

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
<b>v.</b>	:	
	:	<b>Case No.: 21-CR-498 (CJN)</b>
<b>ANDREW TAAKE,</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNEMNT’S REPLY TO DEFENDANT’S MOTION  
FOR APPROPRIATE RELIEF (ECF 498).**

The United States, by and through its attorney, the United States Attorney for the District§ of Columbia, hereby replies to the Defendant’s Motion for Appropriate Relief as follows:

**BACKGROUND**

Defendant Andrew Taake has been indicted for crimes relating to his conduct during the January 6<sup>th</sup>, 201 attack on the U.S. Capitol on January 6<sup>th</sup>, 2021. The Defendant is accused of using a metal whip and pepper spray to attack law enforcement officers. Included among the charged crimes are Civil Disorder, 18 U.S.C. § 231(a)(3), Obstruction of an Official Proceeding, 18 U.S.C. §§ 1512(c)(2), 2, Assault on Law Enforcement Officers with a Deadly Weapon, 18 U.S.C. §§ 111(a)(1) and (b) and Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon. 18 U.S.C. §§ 1752(a)(1) and (b)(1)(A). Mr. Taake has been held without bond pending trial since his arrest on July 23, 2021.

In his present motion the Defendant claims that his Sixth Amendment right to communicate with counsel and to access discovery are being violated by being housed at the

United States Penitentiary in Lewisburg, Pennsylvania and as a remedy he seeks a transfer to a facility closer to the District of Columbia.

## ARGUMENT

### ***A. The Attorney General has sole discretion to determine the place of confinement***

The Defendant is in the lawful custody of the Attorney General, who has the sole discretion to determine a prisoner's place of confinement. *See* 18 U.S.C. §§ 3142(i)(2), 4042, 4086; 28 C.F.R. § 0.111. The Attorney General, in turn, has delegated the care and custody of federal pre-trial prisoners to the USMS. *See* 28 C.F.R. § 0.111(k) (the Director of the USMS has broad authority for the “[s]ustention of custody of Federal prisoners from the time of their arrest by a marshal or their remand to a marshal by the court, until the prisoner is committed by order of the court to the custody of the Attorney General for the service of sentence....”). Pursuant to 18 U.S.C. § 4086, the U.S. Attorney General, “shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.”

Courts around the country have repeatedly held that, absent a finding of a constitutional violation, the USMS has discretion regarding housing decisions. *See, e.g., United States v. Jones*, 19CR00333-MO-4, 2020 U.S. Dist. LEXIS 122631 \* (D. Oregon, July 13, 2020) (finding the Court lacks authority to order U.S.M.S. to place defendant in any particular facility); *United States v. Wattenbarger*, No. 1:06CVCR0171 OWW, 2007 WL 214565, at \*1 (E.D. Cal. Jan. 25, 2007) (“The Court defers to the United States Marshal’s Service, which is charged by law with assuring the security of the Court, pretrial detainees, and all persons appearing in the Court.”); *United States v. Bigham*, No. 14-CR-20676, 2016 WL 738045, at \*2 (E.D. Mich. Feb. 25, 2016) (“Defendant has provided no authority empowering a district court to direct the U.S. Marshals

Service to house a criminal defendant at any specific location.”); *Falcon v. U.S. Bureau of Prisons*, 852 F. Supp. 1413, 1420 (S.D. Ill. 1994), *aff’d*, 52 F.3d 137 (7th Cir. 1995) (holding that the Marshals Service’s discretion would not be limited in selecting the appropriate forum for the pretrial detention of a defendant awaiting trial); *United States v. Rosario*, No. CRIM. 90-00201-01, 1990 WL 106587, at \*1 (E.D. Pa. July 23, 1990) (“Absent extraordinary circumstances, the court does not believe it should interfere with the determination of the U.S. Marshals Service and Bureau of Prisons as to where persons in custody should be housed”); *Moyers v. Shudan*, No.3:07-CV-393, 2009 WL 1813969, at \*2 (E.D. Tenn. June 24, 2009) (denying the plaintiff’s motion to order USMS to house him in a particular institution and noting that the “housing of federal prisoners pending court proceedings is within the discretion of the U.S. Marshals Service and this Court will not interfere with that discretion, absent extraordinary circumstances”).

***B. The Defendant’s claim of a Sixth Amendment violation lacks merit***

Despite his claim that his Sixth Amendment right to counsel has been violated, the Defendant asserts nothing more than an allegation that the distance between he and his attorney has made communication difficult. Importantly, the defendant has provided no specifics on how he has been denied access to discovery. Presumably, his contention is that if he was moved closer to his attorney he would have more opportunity to review the discovery with his attorney.

The Sixth Amendment guarantee of counsel includes the "opportunity for . . . counsel to confer, to consult with the accused, and to prepare his defense." *Avery v. Alabama*, 308 U.S. 444, 446, 60 S. Ct. 321, 84 L. Ed. 377 (1940). Further, the complete denial of the assistance of counsel — whether real or constructive — is *per se* reversible error. *See Perry v. Leeke*, 488 U.S. 272, 280, 109 S. Ct. 594, 102 L. Ed. 2d 624 (1989). Nevertheless, not every restriction

in counsel's access to the defendant constitutes a deprivation of the right to counsel in violation of the Sixth Amendment.

The Defendant's motion falls woefully short of establishing any basis to conclude that his opportunity to confer and consult with his attorney has been restricted. Taken in the best light for the Defendant, the most that can be said is that his counsel would have an easier time visiting him if he were housed closer. There is, however, no allegation that counsel cannot make the trip to visit him. Nor is there an allegation that he has been prohibited from speaking with his counsel over the phone or other electronic means. Further, the Defendant does not assert that he does not have access to discovery. Simply that more visits by counsel would allow them to review discovery.

### **Conclusion**

For the reasons set forth above, the Defendant's motion should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On this 11<sup>th</sup> day of May 2022, a copy of the foregoing was served upon all parties listed on the Electronic Case Filing (ECF) System.

/s/ BARRY K. DISNEY  
BARRY K. DISNEY  
Trial Attorney