

Inner City Press

August 5, 2021

By E-mail to Chambers

Hon. Amit P. Mehta, United States District Judge
E. Barrett Prettyman Courthouse
333 Constitution Avenue N.W., Washington D.C. 20001

Re: PUBLIC Access to videos (judicial documents) in US v. Harrelson, 21-cr-00028-APM-10

Dear Judge Mehta:

This is a request for access to videos used as judicial documents in the above captioned case, which I have been reporting on for Inner City Press. Before this submission I asked DOJ for access to the videos, citing your July 13 minute order:

"MINUTE ORDER as to KENNETH HARRELSON (10) granting the Press Coalition's 296 Application for Access to Video Exhibits. The United States shall make available to the Press Coalition the video exhibits entered into evidence during the detention hearing of KENNETH HARRELSON (10), consistent with the procedures set forth in Standing Order 21-28. The Press Coalition is granted permission to record, copy, download, retransmit, and otherwise further publish these video exhibits. Signed by Judge Amit P. Mehta on 7/13/2021. (lcapm1) (Entered: 07/13/2021)"

I have today been told that DOJ interprets your Order as ONLY requiring or even allowing them to release these judicial documents to the "Coalition." This seems absurd, given the case law about the availability of judicial documents to the public, not to a subset thereof.

I understand that DOJ has interpreted a number of DDC orders in the January 6 cases in this restrictive way - this should be addressed more broadly, but in this Harrelson case, this is a request that you address the issue of whether the judicial documents should be made available to the public, or only a subset (and if so, why). I have also written to you on USA v. Schwartz, 21-cr-178 (APM), on June 24 (no response).

Inner City Press has been reporting on these January 6 cases, see, e.g., July 30, 2021, "A Capitol riot suspect told a judge he refuses to wear masks because it 'stresses me out,'" by Michelle Mark, "'You say you've been a lawyer for 40 years, but you called her arrogant and prissy,' Walton said, as quoted by Inner City Press," <https://www.insider.com/capitol-riot-daniel-goodwyn-mask-refusal-it-stresses-me-out-2021-7>

June 24, 2021, "Capitol rioter allowed to go on vacation after making 'divine special appearance' in court," by Jess Sabine, Boing Boing, "Matthew Russell Lee @MatthewLeeICP Update: In DC January 6 Case Pauline Bauer Is Now Ordered Released, After 1 Night, So Will Drive to Mt Rushmore July 4 after appearing before DDC District Judge McFadden June 28," <https://boingboing.net/2021/06/24/capitol-rioter-allowed-to-go-on-vacation-after-making-divine-special-appearance-in-court.html>

June 23, 2021, "Judge releases Capitol rioter to go on vacation after she makes 'divine special appearance' in court," by David Edwards, Raw Story, "The news of Pauline Bauer's release was first reported by Matthew Russell Lee on Inner City Press. According to the report, Faruqi ordered Bauer to be held in jail after finding her in contempt of court on June 21," <https://www.rawstory.com/pauline-bauer-release/>

May 6, 2021, Law & Crime, "Alleged Capitol Rioter Faces Mental Health Examination After Screaming During Multiple Court Hearings," by Colin Kalmbacher, " <https://lawandcrime.com/u-s-capitol-siege/fck-all-of-you-alleged-capitol-rioter-faces-mental-health-examination-after-screaming-during-multiple-court-hearings/>

Inner City Press: In-house SDNY: Room 480, 500 Pearl Street, NY NY 10007
E-mail: Matthew.Lee@innercitypress.com - Tel: 718-716-3540
Regular Mail: Dag Hammarskjold Center, Box 20047, New York, NY 10017

Inner City Press

If necessary, to expedite things (Inner City Press is reporting on this case today)

APPLICATION FOR ACCESS TO VIDEO EXHIBITS

Pursuant to Local Criminal Rule 57.6 and Standing Order No. 21-28 (BAH), applicants Inner City Press and Matthew Russell Lee, as correspondent and New York counsel, respectfully seek access, under the First Amendment and common law, to certain video recordings that have been submitted to the Court in this matter. In support of this application:

1. On May 14, 2021, Chief Judge Beryl A. Howell issued Standing Order No. 21-28 (the “Standing Order”). The Standing Order recognizes “[t]he significant public and media interest in the numerous criminal cases arising from the January 6, 2021 violent breach of the United States Capitol (the ‘Capitol Cases’), for which the parties are routinely submitting video exhibits to the Court for use in pretrial proceedings.” See Standing Order at 2.

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

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

4. This action is one of the Capitol Cases. In its Memorandum in Support of Pretrial Detention, the Government alleges that Defendant Harrelson was part of a violent mob, etc.

6. These video clips (the “Video Exhibits”) were plainly “intended to influence the court” in its decision-making, and as a result they are judicial records subject to a “strong presumption in favor of public access.” *Leopold v. United States*, 964 F.3d 1121, 1127-28 (D.C. Cir. 2020) (Garland, J.).

7. Neither the Government nor the Defendant could possibly rebut the presumption of access under the applicable test set out in *United States v. Hubbard*, 650 F.2d 293, 317-21

Inner City Press: In-house SDNY: Room 480, 500 Pearl Street, NY NY 10007
E-mail: Matthew.Lee@innercitypress.com - Tel: 718-716-3540
Regular Mail: Dag Hammarskjold Center, Box 20047, New York, NY 10017

Inner City Press

(D.C. Cir. 1980). See, e.g., United States v. Jackson, 2021 U.S. Dist. LEXIS 49841 (D.D.C. Mar. 17, 2021) (Howell, C.J.) (granting access to video exhibits in one of the Capitol Cases).

8. Because the Video Exhibits are judicial records subject to an unrebutted presumption of public access, the Court should grant this Application and direct the Government to release the Video Exhibits to the public, on a truly publicly accessible platform forthwith

Even prior, to expedite that release, the Court should further instruct the Government to provide undersigned with the “necessary access credentials” referenced in the Standing Order. But again, password protected access is not enough - they must be PUBLICLY available. See, e.g., <https://www.documentcloud.org/documents/20536946-rakofforderonmrlicp>

9. Inner City Press requests that the Court grant permission to record, copy, download, retransmit, and otherwise further publish these Video Exhibits.

This request is made without conceding that the Standing Order complies with the First Amendment or common law, and expressly reserving the right to challenge this and other portions of the Standing Order in this and other Capitol Cases.

Dated: August 5, 2021 Respectfully submitted,

Matthew Russell Lee, Inner City Press

Matthew Russell Lee, Esq. Inner City Press

SDNY Press Room, 500 Pearl Street, NY NY 10007

Email [Matthew.Lee \[at\] innercitypress.com](mailto:Matthew.Lee@innercitypress.com)

Cell: 718-716-3540

www.InnerCityPress.com

cc's ahmed.baset@usdoj.gov, russell@ballardspahr.com

July 27, 2021, New York Law Journal, "Judge Orders Release of Michael Avenatti's Financial Affidavits In Stormy Daniels Theft Case," "Journalist Matthew Russell Lee of Inner City Press had intervened, advocating for the affidavits' release," <https://www.law.com/newyorklawjournal/2021/07/27/judge-orders-release-of-michael-avenattis-financial-affidavits-in-stormy-daniels-theft-case/>

January 10, 2021, Seattle Times, "Seattle man charged with assaulting a federal officer at U.S. Capitol siege, "Leffingwell's attorney said in court that he intended to return to Seattle, and the magistrate judge ordered him to stay away from Washington, D.C., according to reporting by Inner City Press journalist Matthew Russell Lee," <https://www.seattletimes.com/seattle-news/crime/seattle-man-charged-with-assaulting-a-federal-officer-at-u-s-capitol-siege/>

Inner City Press: In-house SDNY: Room 480, 500 Pearl Street, NY NY 10007

E-mail: Matthew.Lee@innercitypress.com - Tel: 718-716-3540

Regular Mail: Dag Hammarskjold Center, Box 20047, New York, NY 10017

Inner City Press

Background: Inner City Press' April 14, 2021 letter request for access to videos used in the case. While noting in the docket the Court's order that videos be made available "without restriction" in the USAfx drop box, be aware that despite Inner City Press telephone calls and emails, no access to that drop box has been provided. Therefore it is not "without restriction."

I was told by DDC to ask the Office of the US Attorney for DC. But their media inquiries line does not answer, and two individuals emailed have not responded.

In any event, the judicial documents should be made available on a publicly accessible website, and not only a more restricted DOJ drop-box of USAfx system. See, the recent order by SDNY Judge Jed S. Rakoff on a similar Inner City Press request in *US v. Weigand*, 20-cr-188 (JSR - SDNY) directing the US Attorney's Office to make all exhibits publicly available the night of the day they are presented:
<https://www.documentcloud.org/documents/20536946-rakofforderonmrlicp>

See also, InnerCityPress.com and, e.g., <https://abovethelaw.com/2021/03/lawyer-who-boasted-about-kicking-in-nancy-pelosis-door-released-on-bail-wants-a-glass-of-wine-with-dinner/>

These videos are, needless to say, judicial documents within the mention of *United States v. Aref*, 533 F.3d 72, 81-83 (2d Cir. 2008) and *Lugosch v. Pyramid Co.*, 435 F.3d 110 (2d Cir. 2006) - they should be made publicly available.

Inner City Press: In-house SDNY: Room 480, 500 Pearl Street, NY NY 10007
E-mail: Matthew.Lee@innercitypress.com - Tel: 718-716-3540
Regular Mail: Dag Hammarskjold Center, Box 20047, New York, NY 10017