

The D.C. Circuit has consistently employed the six-factor “Hubbard test”¹ when determining whether the common-law right of access to judicial records requires those records to be made available to the public for copying and inspection. Applied in the general context of video exhibits submitted to the Court involving defendants charged with criminal offenses related to the January 6, 2021 breach of the U.S. Capitol, and absent order of the court, that test generally weighs in favor of allowing public access to these exhibits.

The petitioners’ filing seeks video exhibits submitted to the Court in conjunction with the Government’s Memorandum in Support of Pre-Trial Detention in this matter on April 28, 2021 (ECF No. 32). *See* Petitioners’ Memorandum of Points and Authorities in Support of Motion (ECF No. 67), at 2. The government submitted 2 videos to this Court.² Neither party sought a sealing order for the videos upon their submission.

Therefore, because the videos were submitted to the Court in anticipation of the Court’s decision on detention, and they were not subject to a sealing order, the government does not object to their disclosure, including their release for recording, copying, downloading, retransmitting or further broadcasting.

¹ The *Hubbard* test balances the following factors: “(1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.” *Leopold v. v. United States*, 964 F.3d 1121, 1131 (D.C. Cir. 2020) (quoting *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 665 (D.C. Cir. 2017)).

² The Court did not hold a detention hearing in this case because at the defendant’s initial appearance and arraignment on May 6, 2021, the defendant withdrew his prior request for a detention hearing and waived his right to a detention hearing and written finding of fact in support of an order of detention, and then the Court granted the government’s request for detention.

Respectfully submitted,

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