

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 21-cr-134 (CJN)
	:	
MARK SAHADY	:	
	:	
Defendant.	:	

**UNITED STATES’ REPLY IN SUPPORT OF ITS MOTION IN LIMINE REGARDING
CROSS-EXAMINATION OF U.S. SECRET SERVICE WITNESS**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits its reply in support of its motion *in limine* seeking to limit the cross-examination of witnesses regarding United States Secret Service protection at the U.S. Capitol on January 6, 2021, ECF No. 53 (“Gov’t’s Mot.”). The defendant responds that he does not intend to cross examine the government’s witnesses on the topics sought to be precluded by the government. ECF No. 61, at 1 (“Def’s Opp’n”). Instead, the defendant takes issue with the possibility of an *ex parte* hearing to determine the remote possibility of such cross-examination. The government seeks to preclude the defendant from cross-examining witnesses concerning:

1. Secret Service protocols related to the locations where protectees or their motorcades are taken at the Capitol or other government buildings when emergencies occur; and
2. Details about the nature of Secret Service protective details, such as the number and type of agents the Secret Service assigns to protectees.

Gov’t’s Mot. at 2.

Cross-examination of witnesses about extraneous matters beyond the scope of direct examination should be excluded as irrelevant and an unnecessary intrusion into sensitive national security matter. As the government previously argued, the movement of the Vice President, his

family, and their motorcade for their safety is relevant to whether the civil disorder adversely affected the Secret Service's ability to protect those individuals. However, the Secret Service's general protocols about relocation for safety should be excluded as irrelevant. Fed. R. Evid. 401. Similarly, the details about the nature of Secret Service protective details are irrelevant to whether the disorder adversely affected the Secret Service's duties to protectees in this case or whether the Capitol and its grounds were restricted at the time. Moreover, the two above-enumerated areas implicate sensitive matters of national security. While the government hopes that January 6, 2021, will be the last instance the Secret Service will need to evacuate a protectee from the Capitol, publicly disclosing such material could place sensitive information that keeps protectees safe in the wrong hands.

In his response, the defendant "does not oppose these two specific limitation requests made by the government in its [m]otion[]." Def.'s Opp'n at 1. However, the defendant "reserves the right to move the Court to reconsider its decision on this limitation." *Id.* at 1 n.1. In other words, the defendant cannot now articulate how (1) any such cross-examination would be relevant to the charges against him or (2) any purported relevance would not be substantially outweighed by the danger of confusion of the issues, mini-trials, undue delay and waste of time. Therefore, the defendant should be precluded from cross-examining the government's witnesses on these topics at trial.

The defendant's opposition instead challenges the government's request that any hearing on its motion be held *in camera* and *ex parte*. *Id.* at 2. According to the defendant, the government has not sufficiently identified or justified its *ex parte* request. He is mistaken. As the government provides in its motion, cross-examination on the specified topics "could prove detrimental to the Secret Service's ability to protect high-level government officials and affect our national security."

Gov't's Mot. at 5. In this case, "the very nature of the Secret Service's role in protecting the Vice President and his family implicates sensitive information related to that agency's ability to protect high-ranking members of the Executive branch and, by extension, national security." Gov't's Mot. at 2. "It is permissible for the Court, in extraordinary circumstances, to review material *in camera* and *ex parte*. See *United States v. Libby*, 429 F. Supp. 2d 18, 22 (D.D.C. 2006). And circumstances justifying submission *ex parte* include materials "submitted for inspection by the Court because a party seeks to prevent their use in litigation[.]" and where the government shows there is a "national security concern[.]" *Doe v. Mayorkas*, No. 20-cv-2521 (JDB), 2021 WL 9036568, at *2-*3 (D.D.C. Dec. 6, 2021).

In any event, the defendant's objection to any *in camera*, *ex parte* proceeding is irrelevant because he does not oppose the government's requested limits on cross-examination.

CONCLUSION

For the foregoing reasons, the Court should grant the government's motion to preclude certain cross-examination of U.S. Secret Service witnesses.

Respectfully submitted,

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