

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
 )  
 v. ) No. 22-cr-186 (TJK)  
 )  
 RALPH JOSEPH CELENTANO III, )  
 )  
 Defendant )  
 \_\_\_\_\_ )

**DEFENSE REPLY IN FURTHER SUPPORT OF MOTION IN LIMINE TO  
PRECLUDE EVIDENCE**

Mr. Celentano, through counsel, submits this reply in further support of his request to exclude a prejudicial and irrelevant compilation video and other such evidence depicting actions Mr. Celentano was not present for on January 6, 2021. The government, in its opposition (ECF No. 39), counters that (1) the actions of “other rioters at the Capitol, which is included in the government’s compilation video”, are relevant. The acts of others that Mr. Celentano did not participate in or know about have no relevance to whether he is guilty of any of the crimes he is charged with committing.

**The Government’s Montage Exhibit and Other Footage Depicting  
Violent Events at Which Mr. Celentano Was Not Present are Irrelevant and  
Highly Prejudicial**

The government claims that the actions of other rioters at multiple areas of the Capitol is relevant to elements of Counts Two and Seven. ECF No. 39 at 5-7. With respect to Count Two, Civil Disorder (18 U.S.C. § 231(a)(3)), the government asserts that evidence “of actions of other rioters at all locations of the Capitol

building and grounds is relevant to prove that a civil disorder was occurring and that it interfered with a federally protected function.” *Id* at 5-6. As for Count Seven, Obstruction of an Official Proceeding and Aiding and Abetting (18 U.S.C. § 1512(c)(2) and 2), the government contends that “proving this charge requires presenting evidence involving the actions of other rioters at all locations of the Capitol building and grounds.” *Id* at 6.

Neither claim withstands scrutiny. Count Two alleges that Mr. Celentano committed or attempted to commit an act to “obstruct, impede or interfere with a law enforcement officer, lawfully engaged in the lawful performance of his/her official duties incident to and during the commission of a civil disorder which in any way and degree obstructed, delayed and adversely affected commerce and the movement of any article and commodity in commerce and the conduct and performance of any federally protected function.” *See* ECF No. 14, Indictment. In factual terms, Count Two alleges that Mr. Celentano corruptly obstructed or impeded an official proceeding, specifically Congress’s certification of the Electoral College.

The government accuses Mr. Celentano of committing these offenses by entering restricted grounds on the west terrace of the Capitol, shouting at police officers, and getting into physical altercations with police officers, including pushing on officer over a ledge. *See* ECF No. 39, 1-2. Thus, it is the evidence of these actions – which the government specifically attributes to Mr. Celentano – that goes to the issue of whether *Mr. Celentano* obstructed a law enforcement officer

performing his official duties during a civil disorder that obstructed the performance of a federally protected function. That hundreds or thousands of others engaged in conduct at other locations of the Capitol building and grounds – where Mr. Celentano was not even within viewing distance of – is not probative of Mr. Celentano’s intent, knowledge or culpability and is highly prejudicial.

Contrary to the government’s view, the inclusion of “the alternative theory of aiding and abetting” charge doesn’t create a relevant place for such evidence at Mr. Celentano’s trial either. To prove a defendant’s guilt as an aider and abettor, the government must prove “(1) the specific intent to facilitate the commission of a crime by another; (2) guilty knowledge (3) that the other was committing an offense; and (4) assisting or participating in the commission of the offense.” *United States v. Wilson*, 160 F.3d 732, 738 (D.C.Cir.1998) (internal quotation and citation omitted). Thus, while the conduct of other individuals could be relevant to Mr. Celentano’s culpability under such a theory, that would require that Mr. Celentano knew about that conduct and intentionally assisted the conduct. Here, the government seeks to admit evidence of conduct that Mr. Celentano was not privy to. Even if the government is correct that it must show collective action to prove aiding and abetting, the only relevant evidence of that is evidence of what Mr. Celentano saw and heard – not what was occurring at other times, outside his presence.

Not only bearing no relevance, evidence of others’ conduct in the montage video and elsewhere, is cumulative and prejudicial. As the government well knows, it has many means at its disposal that can accomplish the same goal without

presenting inflammatory content that will adversely influence the jury. For example, the government in past January 6 cases has been presenting a video exhibit called the “Official Proceeding Montage,” that also gives an overview of the timing of the certification on January 6, 2021, and exactly when it was disrupted. *See United States v. Reffitt*, 21-cr-32 (DLF), Trial Transcript beginning at 1063. In that montage, the government presents details about the certification, exactly what sides of the Capitol building the members of Congress were, when objections occurred during the vote, when the vote had to come to a halt, when members of Congress were evacuated, and when they returned to finish the certification. *Id.*

That video does not present prejudicial content and yet provides the same context and information the government claims is necessary to present its case. That non-prejudicial montage together with videos showing Mr. Celentano’s conduct that day are more than sufficient to present the government’s theory of the case. As the videos that show Mr. Celentano also show other individuals around him, any claim by the government that it needs to present the actions of other individuals to present the whole picture can be met simply by showing the videos specifically applicable to Mr. Celentano. Doing so will focus the jury only on what was occurring in Mr. Celentano’s path, which is the most relevant to his charges. The government’s ability to use less prejudicial evidence is a central principle that should not be ignored. *See Old Chief v. U.S.*, 519 U.S. 172, 180 (1997) (a court should weigh the probative value of evidence in light of appropriate evidentiary alternatives).

The video montage the government wishes to present portrays multiple brutal assaults, smoke, blood and tear gas that were not in Mr. Celentano's path that day and that he thus did not see or hear. It is unclear why the government thinks it necessary to present that kind of evidence when Mr. Celentano is not charged with the crimes depicted and did not participate in or even observe such things. It is certainly not necessary to show the context and provide a reason for the certification's delay, as that kind of delay could occur even if there were no assaults or destruction of property. Accordingly, the government does not need to present evidence that only serves to create an emotional response about the tragic events that occurred that day. *See United States v. Roberts*, 88 F.3d 872, 880 (10th Cir. 1996) (Evidence is unfairly prejudicial if it 'makes a conviction more likely because it provokes an emotional response in the jury' or adversely affects the jury's attitude toward the defendant).

Admission of narrowly tailored evidence will protect Mr. Celentano's right to a fair trial while preventing confusion and the presentation of cumulative evidence.

### **Conclusion**

For the reasons set forth here and in the defense motion *in limine*, the Court should preclude the government from introducing irrelevant and prejudicial evidence at Mr. Celentano's trial.

Respectfully submitted,

*/s/*

---

Marissa Sherman  
Kathryn Wozencroft  
Attorneys for Ralph Joseph Celentano III  
Federal Defenders of New York, Inc.  
One Pierrepont Plaza, 16<sup>th</sup> Floor  
Brooklyn, NY 11201  
(718) 407-7408