

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>CASE NO. 21-cr-537-JMC</b>
	:	
<b>PAUL RUSSELL JOHNSON and</b>	:	
<b>STEPHEN CHASE RANDOLPH,</b>	:	
	:	
<b>Defendants.</b>	:	

**GOVERNMENT’S UNOPPOSED MOTION TO  
ADOPT THE RECORD IN CASE NO. 21-CR-332**

The United States of America respectfully moves this Court to adopt the record in case number 21-cr-332-JMC as law of the case in the above-captioned matter, for the reasons stated below:

1. On December 1, 2021, the grand jury returned a superseding indictment in case number 21-cr-332 charging defendants Paul Russell Johnson and Stephen Chase Randolph with offenses arising from their role in the January 6, 2021 attack on the United States Capitol. *United States v. Paul Russell Johnson and Stephen Chase Randolph*, Case No. 21-cr-332-JMC (D.D.C.) (ECF 61).

2. On January 12, 2022, in both the above-captioned case, ECF 79, and case number 21-cr-332 (ECF 76), the United States filed a Notice Under Local Criminal Rule 40.5(b)(3) Of Related Cases And Intent To Supersede Indictment. That Notice advised that the two cases were related and the defendants in both cases were charged with aiding and abetting one another to commit the same crimes at the same time and location against the same victim. The Notice provided facts explaining that charges against defendants in both cases involved the initial breach of the Capitol grounds near the Peace Circle Monument.

3. The superseding indictment addressed in the Notice was filed in the above-

captioned case. ECF 80.<sup>1</sup>

4. The United States now seeks to have the record before October 28, 2022, (that is, only through ECF 86) in case number 21-cr-332-JMC made part of the record in the above-captioned case. Doing so would be in the interest of judicial efficiency and consistent with the doctrine of the law of the case. *See Pepper v. United States*, 562 U.S. 476, 1250 (2011) (“[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.”) (internal quotation marks and citations omitted).<sup>2</sup>

5. The third superseding indictment, ECF 80, in the above-captioned case is effectively a superseding indictment from the last indictment (ECF 61) in case number 21-cr-332, as reflected in the Notice, *see* ECF 79. The majority of charges against all defendants in the above-captioned case are the same. ECF 80 (Counts One, Two, Three, Five, Six, Seven, Eight, Nine, and Ten). Like a traditional superseding indictment, the third superseding indictment in the above-captioned case added defendants: defendants Johnson and Randolph, and defendant Blythe, who had not previously been charged in any preceding January 6 indictment. *See also* ECF 121 at 1, n.1 (noting, with respect to a filing by defendant Johnson, the prosecution’s belief that case number 21-cr-332-JMC had been consolidated with the above-captioned case) and Case No. 21-

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<sup>1</sup> The Notice also mentioned that the United States anticipated adding a fifth, then uncharged defendant. ECF 79 at 3, n.4. That defendant, Jason Benjamin Blythe, was charged in the above-captioned case in the third superseding indictment, ECF 80, for his role in the breach near the Peace Circle Monument. Some defendants in the third superseding indictment face additional related charges.

<sup>2</sup> On October 28, 2022, defendant Randolph filed a motion to dismiss the superseding indictment in case number 21-cr-332 (*id.* at ECF 87). The United States does not seek to include that motion or any ruling on that motion as part of the record in the above-captioned case, that is, case number 21-cr-537-JMC. The motion to dismiss in case number 21-cr-332 (ECF 87) applies only to case number 21-cr-332 and in effect, seeks to remove any duplication between 21-cr-332 and 21-cr-537. Thus, the nature of that motion makes its inclusion inappropriate in case number 21-cr-537. *See also* October 28, 2022 Notice of Error in case number 21-cr-537.

cr-332 (January 27, 2022 Notice of Corrected Docket Entry stating that certain defense filings had been submitted in the wrong case and needed to be refiled).

6. When faced with a similar situation, the magistrate judge in *United States v. Quninones-Davila*, No. 16-cr-0009, 2016 WL 4771068, at \*4 (D.V.I. Sept. 12, 2016), reached the same conclusion, holding that the filing of an indictment in case *B* with a new case number, which contained many of the same defendants and charges that were in case *A*, was effectively a superseding indictment. The judge reached that conclusion as an intermediate step in holding that the filing of case *B* did not entitle the originally charged defendants to a new detention hearing. *Id.*; see also *United States v. Crosby*, No. 08-cr-186A, 2013 WL 3354422, at \*3 (W.D.N.Y. July 3, 2013) (holding that after a superseding indictment has been filed, “[t]he prior decisions under earlier versions of the Indictment are law of the case in this prosecution”); *United States v. Frechette*, No. 89-cr-146, 1990 WL 3184, at \*3 (W.D. Pa. Jan. 9, 1990) (“There is no requirement in the Bail Reform Act that the government move for and the court repeat an evidentiary hearing on pretrial detention each time and solely because a defendant is arraigned on a superseding indictment. Frankly, neither law nor logic reveals a reason for doing so.”); *United States v. Rhodes, et al.*, Case No. 22-cr-15-APM (D.D.C. Jan. 19, 2022)(ECF 8, Order granting motion to adopt record from Case No. 21-cr-28-APM after superseding indictment charged defendants from the earlier case in Case No. 22-cr-15-APM).

7. In this case, two of the five defendants were part of case number 21-cr-332 through January 13, 2022. Accordingly, any rulings in case number 21-cr-332 should apply to defendants Johnson and Randolph as the law of the case. Those rulings include, but are not limited to, imposition of a protective order (*id.* at ECF 19), an order permitting disclosure of

material protected by Fed.R.Crim.P. 6(e) (*id.* at ECF 28), and an order setting release conditions for defendant Randolph (*id.* at ECF 32).

8. The law-of-the-case doctrine means that “the *same* issue presented a second time in the *same* case in the *same* court should lead to the same result.” *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996) (en banc) (emphasis in original). The D.C. Circuit has explained that “application of the law-of-the-case doctrine is a two-step process: a court must first determine whether the threshold requirements are met and then ask whether there are prudential reasons to ignore the applicable law-of-the-case.” *Kimberlin v. Quinlan*, 199 F.3d 496, 501 (D.C. Cir. 1999). Here, the threshold requirements are met, as this is effectively the *same* case (at least before October 28, 2022) as case 21-cr-332, pending before the *same* court. There are no prudential reasons to ignore the applicable law of the case. To the contrary, prudence dictates that the Court’s orders to date, as to defendants Johnson and Randolph, remain in place.

9. Counsel for defendants Johnson and Randolph have advised that they do not oppose the relief requested herein.

WHEREFORE, the United States respectfully requests that this Court adopt the record in case number 21-cr-332-JMC (other than the motion to dismiss filed in that case at ECF 87 and any resulting order on that motion) as the record in this case, number 21-cr-537-JMC.

Respectfully submitted,

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