

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : Case No. 1:21-cr-377 (BAH)
 :
 ANTHONY ROBERT WILLIAMS, :
 :
 Defendant. :

**UNITED STATES' REPLY TO DEFENDANT'S RESPONSE TO
GOVERNMENT'S MOTION *IN LIMINE* REGARDING EVIDENCE ABOUT
SPECIFIC LOCATIONS OF U.S. CAPITOL POLICE SURVEILLANCE CAMERAS**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits the following reply to the defendant's response to the government's motion *in limine*, pursuant to Fed. R. Evid. 401, 403, and 611(b), to restrict the presentation of evidence regarding the specific position of U.S. Capitol Police surveillance cameras. The defendant noted in his response that he does not oppose an order precluding the entry of maps showing the location of cameras at the Capitol building and grounds into evidence at trial. (ECF No. 48 at 1.) Therefore, the only issue for the Court to resolve is the extent the defendant will be permitted to cross-examine government witnesses about the exact location of cameras at the Capitol. Because the cross-examination the defendant proffered in his response (and any cross-examination regarding the cameras' specific location) is not relevant, and would implicate national security concerns, the Court should grant the government's motion. (ECF. No. 35.)

ARGUMENT

Contrary to the defendant's assertion, the government did not concede in its motion that limiting cross-examination on the specific location of cameras implicates (or violates) the

defendant's rights under the Confrontation Clause. It does neither. As stated in the government's motion, the Confrontation Clause only guarantees "an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). (ECF No. 35 at 3.) The government is not seeking to exclude *all* cross-examination on the location of cameras. For instance, general cross-examination on the general location of a camera and whether it captured the defendant's movements would not be objectionable. Rather, the government seeks simply to exclude irrelevant cross-examination on the *exact* location of cameras because of national security concerns.

The defendant's example of proposed cross-examination on this subject only proves the government's point that this specific testimony is irrelevant to any fact at issue. The defendant asserts that if "an officer suggests that a camera was not high enough to capture Williams's activities, then the defense should not be preemptively precluded from asking why that is so." (ECF No. 48 at 2.) However, *why* a camera may or may not show the defendant, and *why* a camera is placed in a certain area or at a certain angle is not relevant to any fact at issue. This is not a trial about why or who chose to place the cameras in the Capitol building and grounds where they are placed. It is a trial about the defendant's conduct on January 6, 2021. The choice of camera placement and why it may not show the defendant is irrelevant to any fact at issue pursuant to Federal Rule of Evidence 401. The defendant may properly question the government witness about whether a particular camera shows the defendant and about its general location. Such questioning would ensure that the defendant's rights under the Confrontation Clause are protect while also guarding against the admission of irrelevant evidence.

Additionally, as previously stated in its motion *in limine*, even assuming *arguendo* that the evidence to be excluded is marginally relevant, such relevance is substantially outweighed by the danger to national security. See *United States v. Mohammed*, 410 F. Supp. 2d 913, 918 (S.D. Cal.

2005) (finding that information having broader national security concerns can be excluded under Rule 403 because its tendency to confuse the issues, mislead the jury, create side issues or a mini-trial can result in undue prejudice that substantially outweighs any probative value).

CONCLUSION

For these reasons and those set forth in the United States' motion *in limine* (ECF No. 35), the United States requests that this court enter an order limiting the presentation of evidence about the precise locations of Capitol Police surveillance cameras, including through the use of Capitol Police maps.

Dated: May 11, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

On May 11, 2022, a copy of the foregoing was served on counsel of record for the defendants via the Court's Electronic Filing System.

/s/ Grace Albinson
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