

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

UNITED STATES OF AMERICA,

v.

DANIEL RODRIGUEZ,

Defendant.

Case No: 21-cr-246-ABJ-1

SECOND APPLICATION FOR ACCESS TO VIDEO EXHIBITS

Pursuant to Local Criminal Rule 57.6 and Standing Order No. 21-28 (BAH), applicants Cable News Network, Inc., American Broadcasting Companies, Inc. d/b/a ABC News, The Associated Press, BuzzFeed, Inc. d/b/a BuzzFeed News, CBS Broadcasting Inc. o/b/o CBS News, Dow Jones & Company, Inc., publisher of The Wall Street Journal, The E.W. Scripps Company, Gannett Co., Inc., Gray Media Group, Inc., Los Angeles Times Communications LLC, publisher of The Los Angeles Times, National Public Radio, Inc., NBCUniversal Media, LLC d/b/a NBC News, The New York Times Company, Pro Publica, Inc., Tegna, Inc., and WP Company LLC, d/b/a The Washington Post (together, the “Press Coalition”) respectfully seek access, under the First Amendment and common law, to certain video recordings that have been submitted to the Court in this matter. In support of this application the Press Coalition states as follows:

1. On May 14, 2021, in response to a motion filed by the Press Coalition, Chief Judge Beryl A. Howell issued Standing Order No. 21-28 (the “Standing Order”). The Standing Order recognizes “[t]he significant public and media interest in the numerous criminal cases arising from the January 6, 2021 violent breach of the United States Capitol (the ‘Capitol Cases’), for which the parties are routinely submitting Video Exhibits to the Court for use in pretrial proceedings.” *See* Standing Order at 2.

2. To accommodate this interest, the Standing Order provides that “[m]embers of the media seeking access to Video Exhibits submitted to the Court in Capitol Cases may file an application . . . to the presiding judge in the case, or if no judge has been assigned, to the Chief Judge, for determination, and the judge may seek the position of the parties.” *See id.* at 5.

3. The Standing Order further provides that “[u]pon grant of such media application, the government shall make the Video Exhibits[s] available to any member of the media with necessary access credentials provided by the government, unless the order otherwise limits access.” *See id.* at 5-6. Specifically, the Standing Order states that “[m]embers of the media provided access to Video Exhibits in a particular case pursuant to such order may view those exhibits” by way of an electronic “drop box” into which the Government has agreed to place videos subject to access orders in the Capitol Cases. *See id.* at 6.

4. On November 16, 2021, the Press Coalition submitted an application for the video recording of the FBI’s interrogation of Defendant Daniel Rodriguez, which was submitted in connection with the Defendant’s motion to suppress certain statements he made during the interrogation. *See* Application for Access to Video Exhibit, Dkt. 57; Mot. to Suppress at 1, Dkt. 38. Neither the Government nor Defendant objected to release of the requested video, and the Court promptly granted the Coalition’s Application. Minute Order of Nov. 22, 2021.

5. On December 12, 2021, following a hearing on the Defendant’s Motion to Suppress, the Court ordered the Government “to provide an excerpt of the video of the FBI interview of defendant Rodriguez” depicting a particular exchange that was discussed at the hearing, and instructed that the excerpt “be made from the original video or as close to the original as is available to the government, to minimize degradation of video quality that comes from making copies of copies.” *See* Minute Order of Dec. 9, 2021.

6. The Government submitted two additional videos in response to the Court's request: another copy of the full interrogation, and the requested excerpt of the interrogation video (the "Video Exhibits"). *See* Notice of Gov't's Supp. Submission in Resp. to Court's Minute Order of Dec. 9, 2021 Regarding Defendant's Mot. to Suppress Statements, Dkt. 74. The Court has directed the Government to be prepared to play the excerpt at the December 22, 2021 hearing in this matter. *See* Minute Order of Dec. 18, 2021.

7. The Video Exhibits are plainly "intended to influence the court" in its decision-making, and as a result they are judicial records subject to a "strong presumption in favor of public access." *Leopold v. United States*, 964 F.3d 1121, 1127-28 (D.C. Cir. 2020) (Garland, J.); *United States v. Hubbard*, 650 F.2d 293, 299 (D.C. Cir. 1980) (documents "press[ed] upon the trial judge during the suppression hearing . . . became part of the 'record' of the case" and subject to a presumption of public access).

8. Neither the Government nor the Defendant could possibly rebut the presumption of access under the applicable test set out in *Hubbard*, 650 F.2d at 317-21. *See, e.g., United States v. Jackson*, 2021 U.S. Dist. LEXIS 49841 (D.D.C. Mar. 17, 2021) (Howell, C.J.) (granting access to Video Exhibits in one of the Capitol Cases).

9. Because the Video Exhibits are judicial records subject to an un rebutted presumption of public access, the Court should grant this Application and direct the Government to release the Video Exhibits to the Press Coalition via electronic "drop box" within 72 hours.

10. The Standing Order provides that "[n]o recording, copying, downloading, retransmitting or further broadcasting of Video Exhibits in a particular case is permitted, unless such permission is granted by the presiding judge." *See* Standing Order at 6. The Press

Coalition therefore requests that the Court grant permission to record, copy, download, retransmit, and otherwise further publish these Video Exhibits.¹

CONCLUSION

For the foregoing reasons, the Press Coalition respectfully requests that the Court order the Government to release the Video Exhibits, without restriction, within 72 hours.

Dated: December 20, 2021

Respectfully submitted,

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¹ The Press Coalition makes this request without conceding that the Standing Order complies with the First Amendment or common law, and expressly reserving the right to challenge this and other portions of the Standing Order in this and other Capitol Cases.