

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

[1] KAROL J. CHWIESIUK,  
[2] AGNIESZKA CHWIESIUK,

Defendants.

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Case No: 21-CR-536 (CKK)

**UNITED STATES' UNOPPOSED MOTION FOR EARLY RETURN OF TRIAL  
SUBPOENA PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 17(c)**

The United States of America, by and through undersigned counsel, respectfully moves this Court for an Order permitting it to issue a subpoena *duces tecum* inviting the subpoenaed entity to produce records prior to trial pursuant to Federal Rule of Criminal Procedure 17(c). The subpoena, attached as Exhibit 1, would require the Chicago Police Department to produce personnel records for defendant Karol Chwiesiuk, including his complimentary award history and full disciplinary history. The defendants do not oppose this motion.

The subpoena would require the witness to produce the documents at the currently scheduled February 28, 2023, pretrial conference. The government requests permission to invite the subpoenaed witness to produce the materials directly to the government in lieu of appearing in Court. The government is mindful that the personnel records could contain statements Karol Chwiesiuk made about the events of January 6, 2021. To provide adequate safeguards, the materials would first go to a filter team to conduct an initial review for any documents that contain a statement about the events of January 6, 2021, that appears to have been made without the benefit of a *Garrity* warning. *See, Garrity v. New Jersey*, 385 U.S. 493, 497 (1967). The filter team would then provide the undersigned trial team all

appropriate documents, and the trial team would provide copies of those documents to counsel for the defendants.

In support of its requests, the government states as follows.

## I. BACKGROUND

Based on their actions on January 6, 2021, the Chwiesiuks are charged with Entering and Remaining in a Restricted Building, in violation of 18 U.S.C. § 1752(a)(1); Disorderly or Disruptive Conduct in a Restricted Building, in violation of 18 U.S.C. § 1752(a)(2); Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G). ECF No. 54. Karol Chwiesiuk was additionally charged with Entering or Remaining in a Room Designated for the Use of a Member of Congress, in violation of 40 U.S.C. § 5104(e)(2)(C)(i). *Id.* Trial is scheduled to begin on May 1, 2023.

## II. ANALYSIS

Federal Rule of Criminal Procedure 17(c) states that a trial subpoena “may order” the production of “any books, papers, documents, data, or other objects the subpoena designates.” The Rule further provides that the Court “may direct” the production of the designated items “in court before trial.” This Rule leaves advance production of a response to a document subpoena “to the court’s discretion.” *United States v. Binh Tango Vo*, 78 F. Supp. 3d 171, 178 (D.D.C. 2015) (quoting *United States v. Noriega*, 764 F. Supp. 1480, 1493 (S.D. Fla. 1991)). A party seeking an early-return trial subpoena must show “(1) relevancy; (2) admissibility; [and] (3) specificity.” *Id.* (quoting *United States v. Nixon*, 418 U.S. 683, 700 (1974)).

In *Nixon*, 418 U.S. at 699-700, the Supreme Court adopted the Rule 17(c) analysis set forth in *United States v. Iozia*, 13 F.R.D. 335, 338 (S.D.N.Y. 1952). Pretrial production

under Rule 17(c) is permissible when: (1) the documents are evidentiary and relevant; (2) they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) the application is made in good faith and is not intended as a “fishing expedition.”

On January 6, 2021, Karol Chwiesiuk was employed by the Chicago Police Department (“CPD”). The requested subpoena relates to his personnel file from his time as a Police Officer. The government moved *in limine* to preclude Karol Chwiesiuk from introducing evidence of specific instances of his prior good conduct, including accolades and awards from his service in the CPD. *Motion to Exclude Improper Character Evidence*, ECF No. 73. Karol Chwiesiuk opposes this motion. *Defendant’s Response to Government’s Motion to Exclude Improper Character Evidence*, ECF No. 76. He argues that evidence from his time with CPD is relevant to whether he would “intentionally engage in conduct to ‘offend public morals’ and ‘undermine public safety’ to impede the orderly functioning of government.” *Id.* at 2. He also argues that some records in his CPD personnel file may demonstrate his “traits for truthfulness and honesty,” which he says will be admissible should he testify. *Id.* at 3.

The proposed subpoena thus meets the requirements for issuance of a Rule 17(c) subpoena. This request is made in good faith for records which defendant Karol Chwiesiuk may seek to introduce at trial. In the defendant’s view, the information sought will assist the jury in determining the defendant’s intent in entering the Capitol on January 6, 2021. The government requests a full disciplinary history because obtaining only accolades would not

provide a wholesome picture of the defendant's service with the CPD. The government requires the records in advance of trial to allow a filter team sufficient time to review those records. Further, obtaining the records prior to the date of trial will facilitate the orderly progress of trial by allowing the parties to litigate or resolve any issues of admissibility arising from the document production before trial begins. *See Bowman Dairy Co. v. United States*, 314 U.S. 214, 219-20 (1951) (noting that an early-return trial subpoena serves the function of expediting trial by allowing for examination of the subpoenaed materials before trial begins). CPD is preparing the file for production but requested a subpoena before providing the documents.

As noted above, Rule 17(c)(1) requires a witness to produce the designated items "in court before trial" and states that "[w]hen the items arrive, the court may permit the parties and their attorneys to inspect all or part of them." The proposed subpoena requires the witness to produce the designated documents at the currently scheduled April 28, 2023, pretrial hearing in this case.

The government requests permission to invite the subpoenaed party to produce the documents to the government electronically in lieu of appearing at the status hearing. A return of the subpoenaed materials directly to the filter team would permit the filter review to take place in advance of trial with sufficient time for the filter team to provide appropriate documents to the undersigned attorneys, and then production of those materials to the defense.

### III. CONCLUSION

The government respectfully requests the Court to permit service of the subpoena to obtain records sought by the subpoena attached as Exhibit 1.

Respectfully submitted,

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DATED: April 12, 2023

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