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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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:
UNITED STATES OF AMERICA :
:
versus : Criminal Action Numbers
:
ARTURO VASQUEZ, : 2017 CF2 1369
PHILLIP GLASER, : 2017 CF2 1368
CHRISTIAN VALENCIA, : 2017 CF2 1203
MOLLY CARTER, : 2017 CF2 1380
:
Defendants. :
-----x

Washington, D.C.
Wednesday, May 30th, 2018

The above-entitled action came on for motions
before the Honorable ROBERT MORIN, Associate Judge, in
Courtroom Number 315.

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OF AN OFFICIAL REPORTER, ENGAGED BY THE
COURT, WHO HAS PERSONALLY CERTIFIED THAT
IT REPRESENTS TESTIMONY AND PROCEEDINGS OF
THE CASE AS RECORDED.
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P R O C E E D I N G S

THE DEPUTY CLERK: From Your Honor's motions hearing calendar, United States verse Molly Carter, 2017 CF2 1380; United States versus Arturo Vasquez, 2017 CF2 1369; United States versus Phillip Glaser, 2017 CF2 1368; and United States versus Christian Valencia, 2017 CF2 1203.

MS. KEIL: Good morning, Your Honor.
Brittany Keil for the United States.

MR. COFFIELD: Good morning, Your Honor.
Bill Coffield on behalf of Molly Carter, who's present and ready to proceed, Your Honor.

MR. LINEHAN: Good morning, Your Honor.
Patrick Linehan on behalf of Arturo Vasquez. Mr. Vasquez is present as well.

MS. LEGRAND: Good morning, Your Honor.
Rebecca Legrand on behalf of Christian Valencia, who is here as well.

MR. FELLNER: Good morning, Your Honor.
Jon Fellner for Mr. Glaser, who's here.

MR. FRAGALE: And good morning, Your Honor.
David Fragale also for Arturo Vasquez.

THE COURT: So just to keep my notes consistent, I think we were proceeding on the motion to suppress. And I was going to hear argument from each counsel.

1 If you could begin your argument -- I know you
2 began it yesterday -- but -- Mr. Fellner. But once you
3 begin it, if you could identify what fruits you're seeking
4 to suppress, that would be helpful as well for the record.

5 MR. FELLNER: Thank you, Your Honor.

6 In terms of fruits, we're seeking to suppress
7 all video and photos taken of Mr. Glaser after the kettle.
8 So right -- I believe yesterday Officer Pemberton
9 testified that after the rush of the line, everybody was
10 arrested at that particular point. So anything after
11 that. Not the booking photos, but photos, videos, any
12 clothing that he had, and I believe a cell phone.

13 THE COURT: Okay. So -- I'm sorry.

14 Was clothing seized from the client? Are you
15 just saying pictures?

16 MR. FELLNER: I think it was just pictures and
17 the videos, the body camera.

18 THE COURT: You're saying -- okay. That's a
19 fruit?

20 MR. FELLNER: I do believe it is a fruit. Not
21 the mug shots, but anything else.

22 THE COURT: Okay. Thank you.

23 MR. FELLNER: So, Judge, I think the whole
24 argument on the motions to suppress so far -- I know you
25 heard another one -- is based on a couple of overriding

1 fallacies that we have here, including this idea that this
2 is a monolithic group with so many hundreds of people
3 protesting.

4 First, I believe yesterday, we're talking about
5 a group of 500 people. Mr. Linehan went through a lot of
6 different videos -- and I'll let him talk about that when
7 he gets up here. But in the first one I think it's
8 particularly important. The protest stretches out two
9 blocks, basically, and that Detective Pemberton even
10 admitted that the people in the back of the protest could
11 not even see the BP destruction.

12 Second, there's no video evidence to back up
13 this idea that the group was cheering, chanting and
14 encouraging these breakers.

15 I think Detective Pemberton's testimony about
16 Witness 1 and Witness 2, I think one of them was halfway
17 through the protest, the other one picked it up later.

18 You've looked at all these videos. A lot of the
19 chanting is "whose streets, our streets," different
20 political slogans. I think there's evidence to support
21 this idea that they were chanting, sort of in unison, as
22 the Court found in a different case, *Carr*, which we're
23 going to talk about in a minute.

24 Now, the First Amendment has repeatedly said:
25 "We cannot allow guilty by association" in these protest

1 cases.

2 Probable cause, in this case, needs to be
3 individualized, and they just don't have that for
4 Mr. Glaser. So let me just talk about this for a moment
5 with Mr. Glaser.

6 We introduced Glaser 1 yesterday for Your Honor.
7 There's a little white dye on a picture with an arrow.
8 I'd submit to the Court there's no evidence that that's
9 Mr. Glaser, at all.

10 And I think the Government's grasping at straws
11 to say that that's him. It's a tiny little blur of gray
12 or white, and according to the detective, he's behind a
13 big sign. It could be a Nordstrom jacket. We don't know
14 what that is.

15 Now, also, he said that they didn't have any
16 evidence that Mr. Glaser did anything before he was
17 arrested or post arrest, after he looked at the videos.
18 The only evidence he has is he says they charged the line,
19 nothing else.

20 The video evidence before 12th and L
21 unequivocally show him walking. I sent the two videos to
22 your chambers yesterday. There's two seconds in one video
23 where they're saying he's walking, and five seconds in
24 another video.

25 No damage is being done in these videos. And

1 Detective Pemberton stated the damage of Bobby Van's was
2 done before Mr. Glaser even got there, and he was on the
3 other side of the street.

4 So what you have is seven seconds showing him
5 marching, and that's it, and protesting. He's not
6 carrying a sign. He doesn't have a weapon. There's
7 nothing indicating he's doing anything other than
8 exercising his First Amendment rights.

9 So -- and once you get to 12th and L and 13th
10 and L, they're blocking the street. They form a police
11 line, which is against the First Amendment policies, and I
12 just don't believe there's probable cause to arrest him at
13 this point.

14 I think this case is much more like *Barham* than
15 *Carr*. And we have a lot fewer people arrested in *Carr*, 65
16 to 75. Here, 235 people arrested. And I don't think that
17 the Court can find probable cause as to Mr. Glaser.

18 And I'll answer any questions you might have.

19 THE COURT: Well, what's your position
20 concerning the legal import of "charging", Mr. Glaser
21 charging the line?

22 MR. FELLNER: I'm sorry.

23 THE COURT: Wouldn't that provide a basis for an
24 arrest?

25 MR. FELLNER: Well, here's the thing: The

1 so-called charging of the line, if you look at the videos,
2 actually, it's people trying to leave the area. They are
3 blocked in without any dispersal orders. They're not
4 told, hey, you're now free to leave or anything like that,
5 so they're trying to leave the area.

6 The basis for the arrest that's been supported
7 by the police is, all these people are engaged in riotous
8 behavior, not this charging of the line.

9 THE COURT: If the Court found that to be
10 essentially, in and of itself, riotous conduct or APO,
11 that would be an independent basis for the finding of
12 probable cause against your client; would it not?

13 MR. FELLNER: The APO charge?

14 THE COURT: Or the -- arguably, the charging of
15 the line is riotous behavior.

16 MR. FELLNER: Well, I think if the Court found
17 that that was riotous behavior in and of itself, perhaps.
18 But I think that the vast evidence in this case shows that
19 that is not the behavior they're talking about. And that
20 that's not riotous behavior, it's just people trying to
21 leave an area where they're penned in. They're penned in
22 by the police without any orders to leave.

23 There's no dispersal order. There's nothing
24 that they did under the First Amendment that they're
25 supposed to do. They didn't say, "hey, you're now free to

1 leave," didn't say, "hey, disperse." Didn't do any of
2 those things.

3 So I think even if the Court found he was
4 charging the line, I don't think that's enough to find
5 probable cause.

6 Additionally, even after the charge of the line,
7 they didn't arrest people for quite some time.

8 THE COURT: They didn't process people.

9 MR. FELLNER: Well, they didn't process people,
10 but I don't think that the order for an arrest came for,
11 like, another 20 minutes, at least.

12 THE COURT: But they weren't free to go at that
13 time, as I understood the facts.

14 MR. FELLNER: I agree that they weren't free to
15 go.

16 THE COURT: Okay.

17 MR. FELLNER: Is there anything else?

18 THE COURT: Oh, no.

19 I will say, I viewed all your videos. You know,
20 some of the videos were 30 and 40 people, it was hard for
21 me to -- I watched the designated times. It was hard to
22 figure out what I was supposed to --

23 MR. FELLNER: Well, I think you were trying to
24 look for the -- they're saying there's one piece of white
25 or -- I mean, that's the whole point is, their case is

1 ridiculous, to be honest. I mean, they have --

2 THE COURT: Okay. So that's not a legal term.

3 MR. FELLNER: I understand that's not a legal --
4 but, I mean, the whole point is, it's hard to ascertain
5 Mr. Glaser in any of their videos.

6 THE COURT: Okay. Thank you.

7 MR. LINEHAN: Good morning, Your Honor.
8 Pat Linehan for Mr. Vasquez.

9 Before I begin, I -- one bookkeeping issue. I
10 just wanted to make sure the videos I used yesterday were
11 entered into evidence for purposes of the hearing and
12 preserve the record. Those were Exhibits 100, 111, 152-1,
13 154C. All those are Government Exhibit numbers.

14 I also used a video that was not on the
15 Government's exhibit list but was on its notice of
16 designation of evidence, which was Number 15X, and I'd
17 like that to be in the record as well.

18 THE COURT: All those items will be admitted
19 into evidence.

20 (Government Exhibit Numbers
21 100, 111, 152-1, 154C and 15X
22 admitted into evidence.)

23 MR. LINEHAN: Thank you, Your Honor.

24 Now, to respond to your -- to respond to your
25 preliminary question, and I know you want to start with

1 this. The fruits that Mr. Vasquez seeks to suppress are
2 the post arrest images and videos. We have Government
3 Exhibit Numbers: 154G, 155C, 156-2, 156-3, 700 and 728
4 through 730.

5 I would note that our actual motion identified a
6 smaller subset of those, but now that we know that when
7 the arrest took place, we would seek to exclude all of the
8 post-kettle videos that purport -- or that the Government
9 purports identifies our clients -- my client.

10 THE COURT: Thank you.

11 MR. LINEHAN: So I'd like to take a two-part
12 approach here. And I'm hoping I can last six minutes, but
13 I think some of the things that Mr. Fellner was going to
14 cover has now fallen on me, so I might be longer than what
15 I promised.

16 I'd like to -- and to reiterate Mr. Fellner's
17 point, I think there are a number of false factual
18 predicates on which the previous findings of probable
19 cause were made, and I'd like to talk about those issues
20 and then briefly about Mr. Vasquez specifically.

21 Obviously starting with the governing law in the
22 District of Columbia, I don't think there's any dispute
23 either with the Court or the Government -- I don't think
24 the Government would disagree with the proposition that
25 probable cause needs to be established and particularized

1 as to each individual defendant.

2 I think the Court's ruling in prior cases is
3 essentially that every single person in the group that was
4 kettled, there was a finding of probable cause.

5 And so that's the issue. The issue is not
6 one -- I don't think it's a legal issue that we have a
7 dispute about in terms of the fact that it needs to be
8 particularized. I think the Court's prior rulings was
9 that there were particularized findings as to each
10 individual -- each individual in that group.

11 However, as I said, I think the holding is
12 premised on a number of factual premises that I don't
13 think the record, as developed by others in prior
14 hearings, bears out.

15 First is the finding that the group was one that
16 was acting in concert. This was something that
17 Mr. Fellner touched on and sort of left to me to speak on
18 on some detail.

19 Judge Leibovitz repeatedly described the marches
20 as acting in concert and working together throughout the
21 course of the march. And I know Your Honor made similar
22 findings referring to the group taking concerted action
23 and moving in a concerted effort. I don't think the video
24 bears that out, and I don't think it does so in three
25 different respects.

1 First of all, I think the video -- I think the
2 evidence shows that this was a widely-dispersed group.
3 And when you look at the aerial and security camera
4 footage that I asked Dr. -- Detective Pemberton about
5 yesterday, you could see that, at various points in the
6 march, the tail end of the march was up to close to three
7 blocks away from the front end.

8 THE COURT: You mean at the beginning?

9 MR. LINEHAN: At the beginning.

10 THE COURT: Okay.

11 MR. LINEHAN: And even later, although not three
12 blocks away, one and a half blocks away, and certainly
13 outside of the -- without any visibility to what was going
14 on in the front end, at least with respect to the damage
15 that was done to the Bobby Van's restaurant on 12th
16 Street.

17 There's no -- in those two -- in at least those
18 two examples, there's no evidence that the people in the
19 back even knew what was going on in the front. It's hard
20 to believe that they were in a position even to see the
21 actions of those in the front of the march, let alone
22 cheer on or somehow actively endorse or incite those acts.

23 I mean -- and I guess the best analogy I could
24 come up with, Your Honor, is in the Tour de France. We
25 have -- I'm not a huge cycling follower, but I do know

1 that there is a concept called the peloton, which is the
2 group -- the front group of cyclists, and then you have
3 all the others in the back. They may be in the same
4 race --

5 THE COURT: Can you come up with another sport?
6 I'm not particularly familiar with bicycling, but I
7 mean ...

8 MR. LINEHAN: Sure. Sure.

9 THE COURT: Just different groups.

10 MR. LINEHAN: Give me ten seconds to explain you
11 the concept. I don't know if I have a better analogy than
12 that.

13 But in the Tour de France, you have a lead group
14 that is huddled together, and then the rest of the group
15 is, in various points in time, behind that group.

16 And I think that's -- I think that's a good
17 analogy to what was happening in this march, which was you
18 had a group in the front, a small subset in the front, and
19 a lot of people straggling in the back, and I would submit
20 that that is not a group that acts in concert. That's not
21 a single, cohesive, unitary group.

22 THE COURT: Can I ask you a question? You may
23 or may not have an answer to this.

24 MR. LINEHAN: Sure.

25 THE COURT: I understand your position that the

1 police essentially shouldn't have kettled the 1200 block
2 of L Street, but under your theory, if this group
3 continued for how many blocks and the destruction
4 continued, would you say the police had an obligation to
5 stop the group?

6 In other words, this was 16 blocks. They
7 followed them for a number of blocks. There appeared to
8 be destruction at virtually every block except Franklin
9 Park. Obviously there's nothing, necessarily, to destroy.
10 They're following the group; they're observing the
11 destruction.

12 Were they to let the group just continue and
13 follow them as windows were destroyed?

14 MR. LINEHAN: Sure. Well, I have a couple of
15 responses to that.

16 One is that I think there are narrower ways to
17 have dealt with --

18 THE COURT: That's what I'm asking.

19 MR. LINEHAN: Yeah. They could have made
20 arrests on the spot. I mean, the fact the march --

21 THE COURT: But the people who are doing the
22 destruction appeared to be running back into the group
23 with a deliberate attempt to hide their identity among the
24 group. That's the whole ...

25 MR. LINEHAN: So I would submit that if you had

1 police officers following the group -- following the
2 group, not necessarily compressing them, but sort of
3 tracking the group and, you know -- and we see this in
4 videos. We see videos where there are police officers at
5 the scene of violence and nothing's done -- at the scene
6 of this property destruction, and nothing's done to try to
7 apprehend those particular individuals. I think that
8 could have happened at various points in time during the
9 march.

10 I guess the other response I would -- the other
11 response I would give is that there may -- I think there
12 could have been ways to more narrowly define the group,
13 and quite possibly done -- I think law enforcement could
14 have done a better job to identify the specific area
15 within this march that perhaps -- that perhaps was
16 doing -- was doing the property destruction.

17 Now, there are policies in place -- and I think
18 Mr. Coffield is going to talk about that -- and those
19 policies are in place for a reason.

20 And then -- and then I guess the third response
21 that I would give is that you could simply make -- give a
22 dispersal order. And to the extent that people after that
23 order is given are still -- are still marching in a unit
24 as a group, then there could be some --

25 THE COURT: Dispersal orders are for, as I

1 understand it, a protest march, not a requirement if a
2 riot is declared.

3 Am I incorrect in that?

4 MR. LINEHAN: Well --

5 MR. COFFIELD: Yes.

6 MR. LINEHAN: I don't know the answer.

7 THE COURT: That's fine.

8 MR. LINEHAN: I would have to defer to my
9 colleague.

10 THE COURT: Somebody else with deal with that.
11 Okay.

12 MR. LINEHAN: But the idea -- I mean, that sort
13 of -- kind of puts the cart before the horse, so to speak.

14 I think that, you know, if there were events to
15 give rise to it that would warrant a dispersal order, you
16 know, that could possibly -- you know, I don't think just
17 because you call something a riot doesn't mean that you
18 don't have an obligation to follow the policies that
19 require a dispersal order, it's particularly for a march
20 that has -- that's a protest march.

21 THE COURT: Okay.

22 MR. LINEHAN: The second point is -- and this
23 sort of goes to the issue that you just raised, Your
24 Honor, which is that to the extent that the marchers
25 became a single group appearing to act in concert, that

1 was the result of a corralling by the police officers.

2 We saw the group that was widely dispersed going
3 down 13th Street and continued to be widely dispersed
4 after it exited Franklin Square for the first time.

5 We also say, in Government Exhibit 100, that the
6 order was given by Commander Deville at approximately
7 10:34 to begin efforts to corral the group. That's 16
8 minutes prior to the kettling at 12th and L.

9 So if the group had the appearance of acting in
10 concert with a few individuals that were committing acts
11 of property destruction because of their physical
12 proximity to the individuals, that was largely due to the
13 police's own doing.

14 And to use the analogy, which is not being very
15 effective to Your Honor since you're not a cyclist buff,
16 they essentially pushed the bikers in the back to the
17 peloton, okay, and created their own -- created their own
18 unitary group.

19 And I think it would be a constitutionally
20 problematic result. If the police were permitted to
21 establish probable cause, as to individuals that were
22 simply exercising their First Amendment rights in a march
23 that they may not agree with, simply by pushing them
24 closely to others in the march that may be committing acts
25 of property destruction. And I submit that's what

1 happened here. And I can't be consistent with the
2 principles of the Fourth Amendment probable cause
3 requirement.

4 The third point I'd like to make is Your Honor's
5 finding -- it relates to Your Honor's finding that there
6 were still individuals innocently present by the time the
7 police kettled the marches on L Street between 12th and
8 13th.

9 The videos we saw yesterday -- and I apologize
10 if they were repetitive to videos that you had already
11 seen.

12 THE COURT: Don't apologize. I actually try to
13 deal with each case separately with the evidence
14 presented.

15 MR. LINEHAN: I appreciate that, Your Honor.

16 But I think that the excerpts I showed from
17 those videos to Detective Pemberton show people that were
18 trying to leave the march blocks before the formation of
19 the kettle; where the police, at the time, had no apparent
20 reason to think that those specific individuals had broken
21 or destroyed anything and they were not allowed to leave.

22 I think that -- I submit that the video evidence
23 makes clear that the marchers began down 13th Street and
24 continued as far as I Street as a relatively widely
25 dispersed group. The police got involved in the group

1 once the group hit Franklin Square Park and eventually
2 began to try to prevent people from leaving well before
3 the formation of the kettle.

4 Before I leave this point, just a statement made
5 by Detective Pemberton during his testimony yesterday. He
6 said -- and this is a quote from the transcript I received
7 this morning. And I asked him about some video footage
8 from 13th Street and New York. And I asked: Question:
9 "The people that we saw in video that were ahead of the
10 people in the riot gear, including the man whose camera
11 we're watching, do you think they were free to leave at
12 this point in the march?" And he said: "Absolutely."

13 Now, I'd like to play some footage minutes
14 before the march hit -- reached 13th Street and New York.
15 And this is Government Exhibit 154X.

16 (Video played.)

17 MR. LINEHAN: Now, this is at 13th and New York
18 before the excerpt that I showed Detective Pemberton.

19 Can you turn it up a little?

20 You've got a building to the right. You've got
21 police officers to the left. You've got a line in the
22 front.

23 Okay. Liz, that's good. Thanks.

24 So I would submit that it contorts any sense of
25 reality to say that, at this point in the march, which,

1 again, was approximately 12 minutes before the kettling
2 and a few blocks before the video that I showed Detective
3 Pemberton, that these people felt free to leave.

4 They may have been physically able to escape
5 from the police in that video, but any attempt or success
6 in doing so would have been in spite of the clear intent
7 of law enforcement at that time, which was to corral the
8 group.

9 I want to show --

10 THE COURT: Wasn't it at 11th and New York that
11 you played right there?

12 MR. LINEHAN: That was at 13th and New York.
13 I'm sorry. Yes, it was at 11th and --

14 THE COURT: So that's when the group was
15 redirected, right?

16 MR. LINEHAN: That's correct. That's correct.

17 THE COURT: They're not kettled at that point,
18 they're just redirected?

19 MR. LINEHAN: They're not kettled, but they're
20 going forcibly redirected --

21 THE COURT: Correct.

22 MR. LINEHAN: -- in an environment where they
23 clearly don't feel free to leave.

24 I do want to show another quick clip because
25 Detective Pemberton made reference to the police not

1 attempting to apprehend marchers who were trying to leave
2 the march prior to the kettling on L Street.

3 If we could go to Government Exhibit 111. And
4 this is at the 19:25 stop point. If you can --

5 (Video played.)

6 MR. LINEHAN: So this is the group now
7 approaching New York and 11th.

8 So there are people running south on 11th, and
9 there are the police officers running after them.

10 Okay. That's good, Liz. Thanks.

11 BY MR. LINEHAN:

12 Q So I think that -- this is clear evidence that,
13 at this point in time, people were not free to leave.
14 That they -- and that contrary to Detective Pemberton
15 testimony's, there were efforts to actually go after the
16 people who were trying to leave.

17 But I think these facts weigh heavily in
18 favor -- heavily against a finding of probable cause as to
19 each individual in the kettle who was arrested, and
20 obviously that includes Mr. Vasquez.

21 And as Detective Pemberton confirmed, that
22 Mr. Vasquez was arrested solely because he was found in
23 the kettle.

24 THE COURT: And just -- are you proffering any
25 evidence that Mr. Vasquez tried to leave and was prevented

1 from doing so other than in the kettle itself?

2 MR. LINEHAN: I am not. In fact, I'm not
3 proffering any evidence that Mr. Vasquez tried to leave
4 the kettle either.

5 THE COURT: No. Prior to the kettle.

6 MR. LINEHAN: Right. Correct.

7 THE COURT: Okay.

8 MR. LINEHAN: I just want to address some
9 things -- issues specific to Mr. Vasquez.

10 The post-arrest videos are essentially the
11 Government's entire case against -- and specifically, his
12 arrest where the insignia on his shirt is shown is the
13 Government's entire case against Mr. Vasquez.

14 The gloves of the guy in the SUV video that
15 we've talked about during my motion to authenticate, the
16 wrench, the goggles, none of that was ever recovered from
17 the scene of the kettle or from anywhere else.

18 The core of the Government case is that the
19 white blur in the SUV assailant's shirt looks like the
20 shirt that Mr. Vasquez is wearing in the body cam video
21 when -- taken when evidence is seized and is put in the
22 van.

23 Now, who knows where those items are now, but I
24 would remind the Court that what began as a 500-person
25 march in Logan Square, now we're down to 300 at the time

1 of the kettle. And then 70 of those people broke through
2 the police line and got away, leaving over 250 people from
3 the march unaccounted for, likely including the guy in the
4 SUV video.

5 So the fruit of the poisonous tree here is not
6 one piece of a larger mosaic, Your Honor. This is the
7 entire mural for Mr. Vasquez.

8 And I -- and that's all I have, Your Honor.
9 Thank you.

10 THE COURT: Thank you. Could I just pause you?
11 You can remain there for one second.

12 (Court and clerk confer.)

13 THE COURT: You can remain there. I just have a
14 number of matters that I'm going to call not related to
15 the rioting cases so I can get the lawyers out.

16 MR. COFFIELD: The protest.

17 THE COURT: I might need your desk.

18 (A brief recess was taken.)

19 THE DEPUTY CLERK: Recalling Arturo Vasquez,
20 2017 CF2 1369; United States versus Phillip Glaser 2017
21 CF2 1368; United States versus Christian Valencia, 2017
22 CF2 1203; United States versus Molly Carter, 2017 CF2
23 1380.

24 THE COURT: Okay. All counsel and defendants
25 are present.

1 MR. COFFIELD: May I proceed, Your Honor?

2 THE COURT: Yes.

3 MR. COFFIELD: Your Honor, as to the fruits --

4 THE COURT: If you could just announce your
5 name.

6 MR. COFFIELD: I'm sorry, Your Honor. It's
7 Bill Coffield on behalf of Ms. Carter.

8 THE COURT: Uh-huh.

9 MR. COFFIELD: Your Honor, as to the fruits, we
10 would -- we would, likewise, ask that the processing
11 photos taken after detention be excluded. And likewise,
12 Ms. Carter's cell phone was taken and cell phone data was
13 taken.

14 THE COURT: And is the Government seeking to
15 introduce any information from the cell phones?

16 MS. KEIL: There might be, yes, Your Honor.

17 THE COURT: Okay. Thank you.

18 MR. COFFIELD: Your Honor, I'm not going to
19 repeat what has been said. Your Honor had asked a very
20 specific question and -- about -- well, let me go about
21 this in two different directions, Your Honor.

22 One was, you seemed to indicate that the
23 procedures for a riot may be different than something
24 else.

25 In fact, the police complaints board in the

1 District analyzed the situation and judged it based on the
2 standard operating procedures that have already been
3 discussed and introduced here, which are codified under
4 Section 5331.

5 THE COURT: Uh-huh.

6 MR. COFFIELD: Under those standard operating
7 procedures -- and again, they anticipate that there could
8 be a march that turns violent. That there is a march that
9 could, in fact, involve property damage and other sorts of
10 damage. And it has very specific things that are to be
11 done, and, in fact, requires that some of them be
12 documented as they're occurring.

13 There's supposed to be a dispersal order given.
14 There was no dispersal order given. They're supposed to
15 deploy personnel to isolate and contain the people within
16 the crowd who are causing any kind of property damage.
17 And then they specifically say the police lines are not to
18 be used to encircle demonstrators unless it's necessary
19 for their protection, or that there's been a decision to
20 arrest everybody already.

21 We know that they weren't doing anything to
22 protect the protestors, and we certainly know that there
23 have been no arrest decision made.

24 Your Honor, just to be clear --

25 THE COURT: Could I ask you this -- I appreciate

1 your arguments about standard operating procedures.

2 How does that inform a decision about probable
3 cause under the Fourth Amendment?

4 MR. COFFIELD: I think I'll get there, Your
5 Honor.

6 THE COURT: Okay.

7 MR. COFFIELD: And it's a good question, Your
8 Honor.

9 And let me say, Your Honor, when I looked at the
10 decision -- which was a difficult decision that Judge
11 Leibovitz had to make when she found probable cause in the
12 very first case that was here -- if we were to accept the
13 factual predicate that underlined that decision, then I
14 wouldn't disagree with the decision that Judge Leibovitz
15 made. But I think that you have to take issue with that
16 factual predicate because of what we see in the videos and
17 what the evidence is.

18 And the point being is, is that rather than
19 following these procedures, what occurred was -- and if --
20 and, Your Honor, I'm not going to play the video, but if
21 you want to go back and look at Exhibit 100, which is that
22 video that's the compilation that the Government has shown
23 a number of times where they have the aerial, they have
24 the map diagram, and then they have some individual video
25 going down, pretty much from start to finish on that

1 Exhibit 100. If you look at that, five minutes and one
2 second in, Commander Deville gives the order to "flank
3 them." They haven't gotten to N Street, and has already
4 given an order to flank them.

5 At 9:30 on that tape, at 9:30, nine minutes and
6 30 seconds in, he gives an order to "block them in." At
7 12:09 on that tape, "stop the march." The limo hasn't
8 happened yet, and he's given an order to "stop the march."

9 12:45, 12 minutes and 45 seconds in, "get all
10 four sides of the park." 14:15 in, "put a stop to it."
11 Okay.

12 This is contrary to procedure. It's --

13 THE COURT: Right. But I appreciate those were
14 the directives. They weren't exactly followed, correct?
15 They didn't --

16 MR. COFFIELD: I understand. But then what
17 happened is: You've got this concerted effort to corral
18 these people, and the underlying predicate for the finding
19 that Judge Leibovitz made was, was that this crowd was
20 going through this for the entire time, and when they
21 found themselves at 12th and 13th, that that's -- that, at
22 that point, because of the fact that everybody was all
23 together, there was probable cause that they had stayed
24 with this march to that point. With everything that had
25 gone on, that at that point, there was probable cause for

1 the police to believe, well, look, if they're all still
2 here, if they're here, if they're here between 12th and
3 13th on L, then there's probable cause they were, you
4 know, a part of this group, and probable cause that they
5 were rioting. And the -- as was shown by my colleague up
6 here, Your Honor, that's just not the case. That's just
7 not what happened.

8 There was a concerted effort early on to corral
9 these people. There was an effort concerted on. And my
10 client did try to leave, and there was no place to go.
11 Every time she --

12 THE COURT: I'm sorry. But have you played that
13 evidence? I mean, I'm not disputing your proffer, but I
14 don't remember seeing it.

15 MR. COFFIELD: You can't see any --

16 THE COURT: Oh, okay.

17 MR. COFFIELD: In fact, there's no video
18 evidence of my client past 14th Street, except after she's
19 in the kettle.

20 So, Your Honor, I just -- you know, again, the
21 factual --

22 THE COURT: Okay. When you said your "client
23 tried to leave," what does that --

24 MR. COFFIELD: She was walking along, and she's
25 trying to get out, and the police are -- keep pointing her

1 in a direction, and then she finds herself between 12th
2 and 13th.

3 THE COURT: No, I understand your argument. I
4 understand your argument. I'm not sure I have evidence of
5 that.

6 MR. COFFIELD: And I can't -- I can only give
7 you my proffer, Your Honor, because there is no -- there
8 is no video evidence of that. There's no video evidence
9 of my client past 14th Street at the very -- at -- you
10 know, at the 12-minute mark of exhibit -- of Exhibit 14.

11 THE COURT: Uh-huh. Okay.

12 MR. COFFIELD: Excuse me, of Exhibit 100.

13 And so, Your Honor, my -- the point here is, is
14 that what we're essentially doing is we're allowing the
15 police to disregard the D.C. code and the SOPs that have
16 been garnered as a result of that; not give these people
17 an opportunity to leave, as the factual predicate was used
18 for Judge Leibovitz, in her findings; and then get the
19 fruits of not following that procedure; directly abusing
20 that procedure, directly not following that procedure by
21 kettling them; and then getting to use the fruits of that.

22 And I submit, Your Honor, that that should not
23 be allowed, and that is a reason not to find probable
24 cause.

25 THE COURT: Thank you.

1 MS. LEGRAND: Thank you, Your Honor.

2 Rebecca Legrand on behalf of Christian Valencia.

3 And I have very little to add to what my able
4 co-counsel have already said.

5 THE COURT: Can I just ask you to identify the
6 fruits you're seeking to suppress?

7 MS. LEGRAND: So we are similarly seeking to
8 suppress the videos and images taken of Mr. Valencia
9 trapped in the kettle and being processed as they remove
10 him from the kettle, as well as his cell phone was seized.
11 We haven't seen any disclosures to -- that the Government
12 will use evidence from that, but we would be seeking to
13 suppress any use of his cell phone or information taken
14 from this cell phone.

15 THE COURT: Does the Government have a proffer
16 about Mr. Valencia's cell phone?

17 MS. KEIL: My understanding is that I don't
18 think we were planning to use anything. That's my
19 understanding at this time.

20 THE COURT: Okay.

21 MS. LEGRAND: So I would reiterate what you've
22 just heard from my co-counsel, which is that when you
23 actual look at the videos and look at the order of events
24 here, instead of seeing a group repeatedly reforming and
25 re-emerging in an effort to disobey police, you see the

1 police themselves herding people together from quite early
2 on, as Mr. Coffield just explained. And you see people,
3 at times, try to leave; and at times you see those people
4 sprayed with some sort of crowd-control liquid or tackled
5 or hit with batons.

6 So the folks who remained together to the very
7 end, in truth, are the folks who were least willing to
8 risk getting sprayed in the face or tackled and most
9 willing to follow the orders they were hearing from the
10 police, which were saying, "move, move, go."

11 So the people who complied are the people you
12 see at the end who got arrested in bulk. Even though
13 there's no dispute that that included folks who were
14 journalists, folks who were wearing green hats saying "I'm
15 a lawyer." All of them were arrested, and all of them
16 were trapped in that kettle before anybody tried to charge
17 the line. And most of the people in that kettle did not
18 charge the line.

19 So for that reason, Mr. Valencia, like the other
20 defendants here, there was no probable cause for his
21 arrest at the time he was kettled and arrested half an
22 hour, 45 minutes after starting a march in Logan Circle.

23 THE COURT: Okay. And are you -- was there any
24 evidence presented about your client individually trying
25 to leave and being prevented?

1 MS. LEGRAND: Not about him individually.

2 THE COURT: Okay. Thank you.

3 Okay.

4 MS. KEIL: Yes, Your Honor. And I can -- I
5 don't know how you want me to argue this. But I would
6 note, going back to Defendant Glaser, the Court touched on
7 this, which is -- I mean, I'm going to argue probable
8 cause for the stop, the particularized suspicion for the
9 group as well. But with Defendant Glaser, the Court does
10 have an independent basis, which is the intervening act by
11 Defendant Glaser of charging a police line and the APO
12 charge.

13 So, even if the Court were to look at the
14 probable cause and say there was no probable cause for the
15 reason to arrest him for the rioting actions, the Court
16 does have that independent basis.

17 The argument that I actually -- that Defendant
18 Vasquez made about the Tour de France, I do not know that
19 much about the peloton either.

20 The one thing I do know is all the participants
21 in the Tour de France are part of the Tour de France.
22 They are all there, intentionally part of that race. They
23 are all actors in that race. They all show up there
24 wearing similar uniforms, if they're a part of the same
25 team. They have numbers; they're intentionally following

1 a route; they're following each other.

2 THE COURT: Well, I hope you don't spend too
3 much time on this.

4 MS. KEIL: I'm not, Your Honor. But my point
5 is, is that's sort of the exact situation that we have
6 here.

7 Not everybody in that group is, in fact, a
8 breaker. There's been no evidence, and the Government's
9 not proffering that.

10 The point is, is that at some points while
11 different parts of the group may go ahead of the others
12 while some of them may be in front breaking, the group
13 does not -- they may break apart a little bit, there's
14 this argument that it stretches over blocks. Well, that's
15 also because there's 500 people. It is not like there's
16 one person three blocks ahead and two people back here and
17 they don't know what the other is doing.

18 This is a large group that stays together while,
19 at some points, are farther apart, they come back together
20 at different times. Specifically, I believe there was
21 three different times they break apart and come back
22 together.

23 They are intending to act as a unit; they're
24 intending to say cohesively together, and stay to the
25 similar route as they go.

1 The officers and the evidence that was
2 incorporated into this testimony stated that they are
3 acting as a unit. The witnesses see them acting as a
4 unit. People jumping out, coming back in.

5 And yes, people leave. The group starts at 500,
6 ends around 250, 300 people by the time we get to 12th and
7 L. But the testimony that the Court has heard and has
8 incorporated, is that the people that were in the kettle
9 were the people that were in the group.

10 Carr directly talks about this issue. Carr is
11 on point. There's -- you know *Barham* and the other cases
12 that were discussed don't involve riotous behavior. Carr
13 specifically talks --

14 THE COURT: Our court hasn't adopted *Carr*.

15 MS. KEIL: That's true, Your Honor, but it's
16 instructive.

17 And, in this case, it goes to show that these
18 are people who dressed alike, they intended to act like a
19 group, they worked together as a group. And Carr talks
20 about -- there was discussion about whether or not each
21 person was actually identified as being a part of the
22 group at the time of the arrest. Because, again, this is
23 what we're talking about, the time of the arrest.

24 There's very good arguments that counsel has
25 made about what they can make at trial, as far as what you

1 can see and not see, and I expect them to make those
2 arguments, but this is about the arrest.

3 And at this point when the officers are
4 following seeing people acting as a unit, seeing them
5 maybe spread out, come back together -- the people, for
6 example, at the very end of the group when they're exiting
7 Logan Circle, they hear the cheers up front, they maybe
8 don't see exactly what's happening, people throughout the
9 group are cheering as they go. They got past -- as
10 they're following the group, they see the damage that's
11 being done.

12 I mean, at that point, there is damage being
13 done. They don't --

14 THE COURT: But, for example, I'm not persuaded,
15 let's just say going down 13th Street from Logan Circle
16 after the BP gas station. The police tried to kettle them
17 then. I would not suggest that they had probable cause at
18 that point.

19 MS. KEIL: And the Government -- but the
20 Government's not arguing that. I mean, the Government's
21 arguing that the probable cause happens at 12th and
22 L Street. I'm just using that as an example that there
23 were multiple times, multiple damage throughout this
24 route, through the 16 blocks, that these people -- that
25 people could have left, could have said, you know what, I

1 do not want -- this is not what I signed up for.

2 And they did not. They continued on. And the
3 officers and the witnesses and Detective Pemberton's
4 testimony supports the fact that all the officers, at the
5 time of the arrest, who made the arrest, believed that
6 those were the individuals who were involved in the
7 riotous behavior.

8 Carr makes it very clear that it would be -- and
9 I understand that it's --

10 THE COURT: I'm very -- I'm not sanguine that
11 Carr is where the law is at this point. I mean, I
12 understand it's a circuit case, but that is --

13 MS. KEIL: I understand that, Your Honor.

14 THE COURT: That gets to sort of collective
15 responsibility, as opposed to individual responsibility
16 within a group.

17 MS. KEIL: Correct, Your Honor. But I would say
18 that in the way that Judge Leibovitz and Your Honor has
19 previously ruled, is that the individual -- it's
20 particularized to the actions of the group.

21 There's the group itself, if they can -- if they
22 can articulate probable cause --

23 THE COURT: I would say my intent was -- is that
24 it's particularized as to the individuals within the
25 group.

1 MS. KEIL: In the group. And that's what I
2 mean. It's individuals within the group. It's
3 particularized to those people in the group. And that --
4 I think the evidence in this case supports that, as far as
5 the probable cause aspect, Your Honor.

6 I don't know -- I know there was a lot of
7 discussion about the dispersal orders, the standard
8 operating procedures. Frankly, I understand that there
9 may be concerns about what the police did or didn't do on
10 that day, but, as the Court pointed out, that is sort of a
11 different issue. This is a constitutional issue about
12 whether or not they had a reasonable belief that these
13 people that they arrested engaged in a criminal action,
14 and in this case, in the rioting.

15 Whether or not -- I mean, I know that it's a
16 D.C. circuit case with *Carr*. But, I mean, there doesn't
17 seem to be any constitutional requirement for a dispersal
18 order for this kind of activity.

19 I don't believe the D.C. case law supports that
20 argument either. I believe *Barham*, and the other cases
21 talk about, as the Court said, failure to obey a lawful
22 order, people who are demonstrating in protest cases where
23 they're trying to disperse people.

24 The corralling -- I guess I'm not clear. There
25 was a lot of argument that when the officers are following

1 these people, that at some point, they are trying to --
2 like the 11th and New York blockade. Yes, those officers
3 were there to prevent them from going past 11th and
4 New York on that street, but that was not an effort at
5 that point to even corral. It was basically to prevent
6 them from going that way. The group turns around and
7 continues going in another direction.

8 And at some point, yes, they want this to stop.
9 That's not unreasonable for it to stop. They're trying to
10 follow them, they're trying to see what's going on,
11 they're trying to get a handle on the situation.

12 As the Court stated and Detective Pemberton
13 testified to, it was impossible for them to actually --
14 they didn't have enough officers to do anything until they
15 were actually able to get that kettle and corral at 12th
16 and L Streets.

17 There was this try to leave by various
18 defendants, and that's just not in the record at this
19 point. The Court has to rely on what the evidence
20 presented actually was. And the evidence is, from
21 Witness 1, Witness 2, and even the videos, is that the
22 people who were found at the kettle were the part of the
23 group that was engaged in the destruction, dressed the
24 same, wearing similar clothing, and acting with the group
25 as it moved through those -- from Logan Circle to 12th and

1 L.

2 And I think that -- I think that covers all of
3 the arguments, unless the Court has additional questions.

4 THE COURT: Is the Government agreeing that the
5 fruits identified by the defendants are fruits?

6 MS. KEIL: I wouldn't say all of them are,
7 actually, Your Honor, because I think some of the --
8 Valencia just talks about any images. Obviously any
9 images in the kettle may be pre-arrest, in which case that
10 would not be something that could be suppressed.

11 The post-arrest images and videos, I guess that
12 would depend if they're saying merely the body-worn camera
13 videos based on the arrest itself, because if there's
14 other images or videos, that would certainly not be
15 something that could be suppressed as part of Government
16 action.

17 The cell phones, obviously, I think would be a
18 proper fruit.

19 THE COURT: Okay. Thank you.

20 I appreciate the arguments. And I'm making the
21 best decision I can. I'm not saying -- the Court of
22 Appeals may or may [sic] disagree with my decision.

23 But I will find that a group of individuals,
24 many of whom were dressed alike in dark clothing, left
25 from Logan Circle down 13th Street toward Franklin Square

1 en route. Individuals from that group broke out and
2 engaged in acts of destruction of property, including
3 breaking windows of a gas station, damaging a limousine,
4 destroying other property. The group then just went down
5 to Franklin -- through Franklin Square onto I Street.

6 To me, I would have difficulty finding probable
7 cause for this group prior to their entrance on I Street.
8 But reviewing the videos, of which there are many, and
9 each party can introduce their snippets, along I Street,
10 the sound and the damage that's occurring, the group is a
11 little smaller in length at that point, and moving past
12 individuals who are smashing windows, destroying property,
13 all dressed alike and running back into a group of people
14 who are dressed alike, I think persons who are in the
15 group at that point had reasonable cause to believe that
16 the presence was being used, and that presence was being
17 assisted -- was assisting other individuals engaging in
18 destruction of property.

19 They then went to -- and sort of a circuitous
20 route, went to 11th and New York, where I would say that
21 my view of the police action, at that point, was they
22 were -- the group was redirected back down New York
23 Avenue. They were not under arrest at that point. People
24 were free to move. They came back up 13th Street.

25 And I should say that once members of the group

1 came upon this line of police officers and were redirected
2 back down New York Avenue, the destruction of property
3 continued by members of the group. And then up 13th
4 Street, they were redirected up 13th Street into Franklin
5 Square.

6 The testimony by Detective Pemberton was that
7 individuals, at that point, at the 13th, at the southeast
8 corner of Franklin Square, were not prevented from
9 leaving. They could have easily walked up 13th Street
10 where there were no police presence, or otherwise walked
11 away from the group. But the group reassembled in
12 Franklin Square, continued up 14th Street, where there
13 were multiple acts of visible destruction by members of
14 the group, and were essentially redirected down L Street
15 by the police.

16 Again, the acts of violence continued within the
17 group. And at this point, my general viewing of the group
18 at that point is the overwhelming vast majority of the
19 individuals at that point were wearing all black or dark
20 clothing and were acting as a group assisting one another.

21 So, in general, by the time they get to the 1200
22 block of L Street where they're stopped by the police,
23 both front and back, this group has participated in, I
24 don't know, 20 acts of violence, maybe, as an estimate.

25 The idea that an innocent person would have been

1 walking in this group, unaware of the group's activity, is
2 difficult to conclude that a person could go through this
3 gauntlet of violence and destruction and not be aware of
4 the group's activity. And so there was a decision made by
5 people to stay with the group and assist the group by
6 their presence.

7 So by the time they get to 12th and I in the
8 kettle, again, they have walked through almost a war zone
9 of destruction committed by the group. Multiple attempts
10 by the officers to disperse, including, you know, loud
11 noises, sirens, there were crashes.

12 And to me, I'm not adopting *Carr*. I think from
13 my point of view, *Carr* is -- this is not *Carr*. This is
14 specific observations by officers about a group of
15 individuals acting in concert. And obviously, people were
16 stopped at 12th and -- the 1200 block of I Street.

17 It's -- whether the officers had probable cause
18 to believe individuals who were remaining with the group
19 at that time, who were dressed alike, had probable cause
20 to believe that they were acting as a group that caused
21 all this destruction. And so it is a particularized
22 determination by officers, of the individuals who were
23 still in the group at that time, who had continued such a
24 long way for such a long period of time regrouping, it's
25 described three times and still acting in concert,

1 engaging in acts of violence all the way up to the 1200
2 block of I Street, the police did have probable cause to
3 arrest the individuals at that time.

4 I will also note that the evidence is quite
5 persuasive before me, that had the police not stopped
6 these individuals at that time, the group would have
7 proceeded on destroying property and engaging in acts of
8 violence against the police.

9 So, you know, the Fourth Amendment doesn't
10 require perfection in terms of police conduct, but it does
11 require that the police have probable cause to arrest the
12 individuals.

13 And at this point, particularly after they were
14 kettled and then a number of the individuals formed a sort
15 of pincer group and charged the police, smashing into
16 police officers with open umbrellas and the like, they had
17 probable cause to arrest the people.

18 I would move alternatively with regard to
19 Mr. Glaser. There was independent reasons for probable
20 cause because the police had evidence that he participated
21 in the charge of a police line at that point. And this
22 was not an attempt to walk away or free themselves from
23 the group, it was an attempt to forcibly attack police
24 officers.

25 So again, you know, the Court of Appeals may or

1 may not agree. That's why they're there, and to review
2 the record and review and determine whether or not I'm
3 correct in determining that there was probable cause.

4 Okay. So I think the remaining -- I had
5 Mr. Glaser's motion to sever; is that correct?

6 MR. FELLNER: Yes, Your Honor.

7 THE COURT: Okay. Do you have any additional
8 argument on that?

9 MR. FELLNER: Just -- yes.

10 Judge, well, the additional argument, I think,
11 Your Honor, is that the 313 form that we talked about
12 yesterday, we still need to try to locate the body-worn
13 camera of the officers who transported him to the
14 hospital.

15 I have endeavored to give the Government a
16 blown-up picture of the signature of the sergeant on the
17 313. I believe the Government's still working on trying
18 to figure out who that is. And I think -- again, I
19 understand the Court consolidated the charges; however, it
20 would be a very short trial if we severed the main charges
21 in this case from that. It would be a bench trial. And I
22 think it wouldn't take nearly as long as the procedures
23 we're dealing with now.

24 And I think it's also unduly prejudicial, as the
25 Court just found in the probable cause determination,

1 there's additional issues that we have to deal with in
2 this trial because of these allegations that he charged
3 the line. And they are -- just in the last two weeks, the
4 Government filed that information, and I would ask that
5 the Court --

6 THE COURT: As I understood it, persons had
7 notice about it, that they were going --

8 MR. FELLNER: I agree that we had notice, but in
9 preparation for trial, we were preparing to go on the
10 superseding indictment, which didn't include those
11 charges.

12 THE COURT: No. Wait a minute now.

13 So I had -- as I understood it, the defendants
14 had -- counsel had notice that these charges were going to
15 be filed. I had given people the opportunity to waive
16 their client's presence. We could have held an
17 arraignment a lot earlier.

18 MR. FELLNER: No. No. We were moved -- in
19 terms of notification, the Government -- I'm agreeing.
20 Last summer --

21 THE COURT: Oh, okay.

22 MR. FELLNER: -- the Government said, yeah,
23 we're going to file information on these charges.

24 No charges were filed on the information until
25 the middle of May. That's all I'm saying. And we came in

1 a couple weeks ago. You had said, okay, we'll deal with
2 the arraignment on Tuesday.

3 THE COURT: Right.

4 MR. FELLNER: So I think it is late notice. I
5 understand that, you know, these can be consolidated. I'm
6 not arguing that.

7 THE COURT: Okay.

8 MR. FELLNER: But I think in terms of the 313
9 and our ability to investigate the body-worn camera of the
10 officers who took him to the hospital, we now have to look
11 at self-defense.

12 THE COURT: But can I just ask you this: I
13 mean, wouldn't the evidence be admissible in this current
14 trial even if it were severed? And what are you going to
15 do with that?

16 MR. FELLNER: Would the evidence of the
17 body-worn camera --

18 THE COURT: No. The evidence of the alleged
19 assault on a police officer. Wouldn't that be evidence of
20 participation in the underlying event?

21 MR. FELLNER: I think it's arguable that it
22 would be admissible in this particular trial.

23 THE COURT: Okay.

24 MR. FELLNER: Because he's not actually charged
25 with that. I think it could be admissible on the issue of

1 there's a count of rioting. I believe it may be the 39th
2 overt act. So possibly on that.

3 But it's not admissible as an actual crime that
4 we have to defend against in terms of --

5 THE COURT: I was talking about evidence.

6 MR. FELLNER: -- self-defense.

7 So I think that's an important evidence that
8 distinguishes this and really requires severance so we can
9 do further investigation, look at the body-worn camera
10 and --

11 THE COURT: But the assumption is, there is
12 body-worn camera. We don't have any information that
13 there is, right?

14 MR. FELLNER: I don't, at this point. All I'm
15 trying to do is find out who the sergeant is who wrote the
16 report so we can at least endeavor to subpoena that
17 particular person. I mean, at a minimum.

18 THE COURT: Of course.

19 MR. FELLNER: Okay. Thank you.

20 THE COURT: Do you have any information on that,
21 Ms. Keil?

22 MS. KEIL: The information that I have, and I've
23 shared as much as I have with counsel, is that the
24 arresting officer is not the person who filled this form
25 out, and they did not accompany the defendant to the

1 hospital.

2 This form, where it states the signature of
3 reporting officer, is blank. The only signature is, as
4 far as I could tell, an illegible signature for the
5 supervisory official.

6 I have looked, based on what I believe the last
7 name could be, in the database for any body-worn camera by
8 anybody whose last name begins with a Z, or even a B based
9 on these letters for that day that might have been a
10 transporting officer to the hospital. And I have not been
11 able to locate that yet.

12 There is --

13 THE COURT: Do you understand there will be --
14 there might be body cam of the transport?

15 MS. KEIL: So there is body cam, and I did
16 direct counsel to this.

17 The arresting officer does capture the
18 processing of the defendant in being placed in a transport
19 van, and that is what we believe he's transported to the
20 station in.

21 After that, I cannot find any body-worn camera
22 of this defendant. I'm not saying that doesn't exist,
23 obviously, but I cannot find it at this point.

24 Depending on what it is they want to do with
25 this information or what they're trying to get out, we

1 might be amenable to a stipulation of some kind. And I
2 did offer that to defense, I just don't know exactly --
3 you know, the Government doesn't obviously have any
4 statements of the defendant they would be trying to get in
5 because there's no video of this. So I'm not really sure
6 what we can do. I'm going to continue to look into that.

7 I don't believe that affects the readiness for
8 trial purposes, because the assault itself and the
9 incident itself, they have body-worn camera of the
10 charging of the police line.

11 I will say this: There's been some rulings in
12 the other trial matter this morning that may affect how
13 we're -- no, I know that it may affect how we proceed on
14 some of these defendants and some of these charges. So at
15 some point before we get certified to whomever and are
16 calling for a jury, I would just like time to make sure I
17 know what we're doing with all of these cases.

18 THE COURT: Can you give me a hint?

19 MS. KEIL: Well, there was some MJOAs granted on
20 some of the felony riot counts for certain defendants.

21 THE COURT: Okay.

22 MS. KEIL: And that may affect the -- what we're
23 going to do with those. If we're still going to proceed
24 with those counts, or if we're not.

25 THE COURT: So you've gotten by MJOA in the

1 other cases?

2 MS. KEIL: Yes.

3 THE COURT: So what would -- I don't want you to
4 make representations you don't feel comfortable making,
5 but what is the potential scope in terms of this group and
6 how many involved? How many counts?

7 MS. KEIL: I could go out and talk and come back
8 in and say we're still going to proceed on everything.
9 But I understand there may also be a situation where we
10 may not proceed on some defendants at all.

11 THE COURT: Okay. Well, that would be, I think
12 important to know.

13 MS. KEIL: Yes. And that's why --

14 THE COURT: Yes.

15 MS. KEIL: The FBI issue with whether or not
16 they had any additional videos, just for everyone's
17 information, I have been in texting contact with the
18 division chief over there that I spoke with yesterday and
19 last night.

20 The person she was reaching out to, she could
21 not get an answer, she assigned someone else this morning
22 to look into that file to see what else they may have had
23 that is different than what we have, and they're supposed
24 to contact me today, and that's my last communication.

25 THE COURT: Okay. So do you feel comfortable

1 starting today, or do you want to have time to vet all
2 those issues?

3 MS. KEIL: As far as how we're proceeding?

4 THE COURT: I mean, obviously it affects jury
5 selection.

6 MS. KEIL: Exactly.

7 I would at least need time. So I would ask for
8 a pass for the lunch break, since we're getting close to
9 that time, if the Court's willing to give me that much
10 time.

11 THE COURT: Oh, no. Look, I appreciate your
12 position. I appreciate your approach. You've appeared
13 before me many times. You have a very solid reputation
14 with me. So when you tell me you need time, I know it's
15 not a delaying tactic. I know you're working at
16 something. So that's a credit to you.

17 So that's why I'm saying, do you need today?
18 Or -- you know, normally what happens is, okay, I can come
19 back at 2, but we don't like a jury panel to hang around
20 if we're not going to get to it today.

21 MS. KEIL: I think it makes sense, honestly, to
22 have the day to make these decisions.

23 THE COURT: Okay.

24 MS. KEIL: I think the defendants may benefit
25 from us having that time --

1 THE COURT: Okay.

2 MS. KEIL: -- frankly.

3 MR. COFFIELD: No objection.

4 MS. LEGRAND: Your Honor, let me ask a question.

5 We received a four-page email disclosing 56
6 additional videos today.

7 THE COURT: Yes.

8 MS. LEGRAND: When are we talking that up?

9 THE COURT: What?

10 MR. COFFIELD: Yeah. Let's sit on that.

11 MS. LEGRAND: No, I'm fine. I am just cheeking.
12 I want to preserve my client's speedy trial rights, as
13 well. This has gone on. I don't know if I'm one of the
14 lucky -- anyway. I appreciate the approach. I would love
15 the Government to take their time, I just want to
16 understand.

17 THE COURT: Well, no. I'm going to let Ms. --
18 if she's making those representations to me, it's in
19 everybody's interest, I believe, to allow her to do her
20 job.

21 MS. LEGRAND: Thank you.

22 THE COURT: So let me just call off the jury for
23 today. I will direct, initially, unless there's some
24 reason, the 302 that you provided today be provided to
25 counsel as an initial matter.

1 MS. KEIL: That's fine, Your Honor. I have
2 copies.

3 THE COURT: Let me just leave you with some
4 questions that I have. And again -- I mean, obviously,
5 you're vetting the information of the FBI, which you've
6 reported on.

7 And obviously I would want to know whether or
8 not your office was aware of any interaction between
9 Project Veritas and the FBI or Metro transit.

10 Do you know when the first instance -- and
11 again, I think I know, but I want -- the first instance
12 that the Government notified any defendant that it had
13 received videos from Project Veritas, was that mid-trial
14 in the first trial?

15 MS. KEIL: These additional videos?

16 THE COURT: No. I'm talking about --

17 MS. KEIL: The January -- I'm sorry.

18 THE COURT: I'm talking about that Project
19 Veritas or members of that group, where the originators of
20 the videos.

21 MS. KEIL: My understanding is the Government
22 reached out to Veritas to get the videos, and so I think
23 that was -- I'm not understanding.

24 THE COURT: Let me be -- when was the first time
25 the Government notified defense counsel?

1 MS. KEIL: Oh. I don't know.

2 THE COURT: Okay. That's -- because -- well, I
3 would like to know that. I would like to know, for
4 example -- you know, the 302, the FBI, doesn't identify
5 the individuals. They just described them as concerned
6 citizens.

7 And I would like to know whether there was any
8 agreement between the Government, law enforcement, your
9 office to attempt to not disclose Project Veritas' actions
10 in terms of videotape and providing information.

11 MS. KEIL: You mean their actions as it related
12 to meeting with the FBI?

13 THE COURT: And as I understood it, they -- at
14 least the proffer was, from one of the members of Project
15 Veritas, that there were a number of individuals who were
16 going to be participating and recording.

17 I just want to know the Government's
18 representations about the scope, its knowledge of the
19 scope in Project Veritas', for lack of a better word
20 involvement or actions with regard, and whether or not
21 that was disclosed to defense counsel.

22 Again, obviously if you make other decisions
23 with regard to defendants, I'm not -- that's going to be a
24 priority from the Court's point of view in terms of moving
25 the case along that will define where we go further.

1 But -- and I have your summary of Ms. Kerkhoff's
2 representations about what's on the other videos, but I
3 just have separate inquiries about -- in addition to the
4 content.

5 MS. KEIL: That's fine, Your Honor. I'll make
6 those inquiries.

7 THE COURT: That's why I think giving you the
8 day might be helpful.

9 MS. LEGRAND: Would it be possible for defense
10 counsel to get the videos so we have a day to prepare as
11 well?

12 THE COURT: Well, this is the only thing I
13 was -- I'm just going to take this step by step. Because
14 I don't want counsel -- if they make decisions with regard
15 to individuals that obviate the need for counsel's work in
16 that regard.

17 MS. LEGRAND: Thank you, Your Honor.

18 MS. KEIL: I'm handing over -- they're not
19 stapled, I apologize -- but four copies of the 302.

20 THE COURT: Oh, did you anticipate my ruling?

21 MS. KEIL: Yes, Your Honor. I just like to be
22 prepared, Your Honor.

23 THE COURT: So do you want to come back after
24 lunch? Or how -- no, I'm asking you.

25 MS. KEIL: I'm sorry. I just got a text that

1 may -- I just got a pass [sic] from my colleague who asked
2 for a pass until tomorrow based on these rulings, so I
3 don't know if it makes sense to come back after lunch --

4 THE COURT: Okay.

5 MS. KEIL: -- based on them talking to other
6 people in the office.

7 THE COURT: Yes. No. I think you have to
8 follow your process.

9 MS. KEIL: Okay.

10 THE COURT: So I appreciate you making that
11 representation in asking for the time.

12 So unless there's something else, the
13 Government's working on it, so I think we just have to
14 give them a chance.

15 MR. COFFIELD: Yes, Your Honor.

16 MR. FELLNER: What time tomorrow, Judge?

17 THE COURT: Okay. We're going to talk about
18 that.

19 (Court and clerk confer.)

20 THE COURT: Oh, I have the other group tomorrow.
21 Do you have that staffed up?

22 MS. KEIL: I'm sorry. So I have that ...

23 THE COURT: I have my group tomorrow.

24 MS. KEIL: Yes. That group, I'm not sure. It
25 may also affect -- this situation may also affect that

1 group as well.

2 THE COURT: Okay. Do you mind if I call both
3 groups in together?

4 MS. KEIL: No, that's fine. That's fine.
5 You'll get everybody.

6 THE COURT: 10:30.

7 LAW CLERK: 9:30.

8 THE COURT: 9:30, 9:30.

9 THE LAW CLERK: 302.

10 THE COURT: We have 302?

11 LAW CLERK: (Gesturing affirmatively.)

12 THE COURT: We have Courtroom 302.

13 MR. COFFIELD: 9:30.

14 THE COURT: 9:30.

15 MR. LINEHAN: Thank you, Your Honor.

16 MR. COFFIELD: Thank you, Your Honor.

17 THE COURT: I appreciate counsels' arguments.

18 MR. COFFIELD: It's a results-oriented business,
19 Your Honor.

20 THE COURT: Oh, I know it is. I know it is.
21 Not from my point of view, but I understand from an
22 advocate's point of view.

23 Thank you.

24 THE DEPUTY CLERK: Mr. Vasquez, Mr. Glaser,
25 Mr. Valencia and Ms. Carter, you will be signing notice to

1 return to Courtroom 302 before Chief Judge Morin tomorrow
2 at 9:30 a.m. Should you fail to appear at that date and
3 time, you will subject yourself to a \$12,500 fine, five
4 years in jail or both simply for failing to appear.

5 Do you understand, Mr. Vasquez?

6 DEFENDANT VASQUEZ: Yes.

7 THE DEPUTY CLERK: Mr. Glaser?

8 DEFENDANT GLASER: Yes.

9 THE DEPUTY CLERK: Mr. Valencia?

10 DEFENDANT VALENCIA: Yes.

11 THE DEPUTY CLERK: And Ms. Carter; do you
12 understand?

13 DEFENDANT CARTER: Yes.

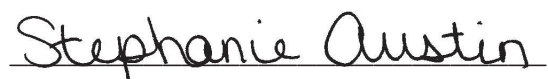
14 (Proceedings adjourned at 12:15 p.m.)
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CERTIFICATE OF REPORTER

I, Stephanie M. Austin, RPR, CRR, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the motions in the case of the UNITED STATES OF AMERICA versus ARTURO VASQUEZ, Criminal Action Number 2017 CF2 1369; UNITED STATES OF AMERICA versus PHILLIP GLASER, Criminal Action Number 2017 CF2 1368; UNITED STATES OF AMERICA versus CHRISTIAN VALENCIA, 2017 CF2 1203; and UNITED STATES OF AMERICA versus MOLLY CARTER, 2017 CF2 1380, in said court on the 30th day of May, 2018.

I further certify that the foregoing 58 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 30th day of May, 2018.



Stephanie M. Austin, RPR, CRR
Official Court Reporter