IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
	:	
V.	:	**CRIMINAL NUMBER 21-691**
	:	
	:	
CHRISTIAN MATTHEW MANLEY	:	

DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE PARLER POST

Defendant Christian Matthew Manley, by and through his attorney, Natasha Taylor-Smith, Assistant Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania, respectfully moves the Court to preclude the admission of the comment, "If she can do it we can do it. Come armed or go home," which Mr. Manley purportedly posted on the social media platform Parler. That posting is unreliable and irrelevant, and overly prejudicial.

WHEREFORE, for the reasons set forth in this Motion *in limine* and accompanying memorandum of law, Mr. Manley respectfully requests that the Court grant the instant Motion.

Respectfully submitted,

/s/ Natasha Taylor-Smith
NATASHA TAYLOR-SMITH
Assistant Federal Defender

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
	:	
V.	:	**CRIMINAL NUMBER 21-691**
	:	
	:	
CHRISTIAN MATTHEW MANLEY	:	

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION *IN LIMINE* TO EXCLUDE PARLER POST

Defendant Christian Matthew Manley, by and through his attorney, Natasha Taylor-Smith, Assistant Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania, respectfully submits the following memorandum in support of the instant Motion.

I. BACKGROUND

On October 15, 2021, Mr. Manley was arrested in Alaska, after an arrest warrant was issued for his conduct at the Capitol on January 6, 2021. On that day, Mr. Manley attended then-President Trump's rally, and later arrived at the Capitol. Cautious as a result of the protests that had occurred the prior summer, Mr. Manley was outfitted with a tactical vest and carried pepper spray and a baton. As the video evidence shows, Mr. Manley ultimately used the pepper spray in a reckless manner, purportedly spraying law enforcement officers. He then retreated, never entering the Capitol building.

Mr. Manley is now charged in an eight-count Indictment with 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); Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, in violation of 18 U.S.C. § 111(a)(1) and (b) (Count

Three); Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count Four); Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Five); Engaging in Physical Violence in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of 40 U.S.C. § 5104(e)(2)(D); Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(F) (Count Seven); and Act of Physical Violence in the Capitol Grounds or Buildings, in violation of 40 U.S.C. § 5104(e)(2)(F) (Count Eight).

The government provided in discovery a copy of an excerpt from an article from Bellingcat.com, stating, "Congresswoman Lauren Boebert also seems to have inspired at least one person on Parler to claim they will carry firearms in D.C. on January 6th. Boebert recently Tweeted a video explaining 'why I WILL carry my Glock to congress.' The post subsequently went viral." *See* Attachment A. Below this text, the article includes a copy of what appears to be a post on the social media platform Parler by an individual with the username ChristianManley2. The Parler post states: "If she can do it we can do it. Come armed or go home. #1776 #january6th #dcwildprotest."

This Parler post is inadmissible. The government has not obtained a certified record of the contents of Mr. Manley's purported account from Parler. Because the post cannot be authenticated, it is not relevant evidence and must be excluded at trial. But even if the post was relevant and reliable, it is overly prejudicial. *See* Fed. R. Evid. 401-403.

II. DISCUSSION

The Parler post at issue is not relevant evidence. The government cannot demonstrate that Mr. Manley authored the post, and, therefore, the post cannot be properly authenticated. In addition, the content of the post is not relevant to proving any of the charged offenses. But even

if relevant, the post is overly prejudicial and must be excluded pursuant to Federal Rule of Evidence 403.

A. The Parler post is not relevant evidence

To be admissible, "evidence must be relevant, which means 'its existence simply has some 'tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *United States v. Browne*, 834 F.3d 403, 409 (3d Cir. 2016) (quoting Fed. R. Evid. 401). The proponent of evidence must also demonstrate its authenticity. *See* Fed. R. Evid. 901(a). And because evidence is relevant "only if it is what the proponent claims it is, i.e., if it is authentic, Rule 901(a) treats preliminary questions of authentication and identification as matters of conditional relevance according to the standards of Rule 104(b)."[1] *Id.* (internal quotation marks omitted); *see United States v. Hunt*, 534 F. Supp. 3d 233, 254 (E.D.N.Y. 2021) ("[a]uthentication is essentially a question of conditional relevancy" (quoting *United States v. El Gammal*, 831 F. App'x 539, 542 (2d Cir. 2020)).

Evidence obtained from social media presents exceptional authenticity hurdles. As the Honorable Richard J. Leon recently noted, "Courts, and commentators, have explained why determining the accuracy of information posted to social media is far from straightforward and hence of questionable reliability." *United States v. James*, No. CR 17-184, 2019 WL 2516413, at *3 (D.D.C. June 18, 2019). "Because social media posts may contain false information and doctored images, and because posters may be using hacked accounts or stolen identities,

[1] Rule 104(b) provides: "When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later."

uncorroborated social media posts will not often establish, with any degree of reliability, that the information in the posts is accurate or that the posts are what they purport to be." *Id.* Indeed, social media records are "'no more sufficient to confirm the accuracy or reliability of' information posted to the website 'than a postal receipt would be to attest to the accuracy or reliability of the contents of the enclosed mailed letter.'" *Id.* (*quoting United States v. Browne*, 834 F.3d 403, 411 (3d Cir. 2016)). Judge Leon stated that "[e]ven determining who posted a particular message, image, or video to [social media] is difficult 'because of the great ease with which a social media account may be falsified or a legitimate account may be accessed by an imposter.'" *Id.* (quoting *Browne*, 834 F.3d at 412).

The relevance of the Parler post in this case "hinges on the fact of authorship." *Browne*, 834 F.3d at 410. But the government is unable to show that Mr. Manley created the post, as it does not have a Parler record to present to the jury. Within 24 hours following the events of January 6, internet hosts banned Parler from their platforms, effectively shutting down the website. Thus, in addition to the inherent unreliability of social media posts, as noted by Judge Leon, the government has no means to demonstrate that Mr. Manley authored the Parler post.[2]

[2] Even if the government had a Parler record of the post at issue, it is not clear that the record could be properly authenticated. *See United States v. Hunt*, 534 F. Supp. 3d 233, 254 (E.D.N.Y. 2021) ("Where, as here, social media content is offered for the purpose of establishing that a person made particular statements—that is, the relevance of the proffered evidence 'hinges on the fact of authorship'—a certification by a custodian in itself cannot be sufficient for purposes of authentication because, as already described, such a certification serves a limited role: it simply shows that a record was made at or near a certain time, that the record was kept in the course of a regularly conducted business activity, and that the making of the record was a regular practice of that activity." (citing Fed. R. Evid. 803(6); *Browne*, 834 F.3d at 410)); *Browne*, 834 F.3d at 410 ("Facebook does not purport to verify or rely on the substantive contents of the communications in the course of its business. At most, the records custodian employed by the social media platform can attest to the accuracy of only certain aspects of the communications exchanged over that platform, that is, confirmation that the depicted communications took place between certain Facebook accounts, on particular dates, or at particular times."); *see also United*

In fact, because the purported copy of the post appeared in an article on the website "Bellingcat.com," the government must demonstrate an additional layer of authenticity. Upon information and belief, the government has no information as to the trustworthiness of this source and is unable to demonstrate its reliability.

In addition to the irrelevancy of the Parler post due to its dubious authorship, the post is also irrelevant to proving any of the charged offenses. To prove civil disorder, the government must show that Mr. Manley "commit[ted] or attempt[ed] to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function." 18 U.S.C. § 231(a)(3). To prove assaulting, resisting, or impeding certain officers or employees, using a dangerous weapon, the government must show that Mr. Manley "forcible assault[ed], resist[ed], oppose[d], intimidate[d], or interfere[d] with" an officer engaged in official duties "us[ing] a deadly or dangerous weapon" 18 U.S.C. § 111(b).

Mr. Manley's alleged post about "coming armed" to the DC protest—when he in fact arrived with only bear spray and a baton, and no firearm—is not relevant to whether he in fact obstructed law enforcement duties during a civil disorder, or whether he in fact assaulted an

---

States v. Vayner, 769 F.3d 125, 132 (2d Cir. 2014) (holding that a social media profile page was not properly authenticated where the government offered evidence only that the webpage existed and not that it belonged to the defendant).

officer with bear spray—the allegations of the government. The post is also not relevant to any of the misdemeanor charges.

B. The Parler post is overly prejudicial

Even if the Court finds that the Parler post is relevant to the charged offenses, and sufficiently reliable, the evidence must be excluded as overly prejudicial under Rule 403.

Relevant evidence may still be excluded by a court if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." *United States v. Wilkins*, 538 F. Supp. 3d 49, 63 (D.D.C. 2021) (citing Fed. R. Evid. 403). Rule 403 renders relevant evidence inadmissible only upon a showing that it presents a risk of "unfair prejudice," i.e., prejudice that is "compelling or unique," or has "an undue tendency to suggest decision on an improper basis." *United States v. Oseguera Gonzalez*, 507 F. Supp. 3d 137, 146–47 (D.D.C. 2020) (quoting *United States v. Mitchell*, 49 F.3d 769, 777 (D.C. Cir. 1995) and *United States v. Ring*, 706 F.3d 460, 472 (D.C. Cir. 2013)).

If admitted, the Parler post would be highly inflammatory to the jury and would cause an emotional reaction that would be highly prejudicial to Mr. Manley. The post is frightening—the ordering of individuals to arrive armed at the Capitol—and is especially impactful given the violence that occurred on January 6 and the firearms that *were* brought on Capitol grounds. It is expected that the government will present images of this violence to the members of the jury, who will have a difficult time disassociating the threatening post with the actual violence that occurred. Yet, as argued, the contents of the post have no bearing on whether Mr. Manley in fact interfered with law enforcement duties during a civil disorder or assaulted an officer with bear

spray. Therefore, the danger of unfair prejudice by Mr. Manley's offensive comments substantially outweighs any probative value they may have.

In addition, the Parler post is simply not necessary for the government to prove its case. *See United States v. Sriyuth*, 98 F.3d 739, 747-748 (3d Cir. 1996), *cert. denied*, 519 U.S. 1141 (1997) (quotation omitted) ("To determine whether the threat of unfair prejudice outweighs the probative value of an evidentiary item, a reviewing court must assess the genuine need for the challenged evidence and balance that necessity against the risk that the information will influence the jury to convict on improper grounds."). The government has a large amount of video footage, Mr. Manley's statement, and other evidence supporting the charges in the Indictment.

WHEREFORE, for all the foregoing reasons, and for any others that may become apparent at a hearing, Mr. Manley respectfully requests that the Court exclude the Parler post from trial.

Respectfully submitted,

/s/ Natasha Taylor-Smith
NATASHA TAYLOR-SMITH
Assistant Federal Defender

CERTIFICATE OF SERVICE

I, Natasha Taylor-Smith, Assistant Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania, hereby certify that I have served a true and correct copy of the Defendant's Motion *in limine* and memorandum of law in support thereof, by electronic notification and/or hand delivery to her office, upon Robert Craig Juman, Assistant United States Attorney, United States Attorney's Office, 500 E. Broward Blvd., Ft. Lauderdale, FL 33132, and Zachary Phillips, Assistant United States Attorney, United States Attorney's Office, 1801 California Street, Suite 1600, Denver, CO 80202.

/s/ Natasha Taylor-Smith
NATASHA TAYLOR-SMITH
Assistant Federal Defender

DATE: August 3, 2022