UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA	
V.	
MATTHEW DASILVA	
DEFENDANTS.	

CRIMINAL CASE NO: 1:21-CR-00564

TRIAL: JULY 17, 2023

DEFENDANT'S MOTION IN LIMINE TO EXCLUDE AUDIO RECORDED STATEMENTS FROM VIDEOS AS SPECULATION AND HEARSAY

Pursuant to Fed. R. Evid. 802 and 602, Defendant moves *in limine* to exclude audio recordings of statements made by witnesses in videos recorded on January 6, 2021, as hearsay and lacking personal knowledge.

The Government is in possession of video footage, captured by witnesses, illustrating the defendant's actions on January 6, 2021. These videos incorporate witness statements that speculate on the defendant's state of mind — a person unknown to them and with whom they have had no interaction. The defendant makes no statements in these videos. Moreover, the witnesses' hearsay statements go to an ultimate issue, the *specific intent* of the defendant. Since the witnesses are not experts covered by Rule 704(b), their hearsay statements on an ultimate issue are not otherwise admissible under Rules 701–703. As stated in Weinstein's Federal Evidence § 704.03 (2d ed. 2001) and *United States v. Barile*, 286 F.3d 749, 759–60 (4th Cir. 2002), "As a precondition for admissibility under Rule 704(a), testimony concerning ultimate issues must conform to the Rules of Evidence."

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The statements made by the witnesses on video, therefore, are speculative hearsay on an ultimate issue that lacks personal knowledge and should be excluded. The defendant seeks a ruling from this court *in limine* to preclude the Government from playing, at trial, the audio of the recording of statements made by witnesses.

The defendant does not waive any additional objections he may have on the admissibility of the government's evidence, appropriately reserving all of his objections for the trial.

Respectfully submitted,

By Counsel:

/s/

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CERTIFICATE OF SERVICE FOR CM/ECF

I hereby certify that on May 19, 2023, I will electronically file the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Marina Medvin, Esq.

