

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

UNITED STATES OF AMERICA

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NO. 21-CR-485-01(BAH)

KERRY WAYNE PERSICK

RESPONSE TO COURT ORDER

On April 18, 2022, this Court, through a “Minute Order” (paperless and no docket number) directed parties to provide their positions whether related photo and video evidence¹ may be made publicly available without restriction. This case is currently set for a plea hearing on April 22, 2022.

Mr. Persick understands that to seal motions or proceedings, there must be a higher interest to be served in order to keep them secret. Local rule LCrR 17.2 permits pretrial proceedings to be closed to the public in whole or in part if: (1) there is a substantial probability that the dissemination of information disclosed at the proceeding would impair the defendant's right to a fair trial or another overriding public interest; and (2) that no reasonable alternative to closure will adequately protect the defendant's right to a fair trial or another overriding public interest. While this is not a pretrial proceeding, Mr. Persick asks this Court to similarly seal these materials because the disclosed information could contain personal information that could place Mr. Persick’s safety at risk. The nature of this case provides that much of this information is already in the public’s view. Additional information related to the offense does not need to remain in public view, however, because a separate government report, beyond the factual resume, and specific video and photo

¹ The Court directed the Government to (1) submit a report describing the source, length and location depicted for all photo and video evidence relied upon as support for the Statement of Offense filed in connection with defendant's plea agreement; and (2) make such photo and video evidence available for the Court's review.

evidence of Mr. Persick, likely will contain sensitive personal information. Sealing this report will prevent disclosure of this private information, which the public has no right to inspect.

Additionally, Mr. Persick believes that this report and evidence is more akin to letters submitted to the district court for consideration at sentencing, which courts have uniformly rejected as public materials. And memorandums filed by the Government and a defendant may be sealed from public disclosure if they contain sensitive and personal material. These materials may be more appropriate if admitted as exhibits if the Government chooses to share them at Mr. Persick's sentencing hearing.

While Mr. Persick understands the First Amendment concerns at issue, an overriding interest in Mr. Persick's safety within his community also must be considered. For these reasons, Mr. Persick requests that the Government's report, and the corresponding photo and video evidence, not be publicly disclosed.

Respectfully submitted,

/s/ J. Joseph Mongaras
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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2022, a true and correct copy was served electronically to the AUSA on this case.

/s/ J. Joseph Mongaras
J. Joseph Mongaras