

Rakoczy, Kathryn (USADC) <kathryn.rakoczy@usdoj.gov>

12/6/2021 9:59 PM

RE: Subpoena for USCP

To Jonathan Moseley <contact@jonmoseley.com> Copy Nestler, Jeffrey (USADC) <jeffrey.nestler@usdoj.gov> • Edwards, Troy (USADC) <troy.edwards@usdoj.gov> • Baset, Ahmed (USADC) <ahmed.baset@usdoj.gov> • Manzo, Louis (CRM) <louis.manzo@usdoj.gov> • Hughes, Alexandra (NSD) <alexandra.hughes@usdoj.gov> • Sher, Justin (NSD) <justin.sher@usdoj.gov>

Sorry, I hit send too soon. As I was starting to say, I'm reaching out to see if we can resolve through the discovery process some of the requests you outlined in your subpoena. Here is how we would respond to the items sought in your subpoena:

- a. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting on the discovery of pipe bombs on January 6, 2021, near the U.S. Capitol building (within 10 blocks) (subject to appropriate exclusions or redactions).
 - Could we talk more about this request? Since what you seem to be after is information that helps inform why the Joint Session was recessed, it does not seem like the communications discussing or reporting on the discovery of the pipe bombs is really what you're after. It seems like the information sought in Bullet (c) below gets after that more directly here.
 - That being said, we would note that we have provided USCP radio communications from January 6, 2021, which is partially responsive to this request. (See Global Discovery Production 4, which will be in the 10/18/21 discovery folder when we provide you a copy of all the discovery.)
- b. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting on the U.S. Capitol Police officially advising the Joint Session of Congress and/or the House of Representatives or U.S. Senate separately, on January 6, 2021, to recess.
 - We are looking into whether the USCP has discoverable records regarding the questions of why the Joint Session was recessed and/or the Capitol building evacuated by Members of Congress. We will let you know what we find out.
- c. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting on whether or not the Joint Session of Congress and/or the House of Representatives or U.S. Senate separately, on January 6, 2021, should recess.
 - We are looking into whether the USCP has discoverable records regarding the questions of why the Joint Session was recessed and/or the Capitol building evacuated by Members of Congress. We will let you know what we find out.
- d. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting on the U.S. Capitol Police officially advising Members of Congress to evacuate the U.S. Capitol building on January 6, 2021.
 - We are looking into whether the USCP has discoverable records regarding the questions of why the Joint Session was recessed and/or the Capitol building evacuated by Members of Congress. We will let you know what we find out.
- e. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting the reasons why the Joint Session of Congress should (if written beforehand) or did (if written after the fact) recess on January 6, 2021.
 - We are looking into whether the USCP has discoverable records regarding the questions of why the Joint Session was recessed and/or the Capitol building evacuated by Members of Congress. We will let you know what we find out.
- f. Any and all video recordings recorded at about 2:40 PM showing the entrance to the U.S. Capitol where Kelly Meggs allegedly entered the U.S. Capitol building, including audio recordings where possible, body cam (body worn) cameras of those officers stationed at or near the entrance when Kelly Meggs allegedly entered the building at around 2:40 PM on January 6, 2021.
 - We have provided several hours from several USCP cameras showing this breach of the building. We have also provided publicly available (open source) video of Mr. Meggs' entrance of the

- building. When you receive our copy of the discovery, we can walk you through the folders where this discovery can be found.
- With respect to BWC that might capture this entrance, our investigation to date suggests that only USCP officers, who were not equipped with BWC, were at that entrance at that time. In other words, we have not found BWC that captures Mr. Meggs' entrance into the building.
- g. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting which officers (who may be identified by a code number as long as their testimony can be arranged by identification in some manner) were stationed at about 2:40 PM at the entrance to the U.S. Capitol where Kelly Meggs allegedly entered on January 6, 2021.
- I believe we have identified for the defense and provided in discovery the 302s from FBI interviews of all the officers we have identified as being stationed at the East Rotunda doors at 2:40 p.m. on January 6, 2021. When you receive our copy of the discovery, we can walk you through the folders where this discovery can be found.
- h. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting what, if anything, officers at or near the entrance where Kelly Meggs is alleged to have entered at around 2:40 PM on January 6, 2021 including what exactly the officers said to in any way discourage or deter anyone from entering.
- See our response above to (g) – we have provided our interviews of these officers. Additionally, we have also provided the results of all closed OPR investigations into Capitol Police officers alleged to have acted in a way that was construed as inviting/encouraging/approving the entrance of individuals like Mr. Meggs into the building. We also have made some disclosures on this issue that bear a little closer to this case (although not specifically to the 2:40pm time period and Mr. Meggs) – see, e.g., the 8/5/21 disclosures we made about a USCP Lieutenant.
- i. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting how the entrance where Kelly Meggs is alleged to have entered at around 2:40 PM on January 6, 2021, was open at around 2:40 PM.
- In addition to the surveillance video referenced above under (f), which shows how rioters came to force the doors open, we will be providing some additional discovery soon about how the doors were able to be forced open.

I think where this leaves us is that: we object to the request in (a) but would be happy to discuss further in case we are not understanding what you are getting at; we are looking into whether there are responsive records to requests (b) through (e); we believe the information in (f) through (i) has largely or entirely already been provided in discovery.

Given this, do you want to file a joint request for the judge to stay your request until you have time to review the discovery? Or do you want us to just file a response that essentially lays out what I've said above, and the judge can do with that what he will?

Thanks,
Kate

Kathryn L. Rakoczy
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From: Rakoczy, Kathryn (USADC)

Sent: Monday, December 6, 2021 9:10 PM

To: Jonathan Moseley <contact@jonmoseley.com>

Cc: Nestler, Jeffrey (USADC) <JNestler1@usa.doj.gov>; Edwards, Troy (USADC) <TEdwards1@usa.doj.gov>; Baset, Ahmed (USADC) <ABASET2@usa.doj.gov>; Manzo, Louis (CRM) <Louis.Manzo@usdoj.gov>; Hughes, Alexandra (NSD) <Alexandra.Hughes@usdoj.gov>; Sher, Justin (NSD) <Justin.Sher@usdoj.gov>

Subject: Subpoena for USCP

Hi Mr. Moseley,

As we discussed with Judge Mehta during the hearing today, I'm reaching out to see if we can resolve through the discovery process some of the requests you outlined in your subpoena. Here is how we would respond to the items sought in your subpoena:

- a. Any and all documents, communications, reports, letters, text messages, emails, or other records relating to, discussing or reporting on the discovery of
- b. pipe bombs on January 6, 2021, near the U.S. Capitol building (within 10
- c. blocks) (subject to appropriate exclusions or redactions).
- d. b. Any and all documents, communications, reports, letters, text messages,

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