

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

UNITED STATES OF AMERICA,

v.

ELMER STEWART RHODES, III, *et al.*,

Defendants.

Case No: 22-cr-15-APM

APPLICATION FOR ACCESS TO TRIAL EXHIBITS

Pursuant to Local Criminal Rule 57.6, applicants Cable News Network, Inc., American Broadcasting Companies, Inc. d/b/a ABC News, The Associated Press, BuzzFeed, Inc. d/b/a BuzzFeed News, CBS Broadcasting Inc. o/b/o CBS News, Dow Jones & Company, Inc., publisher of The Wall Street Journal, The E.W. Scripps Company, Gannett Co., Inc., Gray Media Group, Inc., Los Angeles Times Communications LLC, publisher of The Los Angeles Times, National Public Radio, Inc., NBCUniversal Media, LLC d/b/a NBC News, The New York Times Company, Pro Publica, Inc., Tegna, Inc., and WP Company LLC, d/b/a The Washington Post (together, the “Press Coalition”) respectfully request, under the First Amendment and common law, same-day access to the exhibits that will be admitted into evidence at the upcoming jury trial in this matter. In support of this application the Press Coalition states as follows:

1. As this Court is aware, on May 14, 2021, in response to a motion filed by the Press Coalition, Chief Judge Beryl A. Howell issued Standing Order No. 21-28 (the “Standing Order”). The Standing Order recognizes “[t]he significant public and media interest in the numerous criminal cases arising from the January 6, 2021 violent breach of the United States Capitol (the ‘Capitol Cases’).” *See* Standing Order at 2.

2. To accommodate this interest, the Standing Order provides that “[m]embers of the media seeking access to video exhibits submitted to the Court in Capitol Cases may file an application . . . to the presiding judge in the case, or if no judge has been assigned, to the Chief Judge, for determination, and the judge may seek the position of the parties.” *See id.* at 5.

3. The Standing Order further provides that “[u]pon grant of such media application, the government shall make the video exhibit[s] available to any member of the media with necessary access credentials provided by the government, unless the order otherwise limits access.” *See id.* at 5-6. Specifically, the Standing Order states that “[m]embers of the media provided access to video exhibits in a particular case pursuant to such order may view those exhibits” by way of an electronic “drop box” into which the Government has agreed to place videos subject to access orders in the Capitol Cases. *See id.* at 6.

4. This is one of the Capitol Cases. Defendants are charged with a number of claims, including seditious conspiracy, in connection with their conduct leading up to and on January 6.

5. Jury selection for the trial of Defendants Roberto A. Minuta, Joseph Hackett, David Moerschel, and Edward Vallejo is set to begin as soon as December 6, 2022. *See* Dec. 1, 2022 Minute Order.

6. Ahead of the trial for other defendants in this matter that commenced on September 27, 2022, the Court entered an order providing that “the admitting party shall make available to the media at the end of each trial day a copy of any admitted exhibit that has been published to the jury and not restricted by the Court for dissemination.” Order at 3, Dkt. 327. Consistent with this directive, the Government made hundreds of submitted exhibits available to members of the Coalition and other requesting parties through the USAfx “drop box.”

7. The Coalition anticipates the parties will similarly publish many exhibits to the jury in the upcoming trial in this matter (the “Trial Exhibits”), and respectfully requests that the Court enter an order directing the Parties to make the Trial Exhibits available to the Coalition and requesting public the same day they are published.

8. The Trial Exhibits will be introduced with the intent “to influence the court” in its decision-making, and as a result they will be judicial records subject to a “strong presumption in favor of public access.” *Leopold v. United States*, 964 F.3d 1121, 1127-28 (D.C. Cir. 2020) (Garland, J.).

9. Once these Trial Exhibits are admitted in open court, neither the Defendant nor the Government can possibly rebut the presumption of access to them under *United States v. Hubbard*, 650 F.2d 293, 317-21 (D.C. Cir. 1980). *See also, e.g., Craig v. Harney*, 331 U.S. 367, 374 (1947) (“A trial is a public event. What transpires in the court room is public property.”).

10. Because the Trial Exhibits will be judicial records subject to an un rebutted presumption of public access upon their entry into evidence, the Court should grant this Application and direct the Government to release Trial Exhibits to the Press Coalition via electronic “drop box” on the same day that those Trial Exhibits are introduced into evidence.¹

11. To expedite that release, the Court should instruct the Government to provide Coalition members and their counsel with the “necessary access credentials” referenced in the Standing Order.

¹ The Government has provided same-day access to trial exhibits in other Capitol riot cases. *E.g.*, Apr. 26, 2022 Minute Order, *United States v. Webster*, No. 21-cr-208-APM; Feb. 24, 2022 Minute Order, *United States v. Reffitt*, No. 21-cr-32-DLF; Order, *United States v. Robertson*, No. 21-cr-34-CRC, Dkt. 77.

12. The Standing Order provides that “[n]o recording, copying, downloading, retransmitting or further broadcasting of video exhibits in a particular case is permitted, unless such permission is granted by the presiding judge.” *See* Standing Order at 6. The Press Coalition therefore requests that the Court grant permission to record, copy, download, retransmit, and otherwise further publish these Trial Exhibits.²

CONCLUSION

For the foregoing reasons, the Press Coalition respectfully requests that the Court order the Government to provide same-day access to the exhibits admitted into evidence in the upcoming trial in this matter.

Dated: December 2, 2022

Respectfully submitted,

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² The Press Coalition makes this request without conceding that the Standing Order complies with the First Amendment or common law, and expressly reserving the right to challenge this and other portions of the Standing Order in this and other Capitol Cases.

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2022, I caused true and correct copies of the foregoing to be served via electronic mail and U.S. Mail on the following:

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