

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

**UNITED STATES OF AMERICA**

**v.**

**RALPH JOSEPH CELENTANO III,**

**Defendant.**

**Crim. Action No. 22-186 (TJK)**

**MOTION IN LIMINE TO PRECLUDE EVIDENCE**

Ralph Celentano III, through counsel, moves *in limine* for an order prohibiting the government from introducing certain evidence at trial including: 1) a 22 minute compilation video of the events of January 6, 2021 that Mr. Celentano is not depicted in; 2) video and photographs taken from inside of the U.S. Capitol where Mr. Celentano never entered and; 3) evidence regarding the FBI's initial investigation to identify Mr. Celentano where Mr. Celentano is not challenging identity.<sup>1</sup> Such evidence is not relevant and thus not admissible under Federal Rules of Evidence 401 and 402. Even if the Court were to deem any of this evidence relevant, it should nonetheless exclude it under Rule 403 because any probative value is outweighed by a

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<sup>1</sup> In discovery, the government provided the defense with social media posts attributable to Mr. Celentano and the contents of Mr. Celentano's phone. Many of the text messages and social media posts are not relevant to the events of January 6, 2021 or the charges against Mr. Celentano. As the defense has not received the government's exhibit list, the posts and messages that the government seeks to introduce at trial have not yet been identified. The defense reserves the right to make further preclusion arguments upon receipt of the government's exhibit list.

The government has also provided the defense with Mr. Celentano's videotaped post-arrest statement. The government has not indicated whether it intends to introduce Mr. Celentano's statement. If the government seeks to introduce Mr. Celentano's statement, the defense reserves the right to propose appropriate redactions.

significant danger of unfair prejudice, confusing the issues, misleading the jury, and needlessly presenting cumulative evidence.

In addition, Mr. Celentano moves to preclude the interrogation of Mr. Celentano's partner, Jennifer Blake, under Federal Rule of Evidence 802 as it is impermissible hearsay.

### **LEGAL STANDARD**

Federal Rule of Evidence 401 mandates that evidence is only relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence, and, the fact is of consequence in determining the action." Fed. Rule. Evid. 401. Irrelevant evidence is not admissible. Fed. Rule. Evid. 402.

Federal Rule of Evidence 403 prohibits evidence when its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Fed. Rule Evid. 403. "Unfair prejudice" results when some potentially relevant evidence is designed to "lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. U.S.*, 519 U.S. 172, 180 (1997). It is well established that a court should "weigh the probative value of evidence in light of appropriate evidentiary alternatives." *Id.* at 182-185; *See also Henderson v. George Washington University*, 449 F.3d 127, 137 (D.C.Cir. 2006) ("The prejudice to an opponent can be said to be 'unfair' when the proponent of the evidence could prove the fact of other, non-prejudicial evidence

Federal Rule of Evidence 802 prohibits hearsay, which is an out of court statement or declaration offered for its truth at trial. *See* Fed. Rule Evid 801(c), 802.

### **ARGUMENT**

- I. THE GOVERNMENT SHOULD NOT BE PERMITTED TO INTRODUCE A GENERIC COMPILATION VIDEO OF JANUARY 6, 2021

The defense has reason to believe the government intends to introduce a twenty-two-minute video montage capturing surveillance of thousands of individuals on the Capitol Grounds and inside the Capitol Building on January 6, 2021. This video features the most horrific scenes that occurred that day, highlighting specific violence and activities that Mr. Celentano was not involved in or even witness to. In fact, it is unclear whether Mr. Celentano is in any of the clips contained in this video at all. What is clear is that the video includes numerous clips from *inside* of the Capitol Building – where it is undisputed that Mr. Celentano never went. It is a compilation of the activities of others and is unrelated to Mr. Celentano’s charges. The video does not make any fact more or less probable as it relates to Ralph Celentano. The only proposition the video compilation is probative of is that thousands of people other than Mr. Celentano violently broke into the Capitol Building on January 6, 2021, and breached many police lines. However, that fact does not make it more or less probable that Mr. Celentano himself did those things because he is clearly not committing those acts in the video. Therefore, this video montage is not relevant for Mr. Celentano’s trial and should be excluded under Rule 402.

Further, the video montage is unfairly prejudicial and will undoubtedly mislead and confuse the jury in violation of Federal Rule of Evidence 403. Most of the actions portrayed in this video compilation portray group assaults against police, destruction of property, and police use of force against those individuals. Many of the images portrayed show tear gas in the air, police being overrun, and windows being broken with flagpoles. However, Mr. Celentano is not being charged with any of the assaults captured in the video or destruction of property and this video’s admission would be highly prejudicial given its graphic nature – placing focus on the violence that occurred that day and creating sensory anxiety in jurors. The only purpose this

evidence serves is to inflame the jury by stirring up their emotions regarding the overall severity of what happened that day.

“Evidence is unfairly prejudicial if it 'makes a conviction more likely because it provokes an emotional response in the jury or otherwise tends to affect adversely the jury's attitude toward the defendant wholly apart from its judgment as to his guilt or innocence of the crime charged.” *United States v. Roberts*, 88 F.3d 872, 880 (10th Cir. 1996) (citations and inner quotations marks omitted). “The term ‘unfair prejudice,’ as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief*, 519 U.S. 172 at 180. Undoubtedly, the video montage the government wishes to introduce will evoke an emotional response and lure jurors into a feeling that Mr. Celentano is guilty based on the actions of others, regardless of any arguments Mr. Celentano makes.

Most importantly, there are evidentiary alternatives available to the government that tip the balance in favor of excluding this prejudicial evidence. The *Old Chief* court set forth a methodology in balancing Rule 403 by explaining:

The court would decide whether a particular item of evidence raised a danger of unfair prejudice. If it did, the judge would go on to evaluate the degrees of probative value and unfair prejudice not only for the item in question but for any actually available substitutes as well. *If an alternative were found to have substantially the same or greater probative value but a lower danger of unfair prejudice, sound judicial discretion would discount the value of the item first offered and exclude it* if its discounted probative value were substantially outweighed by unfairly prejudicial risk.

*Id.* at 182-183. (emphasis added). The government can, and undoubtedly will, introduce other video surveillance of Mr. Celentano from outside the Capitol Building on January 6, 2021. The government has no need to introduce any evidence of other individuals not associated with Mr. Celentano. Admission of this narrowly tailored evidence will protect Mr. Celentano’s right to a

fair trial, prevent confusion, and will prevent the presentation of cumulative evidence.

II. THE GOVERNMENT SHOULD NOT BE PERMITTED TO INTRODUCE VIDEO OR PHOTOGRAPHS FROM INSIDE OF THE CAPITOL BUILDING

As noted above, it is undisputed that Mr. Celentano never entered, or attempted to enter, the Capitol building on January 6, 2021. Any video or photographic evidence from inside the Capitol building is therefore not probative as to the charges against Mr. Celentano and is highly prejudicial and misleading. Such evidence should be prohibited under Federal Rules of Evidence 401, 402 and 403 for the reasons already stated above. *See supra* Sect. I.

III. THE GOVERNMENT SHOULD NOT BE PERMITTED TO INTRODUCE EVIDENCE RELATED TO THE INVESTIGATIVE STEPS THEY TOOK TO IDENTIFY MR. CELENTANO

The government has not indicated whether they intend to introduce any testimony or evidence relating to the investigative steps the FBI took to identify Mr. Celentano. However, none of this evidence will be relevant at Mr. Celentano's trial because he will not be contesting identity. On the other hand, such evidence will invite the jury to impermissibly speculate that there was an FBI manhunt for Mr. Celentano or that he was eluding authorities. Therefore, any evidence as to how Mr. Celentano was identified should be excluded under Federal Rules of Evidence 401, 402 and 403. *See Old Chief v. United States*, 519 U.S. 172, 180 (1997) (“[t]he term ‘unfair prejudice’ . . . speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.”).

IV. THE GOVERNMENT SHOULD NOT BE PERMITTED TO INTRODUCE THE INTERROGATION OF JENNIFER BLAKE

The government has provided the defense a recorded statement of Jennifer Blake, Mr. Celentano's long-term partner, who was present at the Capitol on January 6, 2021. Ms. Blake is

not a co-defendant of Mr. Celentano and has not been charged with any crimes related to January 6, 2021. Any statements made by Ms. Blake to law enforcement are inadmissible hearsay. *See* Fed. R. Evid. 801(c), 802. Further, introduction of those statements in the absence of Ms. Blake being called to testify by the government as a witness at trial, would violate Mr. Celentano's constitutional right to confrontation. U.S. Const. amend. VI.

Respectfully submitted,

*Marissa Sherman*

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Marissa Sherman  
Attorney for Ralph Joseph Celentano III  
Federal Defenders of New York, Inc.  
One Pierrepont Plaza, 16<sup>th</sup> Floor  
Brooklyn, NY 11201