

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF CABLE NEWS
NETWORK, INC., et al., FOR ACCESS TO
CERTAIN SEALED VIDEO EXHIBITS

Case No. 1:21-mc-34-TFH

**SUPPLEMENTAL REPLY TO THE GOVERNMENT’S SUPPLEMENTAL RESPONSE
TO THE EXPEDITED MOTION FOR ACCESS TO SEALED VIDEO EXHIBITS**

In this action, 14 national news organizations (the “Press Coalition”) have moved to unseal the “Video Exhibits” – 10 videos shown in court and entered as evidence in *United States v. Tanios*, one of many criminal cases in this District against defendants accused of committing violent crimes during the January 6, 2021 riot at the United States Capitol. *See* Motion for Access (“Motion”), Dkt. 1. The Government initially objected to the unsealing of all of these Video Exhibits, but on April 21, 2021, the Government filed a Supplemental Response to notify the Court that it now “withdraws its objection to the public release of the videos introduced at Tanios’s detention hearing that were obtained from Metropolitan Police Department officers’ body-worn cameras (‘BWC’).” *See* Supplemental Response at 1, Dkt. 6. The Government clarified, however, that it “continues to oppose the public release and dissemination of the videos that were obtained from the U.S. Capitol’s closed-circuit video system and were introduced at defendant George Tanios’s detention hearing in the Northern District of West Virginia.” *Id.* The Press Coalition now respectfully submits this Supplemental Reply and states as follows:

First, in light of the Government’s new position on access to the BWC videos, the Court should order the Government to release those Video Exhibits (Nos. 7, 9, and 10) without delay.

Second, Tanios has put all of the Video Exhibits at issue yet again in moving for this Court to reconsider the West Virginia court’s detention order. *See* Def.’s Mot. for Review of the Detention Order, *U.S. v. Tanios*, No. 21-cr-222 (D.D.C. Apr. 20, 2021), Dkt. 19. Tanios argues:

At the detention hearing, the Government presented very little actual evidence. . . . Rather, over objection, the Government presented a proffer of what it believes the evidence would demonstrate if presented and a few video clips of Mr. Tanios and Mr. Khater at the U.S. Capitol. Other than Mr. Tanios being present, the video clips fail to show much at all in terms of the criminal acts allegedly committed by Mr. Tanios. The video clips fail to show any intent to harm officers, knowledge that officers would be injured, or any agreement by Mr. Tanios to do harm. The video clips fail to show Mr. Tanios use any weapon, chemical spray or inflammatory agent. Furthermore, the video clips fail to show that Mr. Tanios provided Mr. Khater with any item that could be used to injure officers at the Capitol. This is a far cry from strong evidence and it is the only evidence the Government relied upon.

Id. at 12. The Government has likewise notified the Court that it “will refer to” the Video Exhibits in its response to Tanios’s motion and “during the hearing” on that motion. *See* Joint Notice to the Court Regarding Detention Hearing at 1, *U.S. v. Tanios*, Dkt. 20. Because the parties continue to dispute whether the Video Exhibits justify Tanios’s pretrial detention, contemporaneous public access to those videos is clearly warranted and is even more important. *See Press-Enter. Co. v. Super. Ct.*, 478 U.S. 1, 12-13 (1986) (at preliminary hearings, “the absence of a jury, long recognized as ‘an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge,’ makes the importance of public access to a preliminary hearing even more significant”) (citation omitted).

Third, the Government has recently recognized, in proposing protective orders in multiple riot cases, that any videos that “[a]re, or later become, part of the public court record, including materials that have been received in evidence in . . . public trials or hearings” should automatically be excluded from the order’s protections. *See, e.g.*, Mem. Op. at 12, *U.S. v. McCaughey*, No. 21-cr-40 (D.D.C. Apr. 21, 2021), Dkt. 39. The Government therefore concedes that it cannot even treat these videos as confidential for discovery purposes. The Government therefore cannot possibly carry its heavier burden under the First Amendment and common law

to withhold such videos from the public where, as here, they have already been shown in court and entered in evidence.

For the foregoing reasons, and those set out in the Press Coalition's prior briefing, the Court should grant the Motion and direct the Clerk to unseal the Video Exhibits immediately.

Dated: April 23, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April 2021, 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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