

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 v. : CASE NO. 21-cr-327 (RC)  
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 LUKE RUSSELL COFFEE, :  
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 Defendant. :  
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**GOVERNMENT’S MOTION TO EXCLUDE PROPOSED  
EXPERT TESTIMONY OF STEVE HILL AND JENNIFER CORTEZ**

The United States of America respectfully moves to exclude Defendant’s proposed expert testimony of Mr. Steven Hill and Ms. Jennifer Cortez. Defendant’s proposed expert testimony should be excluded for at least three reasons. First, Defendant’s proposed expert testimony should be excluded because his expert notice and disclosures fall well short of what is required by Rule 16 of the Federal Rules of Criminal Procedure. Second, even if Defendant were to rectify his disclosures comport with the rule, Mr. Hill and Ms. Cortez should be excluded because they are not qualified to offer expert opinions on the subjects noticed. Third, even if Mr. Hill and Ms. Cortez were sufficiently qualified, their proposed expert testimony should be excluded because their testimony would not be reliable.

If the Court finds it does not have sufficient information in the record to exclude Mr. Hill or Ms. Cortez for certain opinions, then the United States would request a *Daubert* hearing for those opinions. *Sloan v. Urban Title Servs., Inc.*, 770 F. Supp. 2d 227, 238 (D.D.C. 2011) (noting “[I]f necessary, [a c]ourt shall consider a request that a *Daubert* hearing be held to evaluate [the expert’s] proffered testimony.”)

## **BACKGROUND**

### **I. Factual Background**

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol at approximately 1:00 p.m. to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. Temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police (USCP) were present and attempting to keep the crowd that had gathered outside away from the Capitol building and the proceedings underway inside. Members of the Metropolitan Police Department (MPD) were called to the Capitol to assist the USCP.

Shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the USCP, as others in the crowd encouraged and assisted those acts. Within minutes, rioters flooded the Capitol building and fanned out within it. Some of them were armed. Some explicitly called for violence against lawmakers. At approximately 2:20 p.m., with rioters gathered just outside the House and Senate chambers, members of the United States House of Representatives and United States Senate -- and not at the same time --, including the President of the Senate, Vice President Mike Pence, suspended the joint session of Congress and evacuated the chambers. Over the course of several hours, rioters and police officers clashed both inside and outside of the Capitol building. Many rioters used makeshift weapons to assault police officers.

Defendant was among the rioters who assaulted officers. In Counts Two and Three of the Superseding Indictment, Defendant is charged with assaulting, resisting, or impeding a federal officer using a deadly and dangerous weapon, namely, a crutch, in violation of 18 U.S.C. § 111(a)(1) and (b). ECF No. 44. These charges stem from assaults at the Lower West Terrace

doorway to the United States Capitol Building, an area that on January 6, 2021 became known colloquially as “the Tunnel.” This entrance, usually a stairway to a set of double doors restricted to use by members of Congress, has symbolic significance because, once the inaugural stage is built, this central door on the west front becomes the draped, ceremonial entrance through which the president elect arrives on Inauguration Day. On January 6, 2021, however, USCP and MPD officers fell back to this choke point after several security perimeters and defensive lines they had previously been manning had been overrun by rioters. Starting at approximately 2:41 p.m., they defended this position against waves of attacks from rioters until the officers were relieved by a significant force of additional police officers, including the Virginia State Police, at approximately 5:05 p.m.

Just before 4:28 p.m., Defendant joined in an assault on the police line at that location that had been ongoing for nearly two hours. He initiated a physical altercation with MPD Officers L.M., S.S. and others. U.S. Capitol CCTV cameras, officer body worn cameras, and third-party cameras recorded Defendant as he emerged from the crowd and walked towards the line of officers defending the Tunnel against other rioters. As he walked towards the officers, Defendant was standing on the partially constructed inaugural stage, an active construction site that was well within the secure perimeter of the United States Capitol Grounds.

Immediately prior to Defendant’s physical altercation with the officers, a period of fierce fighting had occurred. For the second time that day, the mob had succeeded in pushing the police line deep into the tunnel near the double doors, but the police fought back and, as the result of officers’ sustained pushing, they recaptured the archway and ejected the rioters from the tunnel. As this occurred, beginning at approximately 4:26 p.m., a group of rioters renewed their attack on the police line in the Tunnel, in the apparent hope of retaking what they had just lost. The rioters

physically assaulted several of the officers. Rioters hit officers with sticks, a flagpole, and a crutch, and threw objects into the Tunnel. Some of the rioters were in possession of police riot shields which they used against the officers. At least two police officers were dragged into the crowd from the police line. Additionally, and in response, officers on the front line used police batons and police shields to fend off the rioters, as they had been doing for nearly two hours. Officers deeper in the Tunnel released OC spray in the rioters' general direction.

Defendant approached the Tunnel shortly after the renewed attack. He walked into the chaos and yelled at the officers -- not the rioters -- "Stop!" Defendant raised his hands to deflect OC spray coming from inside the Tunnel and a staff that an MPD officer swung two times in Defendant's direction. Defendant initially came to the line empty-handed, then picked up a crutch that was laying on the ground. Another round of OC spray was released in his general direction. "Stop," he said to the officers as he raised the crutch overhead. Defendant held the crutch overhead for approximately 10 seconds. He turned momentarily to face the crowd, crutch still in the air. Defendant then turned back to face the police line and rammed the crutch into the officers. This push forced the front line of officers back, pinning their shields and compressing them into the officers behind. After pushing for approximately 20 seconds, Defendant tripped and fell. Another rioter pulled Defendant away from the police line and helped him stand up. Defendant, crutch still in hand, rammed the police line with the crutch a second time and then swung the crutch at an officer.

**II. Steven Hill Has Been Excluded as a Defense Expert in other January 6 Cases.**

Mr. Hill has been noticed as a use of force, crowd control, police civil liability expert in other January 6 prosecutions. DC Courts have excluded Mr. Hill as an expert witness for lack of notice, relevance, and jury confusion under Rule 403. However, Mr. Hill has testified as a summary type witness to explain videos taken on January 6. For example, in the prosecution of Christopher Alberts, defendant Alberts noticed Mr. Hill as an expert on use-of-force, demonstration crowd control and police civil liability on April 7, 2023, the weekend before trial. *United States v. Christopher Alberts*, ECF No. 119 at 1 (21-CR-0026 (CRC)).

On April 11, 2023, the Court excluded Mr. Hill from testifying as an expert. Exhibit 1, April 11, 2023, Excerpt of Transcript. The Court excluded Mr. Hill from testifying as an expert because the defense's notice of expert was untimely. *Id.* at 257. The Court also found it would exclude Mr. Hill's testimony because it was not relevant; in that "whether officers violated certain policies or standards in trying to control the crowd does not inform whether Mr. Alberts reasonably believed that he faced imminent threat of death or serious bodily injury or whether he could have taken actions to avoid such threat." *Id.* at 258. The Court went on to say "[a]ny threat by the officers or from the officers can be established through the videos and percipient witness testimony," and there was no need "for an expert to say whether the officers' actions violated some rule or standard." *Id.* The Court concluded that, "[e]ven if Mr. Hill were qualified to testify about the rules of engagement governing Capitol Police officers specifically, which the notices do not establish, and even if Mr. Hill's proposed testimony had some marginal relevance" it would still exclude the testimony under Rule 403. *Id.*

On the same date as the *Alberts'* filing, Mr. Hill was noticed as an expert in the prosecution of Kenneth Thomas. *United States v. Kenneth Joseph Owen Thomas*, ECF No. 85

(21-CR-0552(DLF)). Defendant Thomas noticed Mr. Hill as an expert on use of force and police civil liability approximately six weeks before the start of his trial. *Id.* Defendant Thomas submitted a renewed notice of expert on May 10, 2023, noting that Mr. Hill will “testify that the Defendant interacted with law enforcement officers in his own self-defense and in the defense of others, to stop or minimize further harm to life and safety.” ECF No. 103. Defendant Thomas noticed, among many things, that Mr. Hill would testify “the officers in this segment were the aggressors, according to well-settled principles of use of force,” and the “boisterous mob on the upper terrace were shocked as the line of officers broke the crowd aggressively beating demonstrators.” *Id.* at 2-3.

During a pre-trial conference on May 12, 2023, the Court granted the government’s motion to exclude Mr. Hill as an expert for the reasons stated on the record.<sup>1</sup>

## **ARGUMENT**

### **I. Legal Standard.**

Under Fed. R. Crim. P. 16, a defendant must make expert disclosures by a deadline “sufficiently before trial to provide a fair opportunity for the government to meet the defendant’s evidence.” Fed. R. Crim. P. 16(b)(1)(C)(ii). The disclosure for each expert witness must contain, (1) “a complete statement of all opinions that the defendant will elicit from the witness in the defendant’s case-in-chief,” (2) “the bases and reasons for them,” (3) “the witness’s qualifications, including a list of all publications authored in the previous 10 years,” and, (4) “a list of all other cases in which, during the previous 4 years, the witness has testified as an expert at trial or by deposition.” Fed. R. Crim. P. 16(b)(1)(C)(iii). If an expert’s testimony goes beyond what was disclosed, the Court can exclude it. *See United States v. Robinson*, 258 F. Supp. 3d 85,

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<sup>1</sup> The government will submit an excerpt of the hearing transcript as a supplemental exhibit once received.

86 (D.D.C. 2017) (Ordering that the Expert’s testimony be in accordance with the pre-trial disclosure as required by Rule 16.).

Federal Rule of Evidence 702 principally governs the admission of expert testimony:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) [t]he expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) [t]he testimony is based on sufficient facts or data; (c) [t]he testimony is the product of reliable principles and methods; and (d) [t]he expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. The Court has “the responsibility of acting as [a] ‘gatekeeper[.]’ to shield unreliable or irrelevant expert testimony and evidence from the jury.” *United States v. Sutton*, 642 F. Supp. 3d 57, 64 (D.D.C. Nov. 16, 2022) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993)). The Court has “broad discretion in determining whether to admit or exclude expert testimony. *Id.* at 65 (citing *Blake v. Securitas Sec. Servs., Inc.*, 292 F.R.D. 15, 17 (D.D.C.)). The D.C. Circuit has explained that “the twin requirements for the admissibility of expert testimony [is] evidentiary reliability and relevance.” *Id.* (citing *Ambrosini v. Labarranque*, 101 F.3d 129, 133 (D.C. Cir. 1996)).

On evidentiary reliability, “the Court’s focus must be on the methodology or reasoning employed by application of the factors in Rule 702 [of the Criminal Rules of Evidence] and the non-exhaustive list of facts set forth in *Daubert* and *Kumho*<sup>2</sup>.” *Id.* On relevance, “the Court must determine whether the proffered testimony is sufficiently tied to the facts of the case and whether it will aid the factfinder in resolving a factual dispute.” *Id.* (citing *Daubert*, 509 U.S. at 592-93). In addition to presenting reliable and relevant testimony, “an expert witness also must be

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<sup>2</sup> *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999).

“qualified” under Rule 702[,]” such that they possess sufficient “knowledge, skill, experience, training, or education,” for their conclusions. *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 292 F. Supp. 3d 14, 49 (D.D.C. 2017) (quoting Fed. R. Evid. 702). The expert need not “be recognized as a leading authority in the field in question or even a member of a recognized professional community.” *Sutton*, 642 F. Supp. at 65 (citing 29 Charles Alan Wright & Arther R. Miller Federal Practice & Procedure § 6264.1 (2d ed. 2022.)).

Defendant cannot meet these standards for either Mr. Hill or Ms. Cortez on the expert testimony that has been noticed.

## II. Steven Hill

Mr. Hill is retired and previously was employed as an Albuquerque police department officer, a systems engineer, a “protective force” trainer, and as a U.S. Air Force member. Exhibit 2, Notice of Defense Expert – Steven Hill at 6-8. Mr. Hill has never been qualified as a use-of-force expert by the court,<sup>3</sup> nor has he authored any publications on any of topics noticed as expert testimony. *Id.* at 3-4

Defendant intends to call Mr. Hill to testify on “use-of-force, self-defense, alleged restriction of the west front area of the capitol, and crowd control.” *Id.* at 1. Within those four subjects, Defendant intends to elicit Mr. Hill’s opinion on a wide range of topics. First, Mr. Hill will offer his opinion that the use of force policies for the U.S. Capitol Police and the D.C. Metropolitan Police Department were not adhered to. *Id.* Mr. Hill’s opinion may encompass “notice to disperse, dispersal avenues, approval for use, training certifications, and methods of

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<sup>3</sup> Defendant claims Mr. Hill testified as the city of Albuquerque’s use-of-force expert in *Buck v. City of Albuquerque*, CIV04-1000 and *Fogerty v. the City of Albuquerque*, CIV05-0026. In both cases, Mr. Hill was a named defendant in civil tort actions on excessive police conduct. In reviewing the publicly available dockets of those cases, the government has been unable substantiate the claim that Mr. Hill testified as a use-of-force expert.



employment.” *Id.* Mr. Hill may testify about “the effect of expired munitions.” *Id.*

Second, Mr. Hill will offer his opinion on the “experience of a person when subjected to OC and tear gas and how they reach and behave - particularly Defendant Coffee.” *Id.* at 2.

Third, Mr. Hill will offer his opinion on what “is normally a requirement for a restricted area under [Title 18, U.S.C.] Section 1752 for a [United States Secret Service] protectee and for a facility.” *Id.*

Fourth, Mr. Hill will offer his opinions on “law enforcement use-of-force tactics, reasonable self-defense, and the movements and actions of the crowd around Defendant” through his review of January 6 video footage. *Id.* Mr. Hill will testify about the “training and instruction given to law enforcement personnel on a national and local level,” and how such training “could pertain to the Metropolitan Police on January 6, 2021.” *Id.* Mr. Hill will offer his opinion that the use of “less than lethal weaponry” by law enforcement could not be justified. *Id.*

Finally, Mr. Hill will offer his opinion that “law enforcement officers’ use of force towards any member of the crowd became a violation” of their training, “an unjustified and unjustifiable use of force, illegal, and outside the scope of permitted force.” *Id.* Mr. Hill will also opine that “law enforcements officers responded with overly aggressive tactics which was dangerous and provocative, in violation of their training and the standards governing police use of force.” *Id.*

Defendant’s notice of expert lacks specifics on what videos, manuals, documents, trainings, experiences, and specific actions taken by officers and Defendant, were considered by Mr. Hill in formation of his opinions. In fact, Defendant provides a single paragraph to explain the basis and reasons for Mr. Hill’s opinions:

“The basis of Mr. Hill’s testimony is his extensive review of the evidence in this case, in addition to experience of over 40 years of law enforcement experience in

the areas of tactical operations, response force training, and nuclear/radiological security of fixed and transportation assets. He is an expert in the use of tabletop exercises for response training, data collection and physical security for fixed and mobile security high-risk assets.”

*Id.*

**1. Mr. Hill’s Testimony Should Be Excluded Because the Notice and Disclosure Fail to Comport with Rule 16.**

Defendant’s expert disclosure falls well short of what is required by Rule 16, in that it fails to provide the government with a “complete statement of all opinions” of Mr. Hill and the “bases and reasons for” his proposed expert opinions. Fed. R. Crim. P. 16(b)(1)(C)(iii). Defendant fails to identify the specialized trainings, written policy or procedures, documents, manuals, or any other material which Mr. Hill relied upon to form his opinion, and reasons for it. Defendant fails to identify the specific video recordings reviewed and relied upon by Mr. Hill in forming the basis of his opinions. Defendant further fails to identify specific actions taken by law enforcement against Defendant that he believes to be excessive, and his bases and reasons for that opinion.

In short, Defendant has had ample time to provide notice and expert disclosures in the last five months when the Court set the present trial date on July 14, 2023. Providing deficient expert notice, approximately 4-5 weeks before the trial date, is prejudicial to the government’s ability to evaluate the proposed opinion, to obtain a counter expert if needed, and to engage in an effective and focused cross-examination. For these reasons, the Court should exclude the proposed expert testimony.<sup>4</sup>

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<sup>4</sup> See, e.g., *United States v. Ulbricht*, 858 F.3d 71, 115 (2d Cir. 2017) (upholding exclusion of expert testimony, provided the day before the government was due to rest, that would “dispute” the government’s testimony that 700,000 bitcoin were transferred to the defendant’s wallet) (abrogated on other grounds by *Carpenter v. United States*, 138 S. Ct. 2206 (2018)); *United States v. Hoffecker*, 530 F.3d 137, 184-88 (3d Cir. 2008) (upholding exclusion of notice as both untimely and deficient, where trial court found, “[c]onspicuously omitted from their notices ... are the opinions and basis and reasons for the opinions of [the] three proposed experts. Merely the subjects of what they may discuss is offered”).

**2. Mr. Hill’s Opinion on Adherence to U.S. Capitol Police and D.C. Metropolitan Police Department Training, Policies, or Procedures Should be Excluded.**

Defendant intends to elicit opinion testimony from Mr. Hill about unidentified officers engaging in excessive force in a way that he believes was contrary to USCP and DC MPD use-of-force training, policies, and procedures. Exhibit 2, Defense Letter on Mr. Hill’s Proposed Testimony at 1-2. Mr. Hill is unqualified to do so. Mr. Hill is not a current or former USCP officer or DC Metropolitan Police Officer. He has never undergone use of force trainings for either organization, provided use of force trainings to either organization, or authored any of their use of force policies or procedures. Mr. Hill has no specialized experience or training with the crowd control techniques or devices used by the USCP or MPD under the conditions in which they were used on January 6 in dealing with a hostile crowd that was unprecedented in size and ferocity.

Consequently, Defendant has provided no basis for allowing Mr. Hill to provide an opinion on what the USCP or MPD could have done differently on January 6 in adherence of their policies and procedures. These are matters beyond his knowledge and experience and will not assist the trier of fact. As in the *Alberts* case, there is no need for “for an expert to say whether the officers’ actions violated some rule or standard” because “[a]ny threat by the officers or from the officers can be established through the videos and percipient witness testimony[.]”. Exhibit 1, April 11, 2023, Excerpt of Transcript at 258.

**3. Mr. Hill’s Opinion on Defendant’s Reaction and Behavior After Being Sprayed with Tear Gas and OC Spray Should Be Excluded.**

Defendant intends to call Mr. Hill to testify regarding “the experience of a person when subjected to OC and tear gas and how they react and behave – particularly Defendant Coffee.”

Exhibit 2, Notice of Defense Expert – Steven Hill at 2. Mr. Hill is unqualified to offer such an opinion. Even if Mr. Hill were somehow qualified to offer an expert opinion on the effects of OC and tear gas on an individual, his testimony because it is irrelevant to the criminal charges, and unreliable and speculative as to how another person -- in particular Defendant -- would have responded.

As shown in the expert disclosure, Mr. Hill does not have any specialized training, education, or background in the effects of OC and tear gas; has not authored any publications on the subject; and has never testified as an expert on the subject. Exhibit 2, Notice of Defense Expert – Steven Hill. Mr. Hill’s subjective belief, and speculation on sensations felt by another individual, should be excluded. Moreover, and while not required, Defendant can certainly choose to testify about any physical effects he may have experienced on January 6.<sup>5</sup>

**4. Mr. Hill’s Opinion on What Should have been the Restricted Perimeter Should be Excluded.**

Defendant intends to elicit testimony from Mr. Hill about what he believes should have been the restricted area for a secret service protectee on January 6. Exhibit 2, Defense Letter on Mr. Hill’s Proposed Testimony at 2. Mr. Hill’s intended testimony should be excluded as irrelevant, unreliable, and speculative.

At the outset, however Mr. Hill’s opinions were formed, any opinion regarding what the restricted perimeter *should have been* on January 6, 2021 is entirely irrelevant to whether or not a restricted perimeter *was* established around the Capitol on that date. The same is true of any testimony regarding how other restricted areas in other locations are set and demarcated.

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<sup>5</sup> In general, defense experts should not be permitted to repeat a defendant’s self-serving statement in the guise of rendering an expert opinion. *See United States v. White Horse*, 316 F.3d 769, 775 (8th Cir. 2003) (noting “[t]he district court correctly concluded, moreover, that the statements that Mr. White Horse made during the clinical interview and mental status examination were not independently admissible, because they were hearsay.”).

And, as shown in his resume, Mr. Hill has no personal background or experience with the U.S. Secret Service, USCP, or MPD; no experience with protecting a U.S. Secret Service protectee; and no experience, personal knowledge, or personal involvement with the setting up security for Secret Service Protectees and or for the Vice President during a joint session of congress. Mr. Hill simply has no “specialized experience or reliable method to draw upon” to form a reliable opinion about he believes should have been the restricted area. *See Est. of Stuller v. United States*, 811 F.3d 890, 896 (7th Cir. 2016). Nor does he have any experience -- beyond reviewing them -- with the “statutes for USCP and USSS, and their authorized missions, funding, and training to provide security for the Vice President in an outdoor area.” Exhibit 2, Defense Letter on Mr. Hill’s Proposed Testimony at 2. The proposed testimony would be akin to asking a lay witness to interpret legal statutes which is irrelevant to the criminal trial and encroaches upon the role of the Court. Furthermore, Mr. Hill’s proposed testimony would inappropriately rest “solely on ‘subjective belief or unsupported speculation[.]’” *Groobert v. President & Directors of Georgetown Coll.*, 219 F. Supp. 2d 1, 6 (D.D.C. 2002) (citing *Daubert*, 509 U.S. at 590). Consequently, Mr. Hill’s testimony on these points is not reliable, “sufficiently tied to the facts of the case,” or likely to “aid the factfinder in resolving a factual dispute.” *Sutton*, 642 F. Supp. 3d at 65 (citations omitted).

Thus. Mr. Hill’s personal belief on what should have been the restricted area on January 6 for Section 1752 purposes should be excluded as irrelevant, unreliable, and speculative.

**6. The Court Should Consider Holding a *Daubert* Hearing on the issue of Use of Force and Reasonable Self-Defense.**

Mr. Hill’s suitability as a use-of-force and self-defense expert cannot be ascertained because the expert disclosure is deficient and fails to offer the bases and reasons for the opinions. It is unclear which law enforcement actions -- that were taken to repel a violent and hostile crowd

-- Mr. Hill believes to be illegal and unjustifiable. It is unclear which videos or officer actions Mr. Hill considered in forming his opinion. It is unclear what specific documents, trainings, videos, experiences, etc., that Mr. Hill is basing his opinion on. Exhibit 2, Notice of Defense Expert – Steven Hill at 6-9. Moreover, the Court should outright reject the offer of expert testimony on “reasonable self-defense” which appears to impart an inappropriate legal conclusion. *United States ex rel. Mossey v. Pal-Tech, Inc.*, 231 F.Supp. 2d 94, 98 (D.D.C. 2002) (noting “[E]xpert testimony consisting of legal conclusions will not be permitted because such testimony merely states what result should be reached....”). The trier of fact can make its own determination from the evidence on whether Defendant engaged in defense of himself or others.

Should the Court decide to not exclude Mr. Hill’s testimony, then the Court should direct Defendant to provide a complete statement from Mr. Hill on what he viewed, considered, and relied upon in forming his opinions. The government also recommends the Court hold a Daubert hearing to ascertain whether Mr. Hill is qualified to testify on the issue of use-of-force and reasonable self-defense, and whether such testimony would be relevant and helpful to the Court.

### **III. Ms. Jennifer Cortez**

Defendant intends to call Ms. Cortez to testify on “use-of-force and self-defense.” Exhibit 3, Notice of Defense Expert – Jennifer Cortez at 1. Ms. Cortez is a former police officer for the Oakland and Richmond police departments who served on a use-of-force review board. *Id.* at 3. She has never testified as a use-of-force or self-defense expert, nor has she authored any publications on those topics. *Id.* at 2.

The Notice states Ms. Cortez will offer an opinion that that “use-of-force standards were not followed in the immediate area around [Defendant] on January 6th, and that [Defendant] engaged in reasonable self-defense.” *Id.* As with Mr. Hill’s disclosure, Ms. Cortez’ expert

disclosure lacks any specifics on what videos, manuals, documents, trainings, experiences, and specific actions taken by officers and Defendant, that was considered by Ms. Cortez in formation of her opinions. Ms. Cortez's basis and reasons for her opinions are explained in a single paragraph:

“The basis of Ms. Cortez's is her extensive review of the evidence in this case in addition to her experience on the CA Richmond County Use of Force Board and Internal Affairs, in addition to law enforcement experience in the areas of tactical operations, response force training.”

*Id.* at 3.

**1. Defendant's Expert Disclosure Fails to Comport with Rule 16.**

Defendant's expert disclosure falls short of what is required by Rule 16 and does not provide the government with a “complete statement of all opinions” of Ms. Cortez and the “bases and reasons for them.” Fed. R. Crim. P. 16(b)(1)(C)(iii). Defendant fails to identify the specialized training, written policy or procedures, or any other document on which Ms. Cortez relied upon to form her opinions and reasons for it. Defendant fails to identify the video recordings reviewed and relied upon by Ms. Cortez. Defendant fails to identify the specific action taken by law enforcement that Ms. Cortez believes to be an unlawful use of force. As with the expert disclosure for Mr. Hill, the bare assertion that the expert is relying on their training experience with the review of unspecified documents and/or videos is insufficient.

The Court should exclude Ms. Cortez as an expert.

**2. The Court Should Consider Holding a *Daubert* Hearing on the issue of Use of Force and Reasonable Self-Defense.**

Like Mr. Hill, Ms. Cortez's qualification as a use-of-force and/or self-defense expert cannot be ascertained. Defendant has failed to provide a complete statement of Ms. Cortez's opinions and the bases and reasons for those opinions as required by law. As with Mr. Hill, the

Court should exclude the offer of expert testimony on “reasonable self-defense” which appears to impart an inappropriate legal conclusion. The trier of fact can make its own determination from the evidence on whether Defendant engaged in defense of himself or others.

If the Court decides to not exclude Mr. Cortez, then Defendant should be directed to provide a complete statement from Ms. Cortez on her expert opinions, with a fulsome explanation for what she viewed, considered, and relied upon in forming those opinions. The government also recommends the Court hold a Daubert hearing to ascertain whether Ms. Cortez is qualified to testify on the issue of use-of-force and self-defense, and whether such testimony would be relevant and helpful to the Court.

In addition, even if the Court ultimately determines that the testimony of both Mr. Hill and Ms. Cortez is permissible, testimony from two “experts” regarding use of force and self defense would be cumulative. The Court should therefore permit testimony from only one defense expert regarding use of force and self-defense if a witness is qualified to do so.

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**CONCLUSION**

For the reasons stated above, the United States respectfully requests that the Court preclude defendant from presenting testimony from Mr. Hill and Ms. Cortez testimony on the topics noticed. Should the Court find that it lacks sufficient information to rule at this time, however, the United States requests a *Daubert* hearing.

Respectfully submitted,

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