

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIK HERRERA

Defendant.

Case No. 1:21-CR-00619-BAH

**DEFENDANT ERIK HERRERA’S RESPONSE TO COURT’S AUGUST 1, 2022, ORDER
RE: THE PRECISE EXHIBIT NUMBERS FROM THE GOVERNMENT’S PROPOSED
EXHIBIT LIST THAT CORRESPOND TO THE CATEGORIES OF INFORMATION
HE SEEKS TO EXCLUDE IN HIS MOTION IN LIMINE**

Defendant Erik Herrera, by and through his attorneys of record Jonathan K. Ogata and Cuauhtemoc Ortega, of the Office of the Federal Public Defender for the Central District of California, hereby respectfully files his response to the Court’s August 1, 2022, order regarding the precise exhibit numbers from the government’s proposed exhibit list that correspond to the categories of information he seeks to exclude in his motion in limine.

On June 17, 2022, Mr. Herrera filed his motions in limine seeking to exclude (1) the social media post from Instagram depicting a person, alleged to be Mr. Herrera, in the Senate Parliamentarian’s Office on January 6, 2021; (2) any general evidence, including testimony, videos, photos, or other exhibits of the events of January 6, 2021, at the United States Capitol, the ellipse, and area surrounding both locations; (3) any evidence the government seeks to admit pursuant to Federal Rule of Evidence 404(b); (4) any evidence the government offers pursuant to 902(11). ECF No. 37. On July 15, 2022, as part of the parties’ Joint Pretrial Statement, the government filed their List of Government Exhibits. Pursuant to this Court’s August 1, 2022,

order, Mr. Herrera outlines below the precise exhibit numbers from the government's exhibit list that correspond to each motion in limine.

A. MOTION IN LIMINE 1: The court should exclude the social media post from Instagram depicting a person, alleged to be Mr. Herrera, in the Senate Parliamentarian's office on January 6, 2021.

- Government exhibit: 819

B. MOTION IN LIMINE 2: The Court should exclude any general evidence, including testimony, videos, photos, or other exhibits of the events of January 6, 2021, at the United States Capitol, the Eclipse, and area surrounding both locations.

- Government Exhibits: 107, 107.1, 107.2, 107.3, 107.4, 107.5,
- Government Exhibits: 201, 201.1, 201.2, 201.3
- Government Exhibit: 205
- Government Exhibit: 206
- Government Exhibits: 303, 303.1, 303.2
- Government Exhibit: 601
- Government Exhibit: 602
- Government Exhibits: 701, 701.1, 701.2
- Government Exhibit: 801
- Government Exhibit: 802
- Government Exhibit: 803
- Government Exhibit: 804
- Government Exhibit: 805
- Government Exhibit: 806
- Government Exhibit: 807
- Government Exhibit: 808
- Government Exhibit: 809

- Government Exhibit: 810
- Government Exhibit: 811
- Government Exhibit: 812
- Government Exhibit: 813
- Government Exhibit: 814
- Government Exhibit: 815

It is unclear what exhibits 202-204, 207-213, 702-705.2, and 3001-3005.1, are as they have not yet been produced by the government as part of their ongoing exhibit production. It is possible some or all of these exhibits correspond with this motion in limine. Mr. Herrera reserves the right to include these exhibits, and others, at a later date once such exhibits are provided to Mr. Herrera by the government if such exhibits are found to correspond to this motion in limine.

C. MOTION IN LIMINE 3: The Court should exclude any evidence the government seeks to admit pursuant to federal rule of evidence 404(b).

There are no exhibits related to 404(b) evidence on the government's exhibit list and the government has not provided noticed of intent to use 404(b) evidence. As such, Mr. Herrera continues to move for the exclusion of any 404(b) evidence on the basis outlined in his motion *in limine*.

D. MOTION IN LIMINE 4: The Court should exclude any evidence the government offers pursuant to 902(11) because reasonable notice has not been provided.

- Government Exhibit: 501
- Government Exhibit: 502
- Government Exhibit: 503
- Government Exhibit: 504
- Government Exhibit: 505
- Government Exhibit: 506
- Government Exhibit: 507

- Government Exhibit: 508
- Government Exhibit: 509
- Government Exhibit: 1001
- Government Exhibit: 1002
- Government Exhibit: 1003
- Government Exhibit: 1004
- Government Exhibit: 1005
- Government Exhibit: 1006
- Government Exhibit: 1007
- Government Exhibit: 1008
- Government Exhibit: 1009
- Government Exhibit: 1010
- Government Exhibit: 1011
- Government Exhibit: 1012
- Government Exhibit: 1013
- Government Exhibit: 1014
- Government Exhibit: 1015
- Government Exhibit: 1016
- Government Exhibit: 1017
- Government Exhibit: 1018
- Government Exhibit: 1019

E. ADDITIONAL EXHIBITS AND EXHIBIT MODIFICATIONS

The government's exhibit list, filed in ECF No. 49-3, appears non-final based on the notations of "Placeholder[s] for additional exhibits" and "TBD" that appear throughout the exhibit list. ECF No. 49.3. Further, though the government organized their exhibits into file folders by category, the files within those folders do not have a specific exhibit number in the file's name. Defense counsel has cross-referenced the unnumbered exhibits with the government's exhibit list

in responding to this Court's order. To the extent that there are discrepancies between the government's exhibit list and the actual exhibit files the government intends to introduce, the defense reserves the right to revise this response. The government notified counsel yesterday evening that they were attempting to produce additional exhibit files but were experiencing technical issues due to the volume of the exhibits. Defense counsel will review this production prior to the status conference, provided the production is made available in time.

Additionally, the government is continuing to produce discovery in this case, including productions on July 5, 25, 27, 28, and 29, 2022. It is unclear what, if any, additional evidence will be added to the government's exhibit list. As such, Mr. Herrera reserves his right to continue to raise evidentiary objections leading up to and during trial.

Respectfully submitted,

DATED: August 3, 2022

By */s/ Jonathan K. Ogata & Cuauhtemoc Ortega*

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