

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

**UNITED STATES OF AMERICA** :  
 :  
 : **CRIMINAL NO. 21-cr-642 (JDB)**  
 v. :  
 :  
 :  
 **DARRELL NEELY,** :  
 :  
 :  
 **Defendant.** :

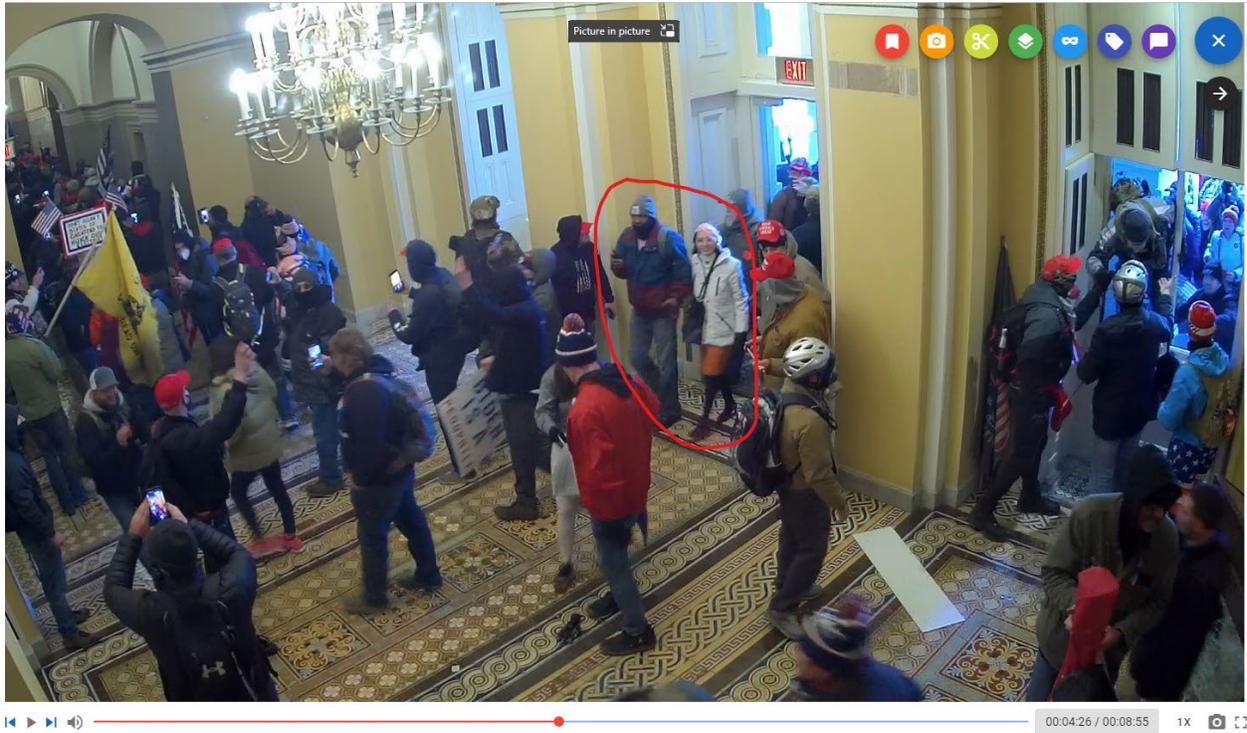
**GOVERNMENT’S OPPOSITION TO DEFENDANT’S  
MOTION *IN LIMINE* REGARDING CONDUCT OF OTHERS**

Defendant’s motion *in limine* regarding the conduct of other rioters (Dkt. 34) should be denied. As set forth below, the conduct of other January 6 rioters is relevant, not overly prejudicial, and admissible for numerous reasons.

**BACKGROUND**

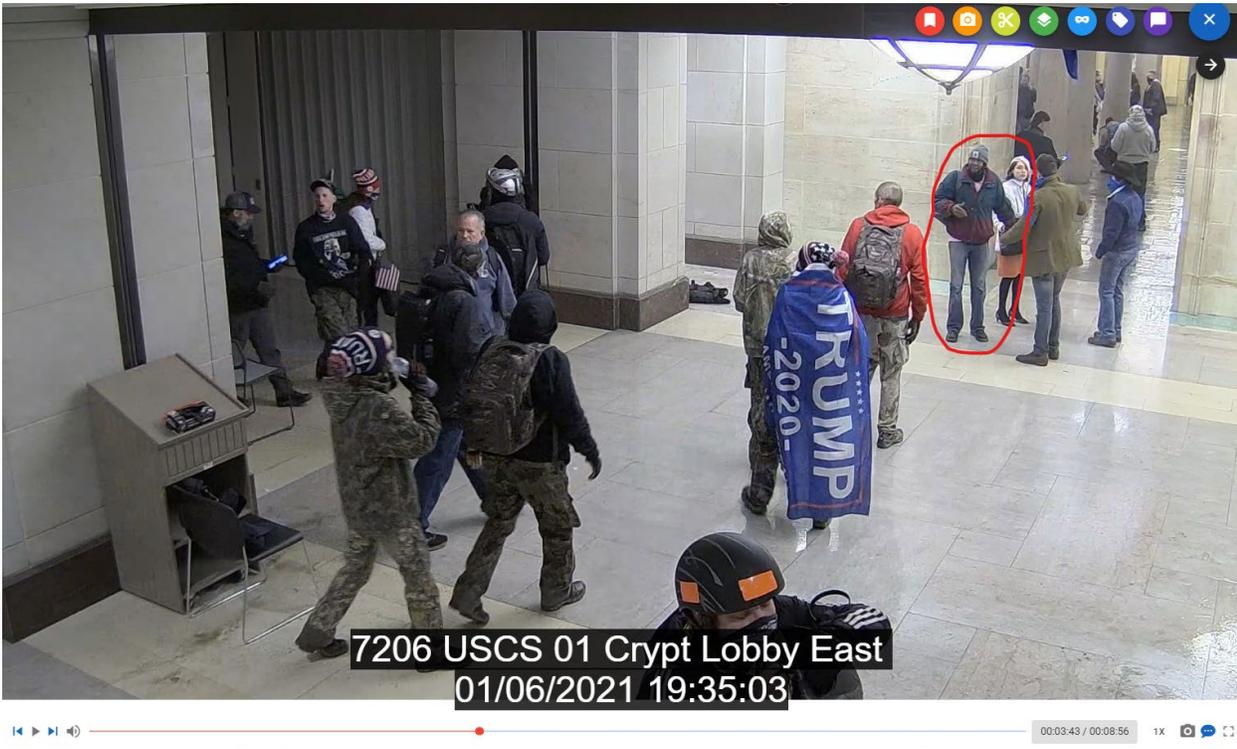
At 1:00 p.m., on January 6, 2021, a Joint Session of the United States Congress convened in the United States Capitol building. The Joint Session assembled to debate and certify the vote of the Electoral College of the 2020 Presidential Election. With the Joint Session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over erected barricades. The crowd, having breached police officer lines, advanced to the exterior façade of the building. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol. At approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers.

Defendant Darrell Neely entered the Capitol through the Senate Wing Door at approximately 2:24 PM ET, as shown in the photograph below.



Defendant then proceeded to roam the Capitol for approximately 70 minutes. As shown in the photographs below, he smoked a cigarette, spent time in the Crypt, and exited the Capitol through the Memorial Door at approximately 3:30 PM.







At some point during his time in the Capitol, Defendant found items belonging to a U.S. Capitol Police Officer, including a jacket and hat, and stole those items. The items belonged to an officer who had removed them after being sprayed by an unknown substance. In a post-arrest interview with law enforcement, Defendant acknowledged that he took these items from the Capitol and described them as his “memorabilia.”

### **LEGAL STANDARD**

Federal Rule of Evidence 401 provides that “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401. Under Federal Rule of Evidence 403, relevant evidence may be excluded when “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.” Fed. R. Evid. 403.

## ARGUMENT

### **A. The Conduct of Others is Inherently Relevant in All Capitol Riot Cases to Show a Particular Defendant's Intent, Knowledge and Opportunity to Commit Crimes**

The actions of other rioters within the mob are relevant in all January 6 cases due to the nature of the event. On January 6, 2021, a large mob of protestors gathered outside of the Capitol. At approximately 2:00 PM, certain individuals in the crowd forced their way through, up, and over barricades limiting access to restricted grounds of the U.S. Capitol. Officers of the USCP were forced to retreat, and the crowd advanced to the exterior façade of the building. Members of the USCP attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 PM, individuals in the crowd forced entry into the Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. Some time around 2:12 PM, the rioters breached the Senate Wing Door, and the mob of protestors pushed their way inside of the U.S. Capitol building.

The actions of others within the mob are inherently relevant in all Capitol riot cases because they are consequential to a specific defendant's mental state, knowledge and opportunity to commit the charged crimes. Capitol riot defendants found safety in numbers. *See United States v. Matthew Mazzocco*, 1:21-cr-00054 (TSC), Tr. 10/4/2021 at 25 (“A mob isn't a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers.”) (statement of Judge Chutkan). An individual defendant could not have committed the crimes without the presence of the mob because they would have been outnumbered by law enforcement officers.

The evidence will show that Neely, like other Capitol riot defendants, knowingly and intentionally joined the mob to commit his crimes. He was part of the mob that entered through the Senate Wing Door shortly after it was breached. He then remained in the U.S. Capitol building

with other rioters for over an hour. Evidence will show that Neely took government property from the building. Emboldened by the presence, words and actions of others in the mob, he knowingly and intentionally committed his charged offenses. The mob was the means that gave defendant Neely the opportunity to commit his crimes.

**B. The Conduct of Others is Relevant to the Elements of the Charged Offenses**

Each of the charged offenses in this case require the defendant to act willfully and knowingly. Defendant Neely heard and saw other rioters discussing their intent to enter the U.S. Capitol building and disrupt the Congressional proceeding counting the votes of the Electoral College. Their words and conduct are relevant to show Neely's knowledge and intent.

Furthermore, fashioning a broad order that would prohibit the government from presenting evidence concerning the actions of others within in the mob would be an impossible task due to the nature of the events on January 6, 2021. Defendant Neely's objections would be better handled on a case-by-case basis.

**CONCLUSION**

For the foregoing reasons, the defendant's motion *in limine* should be denied.

Respectfully submitted,

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