

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
Criminal Division – Misdemeanor Branch

UNITED STATES

\*

v.

\*

2021 CMD 000187

EARL A. GLOSSER

\*

Judge Judith Smith

Status Hearing: September 13, 2021

**DEFENDANT’S RESPONSE AND OPPOSITION TO THE  
UNITED STATES’ MOTION FOR PROTECTIVE ORDER GOVERNING DISCOVERY**

Comes now the Defendant, through undersigned counsel, and requests this Court deny the government’s Motion for Protective Order Governing Discovery with respect to some, but not all, of the categories sought by the government. Defendant states the following in support of his position:

1. At the outset, Mr. Glosser wishes to note that he does not object to this Court entering a protective order to some of the categories sought by the government. Using the lettered categories in paragraph 1. of the government’s proposed Protective Order Governing Discovery for reference, Mr. Glosser does not object to a protective order that addresses letters a. Personal identity information as identified in Rule 49.1 of the Superior Court Rules of Criminal Procedure, as well as telephone numbers, email addresses, driver’s license numbers, and similar unique identifying information; d. Contact information for, photographs of, and private conversations with individuals that do not appear to be related to the [alleged] criminal conduct in this case; e. Medical or mental health records (to the extent that such exists with regard to Mr. Glosser and similarly situated defendants); j. Tax returns or tax information (to the extent that such exists with regard to Mr. Glosser and similarly situated defendants).

2. Mr. Glosser and similarly situated defendants were arrested at 7:15 p.m. standing in a parking lot approximately one block west of the Capitol Building. Mr. Glosser and the other similarly situated defendants are charged with unlawful entry on the theory that they refused to leave the grounds of the Capitol Building after they were advised to leave. None of these defendants have been charged in connection with the events the government describes in its motion as the Capitol Attack. In fact, the incident referred to as the Capitol Attack had been over for several hours when Mr. Glosser was arrested.

3. Mr. Glosser agrees with the Government's assertion in paragraph 11. of its motion that "Considering the type of crime charged helps assess the possible threats to the safety and privacy of the victim." Mr. Glosser is charged with one count of unlawful entry. This incident happened on January 6, 2021. It is now August and the Government has not indicated it will charge Mr. Glosser with other, more serious crimes arising out of this incident.

4. Mr. Glosser also agrees with the government's assertion in that paragraph that "A long record of convictions for violent crimes may suggest a substantial danger to the safety of others." The converse should also be true. Mr. Glosser has no criminal record of any kind. He was arrested in January and his time on pretrial has been utterly uneventful.

5. There are no civilian witnesses in these matters that the Government has made us aware of who might be intimidated or retaliated against.

6. The Government has represented to undersigned counsel, through AUSA Wang, that the government does not intend to turn over any video from inside the Capitol Building in Mr. Glosser's matter or those of the similarly situated defendants because it is immaterial to their cases.

7. With regard to the categories of discovery sought in the Government's proposed order not addressed above, b.; c.; f.; g.; h.; i.; the government has not alleged or demonstrated that these categories of discovery exist with regard to the cases here.

8. Category b. addresses Government's confidential sources and while that very well may apply to defendants charged in the Capitol Attack, it almost certainly does not apply to Mr. Glosser and the Government has not alleged that it does.

9. Similarly, the Government has not alleged that there is any witness whose security might be jeopardized by the Government disclosing discovery without the benefit of a protective order. It's hard to imagine how that could be the case on the facts alleged in Mr. Glosser's Gerstein. That Gerstein is attached hereto as Defendant's Exhibit A.

10. Category f. is also a category that seems to have no application to Mr. Glosser's case. Certainly the Government has not shown that the Government used sources and methods in arresting or investigating Mr. Glosser for unlawful entry that warrant a protective order to prevent their dissemination.

11. With regard to category g., the Government has not actually alleged that surveillance camera footage from the "U.S. Capitol Police's extensive system of cameras" exists that is relevant to this case. Given the number of wholly irrelevant categories the government has included in its proposed order, it is certainly reasonable to inquire whether such footage actually exists. If such footage exists, it is video with no sound that captures an outdoor area a full block from the Capitol Building. The Government has not made a showing that this footage is "Vital to national security." See: Government's motion at paragraph 11.

12. Category h. seems to be another category that has nothing to do with Mr. Glosser or the similarly situated Defendants. Neither Mr. Glosser nor these defendants are charged with

destruction of property, burglary or any other crime involving damage to the Capitol Building and the Government has not given Mr. Glosser any indication it intends to seek restitution from him.

13. The government has not made a sufficient showing to warrant this Court issuing a protective order to cover “security information.” “In this section, the term “security information” means information that— (1) is sensitive with respect to the policing, protection, physical security, intelligence, counterterrorism actions, or emergency preparedness and response relating to Congress, any statutory protectee of the Capitol Police, and the Capitol buildings and grounds; and (2) is obtained by, on behalf of, or concerning the Capitol Police Board, the Capitol Police, or any incident command relating to emergency response.” 2 USC 1979(a). It’s not even clear what the word “Sensitive” would mean in this context and it is totally inappropriate to leave discretion to one party to define it. This definition is also so broad that it would or conceivably could cover absolutely anything turned over in discovery.

The order the Government seeks is overbroad and not tailored to this case. The Government seeks to treat Mr. Glosser as if he were involved in the Capitol Attack when the Gerstein merely alleges that he failed to vacate a parking lot. This Court should enter an order that is narrowly tailored to the facts and allegations of this case and then only to the extent that it is authorized to do so under Rule 16 and based upon the showing made by the government. This is not a case that involves a violent crime, civilian victims, witnesses who might be harassed or tampered with or unique security features of the Capitol Building that, if revealed, might embolden or enable terrorists in the future. For all the foregoing reasons, Earl Glosser requests this Court deny the Government’s motion to the extent that oppose as stated in Paragraph 1.

Respectfully Submitted,

*/s/ Joseph W. Fay*

Joseph W. Fay  
D.C. Bar No.: 1002993  
JOSEPH W. FAY ESQ., PLLC  
777 6<sup>th</sup> St. NW, Suite 410  
Washington DC 20001  
202-557-1306  
202-216-0298 (f)  
Joseph.W.Fay@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2021, a copy of the foregoing was served upon the United States Attorney via the case file express file and serve function.

*/s/ Joseph W. Fay*

Joseph W. Fay

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION  
UNITED STATES**

**VS**

**GLOSSER, EARL ATWELL**

**CCN #: 21001507**

**Arrest Number: 102100379**

The event occurred on **01/06/2021** at approximately **19:15** at **PEACE CIRCLE, PEACE MONUMENT CIRCLE NW, WASHINGTON, DC 20004**

**On Wednesday, January 06, 2021, Mayor Muriel Bowser declared a public emergency in the District of Columbia ( Mayor's Order 2021-001 and in pursuant to 24 DCMR2203.4), resulting in the issuance of a District-wide curfew commencing at 6:00pm on Wednesday, January 6, 2021, and ending at 6:00am on Thursday, January 7, 2021.**

**On Wednesday, January 6, 2021, at approximately 1915hrs, CDU #23 observed individuals in the 100 block of First St NW in violation of the Mayor's Curfew Order. MPD Chief Parson, L issued at least 3 warnings for the individuals to disperse and go inside (1915hrs, 1916hrs and 1917hrs). The listed individuals did not obey the warnings. They were stopped and placed under arrest for violation of Mayor's Curfew order 2021-001. The listed individuals were identified as:**

**Grames, Lance, W/M DOB 07/25/1978**

**Doll, Jonathan, W/M DOB 07/24/1980**

**Mason, Ryan, W/M DOB 07/22/1977**

**Gosser, Earl, W/M DOB 04/22/1980**

**Mendez, Mauricio, W/M DOB 04/12/1980**

**Parker, John, W/M DOB 08/15/1956**

**Amos, Michael, W/M DOB 03/13/1982**

**Georgia, Chris, W/M DOB 02/24/1967**

**Johnson, Andrew, W/M DOB 01/27/1981**

**Simultaneously to the Metropolitan Police Department warnings, the United States Capitol Police through audio-amplification devices around the U.S. Capitol Grounds broadcasted numerous warnings related to the closing of the Capitol Grounds to unauthorized persons; The warnings were broadcasted on a loop on audio-amplification devices. Failure to vacate the Capitol grounds may result in arrest. The listed individuals were observed in the listed location**

The event and acts described above occurred primarily in the District of Columbia and were committed as described by defendant(s) listed in the case caption.

Subscribed and sworn before me this **01/07/2021**

**FELLIN, JOHN / 10336 (01/07/2021) E-SIGNATURE**

Police Officer / CAD#

**KIM, HAN / 7164 (01/07/2021) E-SIGNATURE**

Unit

Witness / Deputy Clerk

**FELLIN, JOHN / 10336**

**KIM, HAN / 7164**

Printed Name of Member / CAD#

Printed Name of Witness / Deputy Clerk

The foregoing statement was made under penalty of criminal prosecution and punishment for false statements pursuant to D.C. Code 22-2405