UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA **v.** **CYNTHIA BALLENGER, and CHRISTOPHER PRICE,** **Defendants.**	**Case No. 1:21-cr-00719 (JEB)**

DEFENDANTS' MOTION TO COMPEL DISCOVERY UNDER RULE 16 AND BRADY V. MARYLAND

Defendant Cynthia Ballenger (Cynthia Price) and Defendant Christopher Price, (together Defendants or the Prices) by and through undersigned counsel, respectfully moves this Court to compel the government to disclose evidence that is potentially exculpatory and otherwise material to the preparation of the Prices' defense. Counsel states the following in support of this motion.

Introduction

The motion primarily concerns two sets of issues. The first involves police witnesses at or inside the Senate Wing Door at the time the Prices walked in that door. As discussed below, the Prices argue that certain information from such police witnesses is *Brady* evidence and that the prosecution team—which includes at least the United States Capitol Police (USCP) -- must provide this evidence and allow Defendants to ask questions. Neither the Government nor the USCP appear to believe that such *Brady* obligation or applies in the instant case. Nor does the Government believe any part of the issue falls under F.R. Crim. Proc. 16(a)(1)(E). The Prices

have failed, thus far, to obtain the relevant information or access to these potential witnesses through alternate approaches.

The second set of discovery requests were sent to Counsel for the United States by letter and email on September 19, 2022. *See* Attachment 1. However, the Prices had also, by letter of June 30, 2022, already described the underlying basis and legal theories for this class of requests. This memorandum includes a key section of the June 30, 2022 letter below. The letter is not attached out of caution in respect to the Protective Order in this case. [ECF 13]. Moreover, various motions, responses, and replies have identified the legal importance of the requests. By email Counsel for the United States questioned whether the requests met certain standards:

> To the extent that you seek specific discovery in section 1 of your letter, please identify what portions of Rule 16, *Brady*, *Giglio*, and/or *Jencks* compel the production of these materials. *See United States v. Ulbricht*, 858 F.3d 71, 109 (2d Cir. 2017) (concluding there was no abuse of discretion where the lower court found that the defendant's discovery requests "were too broad and unfocused, and that the information requested was not material in the Rule 16 sense because the defense has not articulated a coherent and particular reason why the [requested discovery] could counter the government's case or bolster a defense.") (internal quotations omitted). *From* email of Andrew Haag, Counsel for the United States, dated October 6, 2022.

At the Pretrial Discovery Conference on October 12, 2022 the parties agreed to disagree with respect to these requests. Counsel for the United States indicated they would not follow-up on the specific requests as set out in Section 1 of the letter of September 19, 2022. Counsel for the United States stated they had not agreed to the broader prosecution team approach, disagreed on materiality and *Brady*, stated that the requests were overly broad, and stated that there was a great

deal of discovery available on the government data base which may include some of the material requested. The Prices argue the Government fails in its obligations and the Government's response is cursory and dismissive. As discussed below, in particular, the relevance of the requests has been established through many arguments already provided to the Government. The Counsel for the Prices continue to review the Government data bases but believes the requests likely mean a search for material outside of these data bases. Here the Prices seek a motion to compel this production.

Legal Standards

Federal Rule of Criminal Procedure 16(a)(1)(E) provides defendants with broad discovery rights. The rule requires the production, upon defendant's request, of documents and objects within the government's possession, custody, or control that are "*material* to preparing the defense." Fed. R. Crim. P. 16(a)(1)(E) (emphasis added). Materiality "is not a heavy burden." *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993). Evidence is material—whether exculpatory or inculpatory—"as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." *United States v. Marshall*, 132 F.3d 63, 68 (D.C. Cir. 1998) (quoting *Lloyd*, 992 F.2d at 351). A defendant makes an adequate showing of materiality where he "present[s] any facts which would tend to show that the government was in possession of information that would be helpful to the defense." *United States v. Cadet*, 727 F.2d 1453, 1466 (9th Cir. 1984).

In determining what to disclose under Rule 16, "the government cannot take a narrow reading of the term 'material' . . . [n]or may it put itself in the shoes of defense counsel in attempting to predict the nature of what the defense may be or what may be material to its preparation." *United States v. Safavian*, 233 F.R.D. 12, 15 (D.D.C. 2005). Rather, "[t]he language

and the spirit of the Rule are designed to provide to a criminal defendant, in the interest of fairness, the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case." *United States v. Libby*, 429 F. Supp. 2d 1, 5 (D.D.C. 2006) (quoting *United States v. Poindexter*, 727 F. Supp. 1470, 1473 (D.D.C. 1989); *see also* Fed. R. Crim. P. 16, Advisory Committee Notes (amend. 1974) (explaining how "broad discovery contributes to the fair and efficient administration of criminal justice" and that Rule 16 provides "the *minimum* amount of discovery to which the parties are entitled. It is not intended to limit the judge's discretion to order broader discovery in appropriate cases" (emphasis added)). Because it is in the interest of fairness that criminal defendants have "the widest possible opportunity to inspect and receive" material in the government's possession that may aid in the defense, disputes regarding the discoverability of information under Rule 16 "should be resolved in the defendants' favor." *United States v. Karake*, 281 F. Supp. 2d 302, 306 (D.D.C. 2003).

Disclosure obligations are also governed by *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. Specifically, in the pretrial setting, *Brady* requires disclosure of any information that is "favorable" to the defense, "without regard to whether the failure to disclose it likely would affect the outcome of the upcoming trial." *United States v. Safavian*, 233 F.R.D. 12, 16 (D.D.C. 2005). Favorable information includes any information "that tends to help the defense by either bolstering the defense case or impeaching potential prosecution witnesses." *Id.*

The government's broad disclosure obligations arise out of the "special role played by the American prosecutor in the search for truth in criminal trials." *Strickler v. Greene*, 527 U.S. 263, 280 (1999). The prosecutor's interest "is not that [she] shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 99 (1935). And in her pursuit of justice, "'the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on

the government's behalf in th[e] case,'" including the MPD, the FBI, Department of Homeland Security, and to disclose that information to the defendant. *See Strickler*, 527 U.S. at 281 (quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)); *In Re Sealed Case*, 185 F.3d 887, 896 (D.C. Cir. 1999). Because of the prosecutor's special role, courts "look with disfavor on narrow readings by prosecutors of the government's obligations under *Brady*." *United States v. Singhal*, 876 F. Supp. 2d 82, 104 (D.D.C. 2012). "Where doubt exists as to the usefulness of the evidence to the defendant, the government must resolve all such doubts in favor of full disclosure." *Safavian*, 233 F.R.D. at 17; *See also* U.S. Attorney's Manual § 9-5.001.C.1 (requiring disclosure of "information that is inconsistent with any element of any crime charged . . . regardless of whether the prosecutor believes such information will make the difference between conviction and acquittal of the defendant for a charged crime."). As the Supreme Court explained, "a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. This is as it should be." *Kyles v. Whitley*, 514 U.S. 419, 439 (1995).

The Local Criminal Rules of this district *require* timely disclosure of such materials. Local Criminal Rule 5.1 provides that "[b]eginning at the defendant's arraignment and continuing throughout the criminal proceeding, the government shall make good-faith efforts to disclose" all information "favorable to an accused" that is "material" under *Brady* "***as soon as reasonably possible after its existence is known***, so as to enable the defense to make effective use of the disclosed information in the preparation of its case." LCrR 5.1(a) (emphasis added). *See also* Order, *United States v. Brynee Baylor*, No. 16-cr-180 (ESH) (D.D.C. Nov. 8, 2016), ECF No. 10 (*sua sponte* ordering the government to produce, "in a timely manner, including during plea negotiations" all *Brady* material notwithstanding the fact that "such evidence also constitutes

evidence that must be produced later pursuant to the Jencks Act, 18 U.S.C. § 3500, or by the fact that such evidence need not be produced according to Rule 16.").

Lastly, the government is required to identify *Brady* material when the discovery is voluminous. *United States v. Saffarinia*, 424 F. Supp. 3d 46, 58 (D.D.C. 2020) (government ordered to identify *Brady* material, to the extent that government knows of such information). There is no question that the discovery in January 6 cases has been uniquely voluminous requiring the government to contract with Deloitte to create a complicated database in order to share it. Every few weeks, thousands of materials are added to this database. While the government sends a letter summarizing the production, it should also specifically identify any *Brady* material it knows of in these massive and unprecedented productions spanning almost two years.

The MINUTE ORDER of this Court of December 9, 2021 states as to CYNTHIA BALLENGER (1) and CHRISTOPHER PRICE (2): Pursuant to the Due Process Protections Act, the Court ORDERS that all government counsel shall review their disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, as set forth in Local Criminal Rule 5.1, and comply with those provisions. The failure to comply could result in dismissal of the indictment or information, dismissal of individual charges, exclusion of government evidence or witnesses, continuances, Bar discipline, or any other remedy that is just under the circumstances.

Argument

I. The Government's Discovery Obligations Extend to Certain Agencies in the Instant Case

Under *Brady,* the prosecutors have an affirmative duty to search possible sources of exculpatory information, including a duty to learn of favorable evidence known to others acting on the prosecution's behalf, including the police, *Kyles v. Whitley,* 514 U.S. 419, 437, 115 S. Ct 1555, 131 L.Ed 2d 490, 131 L.Ed 2d 490 (1995), and to cause files to be searched that are not

only maintained by the prosecutor's or investigative agency's office, but also by other branches of government " closely aligned with the prosecution." *United States v. Brooks,* 966 F.2d at 1503 (" affirmative duty of inquiry"). *See United States v. Beers,* 189 F. 3d 1297, 1304 (10th Cir.1999) (" [i]nformation possessed by other branches of the federal government, including investigating officers, is typically imputed to the prosecutors of the case" for *Brady* purposes); *United States v. Jennings,* 960 F.2d at 1490 (" [t]his personal responsibility cannot be evaded by claiming lack of control over the files ... of other executive branch agencies").

Similar obligations exist under LCr.R 5.1(e):

> For purposes of this rule, the government includes federal, state, and local law-enforcement officers and other government officials who have participated in the investigation and prosecution of the offense(s) with which the defendant is charged. The government has an obligation to seek from these sources all information subject to disclosure under this Rule.

"A prosecutor may have a duty to search files maintained by other 'governmental agencies closely aligned with the prosecution' when there is 'some reasonable prospect or notice of finding exculpatory evidence.'" *United States v. Padilla*, 2011 WL 1103876, at *7 (quoting *United States v. Brooks*, 966 F. 2d 1500, 1503 (D.C. Cir. 1992)). "[A] prosecutor's office cannot get around *Brady* by keeping itself in ignorance, or by compartmentalizing information about different aspects of a case." *Carey v. Duckworth*, 738 F.2d 875, 878 (7th Cir. 1984). The "prosecution has an affirmative duty to disclose exculpatory evidence clearly supporting a claim of innocence even without request." *United States v. Summers*, 414 F.3d 1287, 1304 (10th Cir. 2005)(citing *Scott v. Mullin*, 303 F.3d 1222, 1228 n.2 (10th Cir. 2002)).

With respect to January 6th Cases, the U.S. Secret Service, the Federal Bureau of Investigation, the U.S. Capitol Police and the District of Columbia Metropolitan Police Department are government officials who have participated in the investigation and prosecution of the offenses charged and so the government has an obligation to seek from these sources all information subject to disclosure under the Rules. LCr.R 5.1(e):

Moreover, the U.S. Secret Service, the U.S. Capitol Police, and the District of Columbia Metropolitan Police department were either responsible for the designation of any restricted area or maintaining such an area under 18 U.S.C.§1752(c) or responsible for implementing any such restriction. These groups were also, among those responsible for security on January 6, 2021.

II. The Government, Including the USCP, Carries the Obligation to Provide Brady Evidence Regarding Any Statements (Or Lack of Statements) of the Police Made to the Prices or Any Observations Made by the Police Specifically Concerning the Prices at the Senate Wing Door

Police officers were at the Senate Wing Door and, to the Price's knowledge, did not tell the Prices not to enter. That is *Brady* evidence. The police officers that were there could not have observed any conduct from the Prices other than walking, texting or taking pictures. That is because that is all that happened and that is *Brady* evidence. Of course, this is also on the Capitol video footage, but the information that officers did not notice anything is also evidence. Counsel for the Prices has been trying to identify and talk to such police witnesses. As the Prices understand it from discussion, the position of the Government is that it has no affirmative obligation to facilitate connection to such witnesses. This position followed requests sent by email on May 18, 2022 to Counsel for the United States and a letter sent to Counsel for the United States sent by email on June 30, 2022. As stated in the email, in part:

> Someone probably knows the identity of some of those faces pulled out in the picture. Like the guy in frame [XXXX] for example. He may have exculpatory

> evidence, along with other witnesses, regarding the alignment and statements of the police at the location. The officer in Frame [XXXX] may also be relevant.

It seems clear to us that the government has used facial recognition technology and other means of correlating information to identify the people that were present. Each of those witnesses may provide exculpatory information concerning the alignment and operation of police inside or near the Senate wing door and that Defendants did not engage in any disorderly or disruptive conduct.

We believe the government should turn over the identification information of police and witnesses at the location depicted in …. because it will be *Brady* information to help Defendants prepare and show there was no disorderly or disruptive conduct and police that were not telling or not always telling people at the door not to enter at the time Defendants entered.

In an effort to pursue the issue, Counsel for the Prices contacted Lisa Walters at the Office of General Counsel for USCP identifying two police officers that counsel believed might have been at the Senate Wing Door at the time. These officers had certain information in the large data Relativity data base. Upon contact, USCP offered to relay a request to one police officer that counsel for the Prices identified was likely there at the Senate Wing Door at the time the Prices were there. By email of October 12, 2022, Ms Walters stated: " ….I reached out to Lt. Grossi in September and he does not wish to be interviewed." For USCP this appears to close the book. The Prices, however, believe Lt. Scott Grossi has *Brady* evidence and that the Government must come forward. Other officers on the scene also have such *Brady* evidence which may be as little as they did not observe any disorderly or disruptive conduct from the Prices and did not say anything to them as they entered.

Counsel for the Prices have continued to try to identify other police witnesses. One witness that would have Brady evidence, the Prices could only identify from the written words on a shirt saying "A. Tax". "A. Tax." appears to be standing outside the door at the time the

Prices entered. In fact, his picture is connected to the text of Christopher Price that says "In." "A. Tax." did not saying anything to the Prices at the door. If "A. Tax." could confirm that point, such confirmation is *Brady* evidence. The Prices do not know that the Government currently has direct information regarding "A.Tax". Still, USCP should have more ability to help reach out and find "A. Tax." Perhaps relevant is the type of uniform, the time of the assignment. Perhaps an email to the assisting police forces on January 6, 2021 would help. Such an effort should not be hard for USCP but is hard for the Prices.

Counsel for the Prices has been diligent and continues to try to provide pictures of officers at the Senate Wing Door to the Government and USCP. Counsel had mentioned a specific identification, for example, connected to the Government's facial recognition technology at the Senate Wing Door. That technology is being used to identify people who entered the Capitol and was used to identify the Prices. For some reason, the Government finds no obligation to use that same technology to identify the officer requested. The Prices believe that affirmative efforts by USCP or the Government could find these officers and provide the Brady evidence herein described. The Prices argue the Court should also require the USCP to come forward regarding what Lt. Grossi said or did not say, what he knows about other officers there, and what, if any observations, Lt. Grossi has about the Prices. It would not be surprising if there was no specific observation about the Prices, but such lack of observation would also go to whether there was disorderly or disruptive conduct or not. Police officers would also either be able to identify or fail to identify that the Prices engaged in any special conduct that might qualify under 40 U.S.C. §5104(e)(2)(G). The Prices did not and so such evidence is exculpatory. Certain evidence in the Relativity data base would provide further support for the role of Lt. Scott Grossi and the Prices may separately file a subpoena under F.R. Crim. Proc. 17 depending, in part, on

who the Government plans to call as witnesses. The Prices further argue the Court should indicate that identification of the police witnesses (or other witnesses at that time and location) is Brady evidence and that the Government, including USCP should put effort into this identification and follow-up information.

III. Defendants Stated Appropriate Authority in The Letter of September 19, 2022

Contrary to the United States' email claim, the Prices properly identified authority. In the letter of September 19, 2022, the Prices state:

> Pursuant to Federal Rule of Criminal Procedure 16, Local Criminal Rule 5.1, and other applicable authority, the Prices formally request all information discoverable in this case. This letter follows up and adds specifics to some of the *Brady* material discussion in the letter sent June 30, 2022. That letter included, among other points, obligations as described in *United States v. Safavian*, 233 F.R.D. 12, 16 (2005), *reconsideration denied*, 233 F.R.D. 205 (D.D.C. 2006), including the obligation and affirmative duty to search materials of other branches of the government closely aligned with the prosecution. Secret Service, U.S. Capitol Police and Federal Bureau of Investigation have been constant witnesses for the prosecution, and all have enforcement responsibilities directly related to the events of January 6, 2021; consequently, there is an affirmative obligation to produce *Brady* material in the possession of these agencies. Section C of the June 30, 2022 letter covers certain *Brady* and Fed R. Crim. Proc. 16 issues in the context of the instant case. The instant letter provides greater detail and specific requests but are also related to that prior discussion.

The letter of September 19, 2022 also states at the end:

All of these requests are pursuant to Fed. R. Crim. P. 16(a)(1)(E); *see also Brady*, 373 U.S. 83 (and its progeny); *Giglio*, 405 U.S. 150 (and its progeny); *United States v. Marshall*, 132 F.3d 63, 67 (D.C. Cir. 1998) (citing Fed. R. Crim. P. 16) (holding inculpatory evidence is not immune from disclosure); *Kyles v. Whitley*, 514 U.S. 419, 433-36 (1995) (evidence is materially exculpatory if there is any reasonable probability that, considering the evidence, the results of trial or sentencing would be different).

IV. The Specific Requests Involve Material, Relevant and Exculpatory Discovery

The Prices contest the Government's claim that there is no "coherent and particular legal theory" behind the requests. Citing *Ulbricht* ignores the prior record, which, unfortunately, the Prices must repeat here to drive home points that have already been made and are obvious. As stated below, the Prices generally informed the Government of the legal theories in the letter of June 30, 2022. Moreover, the Prices' Motion to Dismiss [ECF 54-1], Governments Response [ECF-63], and Prices Reply [ECF 66] identify relevant and coherent legal theories including the problem that the Government has not alleged essential facts to meet the elements of the case. Failing this the Government articulates broad claims like the Prices "joined a riot." The Prices provided a discussion on many issues concerning relevance in the Response [ECF 59] to the Motion in Limine to Limit Cross-Examination.

To review the bidding, in its simple terms, the case should have never been brought and should now be dismissed on simple principles. First, whatever perimeter of bicycle racks and postings may have existed, they are not alleged to exist and did not exist to demarcate a restricted area for the Prices as they walked to the Upper Terrace. Second, the Prices walked through an open Senate Wing Door and the government has not allege and cannot allege that the many police officers at or inside the door initially told the Prices not to come in. Third, the

Government cannot allege, in terms of conduct, that the Prices did anything more than peacefully walk, text or take pictures. This conduct fails the conduct necessary to establish disorderly or disruptive conduct under either 18 U.S.C.§1752(a)(2) or 40 U.S.C. §5104(e)(2)(D). This conduct fails to conduct necessary to establish the conduct to parade, demonstrate or picket under 40 U.S.C. §5104(e)(2)(D).

The Government fails to allege essential facts and instead argues the Prices "joined a riot", inappropriately adding guilt by association as something the Prices must counter. However, there are additional statutory elements beyond the conduct issues. That is to say, the Government also fails on many other elements. As previously discussed with the Government and discussed further below 18 U.S.C.§1752(a)(2) contains multiple elements:

> knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, <u>such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions;</u>

The "in fact" clause is demanding, and the Prices can contest that element by pointing out how other people and factors "in fact" disrupted the certification process. This may mean that other parties "in fact" caused the disruption through violence, destruction of property, failure to heed signs, and failure to obey the police. The proceedings were halted well before the Prices arrived. This may also mean that the operation, lack of communication, or potential failures of the police and those responsible for security "in fact" were the elements that disrupted the proceedings. The Prices may compare those reasons to the theory that the time it took to inform two people to voluntarily leave the capitol had anything to do with disorderly conduct or disruption. To be clear, the Prices are not faulting the actions of the police at the Senate Wing

Door. There was, however, a multilayer failure of the police and others to communicate to the crowd, and for officials to anticipate, coordinate, and address the threat and the situation. The Prices understand it was a difficult day, support the police and never disobeyed an instruction. The Prices, however, are faulting the Government for not recognizing the facts and situation in this prosecution. The Prices are addressing every statutory element for their defense.

The Government response to the "in fact" clause is either to say they need not provide essential facts at this time or that the Prices "joined a riot". [ECF 63 at 15]. All of the discovery requests are at least supported by the "in fact" clause. Many of the requests are also supported by the requirements to establish and communicate a restricted area under 18 U.S.C.§1752(a)(1) and (2) and §1752(c). The discovery concerning communication steps also go to knowledge under 18 U.S.C.§1752(1) and (2) and 40 U.S.C. §5104(e)(2)(D).

The Prices have every right and plan to defend every element of the statutory language. The Prices have every right to counter broad guilt by association theories. This includes by arguing the Government has the job, authority, and operational responsibility to prevent or limit disruption from those who actually engaged in disorderly and disruptive conduct at different times and locations at the Capitol that day. The Prices also plan to impeach the many statements of the government claiming a restricted area, claims about the Prices associations with others, and claims about the steps the police took. For example, the Affidavit of Special Agent Belcher claims that only authorized people with appropriate identification were allowed access inside the U.S. Capitol. The issue of open doors and police not communicating a restriction to some who enter impeaches that statement. The issue of doors being locked and secure under ¶ 7 of the Affidavit of Special Agent Belcher [ECF 1 Attachment 1]is specifically stated so the question of that same status is relevant for the time after. ¶ 18(c) of the Affidavit claims the Prices were in a

restricted area when there were no barriers or signs shown at that location. ¶ 18 shows the operation of a police cordon critical to the case and that cordon and related operations may or may not be part of the police plans.

In the letter of September 19, 2022, the Prices request leads with

1. ***Any communications including text messages, emails, radio calls and/or other communications to or from any party, including but not limited to the Secret Service, the U.S. Capitol Police, the District of Columbia Metropolitan Police Department, or officials determining the security for or the course of the certification proceedings held on January 6, 2021 and pertaining to***…

This lead in language is fully consistent with the language and scope of F. R. Cr. Proc. 16(a)(1)(E) and the remaining question would be materiality under that rule or exculpatory relevance under *Brady*.

A. The decision by any party to declare parts of the Capitol Grounds and Complex restricted (including identification of any such restricted area under purported authority of , and the elements or mechanisms by which any such restricted area would be set out) and any steps taken to communicate any such restricted [area] to the public, the organizers of the earlier rally of President Trump, and the Secret Service in charge of security either at the rally or the Capitol or Capitol Grounds

The decisions and identification of restricted areas under 18 USC §1752(c) are critical elements of the case. Defendants dispute there was a restricted area at the time defendants entered the upper terrace. Moreover, notice and operation of the restricted area to organizers of the rally or lack of coordination can be a reason why many were not properly informed of a restricted area

that was dismantled earlier that defendants' arrival on the grounds. Some of the information requested by the relates first to what security measures were in place on January 6, 2021, what was relayed to the public, and at what time and location there were postings, barricades, or other measures to demarcate a restricted area for purposes of 18 U.S.C.§1752(a)(1), (2) and (c). The Government agrees that the testimony is critical to its case, because one of the central parts of its case in chief has been having a member of law enforcement testify to the security perimeter in great detail. *See e.g. United States v. Guy Reffitt*, 21-cr-32 (DLF), *United States v. Cuoy Griffin*, 21-cr-92 (TNM), *United States v. Matthew Martin*, 21-cr-394 (TNM), Trial Transcripts. As the Prices have argued the ghost of perimeter past should not matter to the time the Prices were on the Capitol Grounds. Thus, the state of the signs, barricades of other measures in the location and time the Prices were on the Capital Grounds is critical. Moreover, the operation of security measures at the time and location of the Prices may involve additional components and the Prices must understand what those components and arguments are to prepare a defense. As argued in the Prices motion to dismiss, under 18 U.S.C.§1752(a)(1) and (2) the case should be dismissed because the Government has not and cannot allege the essential facts for a restricted area relevant to the Prices.

Furthermore, information about the status of the restrictions as the afternoon progressed is relevant to when exactly some of those signs may have not been visible to certain individuals depending on when they arrived. For example, after the initial breach occurred, it would be relevant to know whether or not there were personnel who reinstated or re-enforced those restrictions at any point in time.

This evidence is also potentially exculpatory. This information includes not potential impeachment evidence but also evidence that could exonerate the Prices. *United States v. Wilson*, 605 F.3d 985, 1006 (D.C. Cir. 2010). The D.C. Circuit has held: "The defense was entitled to

information that would strengthen its impeachment of [the witness]… Given its relevance as impeachment evidence, the government had a duty under *Brady* to make a timely pretrial disclosure to the defense." *Id.*

B. The reasons that the certification proceedings were delayed until such proceedings began later in the evening

This question goes directly to the language of 18 USC §1752(a)(2) which asks whether disorderly or disruptive conduct was "in fact" the cause of the disruption of a proceeding. If communications about the reasons for delay indicate causes that were not about Defendants, then the Prices will argue that their actions are not "in fact" the cause and that the actions and inactions of others are "in fact" the cause. As an example, the proceedings were disrupted and halted before Defendants were on the Capitol Grounds. As further example, the security situation on the Grounds near the West Terrace continued long after Defendants left the area. There are numerous activities that occurred. The range of reasons stated is material.

C. The status of any sign postings, bicycle racks, fencing, police cordons or other restrictions or public address announcements at the Capitol or Capitol grounds on January 6, 2021 including after the certification proceedings were halted that would in any way block or warn of restrictions from the grounds to the Senate Wing Door including to the upper North Terrace and Upper Terrace generally

This request is tailored to the path Defendants took to get to the Senate Wing Door. It is directly relevant to whether there was a restricted area under 18 USC §1752(c) and whether there was any notice to Defendants. The request is on a material matter. The Prices did notice a barrier or sign. There likely was none on their path and at that time. This is a critical question and there

is no reason for surprises at a trial. The ghost of the past perimeter is not the relevant legal issue. ¶ 18(c) of the Affidavit of Special Agent Belcher [ECF 1 Attachment 1] claims the Prices were in a restricted area when there were no barriers or signs shown at that location. The request for discovery goes to impeachment of the claim of a restricted area. Nothing could be fundamental.

D. The threats to the Capitol or the certification proceedings with respect to any party in advance of the time the certification proceedings were under way or halted, including before January 6, 2021, and after the proceedings were suspended;

This request goes directly to the issue of what "in fact" disrupted a proceeding under 18 USC §1752(a) and, as discussed below, whether the failure of the security authorities to properly address these threats were "in fact" the reason for any disruption and not any alleged disorderly or disruptive conduct of defendants. No doubt the USSS, USCP, and others do not want to address the failures to plan for and prevent the disruption. Plan A-- to have easily movable bike racks to designate a large perimeter did not work. In some place there may not have been anything particularly violent when racks were moved.

E. Any plans, tactics or operations, to address the threats in paragraph C. above.

This request goes directly to the issue of what in fact disrupted a proceeding under 18 USC §1752(a) and, as discussed below, whether the failure of the security authorities to properly address these threats were "in fact" the reason for any disruption and not any alleged disorderly or disruptive conduct of defendants.

F. The status of open or unlocked doors at the Capitol on January 6, 2021 after the certification proceedings were halted;

Open and unlocked doors are reasons that more people entered. These doors were not the responsibility of the Prices. Such information is material and exculpatory of the reasons, "in fact" for any delay. The Prices walked through an open door. The issue also impeaches the testimony that people were not allowed in on January 6, 2022. The issue may also provide additional examples of similar circumstances to the Prices and may produce additional exculpatory evidence.

G. The instructions (verbal or otherwise) of any police officer to any member of the public at the Senate Wing Door or near the Senate Wing Door, and the conduct of such officers that was observable to the public (including, especially, conduct that could have been construed as instructions, warnings, or tactic approval of any conduct of the public, e.g. entering or remaining the building or premises);

The issue is material to both the questions of authorization and knowledge under 18 USC §1752(a) and relevant specific arguments the Prices have made and for which the Government has no answers.

H. The identity and/or actions of any party working in cooperation with the Federal Bureau of Investigation, Secret Service or any police force who encouraged any activity among the crowd at the Capitol or Capitol Grounds on January 6. 2021; and

To the extent there any such parties who encouraged any activity among the crowd—again that can be a reason that goes to whether "in fact" any activity of defendant was the cause of disruption. If parties cooperating with the government helped encourage activities, then such

actions point to other parties as responsible and not defendants. This would be exculpatory evidence and could lead to further exculpatory evidence.

I. Discussion of steps for the police to take after the suspension of the proceedings on January 6, 2021.

The discussion of operation of the police explains issues like the subsequent cordons that formed, why there was or was not use of the public address system, and their strategy and operation if any, which is material to understanding a variety of key issues. At least at the time of defendants' time on the upper terrace and in the small right-side foyer of the Senate Wing door these steps appear to ignore the public address system, ignore providing notice for people to leave in various area, ignores the use of announcements on the upper terrace. After the suspension of proceedings, the police were operating under a new Plan B – whatever it was-- and not the plan claimed by the Government involving a perimeter with barricades and signs. The actual operation of police actions is what mattered during the time Defendants were present. Understanding those operations are material. For example, the police may have set up different cordons for different purposes at the time the Prices were at the Capitol. There may or may not be reasons that the Prices did not hear announcements on the PA system. There may or may not be reasons that the police did not properly communicate to the crowd.

J. Any and all information pertaining to the investigation of the Secret Service after the Department of Homeland Security learned of the deletion of messages before and after January 6, 2021.[1] More specifically, and in addition, letters or

[1] Secret Service identified potential missing text messages on phones of 10 individuals - CNNPolitics; Secret Service erased Jan. 6 texts after officials requested them, watchdog says : NPR

memoranda detailing efforts or lack of efforts to preserve these text messages and reasons for the failure to preserve.

The actions and decisions of the United States Secret Service and coordination with the USCP go directly to multiple issues in the case. The Secret Service is currently under investigation after it was discovered that 10 Secret Service Personnel that contained metadata showing text messages were sent and received around January 6, 2021 but were not retained. This investigation as well as information regarding all Secret Service and/or Capitol police communications during January 6, 2021, is relevant to impeachment testimony and the ability of the defense to potentially rebut the government's claim that all areas were clearly restricted at all times. For example, if a defendant claims that at the point they entered the grounds, there were no restrictions, this information could be relevant to impeach an agent who claims that all locations were restricted. If members of the Secret Service or Capitol police were messaging each other or other parties about these restrictions, the defense is entitled to inspect these messages.

K. Any and all information, video, or audio evidence regarding the government's investigation into the pipe bombs that were found on January 6, 2021 that were planted the night before near the Democratic and Republican Party headquarters. Any information should include, but is not limited to, reports of investigation detailing when the government learned of their existence and any response or action taken.

Again, security concerns regarding the pipe bombs may be, in fact, a cause of any delay and not any actions of defendants. One would assume discussion about this issue before resuming proceedings. Moreover, it is unclear why this and other potential threats were not communicated

to people at the scene. There was a pipe bomb threat. The police had shot someone who later died. None of that information was communicated. Announcements could have been:

> We ask you to leave the Capitol and Capitol grounds at this time. Continued presence constitutes a violation of law. There are public safety issues in the Capitol including reports of a pipe bomb and a shooting.

This is just a hypothetical but communicating with the crowd might have sent many members of the crowd away. Communicating among the organizers of the rally might have prevented the conflict of the President telling the crowd to go the Capitol or at least inform them of the allegedly restricted area.

L. Any communications between former President Trump's former staff on the day of January 6, 2021, regarding any potential steps to communicate to the crowd regarding any purported restrictions at the Capitol or Capitol Grounds, steps encouraging the crowd to go to the Capitol, or steps to coordinate with the Secret Service or Capitol Hill police in regard to security on January 6, 2021.

The request goes to whether the people coordinating the events properly informed people about restrictions. The President asked people to go to the Capitol. No one appeared to announce that there were restricted areas at the rally. These and other communication failures can be "in fact" the reason for disruption of the proceedings. The issue also goes to the knowledge of the Prices and whether the Trump Rally organizers where properly facilitating their permit—a point that may or may not "in fact" be a cause for disruption.

There does not have to be a specific mapping of relevance. Nonetheless, the Prices note the following mapping of the requests and certain statutory or other issues. Obviously, there are more detailed connections but the standards for these requests is nowhere near that demanding.

- A—18 USC §1752(a)(1), (2) and (c), 40 U.S.C. §5104(e)(2)(D), (knowledge) in fact clause, counter to guilt by association, impeachment
- B—18 USC §1752(a)(2) "in fact" clause, 18 USC §1752(a)(1), (2) and (c), 40 U.S.C. §5104(e)(2)(D), counter to guilt by association, impeachment
- C—18 U.S.C.§1752(a)(1),(a)(2) and (c), counter to guilt by association, impeachment
- D-- 18 U.S.C.§1752(a)(2) "in fact" clause, counter to guilt by association, impeachment
- E--18 U.S.C.§1752(a)(2) "in fact" clause, counter to guilt by association, impeachment
- F--18 U.S.C.§1752(a)(2) "in fact" clause, counter to guilt by association, impeachment
- G--18 U.S.C.§1752(a)(1), (a)(2) and (c), 40 U.S.C. §5104(e)(2)(D), "in fact" clause, counter to guilt by association, impeachment
- H-- 18 USC §1752(a)(2) "in fact" clause, counter to guilt by association, impeachment
- I--"in fact" clause, 18 USC §1752(a)(1), (a)(2) and (c), 40 U.S.C. §5104(e)(2)(D) knowledge, counter to guilt by association, impeachment
- J--18 USC §1752(a)(2) "in fact" clause, counter to guilt by association, impeachment
- K--18 USC §1752(a)(2) "in fact" clause, counter to guilt by association, impeachment
- L--18 USC §17521752(a)(2) "in fact" clause, 18 USC §17521752(a)(1), (2) and (c), 40 U.S.C. §5104(e)(2)(D), knowledge, counter to guilt by association, impeachment

V. The Prices Had, Earlier, Generally Explained Materiality, Relevance, and Exculpatory Relevance Consistent with The Requests of Section I of the Letter of September 19, 2022

In the sections below, the Prices note the many arguments already made where the request for discovery are fully relevant. The Prices are repeating because the arguments do not appear to pierce a level of recognition from the Government who claim these arguments are not coherent.

A. Statement from Section C of the June 30, 2022 letter

Every picture and video, or statement of an actual witness on location, concerning the Prices on the Grounds or in the Capitol is exculpatory evidence that they did not engage in any disorderly or disruptive conduct under 18 U.S.C.§1752(a)(2) and 40 U.S.C. §5104(e)(2)(D). Any such videos and pictures also help impeach the Affidavit of Special Agent Belcher who claimed probable cause for disorderly or disruptive conduct under 18 U.S.C.§1752(a)(2) and 40 U.S.C. §5104(e)(2)(D). Special Agent Belcher stated he had spoken to relevant witnesses and stated there was probable cause for disorderly and disruptive conduct.

Any video, pictures, or statement of an actual witness on location may have evidence that police were not challenging or warning the Prices with respect to their presence in the allegedly restricted locations is *Brady* material that helps illustrate that Defendants (a) were not in a restricted area, (b) had no knowledge that a given area is purported to be restricted and (c) defendants were authorized. Moreover, the operation of police in allowing, not challenging, or not warning people regarding entry or allowing people to remain in an area without providing a warning to leave is relevant *Brady* material regarding alleged restricted areas. Evidence that police are not challenging people in what the Affidavit claims is restricted grounds is exculpatory evidence and likely impeachment evidence.

One of the elements of 18 U.S.C.§1752(a)(2) is that alleged disorderly or disruptive conduct, **in fact**, impedes or disrupts the orderly conduct of Government business or official functions. ¶ 8 of the Belcher Affidavit indicates that the actual certification proceedings were not underway when Defendants are alleged to be in the Capitol. The United States may be arguing that Defendants' walk into the right-side foyer at the Senate Wing door before turning to

exit is, in fact, the reason that the certification process was delayed until 8 pm. We believe that Defendants did not engage in any disorderly or disruptive conduct and any conduct was not the source of impeding or disrupting any government business or official function. However, the actions, inactions, and negligence of other parties might be considered responsible for such delay. *Brady* evidence could also include the failure of the police, secret service, or others in charge of security on January 6, 2021 to be prepared. *Brady* evidence could include information on why decisions were made regarding the delay in proceeding.

Brady material would include any discussions or information as to why police did not tell people to leave, by voice or other means before certain periods in certain locations. *Brady* evidence could include consideration by the Secret Service, Capitol Police, or others who decided the course of proper security measures and, how long to delay proceeding. Our understanding is that among factors in the delay would include those who violently breached the Capitol, fought with police, and, in any event failed to follow the orders of the police. Defendants did none of those things.

There were several separate breaches in the Capitol, and some of those breaches involved individuals with firearms, bats, chemical sprays, and the use of flagpoles, fire extinguishers, and skateboards of weapons of opportunity. Those parties, and not defendants would be a major reason for any initial or continuing delay in proceeding. As a secondary matter, the security agencies and not defendants are responsible for providing security to prevent or limit such conduct.

The fact that Lt Michael Byrd shot and killed Ashli Babbit would seem to be another reason for a delay. It is hard to imagine returning to the proceedings after someone was killed nearby. Such a situation would need investigation as a scene of a shooting. There was likely

discussion among the security agencies of the alleged pipe bombs and other information provided before January 6, 2021. Discussions forming the stated rationale for the delay would address what "in fact" was the reason for any delay. Where such discussions not about the Prices, such material would be material and *Brady* material.

There was also any failure of the security agencies to anticipate and operate in a manner that reduced these problems. All of these can be argued to be in fact the reason for a delay. One would anticipate communications discussing these issues as part of decisions by the security agencies and Senate and House leadership with respect to how to proceed. Any communications highlighting the above issues would be *Brady* material and documents and objects material to preparing a defense under rule 16.

B. Arguments in the Motion to Dismiss, Response, Reply and the Response to the Motion in Limine to Limit Cross Examination in the Instant Case Also Explain the Materiality, Relevance and Exculpatory Relevance of the Discover Requests

The requests for discovery reflect certain elements of the statutory charges in the instant case. Many elements may not be reflected in the requests, but the requests go to essential elements. In addition, to the discussion of the relevance of requests in the Prices' letter of June 30, 2022, many of the relevant arguments have already been discussed in the Price's Memorandum In Support of the Motion to Dismiss [ECF 54-1], the Government's Response [ECF 63] and the Prices' Reply [ECF 66]. In addition, the Prices Response to the Government's Motion in Limine has set out arguments indicating the relevance of certain issues.

As examples, here are some relevant excerpts:

- ¶18(c) shows an alleged picture of Defendants standing at a low wall outside of the Capitol Building. This picture is of the Upper Terrace Northeast that leads directly to the terrace that wraps at least around the north side and west side of the Capitol Building.

The Affidavit does not identify any sign, police, or barriers in the picture. The Affidavit does not allege there are relevant signs, police, or barriers cordoning off this area as an entrance or exit to or from the terrace at the time the Prices were present. [ECF 54-1 at 4-5].

- ….One part of a building may be restricted, and other parts may not. Third, the area can only be restricted by having something posted, cordoned off or otherwise restricted. Fourth, the reference is to an area not a given point of entry. If an area is not restricted at any point of entry, it is not a restricted area. Fifth, what is a restricted area under 18 USC §1752 is a constantly changing situation that may appear and disappear. [ECF 54-1 at 10]
- The Prices have every right to rely on the instructions (or failure to provide instructions not to enter) of police officers at the Capitol as well as the specific alignment of the police cordon. There is no allegation that the Prices did not follow police instruction or cross the police cordon. [ECF 54-1 at 13].
- ¶4 of the Affidavit states "…. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol." On the face of the Affidavit, given the screenshots in ¶18(a) and (b) this is a false statement. Clearly, people, including the Prices, were being allowed access to the U.S. Capitol, at least for a short area to the right-side foyer, as set out in these pictures in the Government's Affidavit. The Capitol Hill police were the authority determining the location, procedures, and operation of all police cordons that may have allowed access to areas to small areas of the Capitol, including at the time the Prices entered on January 6, 2021. [ECF 54-1 at 14].

- The allegations explain that other people initially disrupted the certification proceedings.…The only allegations that exist are that that the conduct of others "in fact" disrupted a proceeding. [ECF 54-1 at 23].

- The Government states:

  Citing nothing, they contend, the specific sign postings, the cordons, or other specific method of restriction at specific time and location are necessary allegations of facts, critical to claiming a restricted area…..Nothing in the statutory text or any decision construing § 1752 suggests that the precise manner in which an area is restricted is an element of § 1752(a)(1). (emphasis added) Gov. Opp. at 8-9.

  On the contrary, the Prices cite to the statutory text, which has a definition of restricted area. 18 U.S.C. § 1752(c)(1) defines restricted buildings or grounds, in part, to mean any posted, cordoned off, or otherwise restricted area. It does not appear that the statutory text dismisses the definition of restricted area as a non-essential detail. The Affidavit does not define the restricted area and does not state the elements of 18 U.S.C. § 1752(c)(1) existed in a position to restrict the Prices at the time of their walk on the Upper Terrace or through the Senate Wing Door. [ECF 66 at 4-5]

- The Prices cannot be held legally responsible based on the ghost of a perimeter past. ¶ 4 of the Affidavit states that "[r]estrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by the U.S. Capitol Police." The circumstances changed over the course of the day and the sentence in the Affidavit provides no information relative to the circumstances the Prices faced.¶ 18 show the Prices standing at the Upper North East terrace and claim that location was "restricted grounds" at 3:51. However, there is no indication of any barrier or cordoned off area or police. The picture looks like a wide-open pedestrian walkway…. [ECF 66 at 6].

- The Government also tries to distinguish *Bursey's* addressing the actions of police officers. *See* Gov. Opp. at 9….However, if officers let a person in without saying anything, that is not a cordoned-off area for that person. [ECF 66 at 7].
- Violence is alleged in ¶ 7 of the Affidavit but the Prices are not alleged to fall under ¶7 and it would be false to make such allegation. The Prices were not present during that time period and were not witness to any of those events described in ¶ 7. The Prices alleged conduct is under ¶ 18. Presence among other people is not "disorderly or disruptive conduct." [ECF 66 at 12].
- ….Claiming the Prices are included in any aspect of ¶ 7 is false… there is no allegation that the Prices acted "in concert" with anyone, much less "hundreds of rioters." [ECF 66 at 13].
- Quite the contrary the Prices state "[t]he Prices could not, in any manner, disrupt government business or official functions that were not occurring, and which may have been previously disrupted by other parties or issues."[Citation omitted]. [ECF 66 at 14].
- However, the actions, inactions, and negligence of other parties might be considered responsible for such delay. Generally, the Prices cannot be found criminally liable for the conduct of other parties. There is no guilt by association permitted under the four Counts. Any such imputation would be prejudicial. There were several separate breaches in the Capitol, and some of those breaches involved individuals with firearms, bats, chemical sprays, and the use of flagpoles, fire extinguishers, and skateboards of weapons of opportunity. [ECF 59 at 15].
- Any discussions or information as to why police did not tell people to leave, by voice or other means before certain periods in certain locations is relevant. Relevant evidence

could include consideration by the Secret Service, Capitol Police, or others who decided the course of proper security measures and, how long to delay proceeding. These questions could involve prior protocols or relate to the nature of the Secret Service details. [ECF 59 at 15].

- In defense, the Prices may certainly argue that certain problems in planning and preparation and operation of the Secret Service and other enforcement officials in conjunction with the actions on January 6, 2021 were the reason. Questions could include why the actions and inactions of the Secret Service and the enforcement agencies are not, in part, responsible for both the initial stop of the certification proceedings and any further delay. [ECF 59 at 17].
- Inspector Hawa was asked about how Secret Service operated with respect to the rally on the Ellipse which featured President Trump earlier on January 6, 2021. *Id.* at 233. The Government objected and the court overruled the objection. *Id.* at 234. ECF 59 at 20.
- Mr. Griffin's counsel referred Ms Hawa to an additional exhibit and the Mr. Griffin's counsel circled certain barriers. *Id*. at 239. Ms. Hawa had a discussion related to an area that she said "does not appear to be" a restricted. Id. But she said "I believe those statutes were—should have been surrounded by a bike rack." *Id.* Mr. Griffin's counsel pointed to another area and stated "I'm asking you, before protestors moved those barriers, was that the restricted area line. *Id*. at 240. Ms. Hawa said "It should have been" *Id.* [Citations in Original] [ECF 59 at 21]
- As one can readily see, the testimony of the Secret Service witness in the *Griffin* case covered extensive areas and issues. Ms. Hawa testified in various ways on 1) protocols for restricted areas, 2) how such areas are enforced and manned, 3) how the USSS

coordinates with other enforcement officials, 4) what the initial alleged restricted area was, 5) reports the USSS was receiving on January 6, 2021, 6 concerning the alleged breaches including timing and locations, 6) legal authority and the relationship of the USSS and other enforcement agency to that legal authority, 7) the timing of an alleged lockdown, 8) the putative reasons for the stoppage of proceedings, 9) the role that police communication or lack of communication may play with respect to alleged restricted areas and other issues. The references in the testimony are both to January 6, 2021 and practices that have occurred in the past. The Government itself asked about "protocols" and typical coordination with the U.S. Capitol Police. [ECF 59 at 22-23].

- The Prices came after parts of Plan A failed. Those parts of Plan A were over, and the Congress had already stopped or recessed based on two fundamental things:(1) the actions of people other than the Prices and 2) the failure of a security operation that is the responsibility of federal and/or local agencies. Many view the situation in hindsight, or perhaps at the time, as a lack of planning, preparedness and clarity. The Prices are not the organizers of the events of January 6, 2021. They have every reason to believe organizers have the right permits and that enforcement agencies are coordinating with organizers. [ECF 59 at 26].

VI. Transcripts of Other Related Cases Further Indicate Relevance and Materiality

In *United States v Martin* (1:21-cr-00394) [ECF 41] Judge McFadden stated numerous findings that indicate the relevance of the discovery request in the instant case.

- There is no evidence before me showing any kind of signage indicating the sidewalk was restricted. There were bike racks between it and the street, but without more, that would

not indicate to a reasonable person that he couldn't go on the sidewalk. [*Martin* ECF 41 Transcript at 259].

- Indeed, the defendant pointed out that there was a line of police officers guarding the steps to the Senate stairs, but there was no similar police presence blocking the central stairs. Again, a reasonable person could believe officers were allowing people to gather on the central stairs, but not the Senate stairs. *Id* at 261
- I find the United States Capitol Police Officer Carrion and another officer were standing besides the doors to the rotunda lobby. People were streaming by them and the officers made no attempt to stop the people, at least by the time the defendant approached them. *Id* at 262.
- It's a very --- it was a very different situation than the situation that largely unfolded on the other side of the Capitol building around that time. It was not unreasonable to assume the officers were permitting people to enter the Capitol. *Id* at 264.
- Citizens typically obey police officers, even when they grossly outnumber them. *Id* at 264.
- I find that the proceedings had been halted well before he entered the Capitol building and that they did not resume until long after he had left. Id at 270.

One can see Judge McFadden pointing to many of the same issues the Prices point out and these points help make many of the requests for discovery relevant.

In *United States v Rivera* (1:21-cr-00060) various parties stated issues relevant to the requested discover in the instant case.

- Based on what was going on outside the Capitol as you've just described, did there come a point in time when that plan at to be abandoned? [*Rivera* ECF 64 at 40] Hawa: Yes…. You had talked about an emergency action plan. Did there come a time when the—an emergency action plan with the Vice President was started? Hawa: Yes…. Hawa: I would say we –we--- we were discussing the plan as soon as we knew there was a security breach…. *Id.*
- Was there any—does the Capitol use any device to audibly tell people that they're not authorized. A Yes. We have a PA system. [*Rivera* ECF 64 at 88]

These two points involve government questions of witnesses. The questions illicit that the police moved from plan A to plan B—whatever Plan B was. As noted, many times above, the Prices were not present during situation A and Plan A. The second point goes to issues like whether or why or why not was the PA system not used to communicate to people in the building or why was there no broad communication outside the building.

Conclusion

WHEREFORE, Defendants respectfully request the Court enter an order compelling the Government to produce all material evidence in this case (exculpatory or otherwise) including: (1) regarding police witnesses at the Senate Wing Door at the time relevant to the Prices on January 6, 2021, and (2) in response to the requests for discovery in Section 1 of the Letter of September 19, 2022 (Attachment 1). Defendants further respectfully request the Court provide a continuance in the instant case until Defendants have received such material evidence and had a full opportunity to review such evidence, and for the Court to take any other further action the Court deems just and proper under the circumstances.

Dated: October 23, 2022

Respectfully submitted,

/s/ Nandan Kenkeremath

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