

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

ANTONY VO,

Defendant.

CASE NO. 21-CR-509 (TSC)

JOINT PRETRIAL STATEMENT
OF THE CASE

The parties, by and through their undersigned counsel and in compliance with this Honorable Court's Pretrial Scheduling Order (ECF No. 57), respectfully submit their Joint Pretrial Statement of the Case, including proposed voir dire questions, proposed jury instructions and proposed verdict form.

1. Parties and Counsel

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Defendant: Antony Vo

Counsel for Defendant:

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2. Nature of the Case

The parties have agreed that the following is an appropriate statement of the case:

This is a criminal case. The government has charged the defendant, Antony Vo, with violating four criminal laws stemming from allegations of his presence and conduct on the grounds of and inside the United States Capitol in Washington, D.C., on January 6, 2021.

Count One charges the defendant with unlawfully and knowingly entering or remaining in a restricted area within the United States Capitol building and grounds.

Count Two charges the defendant with engaging in disorderly or disruptive conduct in and within such proximity to a restricted area within the United States Capitol building and grounds.

Count Three charges the defendant with willfully and knowingly engaging in disorderly or disruptive conduct in the Capitol building and grounds.

Count Four charges the defendant with willfully and knowingly parading, demonstrating or picketing in the United States Capitol building and grounds.

Mr. Vo has pleaded not guilty to each of these charges.

3. Undisputed Issues/Stipulations

The government and defense have not agreed on any stipulations.

4. List of Witnesses or Potential Witnesses

a. Government Witnesses

The government expects to or may call the following witnesses:

	Last Name	First Name	Title & Agency	Will Call	May Call
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1	Jessica	Baboulis	Captain, U.S. Capitol Police	X	
2	David	Millard	Sergeant, U.S. Capitol Police		X
3	Adam	Junior	Sergeant, U.S. Capitol Police		X
4	Christopher	Dove	Lieutenant, Metropolitan Police Department		X
5	William	Schwarzer	Officer, Metropolitan Police Department		X
6	Randy	Done	Officer, Metropolitan Police Department		X
7	Darrin	Bates	Officer, Metropolitan Police Department		X
8	Joseph	Henry	Federal Bureau of Investigation	X	
9	Jerry	Pettus	Senior Forensic Examiner, Federal Bureau of Investigation		X
10	Erin	Gabor	Senior Forensic Examiner, Federal Bureau of Investigation		X
11	Robert	Pfannkuch	Special Agent/Digital Forensic Examiner, Federal Bureau of Investigation		X
12	Elizabeth	Glavey	United States Secret Service		X

b. Defense Witnesses

Response from Mr. Ohm: We don't know of any defense witnesses that we intend to call yet but we'll let you know if/when that changes.

4.a. List of Expert Witnesses

Neither the government nor the defense plan to call any expert witnesses.

5. List of Exhibits

a. Government Exhibits

At this time, the government has identified the exhibits it intends to introduce at trial in the exhibit list attached to this pleading as Attachment A. This exhibit list was compiled in a good-faith effort to identify all trial evidence that is known or identified at this time. The government reserves the right to supplement this list or to remove items from the list, as it develops additional evidence throughout trial preparations and to streamline the presentation of its case. The government also reserves the right to introduce any evidence produced to the defense in discovery.

The defense notes objections to the following exhibits:

Government Exhibit No.	Defendant's Basis for Objection
217	Fed. R. Evid. 401 and 403
218	Fed. R. Evid. 401 and 403
219	Fed. R. Evid. 401 and 403
220	Fed. R. Evid. 401 and 403
221	Fed. R. Evid. 401 and 403
302	Fed. R. Evid. 401 and 403
303	Fed. R. Evid. 401 and 403
304	Fed. R. Evid. 401 and 403
305	Fed. R. Evid. 401 and 403
307	Fed. R. Evid. 401 and 403
308	Fed. R. Evid. 401 and 403
458	Fed. R. Evid. 401 and 403
507	Fed. R. Evid. 401 and 403
508	Fed. R. Evid. 401 and 403
509	Fed. R. Evid. 401 and 403
510	Fed. R. Evid. 401 and 403
511	Fed. R. Evid. 401 and 403
512	Fed. R. Evid. 401 and 403
601-625	Fed. R. Evid. 401 and 403
701-709	Fed. R. Evid. 401 and 403
901-905	Fed. R. Evid. 401 and 403
Titles of Open Source Videos	Fed. R. E. 401 and 403

The United States produced copies of its exhibits listed above to Defense counsel on August 4, 2023, via USAfx. ECF 73. A few USCP CCTV exhibits were provided to Defense counsel on August 28, 2023. The United States is in the process of modifying some of these

exhibits, in part to respond to Defendant's objections. In particular, the United States is preparing additional exhibits that will be shorter clips of some of the videos from the U.S. Capitol CCTV Footage (300 series), the open source material (600 series) and the Body Worn Camera footage (700 Series). Also, the United States is preparing additional exhibits that would contain the same information, but in a presentation format that would aid the jury in reviewing the identical substance as the current exhibits. These modified exhibits will include the text chats from Defendant's phone (exhibits 454 – 461, 467 - 468) and the chats from Defendant's social media (500 series). These modifications are not changes to the substance of the exhibits produced to Defense counsel on August 4, 2023, but modifications in the length of the videos and the format of the text chats/chats. These modified exhibits will be designated on the Exhibit list under the Parent

b. Defense Exhibits

The defense has identified the exhibits it intends to introduce at trial in the exhibit list attached to this pleading as Attachment B. The government objects to the following exhibits, as described in the Government's Objection to Certain Proposed Defense Exhibits, ECF 82:

Defense Exhibit No.	Government's Basis for Objection
2	Fed. R. Evid. 401 and 403
3	Fed. R. Evid. 401 and 403
4	Fed. R. Evid. 401 and 403
5	Fed. R. Evid. 401 and 403
11	Fed. R. Evid. 401 and 403

6. Physical/Videotape Evidence

The Court's order orders the parties to describe all physical and/or videotape evidence that will be used at trial, other than demonstrative exhibits. Such evidence listed in the Joint Pretrial

Statement shall be deemed admissible at trial, unless an objection is made in the Joint Pretrial Statement, along with the specific basis for the objection and supporting legal authority.

a. Government Exhibits

The government intends to admit one piece of physical evidence at trial, Defendant's phone. The government also intends to admit the following video and documentary exhibits, which are also described in the government's exhibit list, Attachment A hereto:

Government Exhibit Nos.	Description
201-222	Capitol Maps and Photographs
301-308	Capitol CCTV footage
400-468	Videos, photographs and chats captured by the Defendant's cellphone, 902 certifications by forensic examiners, <i>if necessary</i>
501-512	Defendant's social media chats
601-627	Third party videos, 902 certification, <i>if necessary</i>
701-709	MPD Body-worn camera footage
801-811	Documents containing Legal and Congressional Records
901-905	Montage videos

b. Defense Exhibits

Please see the Defense's Supplemental Exhibit List, ECF No. 82.

7. Motions in Limine and Other Matters Note: Added more detail on the names of the pleadings, and the dates the pleadings were filed.

The government has filed the following outstanding motions in *limine*:

1. The United States filed an Omnibus Motion in *Limine* on July 26, 2023 ECF 67. The Defense filed an Omnibus Response to Government's Motions in *Limine* on August 9, 2023. ECF 75.
2. The United States filed a Motion in *Limine* to Preclude Entrapment Related Defenses and Arguments and Evidence About Alleged Law Enforcement Inaction on July 26, 2023. ECF

68. The Defense filed an Omnibus Response to Government's Motions in *Limine* on August 9, 2023. ECF 75.

3. The United States filed a Motion in Limine Regarding Authentication of Video and Cellphone Evidence on July 26, 2023. ECF 69. The Defense filed an Omnibus Response to Government's Motions in *Limine* on August 9, 2023. ECF 75.
4. The Government filed Objections to Certain Proposed Defense Exhibits, filed on August 23, 2023. ECF 82.
5. To be filed: Motion in *Limine* regarding one government witness, Christopher Dove.

The defendant has filed the following outstanding motions in *limine*:

1. Defendant filed a Motion in *Limine* to Preclude Inflammatory Characterizations at Trial, on July 26, 2023. ECF 65. The Government filed a Combined Opposition to (1) Defendant's Motion in *Limine* to Preclude Use of Certain Language and (2) Defendant's Motion in *Limine* to Preclude Certain Evidence on August 9, 2023. ECF 74. Defendant filed a Response to the Government's Opposition to His Motion in *Limine* to Preclude Inflammatory Characterizations at Trial on August 16, 2023. ECF 78.
2. Defendant filed a Motion in *Limine* to Preclude Certain Evidence at Trial on July 26, 2023. ECF 66. The Government filed a Combined Opposition to (1) Defendant's Motion in *Limine* to Preclude Use of Certain Language and (2) Defendant's Motion in *Limine* to Preclude Certain Evidence on August 9, 2023. ECF 74. The defendant filed a reply brief. ECF 78.
3. Defendant's Objections to Government Exhibits, filed August 23, 2023, ECF 81.

8. Proposed Voir Dire Questions

The parties' proposed voir dire questions are attached as Attachment C.

The parties have agreed to the following voir dire questions: 1 – 22, 24-33, and 53.

The parties have not agreed to the following voir dire questions: 23, 34 – 52, and 54.

Objections are in red text.

9. Proposed Jury Instructions

The proposed jury instructions are attached to this pleading as Attachment D. Objections are in red text.

10. Verdict Form

The parties have agreed upon a proposed verdict form which is attached to this pleading as Attachment E.

11. Special Matters

The parties are unaware of any special considerations for trial.

12. Estimated Length of Trial

The Government expects its case-in-chief to last approximately two days.

The defense expects any presentation it makes to last no more than 1 additional day.

13. Matters of Which the Parties Seek the Court to Take Judicial Notice

The government asks the Court to take judicial notice of the following:

1. Exhibit 801. 3 U.S.C. § 15. Counting Electoral Votes in Congress.
2. Exhibit 802. 3 U.S.C. § 16. Seats for Officers and Members of Two Houses in Joint Meeting
3. Exhibit 803. 3 U.S.C. § 17. Limit of Debate in Each House.
4. Exhibit 804. 3 U.S.C. § 18. Parliamentary Procedure at Joint Meeting.
5. Exhibit 804. Congressional Record. Vol. 167, No. 4, Wednesday, January 6, 2021, House of Representatives.

6. Exhibit 805. Congressional Record, Vo. 167, No. 4, January 6, 2021, U.S. Senate.
7. Exhibit 807. Senate Concurrent Resolution 1, agreed to January 3, 2021.
8. Exhibit 808. U.S. Constitution, 12th Amendment

The defendant opposes the Court's taking judicial notice of Exhibits 801 through 808.

Respectfully submitted,

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Defendant

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