

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 1:21-cr-564 (CJN)
	:	
MATTHEW DASILVA,	:	
	:	
Defendant.	:	

GOVERNMENT’S TRIAL BRIEF

The United States, by and through its attorneys, respectfully submits this brief in advance of the July 17, 2023 trial scheduled before this Court in this case, in accordance with the Court’s Scheduling Order, Doc. 56. The United States’ responses to the Defendant’s Motions in Limine are incorporated into this brief.

I. Request for Opening Argument

The government respectfully requests a brief opening argument limited to seven minutes.

II. Statement of the Case

On January 6, 2021, thousands of people descended on the U.S. Capitol building and grounds and interrupted the Joint Session of Congress that had convened to certify the votes of the Electoral College for the 2020 Presidential Election. Vice President Michael R. Pence was serving as the President of the Senate at the U.S. Capitol and presiding over the Joint Session and Senate proceedings. On that day, U.S. Secret Service was present for the protection of the Vice President and his family members, and physical barriers and law enforcement officers surrounded the U.S. Capitol building and grounds. At all relevant times, the U. S. Capitol building and its grounds—including the northwest lawn, the west plaza, Lower West Terrace, Upper West Terrace, and the entire U.S. Capitol building itself—were restricted areas that were closed to members of the public.

The defendant, Matthew DaSilva, was present in the crowd that amassed on the western front of the Capitol building, having travelled to Washington, D.C. from his home in Lavon, Texas. The government intends to introduce evidence at trial showing that the defendant made his way onto the west plaza of the Capitol at approximately 2:35 pm, within minutes of the breach of the police line that had been established to protect the west plaza. Video evidence will also show the defendant in a small group of rioters holding a flagpole against a door leading into the Capitol from the west plaza at approximately 2:45 pm. The defendant is visible on U.S. Capitol Police CCTV footage shortly thereafter on the west plaza, waving a large blue flag.

At around 4:20 pm, he was at the back of a group of rioters engaged in a group heave-ho maneuver pushing against officers defending the Lower West Terrace entrance to the Capitol, *i.e.*

“the tunnel.” Then at about 4:33 pm, the defendant approached officers assembled in the tunnel and forcibly pushed against a riot shield held by officers trying to hold the police line against protesters. The defendant also grabbed the riot shield and pulled away from officers, toward the crowd. He made further physical contact with one officer when he swatted the officer’s arm away as the officer attempted to deploy a handheld cannister of OC spray.

Video evidence will show that the defendant then remained in the area of the west plaza and Lower West Terrace until the area was cleared by Metropolitan Police officers using a variety of non-lethal crowd control measures shortly after 5:00 pm. In total, the defendant remained in the area of the lower west terrace for nearly two-and-a-half hours.

The government intends to prove the above facts with video evidence, testimony from law enforcement officers, and business records of a Washington, D.C. grocery store.

Based on discussions with defense counsel, the government believes that the basic facts of the case are not substantially in dispute. The parties’ most significant disputes arise with respect to the defendant’s intent and the application of the law to this set of facts.

III. Elements of the Crimes Alleged

The Second Superseding Indictment charges the defendant with violations of Civil Disorder, in violation of 18 U.S.C. § 231(a)(3) (Count One); Assaulting, Resisting, or Impeding Certain Officers in violation of 18 U.S.C. § 111(a)(1) (Count Two); Entering and Remaining in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(1) (Count Three); Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2) (Count Four); Engaging in Physical Violence in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(4) (Count Five); Disorderly Conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Six); and Act of Physical Violence in the Capitol Grounds or Buildings in violation of 40 U.S.C. § 5104(e)(2)(F) (Count Seven).

The government is simultaneously filing its proposed legal instructions in a separate filing with respect to each of these charges.

IV. Anticipated Stipulations

The parties intend on filing their stipulations under a separate filing. In summary, the parties intend on submitting stipulations on at least the following topics:

1. Identity of the Defendant
2. No Criminal Record
3. U.S. Capitol Police CCTV Monitoring
4. U.S. Capitol Police on U.S. Capitol Grounds
5. The United States Capitol Building and Grounds
6. Timeline of the Certification of the Electoral College Vote
7. The Existence of a Civil Disorder

V. Anticipated Stipulated Testimony

The government does not intend on offering stipulated testimony at this trial.

VI. Anticipated Witnesses

	Last Name	First Name	Title & Agency	Will Call	May Call
1	Mendoza	Carneysha	Captain, U.S. Capitol Police	x	
2	Sterling	Jason	Officer, Metropolitan Police Department	x	
3	Chen	Jonathan	Officer, Metropolitan Police Department		x
4	D'Avignon	Marc	Officer, Metropolitan Police Department		x
5	Sajumon	Steven	Officer, Loudoun Police Department (formerly of the MPD)		x
6	Ray	Cory	Special Agent, FBI	x	
7	Hawa	Lanelle	Inspector, U.S. Secret Service	x	

The government will call Captain Carneysha (“Neysha”) Mendoza from the Capitol Police who will provide an overview of the U.S. Capitol building and grounds and explain how the building and grounds were protected and then overrun on January 6, 2021. The government will present video footage that will document what occurred as the U.S. Capitol grounds and building were breached. The video evidence will include U.S. Capitol Police closed-circuit video (CCTV).

The government will also call at least one Metropolitan Police Department (MPD) officer to testify about his experiences on January 6, 2021, with particular attention to his experience in the “tunnel” on the Lower West Terrace of the Capitol Building. The MPD officer will also discuss relevant body worn camera (BWC) footage.

The government will also call the case agent, Special Agent Cory Ray of the Federal Bureau of Investigation. Special Agent Ray will introduce several “open source” or “third party” videos from January 6, 2021 that were collected over the course of this investigation. Special

Agent Ray will also offer business records from a grocery store impacted by the events of January 6, 2021.

Finally, the government will call U.S. Secret Service Inspector Lanelle Hawa to testify regarding the Secret Service's protection of Vice President Pence on January 6, 2021.

VII. Responses to Outstanding Motions in Limine

The parties met and conferred by video conference about proposed exhibits as well as the outstanding motions in limine on June 30.

A. Government's Motions in Limine

Based on the parties' meet and confer, the government understands that the defendant is not opposed to the government's Motion in Limine regarding Cross Examination of the Secret Service Witness, Doc. 50, or Motion in Limine regarding Locations of USCP CCTV Cameras, Doc. 51. The government respectfully asks the Court to grant these motions as unopposed.

The government understands that the defendant is, however, opposed to the Government's Motion in Limine to Admit Montage Evidence, Doc. 49. The Exhibit in question is Exhibit 001. The Government does not intend on playing the entire fifteen-minute video montage, but rather to introduce select sections of the montage for the purpose of putting the defendant's conduct in context and establishing several of the elements necessary for the government to prove the charges under 18 U.S.C. §§ 231 and 1752, and 40 U.S.C. § 5104. The government maintains that the short clips it intends to play for the Court are relevant to the charges, admissible, and not unduly prejudicial to defendant, particularly in light of the fact that the government only intends to play short segments of the whole montage. The government also notes that this montage, in some form, has been played in nearly every January 6 related trial to date. The government respectfully asks the Court to grant this motion.

B. The Defendant's Motions in Limine

In principle, the government opposes the defendant's Motion in Limine to "Exclude Generalized, Sweeping, Non-Particularized January 6 Evidence," Doc. 46. In practice, however, the parties are in significant agreement about what evidence will be admitted at trial, with the

exception of the disagreement regarding Exhibit 001 discussed above. As a general matter, the government only intends on playing portions of the video evidence that either (1) depict Mr. DaSilva's conduct, (2) establish an element of a charged offense, or (3) are necessary for placing his conduct in context, such as for establishing the timeline of his conduct. The government maintains that all of the evidence that it seeks to admit is relevant to this case, admissible, and not unduly prejudicial to the defendant. Moreover, the parties are in discussions about proposing appropriate limiting instructions to the Court with respect to any portions of the video exhibits that are not played in open court. In light of the substantial agreement between the parties, the government respectfully requests that the Court deny this motion to the extent it applies to Exhibit 001 and reserve ruling on this motion unless and until the issue arises at trial.

The government opposes the defendant's Motion in Limine to Exclude Audio Recordings of Witness Statements, Doc. 45. In discussions with defense counsel, the government understands that this motion is targeted at video evidence wherein the statements of other rioters are caught on camera and audible in the recording. These statements are all admissible as non-hearsay or under an exception to the rule against hearsay, as they are either (a) not offered for the truth of the matter asserted, *see* Fed. R. Ev. 801(c)(2); or (b) statements of the declarant's then-existing state of mind, *see* Fed. R. Ev. 803(3). The defendant's arguments regarding whether these statements establish his own state of mind go to the weight of the evidence, rather than its admissibility. The government respectfully requests that the Court deny the defendant's motion, or, in the alternative, permit the government to proffer the objected-to statements before the Court rules.

VIII. Anticipated Exhibit List

Exhibit No.	Description	Witness	Marked for ID	Received in evidence	Published
<i>CAPITOL BUILDING AND GROUNDS</i>					
001	USCP CCTV Video Montage				
002A	Closure of West Front Police Order				
002B	Ground Closure Announcement				
003	Restricted Perimeter				
004	Capitol Building – 3D Map				
005	Capitol Building – 3D Image of West Front				
006	Photograph of the Capitol				
007	Photograph of “Area Closed” signs				
008	Photograph of “Area Closed” sign				
009	Photograph of “Area Closed” sign				
010	Photograph of “Area Closed” sign				
<i>LEGAL AUTHORITY</i>					
101	U.S. Constitution, Amendment XII				
102	3 U.S.C. § 15				
103	3 U.S.C. § 16				
104	3 U.S.C. § 17				
105	3 U.S.C. § 18				
106	Concurrent Resolution				
<i>UNITED STATES CAPITOL POLICE CCTV VIDEO</i>					
201	Camera 74 400 to 415 pm				
202	Camera 74 415 to 430 pm				
203	Camera 74 430 to 445 pm				
204	Camera 944				
<i>METROPOLITAN POLICE BODY WORN CAMERA</i>					
301	Off. Jonathan Chen BWC				
301a	Screenshot 16:33:18				
301b	Screenshot 16:33:26				
302	Off. Marc D’Avignon BWC				
302a	Screenshot 16:33:16				
302b	Screenshot 16:34:09				
303	Off. Aaron Hunter BWC				
303a	Screenshot 16:32:23				
303b	Screenshot 16:32:30				
303c	Screenshot 16:32:55				
303d	Screenshot 16:32:56				
304	Off. Divonnie Powell BWC				

304a	Screenshot 16:33:17				
305	Off. Steven Sajumon BWC				
305a	Screenshot 16:33:31				
306	Off. Jason Sterling BWC				
306a	Screenshot 16:33:14				
306b	Screenshot 16:33:18				
306c	Screenshot 16:33:58				
306d	Screenshot 16:35:30				
OPEN SOURCE VIDEOS & PHOTOGRAPHS					
401	Sargente clip				
402	West Plaza Video (Xy2JnbdsJG5)				
403	West Plaza Video (B.Smith – unified message)				
404	Washington Protest video				
404a	Screenshot				
404b	Screenshot				
404c	Screenshot				
404d	Screenshot				
404e	Screenshot				
405	Full Footage video				
405a	Screenshot				
405b	Screenshot				
406	Norman Koch video				
406a	Screenshot				
407	J Robertson video				
407a	Screenshot				
407b	Screenshot				
408	Go Pro Video (Fanone Incident)				
408a	Screenshot				
409	Storm 7 video				
409a	Screenshot				
410	DaSilva on 410 pm				
410a	Screenshot				
410b	Screenshot				
410c	Screenshot				
411	DaSilva on 430 pm				
411a	Screenshot				

412	M. Castro cellphone video				
412a	Screenshot				
<i>BUSINESS RECORDS (SAFEWAY)</i>					
501	Rule 902 Certificate				
502	Safeway Email				
503	Safeway Sales Comparisons				
504	Safeway Warehouse Shipments				
505	D.C. Register				
506	Curfew Tweet				
<i>U.S. SECRET SERVICE MATERIALS</i>					
601	Hawa Email				
602	Head of State Worksheet				
603	CCTV Evacuation of Mike Pence				
604	Motorcade Video				

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