1993) (custodian of records giving testimony of facts necessary to establish exception to rule against hearsay for records of regularly conducted activity under Rule 803(6) also authenticated proffered exhibits under Rule 901(b)(1)).

Although Rule 901(b)(1) alone would be sufficient to support admission of the USCP testimony, that testimony will also satisfy Rule 901(b)(4), which allows authentication by way of



“the appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.” Fed. R. Evid. 901(b)(4). It also will accord with the requirements of Rule 901(b)(9), which allows authentication by “[e]vidence describing a process or system and showing that it produces an accurate result.” Fed. R. Evid. 901(b)(9).

Likewise, admission of video footage of the Capitol’s West Front from shortly after 1:00 p.m. on January 6, 2021, recorded by a USCP crime-scene officer, is straightforward. At least one USCP witness who observed the events depicted in the footage will testify that the footage fairly and accurately depicts what the officer saw and heard when the footage was recorded, thus satisfying Federal Rule of Evidence 901(b)(1).

***b. House and Senate Recording Studio Videos***

The government intends to introduce clips of video from House and Senate Recording Studio cameras as both case-specific evidence depicting Black and in a compilation video, to be introduced by an overview witness, that will address certain elements of some of the charged offenses relating to Congress’s certification proceeding at the Capitol on January 6, 2021.

Video recorded by the House and Senate Recording Studios is “self-authenticating,” meaning it “require[s] no extrinsic evidence of authenticity in order to be admitted.” Fed. R. Evid. 902.<sup>2</sup> This is so because it qualifies as an “Official Publication[],” defined as any “book, pamphlet, or other publication purporting to be issued by a public authority.” Fed. R. Evid. 902(5). Official materials published on government websites fall into this category and are self-authenticating under Rule 902. *See Williams v. Long*, 585 F. Supp. 2d 679, (D. Md. 2008); *cf. MMA Consultants 1, Inc. v. Republic of Peru*, 245 F. Supp. 3d 486, 503-504 (S.D.N.Y. 2017) (Congressional transcripts); *Singletary v.*

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<sup>2</sup> Further underscoring the multiple paths to authentication, it is worth noting that House and Senate Recording Studio footage may also be authenticated through any of the mechanisms outlined in this motion, including Fed. R. Evid. 901(b)(1), (3), (4), (9).

*Howard Univ.*, No. 1:17-cv-01198, 2018 WL 4623569 (D.D.C., Sept. 26, 2018) *rev'd on other grounds* (government-issued guidebook).

The United States Senate uses the Senate Recording Studio to contemporaneously record Senate proceedings and distribute those recordings to the public. *See* <https://www.senate.gov/floor/>, last accessed Nov. 6, 2022 (publicly available archived recordings of Senate Recording Studio). The Senate Recording Studio recorded the proceedings relating to the Electoral College Certification on January 6, 2021, up to the point when the rioters breached the building and forced the proceedings into recess. *See id.*, proceedings for January 6, 2021. Subsequently, the Senate Recording Studio recorded the Electoral College Certification proceedings after the rioters were cleared from the Capitol Building and the session resumed. *Id.* During the interim, the Senate Recording Studio captured footage of rioters who were present on the Senate Floor during the recess. This footage includes Black, whom the Senate Recording Studio cameras captured spending over 20 minutes inside the Senate Chamber.

*c. MPD BWC Footage*

The admissibility of footage from BWC, worn by MPD officers on January 6, 2021, is likewise clear. Under Rule 901(b)(1), either the officer who wore the camera, or any other witness to the events depicted in the video, can authenticate the video based on their personal knowledge that the video fairly and accurately depicts the events that occurred. *See, e.g., United States v. Patterson*, 277 F.3d 709, 713 (4th Cir. 2002) (“The necessary foundation for the introduction of a photograph is most commonly established through eyewitness testimony that the picture accurately depicts the scene in question[.]”); *United States v. Rembert*, 863 F.2d 1029, 1026 (D.C. Cir. 1988) (noting one method of authentication occurs where “a sponsoring witness (whether or not he is the photographer) who has personal knowledge of the scene depicted testifies that the photograph fairly and accurately portrays that scene”).

While MPD officers deployed throughout the Capitol building and grounds on January 6, 2021, this case will focus briefly on MPD officers who entered the Senate Chamber at approximately 3:08 p.m. to clear rioters from that space. Seconds after he saw a column of MPD officers enter the Chamber, Black left the area of the dais in the front of the chamber and made his way toward a rear exit. As he passed the officers in the aisle leading to an exit, Black was captured on BWC saying, “God bless America.” Any single officer who was present there can testify that the video fairly and accurately depicts what transpired. *See* Fed. R. 901(b)(1). The action can also be seen, without audio, from Senate Recording Studio video, and a comparison of this bird’s-eye view of the action with the BWC video make clear that they record the same event. Thus, the Senate Recording Studio footage corroborates the events recorded on BWC and supports its admissibility. *See* Fed. R. Evid. 901(b)(3) (authentication by comparison with another authenticated specimen).

*d. Cameras Carried by Persons Present in the Crowd*

The government also intends to offer numerous video clips and photos from sources other than USCP, the Senate Recording Studio, and MPD. Some of these were taken from reporters who were present at the Capitol that day. Others were taken by Black’s fellow rioters or other members of the crowd. Many were obtained through open-source means and are publicly available.

As described further below, for these third-party videos not created by official sources or Black himself, the government will establish authenticity by asking the jury to compare them with other, authenticated exhibits: primarily USCP and Senate Recording Studio footage. Fed. R. Evid. 901(b)(3). *See United States v. Thomas*, 987 F.2d 1298, 1301 (7th Cir. 1993) (jury could properly conclude that proffered sawed-off shotgun was authentic by comparing it to photograph of shotgun found on premises by arresting officer when photograph was already in evidence). Police footage confirms these other videos are what they purport to be: recordings of the same events, captured from a slightly different perspective, and in some cases depicting events that were not fully captured

by the USCP or MPD systems. The distinctive characteristics of Black’s appearance and attire, combined with the discernible characteristics of other rioters captured on USCP and MPD footage, will further help support authentication of these exhibits. Fed. R. Evid. 901(b)(4).

*i. Black’s Initial Breach of Lower West Terrace Barricade*

By approximately 12:55 p.m., rioters overwhelmed police perimeters west of the Capitol building, forcing police to retreat to the barricade in front of the Lower West Terrace. As captured in at least three third-party videos, Black positioned himself directly in front of the barricade. One clip, from an open-source video titled “YouTube Video 1' - Police under attack at the US Capitol!!! {4K},” is 26 seconds long. Beginning at around time stamp 00:02, Black is depicted approaching the barricade at the Northwest Plaza Exit Gate—outlined in yellow, below, wearing a green camouflage hooded jacket, a red ballcap under the hood, and distinctive yellow gloves—with police positioned behind the barricade:



Another clip from an open-source video recorded around the same time, titled “NW Plaza Exit Gate (22 seconds).mp4,” is 22 seconds long. Here, Black is positioned with his yellow-gloved right hand on the barricade (with police officers circled in blue) at mark 00:12:



A third clip from another open-source video, titled “Clip of Breach of NW Exit Gate.mp4,” is two minutes and 17 seconds long. It depicts Black, partially obstructed in the video, breaching the barricade and being stopped by two USCP officers beginning at mark 00:32 (Black outlined in yellow, and officers behind the barricade circled in blue):



This same video depicts the entire police line at the Lower West Terrace being breached, and Black

walking toward the southwest sector of the Capitol grounds at mark 02:05:



Several overlapping characteristics support authentication of these three videos. The USCP CCTV videos, from exterior cameras facing the Capitol’s West Plaza, show the police line being overrun and rioters arriving in the West Plaza at the same time and in the same manner as depicted in these third-party videos. The physical location recorded in these videos—the northwest sector of the West Plaza—is the same. The CCTV videos also capture Black’s initial breach of the Lower West Terrace barricade, at approximately 12:57 p.m., and two officers (circled in blue) stopping him, depicted below with the tiny figure of Black (circled in yellow) advancing toward the Capitol building, just as the third-party video depicts this incident:



Further, as uncovered from several other sources, the third-party video showing Black walking to the southwest sector of the Capitol grounds is consistent with what the government knows about his conduct. After the mob breached the Lower West Terrace, Black walked to and positioned himself directly in front of the police line at the southwest sector, as captured in USCP crime-scene-video footage. Shortly after, he was struck with a less-than-lethal crowd-control round at approximately 1:07 p.m.

In addition, a USCP officer who was positioned at the northwest sector of the Capitol grounds during this time frame and who is captured in the footage can testify that the events depicted in the third-party videos are fair and accurate depictions of what occurred. Taken together, and corroborated by USCP surveillance and crime-scene video, the third-party videos authentically depict Black's arrival at, breach of, and initial positioning on the Capitol grounds. Fed. R. Evid. 901(b)(1), (3), (4).

*ii. Black's Conduct at the West Front*

Black positioned himself at the front of the growing mob on the West Front shortly after 1:00 p.m., as depicted in this screenshot example (outlined in yellow) from USCP crime-scene video (titled "DSC\_0002.MOV" (mark: 00:12)):



At approximately 1:07 p.m., USCP crime-scene and CCTV video captured Black being struck with a less-than-lethal round, depicted in this screenshot from the crime-scene video ("DSC\_0002.MOV" (mark: 01:22)):





After Black was struck, rioters around him grew agitated, became more aggressive, and assaulted officers. This series of incidents—including the discharge of the non-lethal round, the assaults on officers that followed, an officer falling to the ground during a scuffle and Black shouting, “Don’t hurt him,” and Black proclaiming, “We the people of the United States of America declare our independence”—is captured in multiple third-party videos, with Black shown from close-up and afar and from different angles:



*Black (outlined in yellow) when he was struck  
(from “Black Getting Shot (Townhall Media Video).mp4” (mark: 00:14))<sup>3</sup>*

<sup>3</sup> Source video available at <https://www.youtube.com/watch?v=YzxvVi8wkrU&t=125> (mark: 02:04).



*Black post-shot  
(from "Black post-shot.mp4" (mark: 00:04))<sup>4</sup>*



*Black (outlined in yellow) shouting, "Don't hurt him," after USCP officer was assaulted and fell to ground  
(from "RMG News Long.mp4" (mark: 05:34))<sup>5</sup>*

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<sup>4</sup> Source video available at <https://ia802202.us.archive.org/24/items/7bCqbttoJDawcwotjE/7bCqbttoJDawcwotjE.mpeg4> (mark: 00:00).

<sup>5</sup> Source video available at [https://ia804508.us.archive.org/23/items/ZHmrrwZep8ftWW2jg/Inside\\_the\\_2021\\_Storming\\_.mpeg4](https://ia804508.us.archive.org/23/items/ZHmrrwZep8ftWW2jg/Inside_the_2021_Storming_.mpeg4) (mark: 16:19).



*Black proclaiming, "God bless America. We the people of the United States of America declare our independence. Blood, sweat, and tears. Praise the name of Jesus. This is the land of the Lord. God brought us here. God brought us freedom." (from "RMG News Long.mp4" (mark: 07:19))<sup>6</sup>*

CCTV (which recorded the entirety of the events on the West Front) fully corroborates, and USCP crime-scene footage (which captured only a limited period) partially corroborates, these third-party videos. Although the CCTV camera is far from the action, one can identify the melee that ensued after rioters grew belligerent following Black being struck. The CCTV and crime-scene videos further confirm that, for an extended period, Black was in the thick of the riot on the West Front. In addition to the USCP videos, testimony by multiple police officers with knowledge, including officers depicted in the videos, can authenticate the videos as fair and accurate depictions of what occurred. These sources of evidence confirm the third-party footage is authentic. Fed. R. Evid. 901(b)(1), (3).

Evidence accumulated in this case, including Black's own statements, reveal that following the immediate aftermath of Black's injury on the West Plaza, police officers took Black behind their line to render medical aid. Third-party video, taken from an elevated position, shows USCP

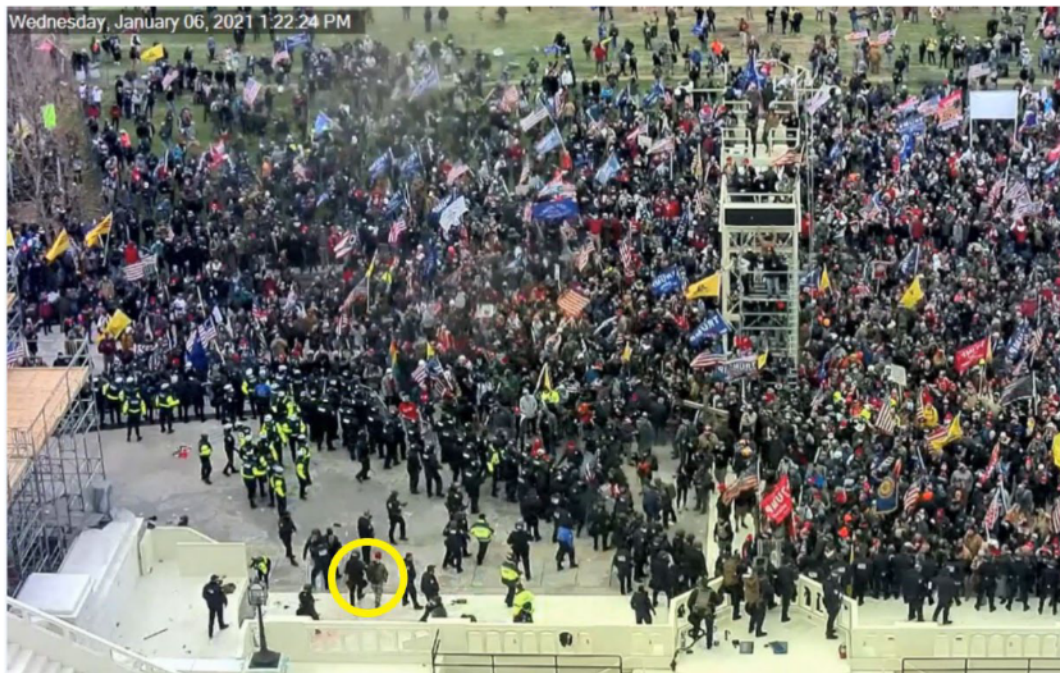
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<sup>6</sup> Source video available at [https://ia804508.us.archive.org/23/items/ZHmrrwZep8ftWW2jg/Inside\\_the\\_2021\\_Storming\\_.mpeg](https://ia804508.us.archive.org/23/items/ZHmrrwZep8ftWW2jg/Inside_the_2021_Storming_.mpeg) 4 (mark: 18:02).

officers escorting Black behind their line. This screenshot from a clipped open-source video, titled “Black receiving medical attention.mp4,”<sup>7</sup> shows Black (outlined in yellow) behind the police line after receiving aid from USCP officers:



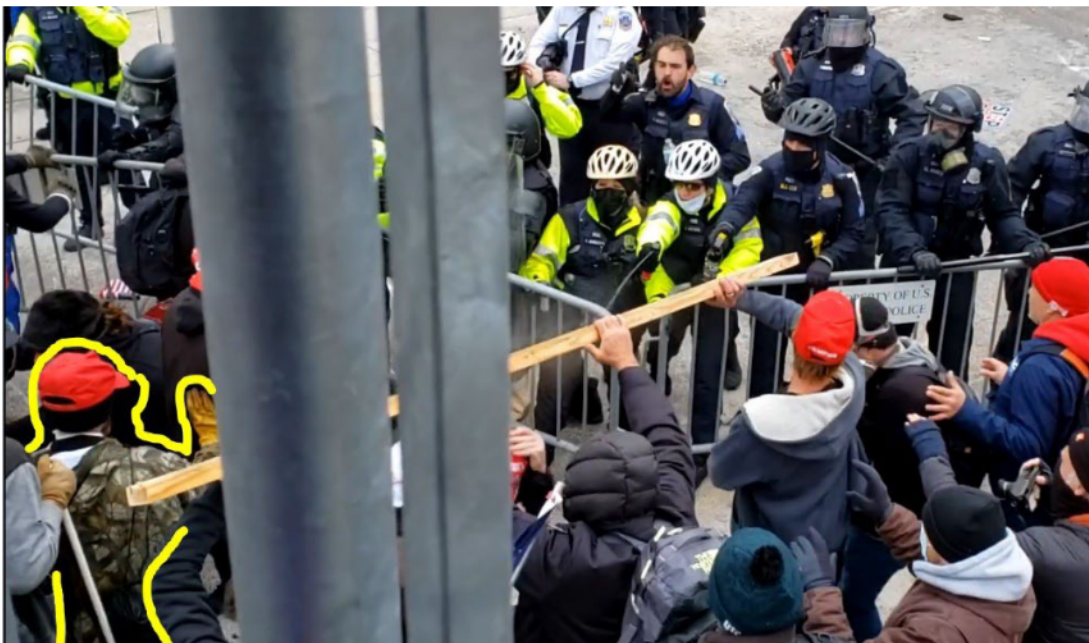
CCTV video corroborates this third-party video. The CCTV footage shows, from the opposite angle, that USCP officers took Black (circled in yellow) behind their line to receive aid from approximately 1:21-1:25 p.m., as depicted in the example, below:



<sup>7</sup> Source video available at <https://www.youtube.com/watch?v=Qdr3mltKHA0&t=1633s> (mark:22:33).

In addition, at least one USCP officer can testify that Black was brought behind the police line to receive aid, and that the third-party video is fair and accurate. These sources of evidence further confirm the third-party footage is authentic. Fed. R. Evid. 901(b)(1), (3).

Shortly after Black received aid, police officers released him back to the crowd. At approximately 1:27 p.m., rioters moved a long wooden beam forward toward the police line. A clip from another third-party video, titled “wooden beam.mp4,”<sup>8</sup> reveals that Black (outlined in yellow) witnessed this incident:



CCTV confirms this incident occurred. In the yellow-circled portion of the screenshot below, the CCTV camera captured the long beam (appearing as a near-horizontal thin line) moving forward toward the police line at 1:27 p.m.:

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<sup>8</sup> Source video available at <https://web.archive.org/web/submit?url=https://video.parler.com/Fa/5a/Fa5akrU6JgKT.mp4> (mark: 00:30).



Therefore, the third-party video depicting the wooden beam can be authenticated. Fed. R. Evid. 901(b)(1).

*iii. Black's Breach of the East Rotunda Doors*

The government intends to introduce several third-party multimedia exhibits showing Black in the area of and breaching the East Rotunda Doors. At some point after 1:27 p.m. and before 2:38 p.m., Black made his way to the East Front of the Capitol and climbed the steps leading to the doors. Shortly before 2:38 p.m., a loud, angry mob cornered a thin line of USCP officers in the entryway at the doors. Around 2:38 p.m., as rioters shouted at and assaulted the besieged officers, Black (outlined in yellow) participated in a heave-ho maneuver designed to breach the entryway, as depicted in this third-party video, titled "The US Capitol Breach As It Happened (NigroTime).mp4" (mark: 00:44),<sup>9</sup> with his yellow-gloved right hand leveraging the back of the rioter in front of him:

<sup>9</sup> Source video, recorded by multimedia journalist Matthew Nigro, available at <https://www.youtube.com/watch?app=desktop&v=MVullQb-Lec> (mark: 00:52).



Several other third-party sources also depict Black—from multiple angles, clad in a green camouflage hooded jacket, a red ballcap beneath the hood and a black skullcap underneath the hat, sunglasses, and yellow gloves—participating in the breach of the Rotunda Doors:

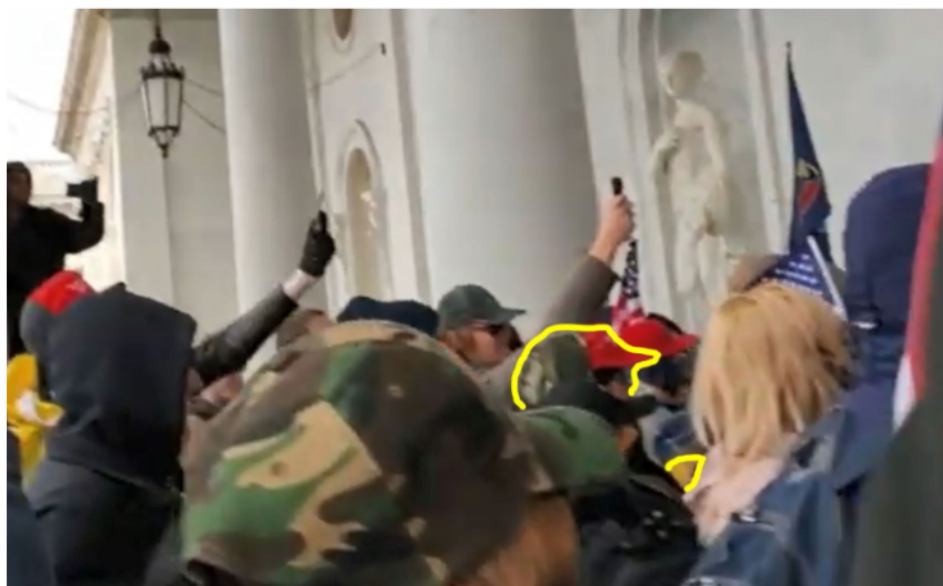


*Black, appearing to shout something toward the doors, before he participated in the heave-ho action (from "Rotunda Doors (Ignoramus).mp4")<sup>10</sup>*

<sup>10</sup> Source video available at [https://ia902303.us.archive.org/7/items/BzjRFNhKvjPnc9zsR/Stephen\\_Ignoramus\\_YouTube.mpeg](https://ia902303.us.archive.org/7/items/BzjRFNhKvjPnc9zsR/Stephen_Ignoramus_YouTube.mpeg) 4 (mark: 04:02:35).



*Black (circled in yellow) positioned where he participated in heave-ho maneuver  
(from "Bangumi French News Media.mp4" (mark: 38:41))<sup>11</sup>*



*Black (outlined in yellow) positioned shortly before heave-ho  
(from "Eastside Capitol Building 1 6 21 - trimmed.mp4" (mark: 03:39))<sup>12</sup>*

<sup>11</sup> Source video disclosed to the defense on March 23, 2022.

<sup>12</sup> Source video available at <https://www.youtube.com/watch?v=ZjLvYqJ2-EM> (mark: 46:41).





*Back of Black's hooded head and top of his shoulders as depicted from behind during heave-ho; Black later advances into doorway, consistent with other videos (from "Capitol Hill Back Door BREACHED.mp4" (mark: 00:11))<sup>13</sup>*



*Three screenshots of Black (outlined in yellow) advancing into East Rotunda Doors entryway after officers (circled in blue) had been sprayed with chemical irritants, assaulted, and cornered as captured by a Los Angeles Times journalist (from "Rotunda Doors (LA Times).mp4" (mark: 00:50))<sup>14</sup>*

<sup>13</sup> Source video available at <https://odysee.com/@vinceableworld:a/GoingIn:b> (mark: 00:12).

<sup>14</sup> Source video, recorded by a journalist for the *Los Angeles Times*, available at <https://www.youtube.com/watch?v=WUB814y5ns0&t=1197> (mark: 19:12).



*Black (outlined in yellow) in the East Rotunda Doors entryway, consistent with and from opposite angle as Los Angeles Times video (from "Rotunda Doors (cellphone video).mp4" (mark: 00:02))<sup>15</sup>*



*Photo from New York Times journalist capturing Black (outlined in yellow) walking between two USCP officers just after crossing threshold of Rotunda Doors (from "jan6additional-7 (New York Times - Rotunda Doors).jpg")<sup>16</sup>*

As with the multiple sources of footage from the West Front, these third-party multimedia

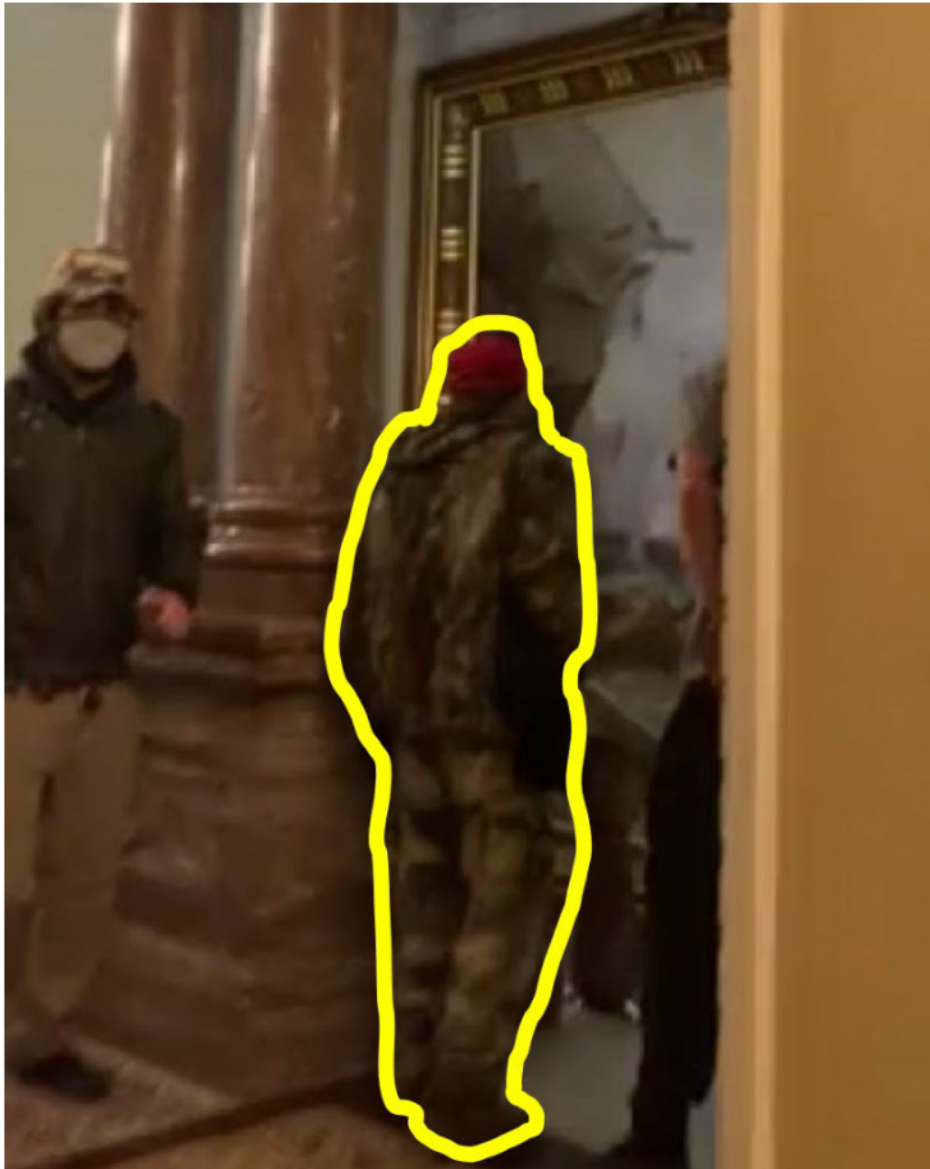
<sup>15</sup> Source video available at <https://archive.org/details/qyFFCBc65Y3LxhQvk> (mark: 03:13).

<sup>16</sup> Source photo disclosed to the defense on August 30, 2022 (low resolution), and October 27, 2022 (high resolution).

items can be authenticated by comparison with CCTV video, which shows the breach of the Rotunda Doors from the interior of the Rotunda Doors lobby. While this CCTV footage has an obstructed view of what occurred outside while the doors were closed, certain details of the mob and the defending officers can be seen through the doors' windows. Further, certain incidents—such as certain flags crossing the threshold and rioters cascading into the Rotunda Doors lobby once police officers could no longer hold their line—are discernible in both CCTV and third-party footage. Other details (*e.g.*, specific rioters, including a woman carrying a sign reading “THE CHILDREN CRY OUT FOR JUSTICE”) are depicted in multiple third-party videos and the CCTV videos. In addition, multiple officers who defended the doors and are depicted in the third-party images can testify they are fair and accurate, and at least one officer will testify that he remembers Black at the doors. Therefore, there are overlapping ways of authenticating the third-party videos of the Rotunda Doors breach. Fed. R. Evid. 901(b)(1), (3), (4).

*iv. Black's Conduct in the Senate Wing and Senate Chamber*

Immediately after he breached the East Rotunda Doors, Black proceeded up a stairwell and meandered in corridors in the Capitol's Senate Wing. Eventually, Black and other rioters breached the Senate Chamber, where he spent over 20 minutes engaged in a variety of conduct until a column of MPD officers cleared the space. The government intends to admit the following third-party multimedia from the Senate wing, all of which can be compared with either authenticated CCTV or Senate Recording Studio videos:



*Video of Black at top of East Grand Senate Staircase, as captured by defendant Eric Munchel's cellphone; a voice consistent with Black's is heard shouting twice in the stairwell, "We will not stand down."  
(from "We will not stand down.mp4" (mark: 00:03-00:11))<sup>17</sup>*

<sup>17</sup> Source video, recovered from another defendant's cellphone, also available at <https://archive.org/details/4wt3wrnC9P7zCSZ3d> (mark: 43:59).



*Black captured on floor of Senate Chamber in photo recovered from defendant Landon Mitchell's Facebook account (from "Black on floor (Landon Mitchell photo 1).jpg.")<sup>18</sup>*

<sup>18</sup> Source photo, recovered from another defendant's Facebook account, disclosed to the defense on November 7, 2022.





Three screenshots from The New Yorker video depicting Black rifling through papers on Sen. Ted Cruz's desk (at far right), sitting on the floor talking on this cellphone, and participating in a prayer led by another rioter (outlined in yellow) (from "A Reporter's Footage from Inside the Capitol Siege.mp4" (mark: 01:07-04:28))<sup>19</sup>

<sup>19</sup> Source video available at <https://www.youtube.com/watch?v=270F8s5TEKY&t=15> (beginning mark: 04:21).

Video from CCTV and Senate Recording Studio cameras depicts exactly the same conduct captured in these third-party images. In addition to being able to admit these images by comparison to the authenticated official videos, these images can be admitted by USCP officers who can testify that the images fairly and accurately represent what the officers observed in the Senate wing and chamber on January 6, 2021. Fed. R. Evid. 901(b)(1), (3), (4).

**B. Motion in Limine to Admit Certain Provisions of the Constitution, Federal Statutes, and Congressional Records**

**1. Judicial Notice of the Federal Electoral College Certification Law**

The proceedings that took place on January 6, 2021, were mandated by, and directed under the authority of, several constitutional and federal statutory provisions. In fact, as Vice President Pence gavelled the Senate to Order that day to proceed with the Electoral College Certification Official Proceeding, he quoted directly from, and cited to, Title 3, United States Code, Section 17.

The government requests that the Court take judicial notice of and admit into evidence copies of Article II, Section 1 of the Constitution of the United States, the Twelfth Amendment, as well as 3 U.S.C. §§ 15-18 relating to the Electoral College Certification Official Proceedings.<sup>20</sup> It is well established that district courts may take judicial notice of law “without plea or proof.” *See United States v. Davila-Nieves*, 670 F.3d 1, 7 (1st Cir. 2012). The government makes this request even though “no motion is required in order for the court to take judicial notice.” *Moore v. Reno*, No. 00- 5180, 2000 WL 1838862 (D.D.C. Nov. 14, 2000). Further, “where a federal prosecution hinges on an interpretation or application of state law, it is the district court’s function to explain the relevant state law to the jury.” *See United States v. Fazal-Ur-Raheman-Fazal*, 355 F.3d 40, 49 (1st

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<sup>20</sup> In addition, should the need arise based on testimony or arguments made in the defense case, the government may request that the Court take judicial notice of and admit into in evidence the entire Constitution of the United States.



Cir. 2004).

**2. Admission of the Congressional Record and S. Con. Res 1**

The Congressional proceedings on January 6, 2021, were memorialized in the *Congressional Record*. The *Congressional Record* is a record of the proceedings of Congress and a public record under Federal Rule of Evidence 902(5). See *MMA Consultants*, 245 F. Supp. 3d at 503-504. The government intends to introduce portions of the *Congressional Record* at trial, including the legislative bodies' "concurrent resolution to provide for the counting on January 6, 2021, of the electoral votes for President and Vice President of the United States," S. Con. Res. 1, 117th Cong. (2021). For the same reasons as the Senate Recording Studios footage above, these records should be admitted as self-authenticating.

**C. Motion in Limine to Preclude Defendant's Introduction of His Own Out-of-Court Statements as Inadmissible Hearsay**

The government intends to introduce certain statements Black made in the days following the January 6, 2021, riot, including excerpts from his YouTube testimonial and/or from his two voluntary FBI interviews. The government does not intend to introduce the entire YouTube statement (which is about 40 minutes long) or the entirety of the FBI interviews (which are approximately 58 minutes and 49 minutes long). These lengthy statements include self-serving comments related to Black's conduct on January 6; graphic details about the facial wound he incurred that day; stories about his family; details about his landscaping business; personal beliefs regarding, among other things, current events, religion, slavery, and American history; and many other irrelevant remarks. Under Federal Rule of Evidence 801(d)(2)(A), Black's statements are admissible non-hearsay when offered by the government. But any attempt by Black to introduce his own out-of-court statements should be precluded. If the statements are offered by Black

himself—either through video clips or by eliciting summaries of Black’s statements through government witnesses—they are inadmissible hearsay.

**1. Black’s out-of-court statements are only admissible non-hearsay if offered by the government**

Under Federal Rule of Evidence 801(d)(2)(A), admissions by a party-opponent are not hearsay to the extent that they “offered against a party.” *See also United States v. Straker*, 800 F.3d 570, 595 (D.C. Cir. 2015) (“Use of a defendant’s own confession against him raises no confrontation issues.”). Accordingly, the prosecution is entitled to elicit admissions by a defendant, but a defendant cannot elicit such admissions because he is not an adverse party to himself. Rule 801(d)(2)(A) thus prohibits a defendant from introducing his own out-of-court statements, because such statements are inadmissible hearsay. *United States v. Nakai*, 413 F.2d 1019, 1022 (9th Cir. 2005) (attempt to introduce claim of intoxication through agent inadmissible hearsay); *United States v. Ortega*, 203 F.3d 675, 682 (9th Cir. 2000). This is true whether or not the statements the government admits were made contemporaneously with other statements that might be exculpatory. *Id.* To allow a defendant to place his exculpatory statements “before the jury without subjecting himself to cross-examination” would frustrate the hearsay rules and deprive the government of its opportunity to test the validity of the defendant’s claims. *United States v. Fernandez*, 839 F.2d 639, 640 (9th Cir. 1988).

The law applies equally to recordings of the defendant’s statements and to agent testimony describing statements the defendant made during an interview. Reasonable limits on cross-examination, namely precluding efforts to elicit the defendant’s out-of-court statements through cross-examination of an interviewing agent, does not violate the Confrontation Clause. *Ortega*, 203 F.3d at 682; *see United States v. Dees*, 34 F.3d 838, 843 (9th Cir. 1994) (trial court has

discretion to reasonably limit cross-examination); *Fernandez*, 839 F.2d at 640 (finding that due process does not require that the defendant be allowed to present exculpatory hearsay statements).

In short, it is plain that a defendant's own out-of-court statements are textbook examples of hearsay that cannot be admitted to prove the truth of any matter asserted. Fed. R. Evid. 801, 802. The government can offer Black's statements as statements of a party opponent, Fed. R. Evid. 801(d)(2)(A), or other nonhearsay or hearsay exception, but Black has no corresponding right to admit his own out-of-court statements.

**2. The Rule of Completeness cannot circumvent the rule against hearsay and allows only for the limited addition of statements necessary to provide context**

Nor does Federal Rule of Evidence 106, the "Rule of Completeness," provide an end-run around the prohibition against hearsay. That rule provides that "[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time." Fed. R. Evid. 106. "The rule is based on two considerations. The first is to correct a misleading impression created by taking matters out of context. The second is the inadequacy of repair work when delayed to a point later in the trial." Advisory Committee Notes, *quoted in United States v. Sutton*, 801 F.2d 1346, 1368 (D.C. Cir. 1986). Thus, the rule is largely one of timing—it "changes the normal order of proof" by allowing the adverse party to admit its evidence at the same time. *Id.*

The Rule does allow for the admission of "some otherwise inadmissible evidence" when, in fairness, that evidence must be considered at the same time. *Id.* This is to prevent evidence from being admitted "'out of critical context to create a misleading impression of what was really said.'" *Id.* at 1369, n.18 (quoting C. Wright & K. Graham, *Federal Practice and Procedure*:

Evidence § 5078, at 377 (1977 & 1986 Supp.). If the government introduces an inculpatory statement and the defense then argues that the statement is misleading because of a lack of context, then “the court can, in its discretion, permit such limited portions to be contemporaneously introduced as to remove the distortion that otherwise would accompany the prosecution’s evidence.” *Sutton*, 801 F.2d at 1369. The court’s inquiry should “focus solely on issues of distortion and timing” so as to ensure the statements do not mislead the jury. *Id.*; see also *United States v. Edmond*, 52 F.3d 1080, 1111 (D.C. Cir. 1995) (“[W]e are satisfied that the redacted portion included sufficient contextual matter in addition to the few statements relating to appellant so as not to mislead the jury.”) In *Sutton*, the D.C. Circuit emphasized the “limited scope of the Rule 106 admission” and noted that the Rule of Completeness should “be invoked rarely and for a limited purpose.” 801 F.2d at 1369.

In this case, Rule 106 could not make the entirety of Black’s YouTube missives and FBI interviews admissible over a hearsay objection. Rather, it could allow for admission of only any narrow portion that would be necessary to “correct a misleading impression” if the government’s excerpts could be considered misleading. *Sutton*, 801 F.2d at 1368 (quoting Advisory Committee note to Rule 106). By way of analogy, Courts of Appeals have rejected the notion that “all documents contained in agglomerated files must be admitted into evidence merely because they happen to be physically stored in the same file.” *Jamison v. Collins*, 291 F.3d 380, 387 (6th Cir. 2002), as amended on denial of reh’g (July 11, 2002) (quoting *United States v. Boylan*, 898 F.2d 230, 257 (1st Cir.1990)).

Black has not yet identified any ways in which the government’s selected excerpts “distort” his statements or would “mislead” the jury about what he said. The portions of Black’s YouTube testimonial and FBI interviews the government may seek to admit in its case-in-chief at trial are

highlighted in the transcripts attached to this motion as Attachments A, B, C, and D.<sup>21</sup> On October 20, 2022, government counsel provided those excerpts to counsel for Black and asked counsel to identify any objections or areas that must, “in fairness,” be admitted along with those portions. Although government counsel asked for a response in time to incorporate any defense objections into this motion, as of the time of filing this motion, Black has yet to identify any specific objection or assert that any of the government’s selected portions are misleading or incomplete.

As the Court will see upon review of the government’s excerpted statements, none of the selected statements is taken out of context or will serve to mislead the jury in any way. The Court should reject any effort by Black to use the Rule of Completeness as a backdoor to admit otherwise inadmissible hearsay. The government respectfully requests that the Court rule *in limine* that the highlighted portions of Black’s recorded statements it has identified in the transcripts are admissible in the government’s case-in-chief.

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<sup>21</sup> Counsel for the government discussed these transcripts with counsel for Black on November 8, 2022. As of the time of filing this omnibus motion, counsel for Black has not identified any inaccuracies in the transcripts. Government counsel will continue to communicate with Black’s counsel to see if the parties can agree on which portions of the statements would be admissible during the government’s case-in-chief without admitting nonrelevant segments.

**CONCLUSION**

WHEREFORE, the United States respectfully requests that its motions *in limine* be GRANTED.

Respectfully submitted,

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United States Department of Justice

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 14, 2022, I served a copy of this pleading on all parties to this matter as indicated in the Court's electronic case files system.

/s/ Seth Adam Meinero  
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