

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Case No.
	:	
KENNETH JOSEPH OWEN THOMAS,	:	1:21-cr-00552 (CRC)
	:	
Defendant	:	
	:	

DEFENDANT’S PROFFER AS TO ANTICIPATED WITNESSES
Susanna Castilo, Director of Communications, District of Columbia Government

Defendant KENNETH JOSEPH OWEN THOMAS (“Thomas”), through the undersigned counsel, John M. Pierce, Esq. and Roger Roots, Esq., and hereby responds to the verbal Order of the Court to explain the expected testimony of the witnesses that the Defendant expects to call at trial.

Initially, Defendant reserves and notes his objection that this procedure is unduly burdensome for an under-funded Defendant’s legal team, as with most January 6 Defendants, but not shouldered in like manner by the well-funded U.S. Department of Justice with regard to its witnesses. Almost everything about these cases – rushed to court with many years left to run on statutes of limitations, but clearly not ready for prime time – seems geared towards swamping the few attorneys willing to provide a legal defense to these accused citizens.

I. PROFFERED TESTIMONY OF SUSANA CASTILLO

Suzanna Castillo, Director of Communications, Mayor’s Office of Communications,
John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, DC 20004

Susanna.castillo@dc.gov (202) 309-2640 would testify that the Mayor of Washington, D.C. Muriel Bowser, issued the attached News Release on January 3, 2021, about the upcoming protests expected on January 6, 2021, telling people to stay home and not enter the District of Columbia. The press release is accessible at: <https://mayor.dc.gov/release/mayor-bowser-continues-preparation-upcoming-first-amendment-demonstrations>

Castillo would testify to other announcements and news interviews by Mayor Bowser warning residents of the District and commuters from surrounding suburbs that the large crowd could be a COVID super-spreader event and that the Mayor wanted businesses closed in the District of Columbia. The Mayor announced that she wanted restaurants in particular closed so that Trump supporters would have no rest rooms to use and would be discouraged from coming to the City or would leave shortly.

Castillo would testify that the new article from WUSA9 television (published in text on their website) accessible at <https://www.wusa9.com/article/news/local/dc/dcs-mayor-bowser-asks-people-to-stay-away-from-downtown-tuesday-wednesday/65-65045787-9deb-44ca-aa32-22e6e0a9a560> is an accurate report of what the Government of the District of Columbia was instructing with regard to the expected January 6, 2021, demonstrations.

As a result, any impact on commerce in the City would have been caused by the Mayor telling D.C. residents and suburban commuters to offices and businesses in the District to stay home and not enter the Capitol.

Castillo would also testify that these announcements were on January 3, 2021, and possibly at other times, such that these announcements were aimed at the demonstrations planned for the Ellipse and not related to any events at the U.S. Capitol as they later developed.

Commerce in the District of Columbia was suppressed by the Mayor scaring people away from the City and telling them not to come into the City. But this was in reference to the lawful, peaceful, and permitted demonstrations at and around the Ellipse, the Washington Monument, and the Washington Mall numbering in the hundreds of thousands of people. This was not about any activity at the U.S. Capitol. Therefore, long before any of the events alleged by the Department of Justice, with no reference to anything happening at the Capitol, commerce was affected not by anything the Defendant did.

Note that for decades crowd estimates have been a highly controversial debate. The estimates of the lawful, peaceful crowds at the Ellipse and around that area in the City run from 500,000 to 1 million people. By contrast, USCP then Deputy Chief Pittman estimated the size of the crowds at and around the U.S. Capitol as being around 10,000 people. Therefore, the effect of the vastly larger peaceful demonstrations would have an impact on commerce, not the much smaller events at the Capitol.

However, following comity and protocol, testimony from a government official of whatever level is often handled by stipulation or extending the invitation to the potential witness to submit an affidavit whose admissibility is stipulated to by both sides.

Dated: May 17, 2023

RESPECTFULLY SUBMITTED
KENNETH JOSEPH OWEN THOMAS,

By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that this document is being filed on this May 17, 2023, with the Clerk of the Court by using the U.S. District Court for the District of Columbia's CM/ECF system, which will send an electronic copy of to the following CM/ECF participants. From my review of the PACER account for this case the following attorneys are enrolled to receive notice and a copy through the ECF system.

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