

behalf of Business Continuity Coalition) * Held virtually and in-person

Location: Rm 538, Dirksen Senate Office Building, Washington, DC; 10:00 AM

- Senate Environment subcommittee hearing on issues adversely affecting environmental justice populations – Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight Subcommittee hearing on 'Examining Current Issues Adversely Affecting Environmental Justice Populations', with testimony from University of Oregon Department of Ethnic Studies & Geography Head Dr Laura Pulido; The Center for Rural Enterprise and Environmental Justice founder and Director Catherine Coleman Flowers; Chuck's Dairy Bar owner Chuck's Dairy Bar; and Ukpeagvik Inupiat Corporation President and CEO Delbert Rexford

Location: Rm 406, Dirksen Senate Office Building, Washington, DC; 10:00 AM

- Senate Commerce, Science, & Transportation subcommittee hearing on space traffic management and orbital debris – Space and Science Subcommittee hearing on 'Space Situational Awareness, Space Traffic Management, and Orbital Debris: Examining Solutions for Emerging Threats', with testimony from Commercial Spaceflight Federation President Karina Drees; Space Economy Rising founder and CEO Kevin O'Connell; University of Colorado Boulder Aerospace Engineering Sciences Department Associate Professor Dr Marcus Holzinger; Analytical Graphics co-founder / COMSPOC Corporation CEO Paul Graziani; and Satellite Industry Association President Tom Stroup

Location: Rm 253, Russell Senate Office Building, Washington, DC; 10:00 AM

- Senate HELP Committee hearing on 'the right to organize' – Hearing on 'The Right to Organize: Empowering American Workers in a 21st Century Economy', with testimony from Georgetown University Law Center Workers Rights Institute Executive Director Mark Gaston Pearce; Economic Policy Institute Senior Economist and Director of Policy Dr Heidi Shierholz; worker Gracie Heldman; and Ellis Hospitality Principal and Managing Partner Jyoti Sarolia

Location: Rm 430, Dirksen Senate Office Building, Washington, DC; 10:00 AM

US House:

- House meets for legislative business – House of Representatives meets for legislative business, with agenda for the week including 'H.R. 2668 – Consumer Protection and Recovery Act', 'H.R. 2467 – PFAS Action Act of 2021', and 'H.R. 3985 – Allies Act of 2021', plus consideration of legislation including 'H.R. 1870 – Strengthening Local Transportation Security Capabilities Act of 2021', as amended, 'H.R. 1893 – Transportation Security Preparedness Act of 2021', 'H.R. 1895 – Transportation Security Public Health Threat Preparedness Act of 2021', 'H.R. 1877 – Security Screening During COVID-19 Act', as amended, 'H.R. 1871 – Transportation Security Transparency Improvement Act', 'H.R. 2795 – DHS Blue Campaign Enhancement Act', as amended, as amended, 'H.R. 3223 – CISA Cyber Exercise Act', 'H.R. 3264 – Domains Critical to Homeland Security Act', 'H.R. 1850 – Supporting Research and Development for First Responders Act', and 'H.R. 3263 – DHS Medical Countermeasures Act' under suspension of the rules

Location: U.S. Capitol, Washington, DC; 9:00 AM

- House Homeland Security subcommittee hearing on terrorism and digital financing – Intelligence & Counterterrorism Subcommittee hearing on 'Terrorism and Digital Financing: How Technology is Changing the Threat', with testimony from Deputy Under Secretary of Homeland Security for Intelligence and Analysis Stephanie Dobitsch; U.S. Secret Service (USSS) Office of Investigations Assistant Director Jeremy Sheridan; and Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI) Assistant Director of Investigative Programs John Eisert

Location: Rm 310, Cannon House Office Building, Washington, DC; 10:00 AM

General Events:

- Bicameral Dems describe 'the human toll of climate-fueled extreme weather' – Climate Power and the League of Conservation Voters hold event to 'hear from people across the country detailing how climate change-fueled extreme weather has hurt the communities where they

live' and call on Congress to act. Speakers include Democrats Sens. Michael Bennet, Catherine Cortez Masto, Chris Murphy, Tina Smith, and Ron Wyden, Reps. Sean Casten, Donald McEachin, and Joe Neguse, Colorado River District General Manager Andy Mueller, Talent, OR, Mayor Darby Ayers-Flood, Reno Fire Chief David Cochran, Climate Generation's Jothsna Harris, and Save the Sound's Curt Johnson

Location: Reserve Officers Association, 1 Constitution Ave NE, Washington, DC; 9:00 AM

- CSIS discussion on 'The Good America' – Center for Strategic and International Studies holds online book event on 'The Good American: The Epic Life of Bob Gersony, the U.S. Government's Greatest Humanitarian' with author Robert Kaplan. Other speakers include former Assistant Secretary for Near Eastern and North African Affairs Anne Patterson, former USAID Administrator J. Brian Atwood, and former U.S. Ambassador to Croatia Peter Galbraith

Location: Virtual Event; 9:30 AM

- CSIS discussion with former acting Deputy Secretary of Defense – Center for Strategic and International Studies hosts former acting Deputy Secretary of Defense Christine Fox for Korea Chair 'The Capital Cable' discussion

Location: Virtual Event; 9:30 AM

- Foundation discussion on deterrence in the Indo-Pacific – 'Policy Pulse: Enhancing Deterrence in the Indo-Pacific' Heritage Foundation discussion, on the Pacific Defense Initiative and why defense of Guam is 'critical'. Speakers include Nuclear Deterrence and Missile Defense Policy Analyst Patty-Jane Geller and Naval Warfare and Advanced Technology Senior Fellow Brent Sadler

Location: Virtual Event; 10:30 AM

- Reagan Institute Summit on Education (RISE) 2021, themed 'Disrupted: From Crisis to Innovation'. Speakers include Democratic Reps. Jim Clyburn and Mickie Sherrill, Republican Rep. Victoria Spartz and Glenn Grothman, Governors Doug Ducey (Arizona), Larry Hogan (Maryland), Asa Hutchinson (Arkansas), Bill Lee (Tennessee), and Jared Polis (Colorado); Lieutenant Governors Jaqueline Coleman (Kentucky) and Bethany Hall Long (Delaware); former Secretaries of Education Arne Duncan and Rod Paige; Nebraska Commissioner of Education Matthew Blomstedt; Nevada Superintendent of Public Instruction Jhone Ebert; Rhode Island Commissioner of Higher Education Shannon Gilkey; Louisiana Commissioner of Higher Education Kim Hunter Reed; Massachusetts Commissioner of Higher Education Carlos Santiago; Tennessee Commissioner of Education Penny Schwinn; South Carolina Superintendent of Education Molly Spearman; and Baltimore City Public Schools CEO Sonja Santelises

Location: Virtual Event; 11:00 AM

- Department of Health and Human Services Secretary's Advisory Committee on Human Research Protections meeting concludes; 11:00 AM
- USCC hosts 'Civics Forward' virtual discussion – U.S. Chamber of Commerce hosts 'Civics Forward' virtual discussion, with former Secretary of Education of New Mexico Hanna Skandera and Hoover Institution Research Fellow David Davenport discussing the driving forces behind the state of civics education in the U.S. and implications for the future of democracy

Location: Virtual Event; 12:00 PM

- Axios discussion on biosimilars with Dem. Rep. Kurt Schrader – 'Biosimilars and the Future of Care' Axios discussion on the future of biosimilars and other innovative approaches to lowering the cost of treatment for patients in the U.S., with Democratic Rep. Kurt Schrader, Carolina Blood and Cancer Care CEO Kashyap Patel, and Viatris Developed Markets President Tony Mauro

Location: Virtual Event; 12:30 PM

- Dem Rep. Elissa Slotkin and GOP Rep. Mike Gallagher discuss defense supply chains – Center for a New American Security hosts Democratic Rep. Elissa Slotkin and Republican Rep. Mike Gallagher for the release of the final report of the House Armed Services Committee's Defense Critical Supply Chain Task Force

Location: Virtual Event; 12:30 PM

- Washington Post Live conversation with Dem Rep. Judy Chu – Washington Post Live hosts 'Future of Diversity in Small Business' conversation with Democratic Rep. Judy Chu, U.S. Black Chambers President and CEO Ron Busby, and Opportunity Finance Network President and CEO Lisa Mensah
Location: Virtual Event; 12:30 PM
- Atlantic Council hosts panel discussion on U.S.-Russian cybersecurity – 'Russia, cybercrime, and a new phase in U.S.-Russian cybersecurity' virtual panel discussion hosted by Atlantic Council, with panelists including Silverado Policy Accelerator Executive Chair Dmitri Alperovitch, Red Canary Intelligence Director Katie Nickels, Wilson Center Kennan Institute Director Matthew Rojansky, and George Mason University Terrorism, Transnational Crime and Corruption Center Director Dr Louise Shelley
Location: Virtual Event; 1:00 PM
- PM Environmental Protection Agency Clean Air Act Advisory Committee meeting concludes;
1:00 PM
- Library of Congress convenes Copyright Public Modernization Committee meeting – Library of Congress convenes public meeting of the new Copyright Public Modernization Committee, to 'enhance communication and provide a forum for the technology-related aspects of the U.S. Copyright Office modernization initiative'. Agenda includes update from Library experts on the development of the Enterprise Copyright System, a discussion about copyright IT modernization with the CPMC members, and a public Q&A period
Location: Virtual Event; 1:00 PM
- National Council on Disability quarterly business meeting
Location: Virtual Event; 1:00 PM
- FDIC Advisory Committee on Community Banking meeting; *1:00 PM*
- Wilson Center discussion on Nicaragua's 'simmering crisis' with Dem Rep. Albio Sires – 'Nicaragua's Simmering Crisis and the U.S. Policy Response' Wilson Center online discussion, on what the international community do to improve human rights in Nicaragua and free political detainees. Speakers include Democratic Rep. Albio Sires, Wilson Center President, Director, and CEO Mark Green, and Berta Valle and Victoria Cardenas, the wives of Nicaraguan presidential candidates Felix Maradiaga and Juan Sebastian Chamorro, respectively, who have been detained by the Ortega regime in the run up to elections
Location: Virtual Event; 1:00 PM
- USCC Foundation discussion on vaccination uptake – 'Why Americans Aren't Getting Vaccinated & What the Delta Variant Means for Business' U.S. Chamber of Commerce Foundation online discussion, part of the 'Path Forward: Navigating the Return to Work' series. Speakers include Arkansas Secretary of Health Dr Jose Romero and CBS News' Kathy Frankovic
Location: Virtual Event; 1:00 PM
- USCC hosts discussion on state of the COVID-19 pandemic – 'Path Forward: Why Americans Aren't Getting Vaccinated and What the Delta Variant Means for Your Business' virtual event hosted by U.S. Chamber of Commerce, with speakers including USCC President and CEO Suzanne Clark, Arkansas Secretary of Health Dr Jose Romero, and CBS News consultant Kathy Frankovic
Location: Virtual Event; 1:00 PM
- USCC hosts discussion on immigration reform and economic growth – 'Putting Communities First: How Immigration Reform Will Drive Economic Growth' virtual event hosted by U.S. Chamber of Commerce, with stakeholders discussing the 'significant negative impacts' the 'broken immigration system' has on states and local communities and industries across the U.S.
Location: Virtual Event; 2:00 PM
- SEC Closed Meeting
Location: U.S. Securities and Exchange Commission, 100 F St NE, Washington, DC; 2:00 PM

- USCC event on 'how immigration drives growth' – 'Putting Communities First: How Immigration Reform Will Drive Economic Growth' U.S. Chamber of Commerce virtual event, with Wisconsin Manufacturers and Commerce President and CEO Kurt Bauer, ThreeSixtyEight CEO Kenny Nguyen, Las Vegas Chamber of Commerce President and CEO Mary Beth Sewald, TechNet President and CEO Linda Moore, Morey's Piers and Beachfront Water Park Human Resources and Government Relations Vice President Denise Beckson, Loews Corporation Executive Committee Chairman Andrew Tisch, and USCC Chief Policy Officer and Head of Strategic Advocacy Neil Bradley and Senior Vice President of State and Local Policy Tom Wickham

Location: Virtual Event; 2:00 PM

- Dem Rep. Rick Larsen discusses Indo-Pacific engagement – Hudson Institute holds online event with Democratic Rep. Rick Larsen, who discusses U.S. policy in the Indo-Pacific region

Location: Virtual Event; 5:00 PM

- NOAA Western Pacific Fishery Management Council meeting begins

Location: Virtual Event

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b7E -3

From: McNally, Richard (OGC) (FBI)
Subject: RE: BWC Briefing for DD and ADD
To: [REDACTED] (OGC) (FBI); Kelly, Stephen D. (OGC) (FBI); Prest, Erin M. (OGC) (FBI)
Sent: July 22, 2021 2:56 PM (UTC-04:00)

b5 -1,2
b6 -1
b7C -1

From: [REDACTED]
Sent: Thursday, July 22, 2021 2:49 PM
To: Kelly, Stephen D. (OGC) (FBI); [REDACTED] McNally, Richard (OGC) (FBI); [REDACTED] Prest, Erin M. (OGC) (FBI); [REDACTED]
Subject: BWC Briefing for DD and ADD

b6 -1
b7C -1
b7E -3

Hi Stephen, Rick, and Erin,

This afternoon, I attended the BWC briefing of the DD and ADD with EAD Turner. The following are some items of note:

b5 -1,2
b7E -4

Thanks.

[REDACTED]
SSA [REDACTED]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation

b6 -1
b7C -1

FBI (22-cv-00149)-6883

[REDACTED]

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From: Prest, Erin M. (OGC) (FBI)
Subject: RE: BWC Briefing for DD and ADD
To: [REDACTED] (OGC) (FBI); Kelly, Stephen D. (OGC) (FBI); McNally, Richard (OGC) (FBI)
Cc: [REDACTED] (OGC) (FBI)
Sent: July 22, 2021 2:57 PM (UTC-04:00)

b6 -1
b7C -1
b7E -3

Thank [REDACTED] I'm adding [REDACTED] here due to the procurement piece.

[REDACTED]
Deputy General Counsel
Investigative and Administrative Law Branch
Privacy and Civil Liberties Officer
Office of the General Counsel
Federal Bureau of Investigation
JEH, Rm 7350
[REDACTED]

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From: [REDACTED]
Sent: Thursday, July 22, 2021 2:49 PM
To: Kelly, Stephen D. (OGC) (FBI); [REDACTED] McNally, Richard (OGC) (FBI); [REDACTED] Prest, Erin M. (OGC) (FBI); [REDACTED]
Subject: BWC Briefing for DD and ADD

b6 -1
b7C -1
b7E -3

Hi Stephen, Rick, and Erin,

This afternoon, I attended the BWC briefing of the DD and ADD with EAD Turner. The following are some items of note:

[REDACTED]

b5 -1,2
b7E -4

b5 -1,2
b6 -1
b7C -1
b7E -3

[REDACTED]

Thanks.

[REDACTED]

SSA [REDACTED]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation

[REDACTED]

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From: Browning, Dawn Marie (OGC) (FBI)
Subject: FW: DDC 6(e) ruling
To: Prest, Erin M. (OGC) (FBI); Kelly, Stephen D. (OGC) (FBI); McNally, Richard (OGC) (FBI); [REDACTED] b6 -1
(OGC) (FBI) [REDACTED] (OGC) (FBI) b7C -1
Cc: McCarthy, Dawn L. (OGC) (FBI) [REDACTED]
[REDACTED]
Sent: July 23, 2021 6:02 PM (UTC-04:00)
Attached: 21904ff7-614e-4c0d-a48a-579580d14123.pdf

I think everyone is already tracking on this opinion, but sharing it just in case.

From: [REDACTED] b6 -1,5
Sent: Wednesday, July 21, 2021 11:28 AM b7C -1,5
To: Browning, Dawn Marie (OGC) (FBI) [REDACTED] b7E -3
Subject: [EXTERNAL EMAIL] - FW: DDC 6(e) ruling

Hi Dawn! I hope this note finds you well, and I would love to find a time to grab lunch soon!

I'm sure folks are already tracking, but just wanted to send along the attached recent ruling out of DDC, which held that in the context of certain Capitol riot related litigation, Rule 6(e) doesn't allow prosecutors to share grand jury material with private contractors, like Deloitte (e.g., definition of government personnel" does not include private contractors). I believe I recall that the DIOG includes contractors within the definition of FBI personnel, so just wanted to flag this opinion for awareness.

Miss you guys and hope all is well!

[REDACTED]

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

IN RE CAPITOL BREACH GRAND JURY
INVESTIGATIONS WITHIN THE
DISTRICT OF COLUMBIA

Grand Jury Action No. 21-20 (BAH)

Chief Judge Beryl A. Howell

MEMORANDUM OPINION

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol to carry out the constitutional duty of certifying the vote count of the Electoral College of the 2020 Presidential Election. This ritual of democracy was disrupted by a rioting mob that breached the Capitol and put a temporary halt to the electoral vote count, assaulting members of law enforcement, destroying property, and encouraging others to join in the mayhem along the way. To date, more than 500 individuals located across the country have been charged, in over 175 misdemeanor informations and over 170 indictments, with criminal offenses in this District resulting from their participation in the attack on the Capitol.

The government's investigation into the Capitol attack began almost immediately after January 6, 2021, with the first defendants arrested and charged the next day. *See, e.g.*, Arrest Warrant Return, *United States v. Coffman*, Crim. No. 21-4 (CKK) (D.D.C. Jan. 7, 2021), ECF No. 3; Arrest Warrant Return, *United States v. Leffingwell*, Crim. No. 21-5 (ABJ) (D.D.C. Jan. 7, 2021), ECF No. 3; Compl., *United States v. Ochs*, Crim. No. 21-73-2 (BAH) (D.D.C. Jan. 7, 2021), ECF No. 1. Nearly seven months later, the government has collected massive amounts of information and electronic data in the course of its investigation, which the government describes as "the largest in American history, both in terms of the number of defendants prosecuted and the nature and volume of the evidence." Gov't's Mem. Regarding Status of Disc. ("Gov't's *Bledsoe*

Discovery Mem.”) at 2, *United States v. Bledsoe*, Crim. No. 21-204 (BAH) (D.D.C. July 12, 2021), ECF No. 53. This evidence ranges from video footage from multiple sources and social media posts to location history data and cell tower data for thousands of devices present inside the Capitol. *See id.* at 3. Recognizing its obligation to share any exculpatory evidence within this enormous dataset with counsel for the hundreds of Capitol attack defendants, the government retained, on May 28, 2021, an independent contractor, Deloitte Financial Advisory Services, LLP (“Deloitte”), “to assist in document processing, review and production of” this voluminous discovery. *Id.* at 7. The government represents that use of Deloitte’s expertise in this manner “is vital to the United States’[s] ability to review large data/document productions and is essential to [the government’s] ability to prosecute these cases effectively,” *id.*, and “to ensure that all defendants obtain meaningful access to voluminous information that may contain exculpatory material” while “adequately protecting the privacy and security interests of witnesses and subjects from whom those materials were derived,” *id.* at 9.

Certain of the evidence collected by the government, however, has been presented to grand juries in this District as evidentiary support for felony charges against more than 200 defendants, and “over 6,000” grand jury subpoenas have been issued for the production of significant portions of the information collected by the government. *Id.* at 4. The number of indictments and subpoenas—and concomitant grand jury activity—is likely to grow as the investigation continues. These materials presented to grand juries are or may be shielded from disclosure to Deloitte by Federal Rule of Criminal Procedure 6(e), which prohibits, with narrowly construed exceptions, the disclosure of “matter[s] occurring before the grand jury,” FED. R. CRIM. P. 6(e)(2)(B), to any persons or entities.

This general rule prohibiting disclosure of grand jury material contains certain exceptions, including allowing “[d]isclosure of a grand-jury matter,” FED. R. CRIM. P. 6(e)(3)(A), to “any government personnel” that a government attorney “considers necessary to assist in performing that attorney’s duty to enforce federal criminal law,” FED. R. CRIM. P. 6(e)(3)(A)(ii). The government now seeks an order authorizing disclosure to Deloitte, pursuant to Rule 6(e)(3)(A)(ii), of grand jury matters related to the Capitol attack and materials collected in connection with those matters. Gov’t’s Mot. Authorize Disclosure of Grand Jury Materials (“Gov’t’s Mot.”) at 1, ECF No. 1. In support of this request, the government contends that Deloitte is properly regarded as “government personnel” within the meaning of the exception. *See id.* at 6–8. In the alternative—and presented almost as an after-thought in a *second* supplemental filing to its initial application—the government seeks an order authorizing disclosure under Rule 6(e)(3)(E)(i), which allows a district court to “authorize disclosure . . . of a grand-jury matter,” FED. R. CRIM. P. 6(e)(3)(E), “preliminarily to or in connection with a judicial proceeding,” FED. R. CRIM. P. 6(e)(3)(E)(i); *see* Gov’t’s Second Suppl. Mem. Supp. Mot. Authorize Disclosure of Grand Jury Materials (“Gov’t’s Second Suppl. Mem.”) at 1, ECF No. 4.

Undoubtedly, the government has a genuine need for the highly technical expertise offered by Deloitte to provide litigation support and process efficiently the cumbersome myriad forms of electronic data collected in investigating the Capitol attack. Preventing disclosure of grand jury matters within the voluminous Capitol attack dataset to the government’s contractor will require the government “to segregate the substantial body of material that may trigger secrecy obligations under Rule 6(e) and provide case-specific mechanisms for its disclosure.” Gov’t’s Second Suppl. Mem. at 5–6. As the government rightly explains, this requirement “threatens to slow the discovery process, delay contemplated trial proceedings, and undermine

the considerable benefits of having a single, secure, searchable database for discovery materials,” and further undermines a review process seen by the government “as a practical necessity to comply with its discovery obligations” to produce exculpatory evidence to hundreds of defendants and resolve these cases as expeditiously as possible. *Id.* at 6.

Nonetheless, for the reasons explained below, the term “government personnel” in Rule 6(e)(3)(A)(ii) permits disclosure of grand jury materials only to employees of public governmental entities and cannot be stretched to include a private contractor such as Deloitte, no matter how compelling the need for disclosure may be. Further, the government has not made a sufficient showing of particularized need to warrant disclosure under Rule 6(e)(3)(E)(i). Disclosure to Deloitte is therefore prohibited, and the government’s motion to authorize disclosure based on one or the other of these exceptions must be denied.¹

I. BACKGROUND

A. January 6, 2021 Attack on the United States Capitol

Two months after the November 3, 2020 presidential election, on January 6, 2021, a joint session of the United States Congress convened at the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election. Gov’t’s Mot. at 1; *see also United States v. Chrestman*, Case No. 21-mj-218 (ZMF), 2021 WL 765662, at *2 (D.D.C. Feb. 26, 2021). “The joint session began at approximately 1:00 p.m., with then–Vice President Mike Pence presiding.” *Chrestman*, 2021 WL 765662, at *2. Shortly after, “the United States House of Representatives and the United States Senate adjourned to separate chambers within the Capitol to resolve an objection raised in the joint session.” *Id.* “As the House and Senate

¹ This case was assigned to the undersigned Chief Judge pursuant to Local Criminal Rule 57.14, which provides that “the Chief Judge shall . . . determine all matters relating to proceedings before the grand jury.” LCrR 57.14(b).

proceedings took place, a large crowd of protestors gathered outside the Capitol.” *Id.* Law enforcement officers from the U.S. Capitol Police, who were later joined by officers from the Metropolitan Police Department and other law enforcement agencies, “were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.” *Id.* (internal quotation marks and citation omitted); *see also* Gov’t’s Mot. at 1; *United States v. Owens*, Crim. No. 21-286 (BAH), 2021 WL 2188144, at *2 (D.D.C. May 28, 2021).

Soon after 2:00 p.m., a violent mob “forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts.” Gov’t’s Mot. at 1; *see also, e.g., Chrestman*, 2021 WL 765662, at *2; *Owens*, 2021 WL 2188144, at *2–4. By one estimate, “the mob on the west side” of the Capitol alone numbered “at least 9,400 people, outnumbering police officers by more than 58 to one.” Gov’t’s *Bledsoe* Discovery Mem. at 4 (internal quotation marks and citation omitted). “[M]ayhem broke out inside the building, putting an hours-long halt to the electoral vote count while elected representatives, congressional staff, and members of the press hid in terror from the mob.” *Chrestman*, 2021 WL 765662, at *2 (internal citations omitted). “The joint session, and thus the constitutional ritual of confirming the results of the 2020 Presidential Election, was effectively suspended until shortly after 8:00 p.m.,” *id.* (internal quotation marks and citation omitted), when law enforcement was finally “able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials,” Gov’t’s Mot. at 1.

B. Investigation into Capitol Attack and Collection of Evidence

In the nearly seven months since January 6, 2021, as of July 16, 2021, over 500 individuals have been charged with criminal offenses in this District arising out of their participation in the Capitol attack. The charges against these defendants range from felonies,

such as assaults on law enforcement and conspiracy, to misdemeanors, such as disruptive or disorderly conduct in the Capitol or on Capitol grounds, with many defendants facing multiple charges. *See* U.S. Att’y’s Off., D.C., *Capitol Breach Cases*, U.S. Dep’t of Justice (last updated July 15, 2021), <https://www.justice.gov/usao-dc/capitol-breach-cases>; Gov’t’s Mot. at 2.

As part of its investigation into the Capitol attack, the government has collected voluminous amounts of evidence, which it describes as including “more than 14,000 hours” of surveillance footage from the Capitol grounds; “[m]ore than 2,000 hours of body worn camera footage from multiple law enforcement agencies”; “[o]ver 300,000 tips” from members of the public, “including approximately 237,000 digital media tips”; “[o]ver 2,000 digital devices”; “[l]ocation history data” and “[c]ell tower data” for thousands of electronic devices present “inside the Capitol building” on January 6; “[i]nformation” obtained “from the searches of hundreds of accounts maintained with electronic communications service providers and/or remote computing services [sic] providers”; “over one million Parler posts, replies, and related data, collected by” the Federal Bureau of Investigation (“FBI”) “from publicly accessible locations on the Internet”; an additional “over one million Parler videos and images (approximately 40 terabytes of data) scraped by an Internet user who voluntarily provided the material to the FBI”; “[s]ubscriber information and two weeks of toll records for hundreds of phone numbers . . . associated with a Google account identified from . . . [a] geofence search warrant”; and “[o]ver 240,000 [FBI] investigative memoranda and attachments.” Gov’t’s Mot. at 2–3.

As this list suggests, much of the material collected “consists of Electronically Stored Information” and therefore “contains significant metadata that may be difficult to extract and

produce if documents are not processed using specialized techniques.” *Id.* at 4.² Due to this need to process correctly metadata, in combination with the still-expanding volume of the material, the government determined that it “would need to employ software tools for both discovery review and trial preparation,” requiring “the use of an outside contractor who could provide litigation technology support services, to include highly technical and specialized data and document processing and review capabilities.” *Id.* (footnote omitted). The government has further represented in pending criminal matters related to the Capitol attack, though not in its filings in connection with the instant motion, that, in order to comply with its obligation to produce all exculpatory material to defendants in discovery, the effort is underway to create “a database of materials relevant to the cases arising from the riot on January 6, 2021,” Letter from Gov’t Counsel to the Court (“Gov’t’s *Jackman* Discovery Letter”) at 1, *United States v. Jackman*, Crim. No. 21-378 (TJK) (D.D.C. July 8, 2021), ECF No. 28, that the government will “systematically review[] . . . for potentially discoverable information,” *id.* at 3; *see also, e.g.*, Gov’t’s Mem. Regarding Status of Disc. (“Gov’t’s *McCreary* Discovery Mem.”) at 7, *United States v. McCreary*, Crim. No. 21-125 (BAH) (D.D.C. July 12, 2021), ECF No. 24 (“Once the database is accessible, [the government] will begin systematically reviewing materials for potentially discoverable information[.]”).

C. Contract with Deloitte

On May 28, 2021, the government contracted Deloitte, “a litigation support vendor with extensive experience providing complex litigation technology services to various government agencies,” Gov’t’s Mot. at 4–5, to assist in document processing, review, and production of the

² The government defines metadata as “information about an electronic document” that “can describe how, when, and by whom [electronically stored information] was created, accessed, modified, formatted, or collected.” Gov’t’s Mot. at 4.

voluminous materials collected in the course of the government’s investigation and to “populat[e]” the database, Gov’t’s Discovery Letter at 3; *see also* Gov’t’s Mot. at 4–5; Gov’t’s *McCreary* Discovery Mem. at 7.³ Though the contract itself has not been submitted as part of the record in this matter, the government states that its “contract with Deloitte contains all applicable personnel and information security requirements required by the Federal Acquisition Regulation[],” 48 C.F.R. § 1 *et seq.* Gov’t’s Mot. at 5; *see also* Gov’t’s Suppl. Mem. Supp. Mot. Authorize Disclosure of Grand Jury Materials (“Gov’t’s Suppl. Mem.”) at 4, ECF No. 2. As to information security, the government assures the Court that the contract includes “stringent information security protocols that entail the use of data encryption, a dual-container configuration, and other measures.” Gov’t’s Mot. at 5; *see also* Gov’t’s Suppl. Mem. at 4. In addition, “[a]ll data managed by Deloitte” pursuant to the agreement “resides in the Deloitte hosting environment,” which complies with federal security parameters. Gov’t’s Mot. at 5; *see also* Gov’t’s Suppl. Mem. at 3–4.

As to personnel, Deloitte employees working on the contract “are bound by a strict confidentiality agreement . . . and are subjected to rigorous security background investigations.” Gov’t’s Mot. at 5; *see also id.* at 7; Gov’t’s Suppl. Mem. at 4.⁴ They are prohibited from “tak[ing] case-related materials outside of their secure facility, which is managed through a digital access control system with area control and access management.” Gov’t’s Mot. at 5; *see also* Gov’t’s Suppl. Mem. at 4. The U.S. Attorney’s Office for the District of Columbia

³ The government has stated elsewhere that it has already “begun transferring a large volume of materials to Deloitte (as of July 7, 2021, over 200 disks of data and 34,000 Capitol Police records)” and “anticipates that the database,” populated with Deloitte’s assistance, “will be accessible shortly.” Gov’t’s *Jackman* Discovery Letter at 3; *see also, e.g.,* Gov’t’s *McCreary* Discovery Mem. at 7 (similar); Gov’t’s *Bledsoe* Discovery Mem. at 7 (similar).

⁴ The government further assures the Court that “Deloitte’s personnel undergo similar clearance and background investigation procedures as employees” of the U.S. Attorney’s Office for the District of Columbia, Gov’t’s Mot. at 7, without clarifying whether the Deloitte employees supporting the contract in fact hold government-issued security clearances, *see id.* at 5, 7; Gov’t’s Suppl. Mem. at 4 (“All Deloitte employees supporting the contract . . . are subjected to rigorous security background investigations.”).

“supervises and directs the work being performed by Deloitte under the contract,” Gov’t’s Mot. at 5, and “[a]t the end of the contract period, Deloitte will be required to return all materials to the government and to sanitize any media in accordance with government-approved procedures,” Gov’t’s Suppl. Mem. at 4.

These precautions notwithstanding, the government’s plan to use Deloitte, an outside contractor, to process and review the voluminous data collected by the government is complicated by the procedural posture of a substantial, and increasing, number of the Capitol attack cases. To date, over 170 indictments, charging more than 200 Capitol attack defendants with felony offenses, have been returned by grand juries sitting in this District. Gov’t’s Mot. at 3. Thus, the materials identified during the investigation of the Capitol attack include “transcripts and exhibits from . . . grand jury presentations” made to obtain those indictments, as well as “thousands of documents” produced to the government in response to the “over 6,000 grand jury subpoenas . . . issued in connection with” the events of January 6. *Id.* The government expects that, as the Capitol attack investigation continues, “the number of cases presented to the grand jury and the number of subpoenas for documents will only continue to grow.” *Id.*

As the government recognizes, these materials presented to grand juries “are or may be protected by Federal Rule of Criminal Procedure 6(e),” *id.*, which bars, with limited and strictly construed exceptions, the disclosure of “matter[s] occurring before the grand jury,” FED. R. CRIM. P. 6(e)(2)(B), to any persons or entities. Rule 6(e) therefore presumptively prevents the government from disclosing any grand jury matters and related materials to Deloitte in connection with its contract to process, review, and catalogue information related to the Capitol

attack, unless one of the exceptions permitting disclosure of grand jury matters in certain circumstances, enumerated in Rule 6(e)(3), applies.

Set against this general prohibition on disclosure designed to protect the secrecy of grand jury proceedings, the government contemplates a *double* disclosure of grand jury materials: first, a wholesale handoff to Deloitte of all such materials and, then, second, production of discrete grand jury materials to individual defendants as pertinent to particular cases to comply with discovery obligations. The government's express goal in making the first disclosure is to facilitate the second disclosure in an easier, more expeditious manner. *See, e.g.*, Gov't's Second Suppl. Mem. at 5 (stating that disclosure to Deloitte will allow prosecutors to more easily "identify [grand jury] material subject to disclosure under the Jencks Act and *Brady-and-Giglio* principles"). While the merits of that goal are self-evident, the issue here is whether the first requested bulk disclosure of grand jury material is authorized under Rule 6(e).

D. Procedural History

On June 30, 2021, the government moved, in an eight-page application, for an order authorizing the disclosure of grand jury matters related to the Capitol attack to Deloitte pursuant to Federal Rule of Criminal Procedure 6(e)(3)(A)(ii), Gov't's Mot. at 1; *see also* Proposed Order Authorizing Disclosure of Grand Jury Materials Under Fed. R. Crim. P. 6(e)(3)(A)(ii) ("Proposed Order") at 1–2, ECF No. 1-1, which allows the disclosure of grand jury matters to certain "government personnel," FED. R. CRIM. P. 6(e)(3)(A)(ii).⁵ In response to the Court's order, *see* Min. Order (June 30, 2021), the government submitted a brief five-page supplemental

⁵ This case and all docket entries were initially placed under seal. In response to the Court's order directing the government to explain "the necessity of maintaining this matter under seal in light of Fed. R. Crim. P. 6(e)(6), which requires that '[r]ecords, orders, and subpoenas related to grand-jury proceedings . . . be kept under seal' only 'to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grant jury,'" Min. Order (July 8, 2021) (alteration and omission in original) (quoting FED. R. CRIM. P. 6(e)(6)), the government "withdr[ew] its request for sealing" of this matter, Gov't's Withdrawal of Sealing Request at 1, ECF No. 3. Accordingly, the entire docket was unsealed on July 9, 2021. *See* Min. Order (July 9, 2021).

filing on July 6, 2021, *see* Gov’t’s Suppl. Mem.⁶ The government was given yet another opportunity, at its request, to supplement its application, *see* Min. Order (July 13, 2021), which it did, on July 13, 2021, *see* Gov’t’s Second Suppl. Mem. This second, ten-page supplemental filing modifies the government’s initial request to seek, in the event the Court “separately determines that Deloitte does not qualify as ‘government personnel’ under Rule 6(e)(3)(A)(ii),” Gov’t’s Second Suppl. Mem. at 10, “a disclosure order . . . under Rule 6(e)(3)(E)(i),” *id.* at 1, a provision allowing a court to “authorize disclosure . . . of a grand-jury matter,” FED. R. CRIM. P. 6(e)(3)(E), “preliminarily to or in connection with a judicial proceeding,” FED. R. CRIM. P. 6(e)(3)(E)(i). The government’s motion is now ripe for resolution.

II. LEGAL STANDARD

Federal Rule of Criminal Procedure 6(e) governs, as its title reflects, “Recording and Disclosing the Proceedings” of a grand jury, FED. R. CRIM. P. 6(e), and “‘sets forth in precise terms to whom, under what circumstances and on what conditions grand jury information may be disclosed,’” *McKeever v. Barr*, 920 F.3d 842, 844 (D.C. Cir. 2019) (quoting *Fund for Const. Gov’t v. Nat’l Archives & Recs. Serv.*, 656 F.2d 856, 868 (D.C. Cir. 1981)), *reh’g en banc denied* (D.C. Cir. July 22, 2019), *cert. denied*, 140 S. Ct. 597 (2020) (mem.). To start, Rule 6(e)(2)(B) expressly prohibits the disclosure of “matter[s] occurring before the grand jury” except in cases where “these rules provide otherwise.” FED. R. CRIM. P. 6(e)(2)(B). “The only rule to ‘provide otherwise’ is Rule 6(e)(3),” *McKeever*, 920 F.3d at 845, which enumerates a list of “Exceptions” to grand jury secrecy, FED. R. CRIM. P. 6(e)(3).

⁶ Since the government’s initial application failed to cite, let alone discuss, binding, applicable precedent, the Court directed the government to address in supplemental briefing “how the government’s expansive reading of the term ‘government personnel’ in Federal Rule of Criminal Procedure 6(e)(3)(A)(ii) to include a private consulting firm holding a government contract comports with *McKeever v. Barr*, which precedent was not addressed in the government’s motion and requires ‘a district court to hew strictly to the list of exceptions to grand jury secrecy.’” Min. Order (June 30, 2021) (quoting *McKeever v. Barr*, 920 F.3d 842, 846 (D.C. Cir. 2019)).

The D.C. Circuit held, in *McKeever v. Barr*, 920 F.3d 842 (D.C. Cir. 2019), that “Rules 6(e)(2) and (3) together explicitly require secrecy in all other circumstances” except those identified in Rule 6(e)(3)’s exceptions. *Id.* at 845. Thus, a district court must “hew strictly to the list of exceptions to grand jury secrecy” set out in Rule 6(e)(3), *id.* at 846, which exceptions are “exhaustive,” *id.* at 845, and ““must be narrowly construed,”” *id.* at 847 (quoting *In re Sealed Case*, 250 F.3d 764, 769 (D.C. Cir. 2001)); *see also United States v. Williams*, 504 U.S. 36, 70 n.6 (1992) (noting that Rule 6(e) “plac[es] strict controls on disclosure of ‘matters occurring before the grand jury’” (quoting FED. R. CRIM. P. 6(e)) (citing *United States v. Sells Eng’g, Inc.* (“*Sells Eng’g*”), 463 U.S. 418 (1983))). In the Circuit’s binding view, “deviations from the detailed list of exceptions in Rule 6(e) are not permitted.” *McKeever*, 920 F.3d at 846.

III. DISCUSSION

The government seeks authorization to disclose “grand jury matters related to the Capitol Breach . . . to Deloitte and its personnel” in order “to assist prosecutors in the performance of their duty to enforce federal criminal laws” by providing “technical litigation support and data processing services,” Proposed Order at 2, pursuant to Rule 6(e)(3)(A)(ii), Gov’t’s Mot. at 1; Gov’t’s Suppl. Mem. at 1–2. In the alternative, it seeks an order authorizing the same disclosure to Deloitte pursuant to Rule 6(e)(3)(E)(i), arguing that “the unique circumstances of the Capitol Breach prosecutions fully justify” such an order. Gov’t’s Second Suppl. Mem. at 1. For the reasons explained below, the government has not demonstrated that the requirements for disclosure under either exception are met, and its motion to authorize disclosure of grand jury matters to Deloitte must be denied.

A. Disclosure Under Rule 6(e)(3)(A)(ii)

Rule 6(e)(3)(A)(ii) allows the disclosure of grand jury matters to “any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—

that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law." FED. R. CRIM. P. 6(e)(3)(A)(ii).⁷ The government argues that "contract employees may be considered 'government personnel' for purposes of Rule 6(e)(3)(A)(ii) when those employees perform necessary prosecutorial functions under government control." Gov't's Mot. at 6; *see also id.* at 6–7; Gov't's Suppl. Mem. at 2–3. Relying on this interpretation, the government posits that Deloitte, as an independent contractor retained by the government "to assist federal prosecutors in the performance of their duties," qualifies as "government personnel" within the meaning of the exception. Gov't's Mot. at 6.⁸

Contrary to the position of the government, however, an interpretation of the term "government personnel" in the (A)(ii) exception to encompass a private firm contracted by the government to provide certain services stands in tension with the text of the Rule and its legislative history. Moreover, such a broad reading of "government personnel" neither comports with the D.C. Circuit's admonition in *McKeever* against interpretations of Rule 6(e) that would "enable the court to 'circumvent' or 'disregard' a Federal Rule of Criminal Procedure," 920 F.3d at 845 (quoting *Carlisle v. United States*, 517 U.S. 416, 426 (1996)) (citing *Dietz v. Bouldin*, 136

⁷ Disclosures under Rule 6(e)(3)(A)(ii), on which the government rests its "primary submission," Gov't's Second Suppl. Mem. at 7, may be made without judicial authorization and court order, though the prosecutor is obliged to "promptly provide the court . . . with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule," FED. R. CRIM. P. 6(e)(3)(B). The government's decision to "nonetheless seek[] such an order here out of an abundance of caution, as case law is not extensive on the issue of what types of independent contractors may constitute 'government personnel,'" *id.*, shows commendable and appropriate caution before making the contemplated massive handoff to a private entity of otherwise-secret grand jury material, particularly since violating Rule 6(e)(2)'s general rule of grand jury secrecy carries potential penalties, including being held in "contempt of court," FED. R. CRIM. P. 6(e)(7); *see also In re Sealed Case No. 98-3077*, 151 F.3d 1059, 1067–70 (D.C. Cir. 1998) (recognizing a private right of action to initiate civil contempt proceedings to enforce Rule 6(e)(2)); *Barry v. United States*, 865 F.2d 1317, 1321 (D.C. Cir. 1989) (same).

⁸ The government further represents that, to ensure full compliance with Rule 6(e), if disclosure is authorized, "Deloitte's employees will be required to adhere to all grand jury secrecy requirements and other applicable laws, regulations, and Department of Justice policies and procedures, including maintaining properly locked and secure storage of grand jury materials, limiting access to grand jury materials, and preventing any improper disclosure of grand jury materials" and the U.S. Attorney's Office "will provide Deloitte a written advertisement as to its obligations with respect to grand jury secrecy and will certify to this Court that it has done so[.]" Gov't's Mot. at 5; *see also* FED. R. CRIM. P. 6(e)(3)(B).

S. Ct. 1885, 1888 (2016)), nor is supported by decisions of other courts interpreting the (A)(ii) exception. Deloitte and its employees therefore are not “government personnel” within the meaning of the exception to grand jury secrecy set forth in Rule 6(e)(3)(A)(ii), and disclosure pursuant to (A)(ii) cannot be authorized.

1. *Principles Guiding Interpretation of Rule 6(e)(3)(A)(ii)*

The standard “principles of statutory interpretation apply also to federal rules, including the Federal Rules of Criminal Procedure.” *United States v. Melvin*, 948 F.3d 848, 852 (7th Cir. 2020); *see also, e.g., Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 123 (1989) (applying principles of statutory interpretation to the Federal Rules of Civil Procedure); *United States v. Owen*, 500 F.3d 83, 89–91 (2d Cir. 2007) (same for Federal Rules of Criminal Procedure). Thus, in interpreting any of the Rules, courts must “begin with the text.” *Eagle Pharms., Inc. v. Azar*, 952 F.3d 323, 330 (D.C. Cir. 2020) (quoting *City of Clarksville v. Fed. Energy Regul. Comm’n*, 888 F.3d 477, 482 (D.C. Cir. 2018)). In addition, the court may, if necessary, look beyond the text to other “traditional tools of statutory interpretation,” including a Rule’s “structure, purpose, and legislative history.” *In re Sealed Case*, 932 F.3d 915, 928 (D.C. Cir. 2019) (quoting *Tax Analysts v. IRS*, 350 F.3d 100, 103 (D.C. Cir. 2003)).

In the wake of the D.C. Circuit’s decision in *McKeever*, the text carries particularly great weight in the Rule 6(e) context. The *McKeever* Court determined that Rule 6(e)’s “list of exceptions is exhaustive,” 920 F.3d at 845, and therefore deprives a district court of inherent authority to disclose grand jury materials unless one of the exceptions to grand jury secrecy specifically enumerated in Rule 6(e)(3) applies, *see id.* at 845–50. To reach this conclusion, the panel evaluated the plain text, legislative history, and traditional policies reflected in Rule 6(e), as well as decades of Supreme Court and D.C. Circuit precedent interpreting Rule 6(e) against

the background principle that “in the absence of a clear indication in a statute or Rule, [courts] must always be reluctant to conclude that a breach of [grand jury] secrecy has been authorized.” *Id.* at 844 (quoting *Sells Eng’g*, 463 U.S. at 425); *see also id.* at 844–45, 846–47 (discussing cases). The *McKeever* Court determined that these sources conclusively demonstrated that the specificity of Rule 6(e)(3)’s enumerated exceptions reflects “a carefully considered policy judgment by the Supreme Court in its rulemaking capacity, and by the Congress, which in 1977 directly enacted Rule 6(e) in substantially its present form.” *Id.* at 845. Thus, to avoid “render[ing] the detailed list of exceptions merely precatory” and overturning Congress and the Supreme Court’s assessment of when disclosure of grand jury materials is appropriate, *id.* (quoting *Carlisle*, 517 U.S. at 426), a district court must “hew strictly” to the exceptions, *id.* at 846, which in turn “must be narrowly construed” and understood to be exclusive, *id.* at 847 (quoting *In re Sealed Case*, 250 F.3d at 769).

In light of the Circuit’s instruction in *McKeever* that “the rule-based exceptions” in Rule 6(e)(3) “are an exhaustive list,” *In re Appl. of U.S. for Order Pursuant to 28 U.S.C. § 1651(a) Precluding Notice of Grand Jury Subpoena* (“*In re Appl.*”), Case No. 19-wr-10 (BAH), 2019 WL 4619698, at *3 (D.D.C. Aug. 6, 2019), “the text of Rule 6(e) must be interpreted narrowly and precisely, in accord with its plain meaning,” *United States v. Thorne*, Crim. No. 18-389 (BAH), 2021 WL 2682631, at *32 (D.D.C. June 30, 2021).

The government attempts to escape this relatively inflexible interpretive frame imposed by *McKeever*, arguing that the Circuit’s holding “was rooted in the need to protect the vital purposes of grand jury secrecy” and that the disclosure of historical grand jury materials sought by the appellant in that case “was . . . completely inconsistent with at least one of the purposes for which grand jury secrecy exists.” Gov’t’s Suppl. Mem. at 3. In contrast, it claims, “the

safeguards that Deloitte is required to take in ensuring the security and confidentiality of [grand jury] materials,” described *supra* Part I.C, render disclosure of grand jury materials to this private contractor “wholly consistent with the long-established purposes of grand jury secrecy.”

Id. Since the requested disclosure to Deloitte does not violate the purposes of grand jury secrecy, the government implies, *McKeever* allows for the term “government personnel” to be read broadly enough to include Deloitte and its employees.

The government correctly observes that the *McKeever* Court sought to uphold, through its construction of Rule 6(e), the important policies of “(1) preserving the willingness and candor of witnesses called before the grand jury; (2) not alerting the target of an investigation who might otherwise flee or interfere with the grand jury; and (3) preserving the rights of a suspect who might later be exonerated,” all of which interests are “safeguard[ed]” by the long tradition of grand jury secrecy. *McKeever*, 920 F.3d at 844 (citing *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 219 (1979)). The government’s reasoning, however, completely ignores the analytical process by which the Circuit pursued this goal. “Since the effect of any potential disclosure of grand jury materials ‘must be evaluated *ex ante*,’ and could ‘grow as district courts continue over time to create additional exceptions to grand jury secrecy,’” *Thorne*, 2021 WL 2682631, at *31 (quoting *McKeever*, 920 F.3d at 849), the *McKeever* Court found that these traditional policy considerations “weighed heavily in favor of reading Rule 6(e) narrowly and literally,” *id.* Indeed, *McKeever* explicitly states that, “[t]o protect these important interests, . . . [courts] ‘must always be reluctant to conclude that a breach of [grand jury] secrecy has been authorized’” by a statute or Rule. 920 F.3d at 844 (quoting *Sells Eng’g*, 463 U.S. at 425). Thus, “*McKeever* explains that Rule 6(e) is the product of ‘carefully considered policy judgment by the Supreme Court in its rulemaking capacity, and by the Congress’” as to when disclosure may be allowed,

“which district courts may not circumvent by ignoring the Rule’s careful calibrations.” *In re Appl.*, 2019 WL 4619698, at *4 (quoting *McKeever*, 920 F.3d at 845). The *McKeever* Court itself, by construing Rule 6(e)’s exceptions in light of its text, structure, and legislative history while leaving evaluation of the purposes served by the Rule to Congress and the Supreme Court, modeled the correct approach to interpretation of this Rule. *See* 920 F.3d at 844–49; *Thorne*, 2021 WL 2682631, at *31–32 (describing *McKeever*’s use of various interpretive tools).

In other words, *McKeever* neither requires nor permits district courts to undertake *ex ante* assessment of whether a proposed disclosure of grand jury materials appears to align with the purposes of grand jury secrecy when construing Rule 6(e). Under the Circuit’s logic, this determination rests within the power of the Supreme Court and Congress, as the bodies entrusted with enacting and amending the Federal Rules of Criminal Procedure. Rather, the task of a district court interpreting an exception to the rule of grand jury secrecy is to “hew strictly” to the text in order to effectuate Congress’s and the Supreme Court’s judgment as to when disclosure is appropriate. *McKeever*, 920 F.3d at 846.

The Circuit’s conclusion in this regard reflects the position, urged successfully by the government in *McKeever* and elsewhere, that Rule 6(e) is “prescriptive and exhaustive in its terms,” and “recognizes only a handful of carefully tailored exceptions” that are confined to their terms. Br. for Appellee at 14, *McKeever*, 920 F.3d 842 (No. 17-5149), Doc. No. 1702864. Since “nothing in Rule 6(e) contains a clear indication or affirmative expression of congressional intent to authorize disclosures outside of the express exceptions listed in that rule,” in the government’s words, “no sound basis exists” to stray from the text when construing the Rule’s exceptions. Br. for Resp’t Opp’n Cert. at 11, *McKeever v. Barr*, 140 S. Ct. 597 (2020) (mem.) (No. 19-307); *see also, e.g.*, Pet. for Writ of Cert. at 15, *Dep’t of Justice v. House Comm. on Judiciary*, No. 19-

1328, 2021 WL 2742772 (July 2, 2021) (mem.) (“[T]his Court has made clear that exceptions to grand-jury secrecy [in Rule 6(e)(3)] must be interpreted narrowly.”). By contrast to its position articulated elsewhere, the government now claims that Rule 6(e)’s exceptions should be interpreted—and expanded—to align with the purposes of grand jury secrecy, rather than read literally, because this more flexible approach to Rule 6(e) accommodates its need for outside expertise in the Capitol attack investigation. This view, however, not only represents an expedient relaxation of the government’s position expressed in *McKeever* and elsewhere, but also cannot be reconciled with the D.C. Circuit’s holding that “deviations from the detailed list of exceptions in Rule 6(e) are not permitted.” *McKeever*, 920 F.3d at 846.

In short, *McKeever* mandates “a strict . . . interpretation” of Rule 6(e)’s exceptions, *Thorne*, 2021 WL 2682631, at *32, which may be informed by the text of the Rule, its legislative history, and precedent. The meaning of the term “government personnel” in Rule 6(e)(3)(A)(ii) is considered in light of these interpretive principles.

2. *Text*

A plain-text reading of Rule 6(e)(3)(A)(ii) disfavors the government’s proffered interpretation of “government personnel.” The government contends “that contract employees may be considered ‘government personnel’ for purposes of Rule 6(e)(3)(A)(ii) when those employees perform necessary prosecutorial functions under government control.” Gov’t’s Mot. at 6; *see also* Gov’t’s Suppl. Mem. at 2–3. Though the government offers barely any analysis of the text of the exception, implicit in its argument is an interpretation of the term “government personnel” as including any individual or entity, whether in an employment relationship with the government or not, that (1) carries out “necessary prosecutorial function[s]” and (2) “work[s]

under the control of government prosecutors.” Gov’t’s Mot. at 7. This reading of “government personnel” fails for three reasons.

First, the term “government personnel,” in common parlance, refers to individuals who are employed by the government. *In re Grand Jury Proc.*, 158 F. Supp. 2d 96, 106 (D. Mass. 2001) (“[O]n its face, ‘government personnel’ appears to refer to people in the employ of the government.”); *see also, e.g., Burch v. U.S. Dep’t of Agric.*, 174 F. App’x 328, 332 (6th Cir. 2006) (finding the “ordinary meaning” of “personnel to be ‘a body of persons employed in some service’ or ‘a body of employees that is a factor in business administration’” (quoting *Bakal Bros., Inc. v. United States*, 105 F.3d 1085, 1089 (6th Cir. 1997))); *DiBacco v. U.S. Dep’t of Army*, 234 F. Supp. 3d 255, 277 (D.D.C. 2017) (determining that the phrase “personnel employed by the Agency” in 50 U.S.C. § 3507 refers to individuals currently or previously employed by the CIA), *aff’d*, 926 F.3d 827 (D.C. Cir. 2019); *United States v. Abu-Jihaad*, 600 F. Supp. 2d 362 (D. Conn. 2009) (“The plain meaning of [‘personnel’] includes ‘a body of persons employed by or active in an organization, service or place of work.’” (emphasis omitted) (quoting *United States v. Sattar*, 314 F. Supp. 2d 279, 298 (S.D.N.Y. 2004))); *Estate of Parsons v. Palestinian Auth.*, 952 F. Supp. 2d 61, 68 (D.D.C. 2013) (same). Stretching this phrase to reach beyond government employees to cover any individual who performs a service for the government, even if limited to individuals working under government supervision, exceeds the plain meaning of “government personnel” without any indication in the text of (A)(ii) that such a broad reading was intended.

Second, the inference from plain meaning that “government personnel” are restricted to employees of a public governmental entity is bolstered by Rule 6(e)(3)(A)(ii)’s explanatory clause, clarifying that the exempt category of individuals “includ[es] those [personnel] of a state,

state subdivision, Indian tribe, or foreign government.” FED. R. CRIM. P. 6(e)(3)(A)(ii). This language, which was added to (A)(ii) through the 1985, 2002, and 2004 amendments to Rule 6(e), *see Amendments to Federal Rules of Criminal Procedure* (“1985 Amendments”), 471 U.S. 1167, 1171 (1985); *Amendments to Federal Rules of Criminal Procedure* (“2002 Amendments”), 535 U.S. 1157, 1186 (2002); Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, tit. VI, subtit. F, § 6501(a)(1)(A), 118 Stat. 3638 (2004) [hereinafter 2004 Amendment]; *infra* Part III.A.3.b, is best read as expanding the “government personnel” initially covered by the Rule to encompass employees of other public governmental entities. The relationship between the term “government personnel” and the explanatory expansion of that term to employees of non-federal governmental entities suggests that “government personnel” standing alone referred only to employees of the federal government. *Cf. Illinois v. Abbott & Assocs., Inc.*, 460 U.S. 557, 567 (1983) (observing, before the 1985 addition of the explanatory language, that the (A)(ii) “exception [was] limited to federal government personnel performing a specified federal law enforcement function”); *United States v. Fort*, 472 F.3d 1106, 1112 (9th Cir. 2007) (noting that, in light of the explanatory clause, “‘government personnel’ [in Rule 6(e)(3)(A)(ii)] is defined expressly to incorporate not only federal authorities, but also employees of non-federal governmental entities that are engaged in assisting federal criminal law enforcement”). If “government personnel” had carried a broader meaning in the first instance, an explicit textual reference to personnel associated with other public governmental bodies would not have been needed to bring such individuals within the scope of the exception. Moreover, that each of the entities enumerated in the explanatory language is governmental or at least quasi-governmental in nature indicates that the “personnel” to whom disclosure may be made pursuant to (A)(ii) must be employed by a public rather than a private entity. The omission of any private

bodies from this enumerated list suggests that a court ought not to infer that the Rule permits disclosure to such entities. *See McKeever*, 920 F.3d at 845 (“Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.” (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17 (1980))).

Third, the government’s proffered interpretation of “government personnel” both reads limiting language out of the (A)(ii) exception and imposes an extratextual limitation. The government contends that persons qualify as “government personnel” if they (1) “perform necessary prosecutorial functions that cannot reasonably be performed by traditional Civil Service employees” and (2) “work under the control of government prosecutors.” Gov’t’s Mot. at 7. The first prong of this formulation of the standard for classification as “government personnel” disregards the remaining text of (A)(ii), which further limits the availability of disclosure to those government personnel “that an attorney for the government considers necessary to assist in performing that attorney’s duty to enforce federal criminal law.” FED. R. CRIM. P. 6(e)(3)(A)(ii). The Rule itself, then, imposes two criteria for the (A)(ii) exception to apply. First, the individual or entity must be “government personnel.” *Id.* Even if this requirement is met, disclosure is not allowed unless the covered personnel is also “necessary to assist” in the enforcement of federal criminal law. *Id.* The government’s definition of “government personnel” conflates these two distinct limitations on disclosure under the (A)(ii) exception by reading the “personnel” restriction to be coextensive with the “necessity” restriction. Under this reading, the “necessity” language becomes superfluous, in violation of the longstanding canon against surplusage, which “dictates that when construing a statute courts ‘give effect, if possible, to every clause and word.’” *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d

998, 1003 (D.C. Cir. 2016) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”). In contrast, reading “government personnel” to refer to government employees preserves the “necessity” requirement as a separate criterion to permit disclosure, giving meaning to the full text of (A)(ii). *See In re Grand Jury Proc.*, 158 F. Supp. 2d at 107 (rejecting a similar interpretation of “government personnel” proffered by prosecutors on surplusage grounds).

The second prong of the government’s standard adds an extratextual requirement that “government personnel” must “work under the control of government prosecutors.” Gov’t’s Mot. at 7. Nowhere does (A)(ii) limit the covered government personnel to employees under the direct supervision or control of prosecutors, nor is such a restriction implied through the “necessity” requirement. *See* FED. R. CRIM. P. 6(e)(3)(A)(ii). The government presumably proposes this criterion because it recognizes that, absent some requirement of control, its interpretation renders the phrase “government personnel” meaningless, as any outside entity whose assistance the government deems necessary could fit within its broad construction of the exception. Yet the government’s acknowledgment that the phrase “government personnel” implies a requirement of control by the government in fact supports a reading of the term as referring to government employees, as the only individuals who are fully subject to government control in the performance of their duties.

The text of (A)(ii), then, supports a narrow construction of “government personnel” as referring to public governmental entities and individuals employed by public governmental entities. As explained below, examination of the legislative history of the exception only strengthens this interpretation.

3. *Legislative History*

Rule 6(e) has been amended repeatedly since its initial enactment in 1946.⁹ Most relevant here, the “government personnel” exception now codified at Rule 6(e)(3)(A)(ii) was first added in the 1977 amendments to the Rule. *See* Act of July 30, 1977, Pub. L. No. 95-78, § 2(a), 91 Stat. 319. That version of (A)(ii) provided for disclosure of grand jury matters to “such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney’s duty to enforce Federal criminal law.” *Id.* The exception was amended in 1985 to make clear that “government personnel” includes the “personnel of a state or subdivision of a state,” *1985 Amendments*, 471 U.S. at 1171; *see also Communication from the Chief Justice of the Supreme Court Transmitting Amendments to the Federal Rules of Criminal Procedure*, H.R. DOC. NO. 99-64, at 2 (1985), and was revised again in 2002 and 2004 to expand (A)(ii)’s coverage to the personnel of Indian tribes and foreign governments, respectively, *see 2002 Amendments*, 535 U.S. at 1186; 2004 Amendment § 6501(a)(1)(A). The legislative history of these amendments indicates that the (A)(ii) exception was consistently intended to create only a narrow provision for disclosure of grand jury matters, restricted to employees of public governmental entities assisting federal prosecutors in the enforcement of federal criminal law.

a. **The 1977 Amendment**

“Rule 6(e), as it stood from 1946 to 1977, contained no provision for access to grand jury materials by non-attorneys assisting government attorneys.” *Sells Eng’g*, 463 U.S. at 436 (footnote omitted). “[T]he original Rule . . . set forth [only] three exceptions to grand jury secrecy,” *In re Grand Jury Proc.*, 158 F. Supp. 2d at 108, one of which allowed for disclosure to

⁹ The current version of Rule 6(e)(3)(A)(ii) was enacted by Congress in 2004. *See* 2004 Amendment § 6501(a)(1)(A).

“attorneys for the government in the performance of their duties,” FED. R. CRIM. P. 6(e), 18 U.S.C. § 687 app. at 1963 (1946). Federal Rule of Criminal Procedure 54(c) defined “attorneys for the government,” as that phrase was used in Rule 6(e), narrowly, to include only the Attorney General, assistants to the Attorney General, United States Attorneys, and assistants to United States Attorneys. FED. R. CRIM. P. 54(c), 18 U.S.C. § 687 app. at 1987 (1946). “This became something of a problem in practice, because Justice Department attorneys found that they often needed active assistance from outside personnel,” *Sells Eng’g*, 463 U.S. at 436, in particular, “attorneys for government agencies outside the Justice Department,” *id.* at 436 n.21.

To address this growing concern, after several years of deliberation by the Advisory Committee on Criminal Rules, the Committee on Rules of Practice and Procedure, and the Judicial Conference as a whole, in 1976, the Supreme Court approved and transmitted to Congress proposed amendments to Rule 6(e). *See Amendments to Federal Rules of Criminal Procedure* (“1976 Proposed Amendments”), 425 U.S. 1157 (1976); *Proposed Amendments to the Federal Rules of Criminal Procedure: Hearings Before the Subcomm. on Crim. Justice of the H. Comm. on the Judiciary*, 95th Cong. 105 (1977) [hereinafter *1977 Hearings*] (statement of Prof. Wayne R. LaFare, Reporter, Advisory Comm. on Crim. Rules); *Communication from the Chief Justice of U.S. Transmitting Amendments to the Federal Rules of Criminal Procedure*, H.R. DOC. NO. 94-464, at iii–iv (1976).

The Supreme Court’s version of the 1976 amendments included a proposal “to add one sentence to Rule 6(e), immediately following the provision for disclosure to attorneys for the Government.” *Sells Eng’g*, 463 U.S. at 436–37. That sentence would have stated that “[f]or purposes of [Rule 6(e)], ‘attorneys for the government’ includes those enumerated in Rule 54(c); it also includes such other government personnel as are necessary to assist the attorneys for the

government in the performance of their duties.” *1976 Proposed Amendments*, 425 U.S. at 1161; *see also* H.R. DOC. NO. 94-464, app. A, at 7.¹⁰ The Advisory Committee’s Notes on this suggested change to Rule 6(e) explained that the expanded definition of “attorneys for the government” was “designed to facilitate an increasing need, on the part of government attorneys, to make use of outside expertise in complex litigation” and clarified that “[t]he phrase ‘other government personnel’” in the definition “includes, but is not limited to, employees of administrative agencies and government departments.” FED. R. CRIM. P. 6(e) advisory committee’s note to 1977 amendment.

“The proposed amendment to Rule 6(e) met a mixed reception in Congress.” *Sells Eng’g*, 463 U.S. at 437. Concerned about the potential expansion of grand jury disclosure, Congress postponed the effective date of the amendment to Rule 6(e) until the earlier of August 1, 1977 or its approval by Congress to allow for review of the proposal. Act of July 8, 1976, Pub. L. No. 94-349, § 1, 90 Stat. 822; *see also 1977 Hearings, supra*, at 1 (remarks of Rep. Mann). The House Subcommittee on Criminal Justice held hearings on the proposed amendments, *see 1977 Hearings, supra*, and ultimately recommended that the House reject the modification to Rule 6(e). In its report, the Subcommittee expressed “concern that [the revised Rule 6(e)] would permit too broad an exception to the rule of keeping grand jury proceedings secret” and “would allow Government agency personnel to obtain grand jury information which they could later use in connection with an unrelated civil or criminal case.” H.R. REP. NO. 95-195, at 4 (1977). “The House [subsequently] voted to disapprove the amendment.” *Sells Eng’g*, 463 U.S. at 437; *see also* H.R. 5864, 95th Cong. § 2 (1977).

¹⁰ The proposed amendments also included technical changes to Rule 6(e) not relevant here. *See 1976 Proposed Amendments*, 425 U.S. at 1161–62.

Following the House's rejection of the proposed amendment to Rule 6(e), *see* 123 CONG. REC. 25,194 (1977) (remarks of Rep. Mann), the Senate Judiciary Committee began the process of "redraft[ing] Rule 6(e) to accommodate both the purpose of the proposed amendment and the concerns of the House," *Sells Eng'g*, 463 U.S. at 438; *see also* S. REP. NO. 95-354, at 1–2, 5–8 (1977). In consultation with the House Subcommittee on Criminal Justice, the Senate Subcommittee on Criminal Laws and Procedures wrote a revised amendment to Rule 6(e), *see* 123 CONG. REC. H7,866 (daily ed. July 27, 1977) (statement of Rep. Mann), which was passed by Congress, Act of July 30, 1977 § 2(a). The version of the Rule that was ultimately enacted stated, in relevant part, that "[d]isclosure otherwise prohibited by this rule of matters occurring before the grand jury . . . may be made to . . . (ii) such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law." *Id.*; *see also* 123 CONG. REC. H7,865 (daily ed. July 27, 1977).

Congress did not define the term "government personnel" in the final language of Rule 6(e)(3)(A)(ii). It did, however, decline to include in the final Rule the phrase "other government personnel," which had featured in the Supreme Court's proposed amendment to Rule 6(e), *see 1976 Proposed Amendments*, 425 U.S. at 1161, and was explicitly defined by the Advisory Committee as "includ[ing], *but not limited to*, employees of administrative agencies and government departments," FED. R. CRIM. P. 6(e) advisory committee's note to 1977 amendment (emphasis added). Congress's rejection of the Supreme Court's specific phrase suggests a rejection also of the Advisory Committee's broad definition of that term in favor of a narrower construction that did indeed limit disclosure to government employees rather than being "not limited to" them. This logic aligns with the concerns about expanding too far the availability of

disclosure and preserving grand jury secrecy that led the House to disapprove of the amendments as initially proposed. Additional details of the legislative history of the 1977 amendments only confirms this inference.

First, the testimony given at the House Subcommittee's hearings on the proposed amendments indicates that Congress understood the term "government personnel" to be synonymous to "government employee." Professor Wayne LaFave, the Reporter to the Advisory Committee on Criminal Rules, directly answered the question of whether the proposed amendment would allow to disclosure to individuals outside the government. *See 1977 Hearings, supra*, at 92 (testimony of Prof. LaFave). When asked whether the "intention" of the proposed rule was "not to permit the prosecutor to call in an astrologer or astronomer, for example," if no "governmental employee [was] expert in that field," Professor LaFave responded: "Yes; that is correct. Apparently representatives of the Justice Department . . . did not seem to think that was a problem, in other words, that there was an occasion when they would need an expert and couldn't find the astrologer some place in the Federal Government." *Id.* Elsewhere in the hearings, the term "government personnel" is treated as equivalent to the term "government employee."¹¹

Likewise, the House and Senate reports on the various proposed amendments to Rule 6(e) appear to use the terms "government personnel" and "government employees" interchangeably. *See S. REP. NO. 95-354*, at 6 (stating, in explaining the final version of Rule 6(e), that

¹¹ *See, e.g., 1977 Hearings, supra*, at 86 (testimony of Prof. LaFave) ("The purpose of this added sentence is to make it clear that rule 6(e) does not forbid U.S. attorneys from making use of this expertise from other Government employees when that outside expertise is, in fact, necessary for the U.S. attorney to carry out his duties."); *id.* at 158 (testimony of Mr. Nussbaum) (suggesting that an exception for government personnel would lead to "access by the entire Federal bureaucracy to grand jury testimony and documents"); *id.* at 29 (testimony of Judge Becker) (discussing concerns related to the proposed disclosure of grand jury matters to employees of agencies other than the Department of Justice, for example, the Internal Revenue Service ("IRS") or the Securities and Exchange Commission ("SEC")); *In re Grand Jury Proc.*, 158 F. Supp. 2d at 110–11 (cataloguing additional examples).

“[a]ttorneys for the Government in the performance of their duties with a grand jury must possess the authority to utilize the services of other government employees”); H.R. REP. NO. 95-195, at 13 (view of Rep. Wiggins) (noting that the proposed amendment “attempt[s] to make it clear that Attorneys for the Government in the performance of their duties with a grand jury, possess the authority to utilize the services of other government employees”). The consistent treatment by Congress of these terms as synonymous suggests that Congress understood “government personnel” to refer to “government employees.”

Second, the history makes apparent that Congress’s overriding interest when amending Rule 6(e) was in preserving grand jury secrecy to the greatest extent possible while enabling prosecutors to seek necessary aid, within carefully circumscribed limitations. Notably, the Supreme Court’s proposed amendment to Rule 6(e) placed no subject-matter restriction on the use of grand jury materials by “government personnel,” aside from the requirement that disclosure be “necessary to assist the attorneys for the government in the performance of their duties.” *1976 Proposed Amendments*, 425 U.S. at 1161. Congress apparently found this limit inadequate, and added to the final version of Rule 6(e)(3)(A)(ii) the further qualification that the “government personnel” be “necessary . . . to assist . . . in the performance of such attorney’s duty to enforce Federal criminal law.” Act of July 30, 1977 § 2(a); *see also* S. REP. NO. 95-354, at 8 (“The Rule as redrafted is designed to accommodate the belief on the one hand that Federal prosecutors should be able . . . to make such disclosures of grand jury information to other government personnel as they deem necessary to facilitate the performance of their duties relating to criminal law enforcement. On the other hand, the Rule seeks to allay the concerns of those who fear that such prosecutorial power will lead to misuse of the grand jury to enforce non-criminal Federal laws[.]”). The congressionally imposed restriction of disclosure not just to

government personnel, but only to government personnel needed to assist in the enforcement of federal criminal law clearly indicates that Congress sought to tailor narrowly the availability of disclosure under Rule 6(e)(3)(A)(ii) even within the government. This careful legislative effort to curb unnecessary intragovernmental disclosure makes highly unlikely that Congress intended to allow disclosure to private entities and individuals outside the government.

Finally, Congress, the Supreme Court, and the Advisory Committee all understood the proposed amendments to Rule 6(e) as an attempt to codify a growing body of case law allowing disclosure of grand jury matters to federal government employees outside the Department of Justice. *See* S. REP. NO. 95-354, at 7 (noting that “it is timely to redraft subdivision (e) of Rule 6” to reconcile “the anomalous language of Rule 6(e) itself” with “current practice, and the weight of case law”); H.R. DOC. NO. 94-464, at 9 (“Although case law is limited, the trend seems to be in the direction of allowing disclosure to government personnel who assist attorneys for the government in situations where their expertise is required.”); FED. R. CRIM. P. 6(e) advisory committee’s note to 1977 amendment (same). The cases cited by these entities in their respective descriptions of the proposed amendment, *see 1977 Hearings, supra*, at 106 (testimony of Prof. LaFave); FED. R. CRIM. P. 6(e) advisory committee’s note to 1977 amendment; H.R. DOC. NO. 94-464, at 9; S. REP. NO. 95-354, at 6–7, 7 n.9, all examined the question of whether the pre-1977 version of Rule 6 permitted disclosure by prosecutors to other government agencies and employees, not to private entities or individuals.¹²

¹² *See, e.g., United States v. Evans*, 526 F.2d 701, 707 (5th Cir. 1976) (allowing disclosure “to a special agent from the Treasury Department in the Alcohol, Tobacco and Firearms Bureau”); *In re Apr. 1956 Term Grand Jury*, 239 F.2d 263, 272–73 (7th Cir. 1956) (considering disclosure to the Treasury Department); *United States v. U.S. Dist. Ct.*, 238 F.2d 713, 721 (4th Cir. 1956) (allowing disclosure to prosecutors’ “superiors in the Department of Justice”); *Robert Hawthorne, Inc. v. Dir. of Internal Revenue*, 406 F. Supp. 1098, 1120–28 (E.D. Pa. 1975) (permitting disclosure to “agents, special agents, and employees of the I.R.S.,” *id.* at 1120); *In re William H. Pflaumer & Sons, Inc.*, 53 F.R.D. 464, 475 (E.D. Pa. 1971) (“[R]epresentatives of government agencies actively assisting the United States Attorney in a grand jury investigation and working under his direction and control may have access to the grand jury material for such purpose.”); *United States v. Anzelmo*, 319 F. Supp. 1106, 1116 (E.D.

Indeed, the Senate Judiciary Committee, in explaining the background against which Congress amended Rule 6(e), stated that, while “[t]he parameters of the authority of an attorney for the government to disclose grand jury information in the course of performing his own duties” were unclear under the then–current version of the Rule, in practice and in case law, “a commonsense interpretation prevail[ed], permitting ‘Representatives of other government agencies actively assisting United States attorneys in a grand jury investigation . . . access to grand jury material in the performance of their duties.’” S. REP. NO. 95-354, at 6–7 (omission in original) (quoting *United States v. Evans*, 526 F.2d 701, 707 (5th Cir. 1976)). Given the express interest of the drafting bodies in adapting the Rule to reflect the current state of the case law and practice, “[i]t is reasonable to infer . . . that use of ‘government personnel’ in the proposed amendment [to Rule 6(e)] was designed to mirror this limitation in the case law,” and therefore to permit disclosure only to non-attorney government employees and government attorneys outside the Department of Justice. *In re Grand Jury Proc.*, 158 F. Supp. 2d at 112.

The legislative history of the 1977 amendments to Rule 6(e), which introduced the term “government personnel” in Rule 6(e)(3)(A)(ii), thus indicates that Congress intended to permit disclosure of grand jury matters only to government employees, and only in limited circumstances when effective enforcement of federal criminal law required the assistance of additional government employees. Examination of subsequent amendments to the Rule, expanding the reach of “government personnel” to include employees of state and local governments, Indian tribes, and foreign governments, further confirms this analysis.

La. 1970) (approving disclosure to an “attorney” and an “accountant for the SEC”); *United States v. Culver*, 224 F. Supp. 419, 432 (D. Md. 1963) (finding disclosure to “a postal inspector” proper); *In re Kelly*, 19 F.R.D. 269, 270 (S.D.N.Y. 1956) (authorizing disclosure to “members of [the U.S. Attorney’s] staff, and accountants of the [FBI] and [IRS]”).

b. Subsequent Amendments

After the (A)(ii) exception was adopted by Congress in 1977, courts applying the new Rule 6(e) began to “differ[] over whether employees of state and local governments [were] ‘government personnel’ within the meaning of the [exception].” FED. R. CRIM. P. 6(e) advisory committee’s note to 1985 amendment (citing *In re Miami Fed. Grand Jury No. 79-8*, 478 F. Supp. 490 (S.D. Fla. 1979); *In re Grand Jury Proc.*, 445 F. Supp. 349 (D.R.I. 1978); *In re 1979 Grand Jury Proc.*, 479 F. Supp. 93 (E.D.N.Y. 1979)). To address this emerging divide, in 1985, the Supreme Court transmitted to Congress a proposed amendment to Rule 6(e) that, in relevant part, clarified that “[d]isclosure . . . may be made to . . . government personnel (including personnel of a state or subdivision of a state).” *1985 Amendments*, 471 U.S. at 1171; *see also* H.R. DOC. NO. 99-64, at 2. The amendment took effect on August 1, 1985, without any revision by Congress. *See* FED. R. CRIM. P. 6(e) notes.

The Advisory Committee’s explanation of this amendment to the (A)(ii) exception suggests that the 1977 version of the exception did not allow for disclosure to state and local government employees. The Committee noted that some federal courts read the term “government personnel,” standing alone, to refer only to employees of the federal government, and that “[t]he amendment,” not the Rule in its previous form, unambiguously “permits disclosure to [state and local] personnel.” FED. R. CRIM. P. 6(e) advisory committee’s note to 1985 amendment. This account of the 1985 amendment indicates that the term “government personnel,” standing alone, in fact was intended to include only federal government employees, necessitating the explicit addition of state and local government personnel to the Rule. Indeed, the 1985 amendment would have been superfluous had “government personnel” included any individuals, whether federal government employees or not, whose help was necessary to federal

prosecutors' enforcement of federal law. It would strain credulity to read the term "government personnel," as the government suggests, to include private entities when both the Advisory Committee and a number of reviewing courts understood it to exclude even the personnel of non-federal governmental entities. Moreover, the Advisory Committee emphasized the status of "employees of state and local governments" as compared to federal employees, again implying that the Committee saw the words "employee" and "personnel" as interchangeable. *Id.*

Just as crucially, though the 1985 amendment expanded the covered "government personnel" beyond federal government employees, that expansion was deliberately limited only to the employees of other governmental entities. Likewise, the 2002 and 2004 amendments to Rule 6(e)(3)(A)(ii) added Indian tribes and foreign governments, respectively, to the list of the public entities whose personnel fall within the scope of the exception, but made no mention of private entities. *See 2002 Amendments*, 535 U.S. at 1186; FED. R. CRIM. P. 6(e) advisory committee's note to 2002 amendment (explaining that the revised (A)(ii) exception "includes a new provision recognizing the sovereignty of Indian Tribes and the possibility that it would be necessary to disclose grand-jury information to appropriate tribal officials in order to enforce federal law"); 2004 Amendment § 6501(a)(1)(A) (modifying Rule 6(e)(3)(A)(ii) to allow disclosure to personnel of a "foreign government," in addition to "a state or state subdivision, [or] Indian tribe"). All three amendments identify additional governmental bodies to whom disclosures may be made when necessary, but still confine the reach of the (A)(ii) exception only to public entities. Neither the Supreme Court nor Congress, in these or any other amendments to Rule 6(e), has sought to move beyond permitting disclosure to the personnel of governmental bodies by including private entities and their employees in the (A)(ii) exception, despite repeated opportunities to do so. The clear implication of this pattern is that, while "government

personnel” may be employed by any of the federal and non-federal governments enumerated in the Rule, covered individuals must share the essential characteristic of being employed by a public governmental entity.

In sum, this consistent trend from 1977 to 2004 of increasingly allowing disclosure to the personnel of governmental entities while omitting from the text of Rule 6(e)(3)(A)(ii) any reference to private or contracted entities confirms that the “government personnel” covered by the exception are the employees of public governmental entities expressly identified in the text of the Rule. Though some leeway may exist to recognize personnel of other public governmental entities not explicitly enumerated, mindful of *McKeever*’s caution that the contours of exceptions to the general rule of grand jury secrecy are defined by Congress and the Supreme Court in its rulemaking capacity, *see* 920 F.3d at 845; *In re Appl.*, 2019 WL 4619698, at *4, the legislative history provides no basis to infer that employees of private entities may be included. *See Andrus*, 446 U.S. at 616–17 (“[W]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.”); *McKeever*, 920 F.3d at 845 (quoting *Andrus* approvingly in the Rule 6(e) context).

4. *Precedent*

Unsurprisingly, since both the text and the legislative history of Rule 6(e)(3)(A)(ii) counsel against a broad reading of “government personnel” to include outside contractors, the government supports its argument in favor of such an interpretation primarily through reliance on decisions of the First, Second, and Tenth Circuits “recogniz[ing] that contract employees may be considered ‘government personnel’ for purposes of Rule 6(e)(3)(A)(ii) when those employees perform necessary prosecutorial functions under government control.” Gov’t’s Mot. at 6; *see*

also id. at 6–7 (citing *United States v. Pimental*, 380 F.3d 575, 578–79, 596 (1st Cir. 2004); *United States v. Lartey*, 716 F.2d 955, 964 (2d Cir. 1983); *United States v. Anderson*, 778 F.2d 602, 605 (10th Cir. 1985)); Gov’t’s Suppl. Mem. at 2–3.¹³ This reliance on nonbinding case law is unpersuasive for several reasons.

First, the First, Second, and Tenth Circuits have not adopted the same framework for interpreting Rule 6(e) set out by the D.C. Circuit in *McKeever* and therefore are not bound by either the conclusion that the text of Rule 6(e)(3) must be narrowly and literally construed or the determination that Rule 6(e)(3)’s exceptions represent an exhaustive list of the available exceptions to grand jury secrecy. *See, e.g., Pimental*, 380 F.3d at 594 (determining that, because “the text of the [sic] Rule 6(e)(3)(A)(ii) itself provides little guidance,” the court should “turn to the history of the Rule and its purpose in allowing disclosure only to ‘government personnel’”); *In re Craig*, 131 F.3d 99, 102 (2d Cir. 1997) (“Although, by delimiting the exceptions to grand jury secrecy, Rule 6(e)(3) governs almost all requests for the release of grand jury records, this court has recognized that there are certain ‘special circumstances’ in which release of grand jury records is appropriate even outside of the boundaries of the rule.” (citing *In re Biaggi*, 478 F.2d 489, 494 (2d Cir. 1973))); *In re Special Grand Jury 89-2*, 450 F.3d 1159, 1178 (10th Cir. 2006) (acknowledging that district courts may have inherent authority to disclose grand jury materials

¹³ The government cites for the first time in its second supplemental memorandum, and does not ever cite in its arguments regarding Rule 6(e)(3)(A)(ii), *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983), a case in which the Supreme Court addressed the question of when grand jury matters may be disclosed to civil attorneys within the Department of Justice for the purpose of pursuing civil suits. *Id.* at 420; *see* Gov’t’s Second Suppl. Mem. at 3, 4, 5 n.1, 9–10. The *Sells* Court, in recounting the legislative history of Rule 6(e), noted that the (A)(ii) exception for government personnel was designed to accommodate Justice Department attorneys’ need for “active assistance from outside personnel—not only investigators from the FBI, IRS, and other law enforcement agencies, but also accountants, handwriting experts, and other persons with special skills.” *Sells Eng’g*, 463 U.S. at 436. Though this dictum appears at first glance to support the government’s broad interpretation of “government personnel,” closer scrutiny reveals that the Supreme Court understood the “outside personnel” at issue to consist of “agencies outside the Department of Justice” and “employees of outside agencies, such as the IRS.” *Id.* at 438; *see also In re Grand Jury Proc.*, 158 F. Supp. 2d at 104–05.

beyond the non-exhaustive exceptions enumerated in Rule 6(e) but declining to define the scope of that authority). These courts, then, were not obligated to construe Rule 6(e)(3)(A)(ii) as a narrow and exclusive exception to grand jury secrecy, as *McKeever* requires this Court to do. Nor were they required to treat the text of Rule 6(e)(3)(A)(ii) strictly, leaving them free to assign greater weight to the purpose of the disclosure at issue in construing its language, as the government urges here.

Second, contrary to the government's characterization, the cases on which it relies do not unambiguously hold that independent contractors providing services to the government are "government personnel" within the meaning of Rule 6(e)(3)(A)(ii) and are distinguishable on their facts. For example, the First Circuit in *United States v. Pimental*, 380 F.3d 575 (1st Cir. 2004), held that certain employees of the Massachusetts Insurance Fraud Bureau, "a 'quasi-governmental entity[]' that investigates allegations of fraudulent insurance transactions," *id.* at 592 (quoting *In re Justices of Superior Ct.*, 218 F.3d 11, 13 (1st Cir. 2000)), were "government personnel," *id.* at 596–97. This conclusion, however, rested on the role of state statutes in creating, mandating private funding for, and determining the "purpose, organizational scheme, and basis operations" of the Bureau; the statutory directive that a certain number of board members be public officials; and "the constant oversight" of the Bureau by "the Massachusetts legislature." *Id.* at 593; *see also id.* at 592–93. These factors led the First Circuit to determine that the Bureau "straddle[d] the line between a government and a private entity." *Id.* at 594. Analogizing Bureau investigators to state law enforcement personnel, the court relied on the exception's purpose of "facilitat[ing] cooperation between federal prosecutors and state personnel . . . in the investigation and prosecution of federal criminal cases" and Congress's "conscious decision" in enacting the text of Rule 6(e)(3)(A)(ii) "to entrust certain state, as well

as federal, personnel with information concerning matters before a grand jury,” *id.* at 595, to conclude “that the exception in Rule 6(e)(3)(A)(ii) may cover the unique quasi-governmental investigators of the [Bureau],” *id.* at 596.

Pimental therefore does not support the government’s position, that an independent contractor and its employees may be deemed “government personnel” upon “‘a functional showing’ that such contractors fall within the ambit of Rule 6(e)(3)(A)(ii).” Gov’t’s Mot. at 7 (quoting *Pimental*, 380 F.3d at 596). It stands instead for the more limited proposition that “the prosecutor must seek court authorization [for disclosure] where quasi-governmental agencies . . . are involved” and may “make a functional showing” that individual employees of quasi-governmental entities fall within the scope of the exception. *Pimental*, 380 F.3d at 596. A “functional showing” standard of this sort is, of course, foreclosed in this Circuit by *McKeever*’s requirement that district courts “hew strictly” to the text of Rule 6(e)(3)’s exceptions. 920 F.3d at 846; *see supra* Part III.A.1.

In any event, none of the considerations that favored disclosure in *Pimental* apply to support a “functional showing” that Deloitte and its employees fall within the scope of the (A)(ii) exception. The special relationship between federal and state law enforcement and the explicit recognition of that relationship in the text of (A)(ii) do not support extension of the term “government personnel” to include an outside contractor retained by the government. Nor is Deloitte, as a private firm subject to government oversight only within the parameters of performing a particular contract, analogous to the quasi-governmental Bureau, which was subject to extensive state-government control under statute. *See In re Grand Jury Matter*, 607 F. Supp. 2d 273, 275–76 (D. Mass. 2009) (determining that “a private contractor” was not “a quasi-governmental entity as in *Pimental*” and therefore “d[id] not qualify as government personnel”

under the logic of that decision (internal quotation marks omitted)). *Pimental*, then, does not undercut the statutory interpretation outlined above of the term “government personnel” as excluding private entities and these entities’ employees.

The government’s reliance on *United States v. Anderson*, 778 F.2d 602 (10th Cir. 1985), is similarly misplaced. The Tenth Circuit in that case found that disclosure to a trust law expert retained “under contract with the government” of “certain promotional materials promulgated to the general public by the defendants,” which materials had also been presented to the grand jury, did not violate Rule 6(e). *Id.* at 605. The court, however, did not explicitly find either that the expert was “government personnel” or that the challenged disclosure involved a “matter occurring before the grand jury,” noting instead that “‘documents are not cloaked with secrecy merely because they are presented to a grand jury.’” *Id.* (quoting *Lartey*, 716 F.2d at 964); *see also United States v. Pac. Gas & Elec. Co.*, Case No. 14-cr-00175-TEH, 2016 WL 3255069, at *2 (N.D. Cal. June 14, 2016) (interpreting the *Anderson* Court’s analysis as turning on whether the material disclosed is “non-public”). *Anderson* therefore leaves ambiguous, at best, whether the government needed to invoke or appropriately invoked the (A)(ii) exception to justify disclosure.¹⁴

Nor does *United States v. Lartey*, 716 F.2d 955 (2d Cir. 1983), support the government’s interpretation of (A)(ii) or the application of that interpretation to treat Deloitte as “government personnel.” The Second Circuit in *Lartey* determined that “a recently retired Internal Revenue

¹⁴ In addition, before deciding *Anderson*, the Tenth Circuit held in *United States v. Tager*, 638 F.2d 167 (10th Cir. 1980), that “by limiting (A)(ii) to ‘government personnel,’” “the drafters of (A)(ii) considered whether the assistance of private persons . . . should be included” in the exception and “decided against such inclusion,” *id.* at 170 (finding that an investigator employed by a private organization who referred a case to the United States Postal Inspection Service did not qualify as “government personnel”). This conclusion remains good law even after *Anderson*, which explicitly observed that “[t]he facts in *Tager* [were] far different” than the facts allowing disclosure in *Anderson*, 778 F.2d at 605, and undermines the government’s contention that “all U.S. Courts of Appeals to consider the question have found that the term ‘government personnel’ is not limited to permanent or full-time federal employees,” Gov’t’s Suppl. Mem. at 2.

Service agent” retained by the government “to analyze [the defendant’s] finances” qualified as “government personnel.” *Id.* at 960. This decision, however, relied heavily on the specific circumstances of the agent’s retention. “During the period that [the agent] had access to [grand jury materials], he was employed exclusively by the government.” *Id.* at 963. In addition, “[t]he records were kept in a secure location in the United States Attorney’s office, and [the agent] did not discuss them with anyone other than” the prosecutor and law enforcement agents working on the investigation. *Id.* These facts allowed the Second Circuit to conclude that the agent was employed, not merely contracted, by the government at the time of the disclosure. Since “nothing in the legislative history of the 1977 amendments . . . indicate[d] that the term [‘government personnel’] is limited to permanent civil service employees of the United States,” disclosure to a temporary employee was within the scope of the exception, *id.* at 964, but the court did not reach beyond temporary government employees to the question of whether private entities can be classified as “government personnel.”

Lartey’s logic thus does not readily extend to a private international firm like Deloitte that simultaneously holds multiple contracts with private and public entities across the globe and cannot be considered a government “employee” in any meaningful sense. The government is one of many Deloitte clients, not its exclusive employer. In addition, by the government’s own admission, the grand jury materials it seeks to disclose would “reside[] in the Deloitte hosting environment” or at a “secure facility” managed by Deloitte, not on a government-controlled server or at a government-owned facility. Gov’t’s Mot. at 5; *see also* Gov’t’s Suppl. Mem. at 3–4. Deloitte employees’ access to potentially protected data would be controlled by Deloitte, not the government. Under these circumstances, *Lartey*’s reasoning does not stretch far enough to bring Deloitte and its employees within the scope of the term “government personnel.” *See, e.g.,*

Pac. Gas & Elec. Co., 2016 WL 3255069, at *2 (finding disclosure of information to “private consultants who do not work for government or quasi-governmental entities, who were not exclusively working for the government on this case, and whose access to data was not controlled by the government” distinguishable from *Lartey* and non-exempt under Rule 6(e)(3)(A)(ii)); *In re Grand Jury Proc.*, 158 F. Supp. 2d at 117 (“*Lartey* did read (A)(ii) expansively as not requiring a *permanent* employment relationship, but it did not entirely read out the requirement that some employment relationship exist.”).¹⁵

Though the case law interpreting “government personnel” in Rule 6(e)(3)(A)(ii) is sparse, beyond these unpersuasive and distinguishable circuit decisions relied on by the government, a number of district courts have held that (A)(ii) does not allow disclosure to private individuals retained by the government. *See, e.g., Pac. Gas & Elec. Co.*, 2016 WL 3255069, at *2; *In re Grand Jury Matter*, 607 F. Supp. 2d at 275–77; *In re Nov. 1992 Special Grand Jury*, 836 F. Supp. 615, 617–18 (N.D. Ind. 1993) (finding that neither Rule 6(e)(3)(A)(ii) nor the exception now codified at Rule 6(e)(3)(E)(i) permits disclosure to private auditors); *In re Disclosure of*

¹⁵ *In re Disclosure of Matters Occurring Before Grand Jury to Litigation Technology Service Center* (“LTSC Disclosure Decision”), Misc. No. 11-00163 JMS/RLP, 2011 WL 3837277 (D. Haw. Aug. 25, 2011), another nonbinding, out-of-circuit case cited by the government, *see* Gov’t’s Suppl. Mem. at 2–3, is similarly distinguishable. That decision determined that the term “‘government personnel’ is not restricted to full-time permanent government employees” and that the availability of the (A)(ii) exception “must be guided by the particular circumstances of the entity at issue and the need for disclosure.” *LTSC Disclosure Decision*, 2011 WL 3837277, at *3. This flexible interpretation of Rule 6(e)(3)(A)(ii) is unavailable in this Circuit under *McKeever*. *See supra* Part III.A.1. In addition, although the *LTSC Disclosure Decision*, as the government claims, “permitt[ed] disclosure of grand jury materials to private contractor personnel who operate the Litigation Technology Service Center (‘LTSC’),” Gov’t’s Suppl. Mem. at 2–3; *see LTSC Disclosure Decision*, 2011 WL 3837277, at *3–4, as the government notes, the LTSC is a “federally-owned facility,” Gov’t’s Suppl. Mem. at 3, whose “data is maintained within a secure Department of Justice information technology infrastructure” and whose “operations are performed in a secure government-owned building,” *LTSC Disclosure Decision*, 2011 WL 3837277, at *3. The government “ultimately control[s] the handling of all case data and documents” at the LTSC. *Id.* Thus, while the “LTSC is operated by” private contractor personnel, the court found that “in all other respects [the] LTSC appears to have the characteristics of a governmental entity.” *Id.* Deloitte, in contrast, shares none of these operative characteristics of governmental entities, aside from fact that its personnel are “required to adhere to all . . . applicable laws, regulations, and Department of Justice policies and procedures.” Gov’t’s Mot. at 5; *see LTSC Disclosure Decision*, 2011 WL 3837277, at *3 (“LTSC employees are subject to all laws, regulations, and Department of Justice policies that are imposed on U.S. Attorney’s Office employees[.]”). This precaution alone is not sufficient to qualify Deloitte for treatment as a governmental entity.

Grand Jury Material, 645 F. Supp. 76, 79 (N.D. W. Va. 1986) (same); *United States v. Hogan*, 489 F. Supp. 1035, 1038 (W.D. Wash. 1980) (“It is clear that the government personnel addressed in Rule 6(e)(3)(A)(ii) are the Government agents who gather and present information relating to criminal behavior to prosecutors who analyze and evaluate it and present it to grand juries.” (internal quotation marks and citations omitted)).

In light of the text and history of Rule 6(e)(3)(A)(ii), as well as the limitations imposed on interpretation of Rule 6(e) in this Circuit by *McKeever*, the term “government personnel” is best construed, in accord with the bulk of the district court case law, as including only employees of public governmental entities. Deloitte, a private firm contracted by the government on a non-exclusive basis, is a private rather than a public governmental entity, and its staff are employees of the firm rather than the government. Rule 6(e)(3)(A)(ii) thus does not allow disclosure of grand jury matters to Deloitte and its employees.

B. Disclosure Under Rule 6(e)(3)(E)(i)

In a last-gasp attempt to demonstrate that potentially massive disclosure of grand jury materials to Deloitte, a private contractor, is appropriate, the government seeks for the first time in its second supplemental memorandum “a disclosure order . . . under Rule 6(e)(3)(E)(i).”

Gov’t’s Second Suppl. Mem. at 1.¹⁶ In contrast to the exception the government first relied on in

¹⁶ The government notes that the “Court may exercise its discretion to authorize disclosure under Rule 6(e)(3)(E)(i) regardless of whether it agrees with the government’s primary submission that disclosure to Deloitte is permissible under the government-personnel exception in Rule 6(e)(3)(A)(ii),” Gov’t’s Second Suppl. Mem. at 7, but observes that “[s]ome out-of-circuit decisions have taken a different view,” *id.* at 8. The cases it cites in support of this proposition disapproved of disclosure under Rule 6(e)(3)(E)(i) to private parties that also fell outside the coverage of “government personnel” in (A)(ii). *Id.* at 8–9 (citing *Tager*, 638 F.2d at 170; *In re Nov. 1992 Special Grand Jury*, 836 F. Supp. at 617–18; *In re Disclosure of Grand Jury Material*, 645 F. Supp. at 79). The reasoning in these cases, however, was not related to the parties’ status as non-government personnel, but instead to the conclusion that a request for disclosure of grand jury materials for use in “the [same] ongoing grand jury investigation” in which the materials were collected falls outside of the exception. *Tager*, 638 F.2d at 170; *see also In re Nov. 1992 Special Grand Jury*, 836 F. Supp. at 618 (“[Rule 6(e)(3)(E)(i)] authorizes district courts to disclose grand jury materials only where those materials are necessary to an altogether different proceeding.”); *In re Disclosure of Grand Jury Material*, 645 F. Supp. at 78 (“The Grand Jury proceeding from which disclosure is desired is not the ‘judicial proceeding’ contemplated by the Rule.”).

Rule 6(e)(3)(A)(ii), *see supra* note 7, the exception in Rule 6(e)(3)(E)(i) requires judicial authorization in the form of a court order. Specifically, the (E)(i) exception provides that a “court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter: (i) preliminarily to or in connection with a judicial proceeding.” FED. R. CRIM. P. 6(e)(3)(E). Disclosure of grand jury information is proper under this exception when three requirements are satisfied. The person seeking disclosure must first identify a relevant “judicial proceeding” within the meaning of Rule 6(e)(3)(E)(i); then, second, establish that the requested disclosure is “preliminarily to” or “in connection with” that proceeding; and, finally, show a “particularized need” for the requested grand jury materials. *Sells Eng’g*, 463 U.S. at 443 (“Rule [6(e)(3)(E)(i)] simply authorizes a court to order disclosure ‘preliminarily to or in connection with a judicial proceeding.’ . . . We have consistently construed the Rule, however, to require a strong showing of particularized need for grand jury materials before any disclosure will be permitted.”); *United States v. Baggot*, 463 U.S. 476, 479–80 (1983) (explaining that the “preliminarily to or in connection with a judicial proceeding” and the “particularized need” requirements “are independent prerequisites to [(E)(i)] disclosure” (internal quotation marks omitted)).

The government contends that its request to disclose to Deloitte all grand jury materials from hundreds of Capitol attack cases already pending and those still being investigated meets the requirements for disclosure under Rule 6(e)(3)(E)(i) because “[t]he disclosures at issue . . . would assist the parties to criminal cases in the preparation or conduct of possible criminal trials, which are ‘judicial proceeding[s]’ under the Rule.” Gov’t’s Second Suppl. Mem. at 1 (second alteration in original). It further argues that “[t]he government . . . has a particularized need to disclose the materials to Deloitte, a trusted contractor whose specialized tools will help the

government systematically review all of the materials that are (or may be) subject to the protections of Rule 6(e) and thus ensure that hundreds of defendants charged (and still to be charged) in the Capitol Breach prosecutions have timely and secure access to the materials to which they are entitled.” *Id.* at 1–2. As explained below, this effort to satisfy the parameters of Rule 6(e)(3)(E)(i) overlooks the novelty and the breadth of the government’s instant request. In light of these factors, the government has failed to show a particularized need for the blanket disclosure of grand jury materials to Deloitte and therefore cannot obtain authorization for such disclosure under (E)(i).

1. “Preliminarily to or in Connection with a Judicial Proceeding”

The government contends that the first and second prongs of the (E)(i) test are met because it seeks to disclose information to Deloitte as part of its own preparation for eventual trials in the Capitol attack cases and to provide necessary discovery for defendants’ preparation for those trials. A “possible criminal trial” is, of course, “a judicial proceeding” within the meaning of the Rule. *In re Grand Jury*, 490 F.3d 978, 986 (D.C. Cir. 2007) (per curiam) (citing *United States v. Mayes*, 670 F.2d 126, 129 (9th Cir. 1982)). Disclosure under Rule 6(e)(3)(E)(i) is, however, generally authorized only to permit the sharing of grand jury materials preliminarily to or in connection with a *single* other judicial proceeding, rather than all cases—numbering here in the hundreds—arising from a massive investigation. This restriction of the disclosure available under (E)(i) to the disclosure necessary to one judicial proceeding for which a further showing of particularized need is made accords with both the text of the exception, providing for disclosure of grand jury matters related to “a judicial proceeding,” FED. R. CRIM. P. 6(e)(3)(E)(i) (emphasis added); *see also Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1481–82 (2021) (finding that “[n]ormally, indefinite articles (like ‘a’ or ‘an’) precede *countable* nouns” and therefore

indicate a “singular” quantity (emphasis in original)), and the exception’s goal of ensuring that, even where disclosure is allowed, the veil of grand jury secrecy is lifted only “discretely and limitedly,” *Douglas Oil*, 441 U.S. at 221 (internal quotation marks omitted) (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 683 (1958)); *see also Baggot*, 463 U.S. at 480 (“[T]he ‘judicial proceeding’ language of [(E)(i)] . . . reflects a judgment that not every beneficial purpose, or even every valid governmental purpose, is an appropriate reason for breaching grand jury secrecy.”).

The government, in contrast, seeks blanket approval to disclose to a private contractor all grand jury material collected pursuant to thousands of grand jury subpoenas and presented in relation to nearly two hundred indictments, *see supra* Part I.B, arguing that disclosure of this vast body of evidence satisfies the first and second prongs of the Rule 6(e)(3)(E)(i) test because the material is connected with or preliminary to possible criminal trials in the nearly five hundred Capitol attack cases currently pending in this District. Gov’t’s Second Suppl. Mem. at 4. Such a sweeping disclosure of grand jury materials from multiple grand jury proceedings, on the grounds that these materials will be used in prosecuting and producing discovery in multiple criminal cases, has never been authorized in a single order, given the general understanding that (E)(i) contemplates a case-specific showing for necessity of disclosure to each “judicial proceeding” in relation to which the authorizing order is sought. The government’s premise, that its proposed disclosure to Deloitte of material in hundreds of grand jury matters to facilitate its preparation for trial and production of exculpatory evidence to defendants in hundreds of individual criminal cases constitutes a disclosure “preliminarily to or in connection with a judicial proceeding,” threatens to expand the scope of (E)(i)’s exception to grand jury secrecy beyond the narrow, discrete instances of disclosure anticipated in the text. The circumstances of

the government's request, then, do not unambiguously satisfy the first and second prongs of the Rule 6(e)(3)(E)(i) test.

This issue need not be resolved, however, because even assuming that the disclosure of grand jury materials to Deloitte constitutes a disclosure “preliminarily to or in connection with a judicial proceeding,” the government has not carried its burden to demonstrate a “particularized need” for the disclosure.

2. *Particularized Need*

The “particularized need” standard requires a showing that (1) the requested materials are “needed to avoid a possible injustice in another judicial proceeding; (2) the need for disclosure is greater than the need for continued secrecy; and (3) the request is structured to cover only material so needed.” *In re Sealed Case*, 801 F.2d 1379, 1381 (D.C. Cir. 1986) (internal quotation marks omitted) (quoting *Sells Eng'g*, 463 U.S. at 443); *see also Baggot*, 463 U.S. at 480 n.4 (citing *Douglas Oil*, 441 U.S. at 222). Ultimately, determinations of “particularized need” are committed to the “considered discretion of the district court,” *Douglas Oil*, 441 U.S. at 228; *see also In re Sealed Case*, 801 F.2d at 1381 (recognizing the “substantial discretion of the district court”), but “that discretion is limited by the text of the rule,” *Pitch v. United States*, 953 F.3d 1226, 1238 (11th Cir. 2020).

The balancing aspect of the particularized-need test means that “as the considerations justifying secrecy become less relevant, a party asserting a need for grand jury [material] will have a lesser burden.” *Douglas Oil*, 441 U.S. at 223. Conversely, the “vital interests” upheld by grand jury secrecy “in (1) preserving the willingness and candor of witnesses called before the grand jury; (2) not alerting the target of an investigation who might otherwise flee or interfere with the grand jury; and (3) preserving the rights of a suspect who might later be exonerated,”

McKeever, 920 F.3d at 844 (citing *Douglas Oil*, 441 U.S. at 219), are at their strongest when a grand jury investigation, and grand jury proceedings, are ongoing. Such is the case in the Capitol attack investigation. This is an ongoing investigation of historic scope in which the government represents that “the number of cases presented to the grand jury and the number of subpoenas for documents will only continue to grow.” Gov’t’s Mot. at 3. The government therefore carries a very high burden to justify disclosure under Rule 6(e)(3)(E)(i). This burden is not met.

In explaining the particularized need to disclose sweeping grand jury material collected in hundreds of Capitol attack cases, for the ultimate purpose of preparing to prosecute and produce discovery in those cases, the government essentially contends that the increased efficiency and convenience of Deloitte processing and reviewing this complex evidence justifies the broad expansion of Rule 6(e)(3)(E)(i) it seeks. First, the government claims that disclosure to Deloitte is necessary to avoid possible injustice in the Capitol attack cases because, without “Deloitte’s assistance to engage in a complete and systematic review of all materials,” Gov’t’s Second Suppl. Mem. at 4, and to create a “a single, secure, searchable database for discovery materials,” *id.* at 6, the government will have to resort to alternative, and possibly less effective, means to “ensure defendants’ complete, secure, and timely access to the materials to which they are entitled for trial preparations,” *id.* at 5. This system, in the government’s view, will “ensure that materials that might have been obtained in the investigation of a particular defendant, but which ought to be provided to all defendants, are so provided.” *Id.* at 7. Thus, according to the government, disclosure to Deloitte will enhance the government’s ability “to comply with its discovery obligations” and to “protect defendants’ right to a fair trial in an investigation that is of historic scope and significance.” *Id.* at 6.

While disclosure to Deloitte would offer the practical benefits of facilitating the population of “a single database” containing both grand jury materials and other data to “readily ensure” the production of materials to the parties “who are entitled to them” and of “ensur[ing]” that grand jury materials “are included in any database searches utilized by attorneys to identify material subject to disclosure,” *id.* at 5, these benefits only make it easier for the government to comply with its discovery obligations to defendants. The government must produce exculpatory evidence regardless of whether disclosure of grand jury materials to an independent contractor is authorized, and thus, the result of nondisclosure to Deloitte is not that defendants will be prevented from receiving some potentially exculpatory evidence within the grand jury materials, but that the government will be forced to develop a method of internally reviewing, processing, and producing protected materials. The government acknowledges as much, noting that “removing [grand jury] subpoenas from responses before transferring the materials to the vendor, or conducting a review in an effort to do so, would be extremely time-consuming and burdensome,” *id.*, but nowhere disclaiming its responsibility to undertake such steps.

Indeed, courts assessing requests for grand jury materials by defendants and by government attorneys seeking such materials for use in related civil cases have considered the analogous “possibility of obtaining information from alternative sources” as “an important factor” in the particularized need analysis. *United States v. John Doe, Inc. I*, 481 U.S. 102, 116 (1987); *see also, e.g., Sells Eng’g*, 463 U.S. at 444–45 (noting that district courts may consider the sufficiency of alternative discovery tools available to the agency seeking disclosure); *In re Grand Jury Procs. Relative to Perl*, 838 F.2d 304, 308 (8th Cir. 1988) (allowing disclosure of grand jury materials “unavailable through any other channel of discovery”). Just as relevant as these parties’ ability to obtain information contained in grand jury materials without disclosure is

the government’s ability to share information contained in grand jury materials without disclosure to Deloitte. Thus, the government’s capacity to satisfy its discovery obligations to defendants through means other than handing over grand jury materials to Deloitte in bulk—that is, by processing grand jury material internally—signals that its obligation to produce certain grand jury materials in discovery does not itself supply a particularized need for disclosure of all grand jury materials to a third-party vendor.

Perhaps recognizing this weakness in its argument, the government contends that “the efficiency and efficacy benefits of the requested disclosure order” may be taken into account “in considering particularized need.” Gov’t’s Second Suppl. Mem. at 5 n.1 (citing *John Doe, Inc. I*, 481 U.S. at 116; *In re Grand Jury Investigation*, 55 F.3d 350, 354 (8th Cir. 1995)). Yet the Supreme Court has cautioned, as the government acknowledges, *see id.*, that “saving[s] of] time and expense” alone cannot “justify a breach of grand jury secrecy.” *Sells Eng’g*, 463 U.S. at 431; *see also, e.g., Procter & Gamble*, 356 U.S. at 682 (holding that avoidance of “delay and substantial costs . . . fall[s] short of proof that without [disclosure] a defense would be greatly prejudiced or that without reference to it an injustice would be done”); *Smith v. United States*, 423 U.S. 1303, 1304 (1975) (finding it “doubtful” that “sav[ing] . . . substantial investigatory and prosecutorial resources” warrants disclosure). Thus, the added inconvenience and administrative burden of the government segregating, reviewing, and processing grand jury materials internally, without Deloitte’s assistance, is not enough to support a finding of particularized need, even if these internal methods might be slower or marginally less accurate than the methods employed by Deloitte. *Cf. In re Nov. 1992 Special Grand Jury*, 836 F. Supp. at 618 (concluding that government’s representation that assistance of private auditors would “be of great value” in a

criminal investigation “falls far short of demonstrating that *any* injustice will result from government auditors going it alone” (internal quotation marks omitted)).

The government alludes more persuasively to the possibility that nondisclosure might result in some pieces of exculpatory evidence falling through the cracks as prosecutors toggle between multiple platforms for reviewing evidence, *see* Gov’t’s Second Suppl. Mem. at 5–6, and to the certainty that nondisclosure will “slow the discovery process” and “delay contemplated trial proceedings,” *id.* at 6. These very real risks of delaying resolution of the Capitol attack cases, particularly as to defendants who have been detained pending trial, and of evidence being inadvertently omitted from discovery weigh in favor of disclosure.

Even assuming, however, that these risks rise to the level of injustices that might be avoided by disclosure to Deloitte, the government has not demonstrated that the second particularized-need consideration, that the need for disclosure be greater than the need for continued secrecy, is met. The government contends that “[a]lthough the overall grand jury investigation remains ongoing,” assigning great weight to the interests of preserving secrecy, “the requested disclosure is designed to facilitate prompt access to relevant grand jury materials by defendants under indictment,” Gov’t’s Second Suppl. Mem. at 6, citing to a number of pending Capitol attack cases in which the disclosure of grand jury materials to a defendant has been authorized, *see id.* at 6 n.3. The scope of the requested disclosure to Deloitte, however, far exceeds the materials that will be disclosed even to defendants under indictment. The latter documents disclosed to defendants presumably will be limited to the disclosure of those materials necessary for the government to comply with its discovery obligations in a specific case. The proposed disclosure to Deloitte, in contrast, reaches to all “grand jury matters related to the Capitol Breach,” Proposed Order at 2, and includes all grand jury materials—whether

exculpatory or not and whether the information relates to any defendant or target of a grand jury investigation or only to a witness, a source, or a mere bystander—and therefore involves the sharing of more grand jury materials than the disclosures authorized in individual criminal cases.

In addition, disclosure to defendants is supported by the particularized need to comply with the government's constitutional obligation to produce exculpatory evidence directly to defendants in discovery, which necessarily outweighs the need for secrecy. The government's desire to comply with that constitutional obligation by sharing information with Deloitte, however, does not carry same the weight. As its explanation of the need for disclosure, the government points again to the increased efficiency and convenience of allowing Deloitte to manage all the data collected in the Capitol attack investigation. *See* Gov't's Second Suppl. Mem. at 6. "[D]elay and expense" may be "relevant factor[s] in the particularized needs analysis," but these matter most in cases where "[t]he threat to grand jury secrecy [is] minimal." *John Doe, Inc. I*, 481 U.S. at 116. Here, the threat to grand jury secrecy posed by blanket disclosure to Deloitte is pronounced and cannot be outweighed by mere expediency.

The instant request raises significant risk of harming grand jury secrecy in the ongoing Capitol attack investigation in several crucial respects. First, the general nature of the government's request to disclose *all* grand jury materials to Deloitte means that the materials to be disclosed may have been collected in connection with investigations of individuals who are never targeted, never charged, or exonerated. Since the government's request is also prospective, applying to any related matters yet to be brought before a grand jury, *see* Proposed Order at 2, the materials to be disclosed to Deloitte may relate to individuals still under investigation who may be indicted or exonerated in the future. Further, the government concedes that "the disclosure of all documents subpoenaed in connection with the Capitol Breach, together

with the subpoenas used to obtain those documents,” may “reveal the scope or direction of the investigations arising out of the Capitol Breach.” Gov’t’s Mot. at 3 n.1. Unlimited disclosure of grand jury materials to Deloitte thus directly implicates the purposes of grand jury secrecy because it may “alert[]” potential “target[s]” of the ongoing investigation “who might . . . flee or interfere with the grand jury” and cause harm to individuals under investigation “who might later be exonerated.” *McKeever*, 920 F.3d at 844 (citing *Douglas Oil*, 441 U.S. at 219). In addition, the anticipated disclosure of grand jury transcripts would reveal to Deloitte the identity of witnesses testifying before the grand jury, introducing the risk of chilling “the willingness and candor of witnesses called before the grand jury.” *Id.* (citing *Douglas Oil*, 441 U.S. at 219).

The government attempts to minimize these risks, arguing that disclosure to a private vendor ““which merely processes the documents and data and follows all government protocols for security”” should not lead to any of these recognized negative consequences of disclosure. Gov’t’s Second Suppl. Mem. at 7 (quoting *LTSC Disclosure Decision*, 2011 WL 3837277, at *4); *see also id.* at 6–7. As assurance, the government highlights that Deloitte’s “personnel operate under strict confidentiality guidelines, . . . will further be admonished on the rules of grand jury secrecy, and . . . will act under the supervision of government attorneys.” *Id.* at 6 (citing Gov’t’s Suppl. Mem. at 4–5). As explained *supra* Part III.A, however, these precautions do not amount to government control over Deloitte and its personnel supporting the contract. The assumption that “disclosure to [government] attorneys poses less risk of further leakage or improper use” of grand jury materials “than would disclosure to private parties or the general public,” *Sells Eng’g*, 463 U.S. at 445, does not extend to a government contractor who does not work exclusively for the government. The safeguards built into the government’s contract with Deloitte therefore do not assuage the concern that bulk disclosure to this private entity will

undermine the interests of grand jury secrecy, particularly in such a high-profile and historically significant investigation.

Nor does the government address the impact of mass disclosure on nondefendants who may be identified or whose information may be included in the grand jury material handed off to Deloitte. These nondefendant individuals include not only witnesses whose testimony may be included in protected transcripts, individuals under investigation, and individuals who have been or will be exonerated by a grand jury, but also bystanders to and even victims of the events of January 6. Within this massive dataset are “[l]ocation history data” and “[c]ell tower data for thousands of devices that were inside the Capitol building during the Capitol Breach,” Gov’t’s Mot. at 2, and “[s]ubscriber information and two weeks of toll records for hundreds of phone numbers that were associated with a Google account identified from . . . [a] geofence search warrant,” *id.* at 3. This information, along with the millions of social media posts and other digital media collected by the government, *see supra* Part I.B, necessarily includes extensive data on nondefendants in the vicinity of the Capitol on January 6, for example, nonparticipating members of the public, congressional staffers, the press, law enforcement agents, and members of Congress, all of which were provided to the government under the auspices of grand jury secrecy and now would be made available to Deloitte in bulk. Altogether, these very compelling reasons for preserving grand jury secrecy cannot be overcome by the government’s desire to efficiently review, process, and produce discovery.

Finally, the government contends that its request for generalized authorization to disclose all present and prospective grand jury materials “is structured to cover only material needed to avoid the relevant injustice.” Gov’t’s Second Suppl. Mem. at 7 (citing *Douglas Oil*, 441 U.S. at 222). In the government’s view, since “the very point of the disclosure is to enable the

government to engage in a systematic review of all discovery materials in a single, secure platform,” the request “cannot be reasonably be ‘structured’ any more narrowly.” *Id.* As explained above, however, though the creation of a single, secure database would certainly make easier the government’s systematic review and production of potentially exculpatory evidence, such a database is not necessary for the government to comply with its discovery obligations and therefore is not necessary to avoid injustice. The sweeping scope of the request, then, is tailored not to avoiding injustice, but rather to minimizing the government’s discovery burdens.

The broad nature of the request further demonstrates the lack of particularized need shown by the government. A “blanket request” for disclosure of all grand jury materials even in a single case “cannot be described as the kind of particularized request required for the production of otherwise secret information” because “the breadth” of such requests necessarily “makes it virtually impossible for [movants] to demonstrate that each of hundreds [or here, thousands] of sought-after grand-jury items” must be disclosed. *United Kingdom v. United States*, 238 F.3d 1312, 1321 (11th Cir. 2001); *see also United States v. Davis*, 721 F. App’x 856, 861 (11th Cir. 2018) (same). The government, by seeking disclosure of all grand jury materials in an as-yet unknown number of cases, does not even attempt to make that individualized showing here, arguing instead that the purpose of this mass disclosure to Deloitte is to allow the government to determine what subset of the disclosed information must be shared with charged defendants.

Disclosures of grand jury information must be substantiated by more than a need for the government to separate efficiently the wheat from the chaff. To hold otherwise would be to lower “the exceedingly high burden of demonstrating a particularized need.” *United States v. Tajideen*, 319 F. Supp. 3d 445, 473 (D.D.C. 2018). Particularized need has been found wanting

where defendants sought grand jury materials in their own cases to probe the accuracy of the government's instructions to the grand jury that indicted them, *United States v. Saffarinia*, 424 F. Supp. 3d 46, 80–81 (D.D.C. 2020), to challenge their indictment, *see, e.g., United States v. Ahmed*, 94 F. Supp. 3d 394, 439 (E.D.N.Y. 2015); *United States v. Singhal*, 876 F. Supp. 2d 82, 98–99 (D.D.C. 2012), to investigate potential government misconduct, *Tajideen*, 319 F. Supp. 3d at 472–73, and to prepare a defense, *see United States v. Tingle*, 880 F.3d 850, 855–56 (7th Cir. 2018), among many other examples. In all of these cases, disclosure was not authorized because the moving party had failed to make “a very clear and positive showing” of the need for the grand jury material. *United States v. Bravo-Fernández*, 239 F. Supp. 3d 411, 415 (D.P.R. 2017) (internal quotation marks and citation omitted). As precedent makes clear, a defendant charged with offenses stemming from the Capitol attack likely faces an uphill battle in seeking disclosure of the materials presented to the grand jury that indicted him. Yet under the government's rationale and the two-step disclosure process it envisions, Deloitte, a private firm, would gain greater access to grand jury materials in all the Capitol attack cases than any individual defendant is entitled to receive in his own case. The particular challenges of managing discovery in the Capitol attack investigation notwithstanding, the government has made no showing of a need particular enough or compelling enough to warrant this unprecedented expansion of Rule 6(e)(3)(E)(i).

In short, the government has failed to demonstrate a particularized need for the blanket disclosure of grand jury materials to Deloitte that it seeks and therefore has not satisfied the criteria under Rule 6(e)(3)(E)(i) for an order authorizing disclosure.

IV. CONCLUSION

For the foregoing reasons, Deloitte and its employees are not “government personnel” within the meaning of Rule 6(e)(3)(A)(ii) and the government has not made the requisite

showing of particularized need for an order authorizing disclosure under Rule 6(e)(3)(E)(i).

Disclosure of grand jury matters and related materials to Deloitte is therefore prohibited.

Accordingly, the government's Motion to Authorize the Disclosure of Grand Jury Materials is

DENIED.

An order consistent with this Memorandum Opinion will be entered contemporaneously.

Date: July 16, 2021



A handwritten signature in cursive script, reading "Beryl A. Howell".

BERYL A. HOWELL
Chief Judge

From: Feinberg, Matthew A. (CD) (FBI)
Subject: Re: Federal Records Schedule associated with body worn camera footage
To: [REDACTED] (IMD) (FBI); Kelly, Stephen D. (OGC) (FBI); [REDACTED] (OGC) (FBI);
Cc: McNally, Richard (OGC) (FBI)
Sent: July 27, 2021 5:08 PM (UTC-04:00)

b6 -1
b7C -1
b7E -2,3

Thank you!

Matthew A. Feinberg, Chief

From: [REDACTED]
Sent: Tuesday, July 27, 2021 4:31:53 PM
To: [REDACTED] Kelly, Stephen D. (OGC) (FBI); [REDACTED]
Cc: Feinberg, Matthew A. (CD) (FBI); [REDACTED] McNally, Richard (OGC) (FBI); [REDACTED]
Subject: RE: Federal Records Schedule associated with body worn camera footage

b6 -1
b7C -1
b7E -3

Hi all,

10-4, thank you! I'll consider this one settled and can be revisited as it relates to modifications *if* needed at some future date. Thanks all.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, July 27, 2021 4:29 PM
To: Kelly, Stephen D. (OGC) (FBI); [REDACTED]
Cc: Feinberg, Matthew A. (CD) (FBI); [REDACTED] McNally, Richard (OGC) (FBI); [REDACTED]
Subject: RE: Federal Records Schedule associated with body worn camera footage

b6 -1
b7C -1
b7E -3

Hi all,

That's been my understanding as well - [REDACTED] We (IMD) can work with OTD and OGC to make any necessary modifications [REDACTED] and submit to [REDACTED] for approval.

b5 -1,2

Thanks,

[REDACTED]
Agency Records Officer
Information Management Division | Federal Bureau of Investigation
(o) [REDACTED] | (m) [REDACTED]
[REDACTED]

b6 -1
b7C -1
b7E -3

From: Kelly, Stephen D. (OGC) (FBI); [REDACTED]
Sent: Tuesday, July 27, 2021 4:24 PM

b7E -3

To: [REDACTED]

b6 -1

b7C -1

b7E -3

Cc: Feinberg, Matthew A. (CD) (FBI) [REDACTED] McNally, Richard (OGC) (FBI) [REDACTED]

Subject: Re: Federal Records Schedule associated with body worn camera footage

Thanks [REDACTED]

My understanding is that our current plan is to [REDACTED] As a result [REDACTED] b5 -1,2

[REDACTED] That being said, DoJ had wanted is to [REDACTED]

[REDACTED] I will need to look at the current draft to see if we need to make this clearer.

That being said, [REDACTED]

Stephen

From: [REDACTED]

b5 -1,2

Sent: Tuesday, July 27, 2021 4:09:37 PM

b6 -1

To: [REDACTED]

b7C -1

b7E -3

Cc: Feinberg, Matthew A. (CD) (FBI) [REDACTED] Kelly, Stephen D. (OGC) (FBI) [REDACTED] McNally, Richard (OGC) (FBI) [REDACTED]

Subject: Re: Federal Records Schedule associated with body worn camera footage

Hi [REDACTED]

My recollection is the decision was made to [REDACTED] I've copied Rick McNally as OTD has been involved in [REDACTED] discussion.

Thanks.

[REDACTED]

SSA [REDACTED]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation

[REDACTED]

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From: [REDACTED]

b6 -1

Sent: Tuesday, July 27, 2021 4:06 PM

b7C -1

b7E -3

To: [REDACTED]

Cc: Feinberg, Matthew A. (CD) (FBI) [REDACTED] Kelly, Stephen D. (OGC) (FBI) [REDACTED]

Subject: Federal Records Schedule associated with body worn camera footage

Good afternoon,

I hope your Tuesday is going well! Your team may already have been involved in the ongoing conversations related to the FBI's transition to acquiring and using body worn cameras (BWCs), but I am not sure as to the outcome so I wanted to reach out. [REDACTED]

b5 -1,2

[REDACTED] Can you please let me know if you have determined [REDACTED]

[REDACTED] From my perspective, [REDACTED]

I am cc'g here the experts who are coordinating and who can answer any additional questions you may have.

Thank you

b6 -1
b7C -1
b7E -3

[REDACTED]
Special Counsel
Deputy Director's Office
Federal Bureau of Investigation

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From: [REDACTED] (OGC) (FBI)
Subject: Re: FBINET to UNET Uploaded Files
To: Kelly, Stephen D. (OGC) (FBI)
Sent: July 28, 2021 11:35 AM (UTC-04:00)

b6 -1
b7C -1
b7E -3

[REDACTED] had a good conversation about our concerns with [REDACTED]. He said he would look into it and follow up on what has been done already and what the data includes.

SSA [REDACTED]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation
[REDACTED]

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From: [REDACTED]
Sent: Wednesday, July 28, 2021 10:45 AM
To: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Subject: Re: FBINET to UNET Uploaded Files

b6 -1
b7C -1
b7E -3,4

FYSA...during the TOCGS call today, A/SC [REDACTED]
[REDACTED] was copied on your email to Dunham RE: [REDACTED]
[REDACTED] reached out to [REDACTED] about it and is waiting to hear back from him. [REDACTED] has been good to work with.

The incoming TOCGS SC is [REDACTED] was previously TDY to work on the BWC pilot for a little while last summer.

SSA [REDACTED]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation
[REDACTED]

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From: [REDACTED]
Sent: Friday, July 23, 2021 2:43 PM
To: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Subject: Fw: FBINET to UNET Uploaded Files

b6 -1
b7C -1
b7E -3

Hi Stephen,

FBI (22-cv-00149)-6957

Attached is the email you sent to DAD Dunham, et al [REDACTED]

b7E -4

Thanks.

[REDACTED]

b6 -1

b7C -1

b7E -3

SSA [REDACTED]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation

[REDACTED]

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From: [REDACTED]

Sent: Friday, July 23, 2021 2:32 PM

To: [REDACTED]

Subject: FBINET to UNET Uploaded Files

Barnes, Steven B. (STB) (FBI)

Subject: BWC footage retention policy
Location: 7125

Start: Thursday, July 29, 2021 9:45 AM
End: Thursday, July 29, 2021 10:30 AM
Show Time As: Tentatively accepted

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Barnes, Steven B. (STB) (FBI)

Required Attendees: Kelly, Stephen D. (OGC) (FBI); Jones, Darrin E. (STB) (FBI); Feinberg, Matthew A. (CD) (FBI); [REDACTED] (IMD) (FBI); Kelly, Stephen D. (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OTD) (FBI); Ferguson, Timothy A. (OTD) (FBI); [REDACTED] (DO) (FBI); McNally, Richard (OGC) (FBI); Delbago, William J. (CIRG) (FBI)

Optional Attendees: [REDACTED]

From: Barnes, Steven B. (STB) (FBI) [REDACTED]
Sent: Wednesday, July 28, 2021 2:05:42 PM (UTC-05:00) Eastern Time (US & Canada)
To: Barnes, Steven B. (STB) (FBI); Jones, Darrin E. (STB) (FBI); Feinberg, Matthew A. (CD) (FBI); [REDACTED] (IMD) (FBI); Kelly, Stephen D. (OGC) (FBI); [REDACTED] (OTD) (FBI); Ferguson, Timothy A. (OTD) (FBI); [REDACTED] (DO) (FBI); McNally, Richard (OGC) (FBI); Delbago, William J. (CIRG) (FBI)
Cc: [REDACTED]
Subject: BWC footage retention policy
When: Thursday, July 29, 2021 9:45 AM-10:30 AM.
Where: 7125

EAD Jones would like to review the plan [REDACTED]
[REDACTED] Attendees are welcome in-person or via MS Teams.

Join Microsoft Teams Meeting [REDACTED]

From: [REDACTED] OGC) (FBI)
Subject: Re: BWC
To: Kelly, Stephen D. (OGC) (FBI)
Sent: July 28, 2021 4:29 PM (UTC-04:00)
Hi Stephen,

b6 -1
b7C -1
b7E -3

I had my bi-weekly call with the CDCAC today and was again asked about any HQ update on BWC (the CDC is being consistently asked by the SAC and crim ASAC). I realize there's probably no news but I said I'd reach out again to double check.

Thanks,

[REDACTED]
Counsel, Field Legal Program
Office of General Counsel
Federal Bureau of Investigation
Cell [REDACTED]
Desk [REDACTED]

From: [REDACTED] OGC) (FBI)
Sent: Wednesday, July 14, 2021 3:05 PM
To: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Subject: BWC

b6 -1
b7C -1
b7E -3

Hi Stephen,

I had a call with the CDCAC this afternoon and they asked if there are any updates re: the BWC policy. I told them it's probably still very much in the process with you and main Justice but that I'd reach out to you. They also asked about a BWC survey that someone at the last Director's meeting apparently said was being sent out to the field, but I'm not familiar with that. Is there any info on either the BWC policy or survey that you have that I may relay to the CDCAC? Thanks very much for your help.

[REDACTED]
Counsel, Field Legal Program
Office of General Counsel
Federal Bureau of Investigation
Cell: [REDACTED]
Desk [REDACTED]

From: Barnes, Steven B. (STB) (FBI)
Subject: FW: BWC footage retention policy
To: Kelly, Stephen D. (OGC) (FBI)
Sent: July 29, 2021 10:37 AM (UTC-04:00)

From: Barnes, Steven B. (STB) (FBI) [REDACTED]
Sent: Wednesday, July 28, 2021 2:05:42 PM (UTC-05:00) Eastern Time (US & Canada)
To: Barnes, Steven B. (STB) (FBI); Jones, Darrin E. (STB) (FBI); Feinberg, Matthew A. (CD) (FBI);
[REDACTED] (IMD) (FBI); Kelly, Stephen D. (OGC) (FBI);
[REDACTED] (OTD) (FBI); Ferguson, Timothy A. (OTD) (FBI); [REDACTED]
[REDACTED] (DO) (FBI); McNally, Richard (OGC) (FBI); Delbano, William J. (CIRG) (FBI)
Cc: [REDACTED]
Subject: BWC footage retention policy
When: Thursday, July 29, 2021 9:45 AM-10:30 AM.
Where: 7125

b5 -1
b6 -1
b7C -1
b7E -3

EAD Jones would like to review the plan [REDACTED]
[REDACTED] Attendees are welcome in-person or via MS Teams.

Join Microsoft Teams
Meeting [REDACTED]
[REDACTED]

From: [redacted] (OGC) (FBI)
Subject: RE: [redacted] (OGC) (FBI) shared "BWC DOJ Policy Fed Agents (05-04-21)" with you.
To: Kelly, Stephen D. (OGC) (FBI); [redacted] (OGC) (FBI)
Sent: July 29, 2021 11:10 AM (UTC-04:00)

b6 -1
b7C -1
b7E -3

wrong one looking for PG

From: [redacted] (OGC) (FBI)
Sent: Thursday, July 29, 2021 11:07 AM
To: Kelly, Stephen D. (OGC) (FBI); [redacted]

Subject: [redacted] (OGC) (FBI) shared "BWC DOJ Policy Fed Agents (05-04-21)" with you.



[redacted] (OGC) (FBI) shared a file with you

This is from early June so you may be able to use this to cut and paste from



BWC DOJ Policy Fed Agents (05-04-21)



This link will work for anyone in Federal Bureau of Investigation.

Open

 Microsoft

[Privacy Statement](#)

From: Kelly, Stephen D. (OGC) (FBI)
Subject: BWC Revisions by DoJ
To: Feinberg, Matthew A. (CD) (FBI); [REDACTED] (DO) (FBI); Dunham, Timothy M. (TD) (FBI);
[REDACTED] (OGC) (FBI)
Cc: McNally, Richard (OGC) (FBI); [REDACTED]
Sent: July 29, 2021 12:05 PM (UTC-04:00)
All:

b6 -1
b7C -1

Sorry not to get back to folks sooner, but I've been out on vacation and unexpectedly I had to take care of

I've had a chance to review the changes from DoJ. [REDACTED]

[REDACTED] That being said, [REDACTED]
[REDACTED]

b5 -1,2
b7E -4,27

Here are a few examples:

b5 -1,2
b7E -27

b5 -1,2
b6 -1
b7C -1
b7E -4,27

I have a proposed a few changes below, as I cannot figure out how to make changes to the document circulated and how to get it to everyone. [REDACTED]

Unfortunately, I will not be available later today, but feel free to connect with [REDACTED] or [REDACTED] with follow-up questions,

Thanks everyone.

Stephen

Proposed Revisions:

b5 -1,2
b7E -4,27

Stephen D. Kelly
Chief, Operational Law Section
Office of the General Counsel
Federal Bureau of Investigation

(desk)
(cell)

b7E -3

From: [redacted] (OGC) (FBI)
Subject: Fw: Body Worn Camera Procurement Update - As of July 28
To: Kelly, Stephen D. (OGC) (FBI); McNally, Richard (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Sent: July 29, 2021 4:46 PM (UTC-04:00)
Attached: Procurement Timeline Tracker 7_28_21.xlsx
FYSA...

SSA [redacted]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation
[redacted]

b6 -1
b7C -1
b7E -3

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From: [redacted]
Sent: Thursday, July 29, 2021 4:44 PM
To: [redacted]
Subject: FW: Body Worn Camera Procurement Update - As of July 28

b6 -1
b7C -1
b7E -3

FYI!

From: Schlendorf, David W. (FFD) (FBI) [redacted]
Sent: Thursday, July 29, 2021 4:39 PM
To: Turner, Brian C. (CCRSB) (FBI) [redacted]; Jones, Darrin E. (STB) (FBI) [redacted]; Gavin, Michael T. (ITADD) (FBI) [redacted]; Brown, James Robert Jr. (OTD) (FBI) [redacted]; Shivers, Calvin A. (CID) [redacted]
[redacted] Dimos, Nicholas (FFD) (FBI) [redacted] Watts, Wendell A. (FFD) (FBI) [redacted]
[redacted]
Subject: Body Worn Camera Procurement Update - As of July 28

b6 -1
b7C -1
b7E -3

Brian, Darrin, and Michael (and adding in Robert, Calvin [redacted] as well),

Below are key highlights/updates on the BWC procurement for your review to ensure we are all clear on the current status and next steps.

b5 -1
b7E -30

b5 -1
b7E -30

If you or your teams disagree with any of the above or have a different understanding, please be sure to have your teams engage with [REDACTED] ASAP so we can work through any confusion or uncertainty.

b6 -1
b7C -1

Thanks, Dave

From: Schlendorf, David W. (FFD) (FBI) [REDACTED]
Sent: Tuesday, July 13, 2021 6:49 PM
To: Turner, Brian C. (CCRSB) (FBI) [REDACTED]; Jones, Darrin E. (STB) (FBI) [REDACTED] Gavin, Michael T. (ITADD) (FBI) [REDACTED]
Cc: Dimos, Nicholas (EED) (FBI) [REDACTED]; Watts, Wendell A. (EED) (FBI) [REDACTED]

b6 -1
b7C -1
b7E -3

Subject: Body Worn Camera Next Steps

Brian, Darrin, and Michael,

We wanted to follow up from the meeting you had with Nick Dimos on June 16 regarding the BWC procurement and budget strategy. [REDACTED]

[REDACTED] While this seems like a long way off, if past is prologue for a procurement of this type, we will need every minute. To provide some visibility into the process, [REDACTED] In good news, our first two required documents [REDACTED] [REDACTED] were completed on time yesterday. [REDACTED]

b5 -1

b5 -1
b6 -1
b7C -1

[REDACTED] UC [REDACTED] is our Procurement POC on this effort, and he will be coordinating with stakeholders to develop the testing plan and to ensure

FBI (22-cv-00149)-6989

acquisition documents are coordinated and complete in accordance with the timeline. FFD will provide bi-weekly email updates to this group throughout the acquisition process to ensure we are all on the same page, and we will communicate out any roadblocks to ensure we are expeditiously resolving issues in order to meet the March 31 award date.

In addition to the procurement update, we wanted to provide an update on the budget requirements. Based on feedback from Michael at the last meeting, [REDACTED]

b5 -1
b7E -30

<< OLE Object: Picture (Device Independent Bitmap) >>

Last on the budget front, for your awareness, we have attached to this email the FY 23 budget request that we submitted to DOJ on July 1 for the full BWC deployment cost [REDACTED] Given that [REDACTED]

b7E -30
b5 -1

Please let us know if there are any questions or concerns with this way forward, either on the procurement or budget front. If not, we will continue moving forward to execute.

Thanks, Dave

BWC Procurement Timeline

<< File: BWC Procurement Timeline - 07.12.2021.xlsx >>

ITADD FY21 End-of-Year Funding Request for BWCs

<< File: ITADD FY 2021 EOY Funding.docx >>

BWC FY23 Budget Request to DOJ

<< File: BWC Enhancement Narrative.docx >>

From: Schlendorf, David W. (FFD) (FBI) [REDACTED]

Sent: Friday, June 11, 2021 5:41 PM

To: Turner, Brian C. (CCRSB) (FBI) [REDACTED]

Jones, Darrin E. (STB) (FBI) [REDACTED]

Gavin, Michael [REDACTED]

T. (ITADD) (FBI) [REDACTED]

Cc: Dimos, Nicholas (FFD) (FBI) [REDACTED]

Watts, Wendell A. (FFD) (FBI) [REDACTED]

b6 -1
b7C -1
b7E -3

Subject: RE: Body Worn Camera Next Steps

Brian, Darrin and Michael,

I'm going to be in Huntsville the first three days of next week, but am serious about wanting to meet with you to review the acquisition strategy options for BWCs. Nick Dimos can certainly walk you through that in my absence (he would be the one doing that even if I were here 😊), but I want to ensure we are all on the same page.

My sense is this will be easier to schedule if one of your offices wrangles the invite process, so could one of your teams tackle that?

FBI (22-cv-00149)-6990

Have a great weekend, Dave

From: Schlendorf, David W. (FFD) (FBI)

Sent: Thursday, June 10, 2021 12:43 PM

To: Turner, Brian C. (CCRSB) (FBI) [REDACTED] Jones, Darrin E. (STB) (FBI) [REDACTED] Gavin, Michael T. (ITADD) (FBI) [REDACTED]

b6 -1
b7C -1
b7E -3

Cc: Dimos, Nicholas (FFD) (FBI) [REDACTED] Watts, Wendell A. (FFD) (FBI) [REDACTED]
William (FFD) (FBI) [REDACTED]
[REDACTED]

Subject: FW: Body Worn Camera Next Steps

Brian, Darrin and Michael,

Attached below please find an updated version of the Body Worn Camera memo/paper [REDACTED]

b5 -1
b7E -30

Michael/Darrin - [REDACTED]

Please let me know if you have any questions, and if you want to get a meeting set up to jointly discuss.

Dave

From: Dimos, Nicholas (FFD) (FBI) [REDACTED]

Sent: Thursday, June 10, 2021 8:08 AM

To: Dunham, Timothy M. (CID) (FBI) [REDACTED] Gabriel, Kacev D. (OTD) (FBI) [REDACTED]

b6 -1
b7C -1
b7E -3

Feinberg, Matthew A. (CD) (FBI) [REDACTED] Perese,
Dogan A. (ITADD) (FBI) [REDACTED]

C [REDACTED]
[REDACTED] Schlendorf, David W.
[REDACTED]

Subject: Body Worn Camera Next Steps

Hi Tim, Kacey, Matt [redacted] and Dogan,

b6 -1
b7C -1

To follow up from our many discussions on BWCS [redacted]

b5 -1
b7E -30

Thanks very much.
Nick

<< File: DD Briefing - BWC Phase 1 Site Selection FFD Additions 06.09.21npd.docx >>

From: [redacted] (OGC) (FBI)
Subject: Fwd: Body Worn Camera Procurement Update - As of July 28
To: Kelly, Stephen D. (OGC) (FBI); McNally, Richard (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Sent: August 1, 2021 11:03 AM (UTC-04:00)
Attached: Procurement Timeline Tracker 7_28_21.xlsx

b6 -1
b7C -1

FYSA...

From: Turner, Brian C. (CCRSB) (FBI) [redacted]
Sent: Sunday, August 1, 2021 10:51:47 AM
To: [redacted]
Subject: FW: Body Worn Camera Procurement Update - As of July 28

b6 -1
b7C -1
b7E -1

[redacted]

FYSA....no action needed on your part.

Thanks much,

Brian

From: Schlendorf, David W. (FFD) (FBI) [redacted]
Sent: Thursday, July 29, 2021 4:39 PM
To: Turner, Brian C. (CCRSB) (FBI) [redacted] Jones, Darrin E. (STB) (FBI) [redacted] Gavin, Michael T. (ITADD) (FBI) [redacted] Brown, James Robert Jr. (OTD) (FBI) [redacted] Shivers, Calvin A. (CID) (FBI) [redacted]
[redacted] Dimos, Nicholas (FFD) (FBI) [redacted] Watts, Wendell A. (FFD) (FBI) [redacted]
[redacted]

b6 -1
b7C -1
b7E -3

Subject: Body Worn Camera Procurement Update - As of July 28

Brian, Darrin, and Michael (and adding in Robert, Calvi [redacted] as well),

Below are key highlights/updates on the BWC procurement for your review to ensure we are all clear on the current status and next steps.

b5 -1
b7E -30

If you or your teams disagree with any of the above or have a different understanding, please be sure to have your teams engage with [REDACTED] ASAP so we can work through any confusion or uncertainty.

b6 -1
b7C -1

Thanks, Dave

From: Schlendorf, David W. (FFD) (FBI) <[REDACTED]>
Sent: Tuesday, July 13, 2021 6:49 PM
To: Turner, Brian C. (CCRSB) (FBI) [REDACTED]; Jones, Darrin E. (STB) (FBI) [REDACTED]; Gavin, Michael T. (ITADD) (FBI) [REDACTED]
Cc: Dimos, Nicholas (FFD) (FBI) [REDACTED]; Watts, Wendell A. (FFD) (FBI) [REDACTED]

b6 -1
b7C -1
b7E -3

Subject: Body Worn Camera Next Steps

Brian, Darrin, and Michael,

We wanted to follow up from the meeting you had with Nick Dimos on June 16 regarding the BWC procurement and budget strategy. [REDACTED]

b5 -1

[REDACTED] While this seems like a long way off, if past is prologue for a procurement of this type, we will need every minute. To provide some visibility into the process, [REDACTED] In good news, our first two required documents [REDACTED] [REDACTED] were completed on time yesterday [REDACTED]

b5 -1
b6 -1
b7C -1

[REDACTED] UC [REDACTED] is our Procurement POC on this effort, and he will be coordinating with stakeholders to develop the testing plan and to ensure acquisition documents are coordinated and complete in accordance with the timeline. FFD will provide bi-weekly email updates to this group throughout the acquisition process to ensure we are all on the same page, and we will communicate out any roadblocks to ensure we are expeditiously resolving issues in order to meet the March 31 award date.

In addition to the procurement update, we wanted to provide an update on the budget requirements. Based on

feedback from Michael at the last meeting, [REDACTED]

b5 -1
b7E -30

<< OLE Object: Picture (Device Independent Bitmap) >>

Last on the budget front, for your awareness, we have attached to this email the FY 23 budget request that we submitted to DOJ on July 1 for the full BWC deployment cost [REDACTED]

Given that b5 -1
b7E -30

Please let us know if there are any questions or concerns with this way forward, either on the procurement or budget front. If not, we will continue moving forward to execute.

Thanks, Dave

BWC Procurement Timeline

<< File: BWC Procurement Timeline - 07.12.2021.xlsx >>

ITADD FY21 End-of-Year Funding Request for BWCs

<< File: ITADD FY 2021 EOY Funding.docx >>

BWC FY23 Budget Request to DOJ

<< File: BWC Enhancement Narrative.docx >>

From: Schlendorf, David W. (FFD) (FBI) [REDACTED]

Sent: Friday, June 11, 2021 5:41 PM

To: Turner, Brian C. (CCRSB) (FBI) [REDACTED] Jones, Darrin E. (STB) (FBI) [REDACTED] Gavin, Michael

T. (ITADD) (FBI) [REDACTED]

Cc: Dimos, Nicholas (FFD) (FBI) [REDACTED] Watts, Wendell A. (FFD) (FBI) [REDACTED]

b6 -1
b7C -1
b7E -3

Subject: RE: Body Worn Camera Next Steps

Brian, Darrin and Michael,

I'm going to be in Huntsville the first three days of next week, but am serious about wanting to meet with you to review the acquisition strategy options for BWCs. Nick Dimos can certainly walk you through that in my absence (he would be the one doing that even if I were here 😊), but I want to ensure we are all on the same page.

My sense is this will be easier to schedule if one of your offices wrangles the invite process, so could one of your teams tackle that?

Have a great weekend, Dave

From: Schlendorf, David W. (FFD) (FBI)

Sent: Thursday, June 10, 2021 12:43 PM

FBI (22-cv-00149)-7001

To: Turner, Brian C. (CCRSB) (FBI) [redacted] Jones, Darrin E. (STB) (FBI) [redacted]; Gavin, Michael T. (ITADD) (FBI) [redacted]
Cc: Dimos, Nicholas (FFD) (FBI) [redacted] Watts, Wendell A. (FFD) (FBI) [redacted]
William (FFD) (FBI) [redacted]

b6 -1
b7C -1
b7E -3

Subject: FW: Body Worn Camera Next Steps

Brian, Darrin and Michael,

Attached below please find an updated version of the Body Worn Camera memo/paper [redacted]

b5 -1
b7E -30

Michael/Darrin - [redacted]

Please let me know if you have any questions, and if you want to get a meeting set up to jointly discuss.

Dave

From: Dimos, Nicholas (FFD) (FBI) [redacted]
Sent: Thursday, June 10, 2021 8:08 AM
To: Dunham, Timothy M. (CID) (FBI) [redacted] Gabriel, Kacey D. (OTD) (FBI) [redacted]
Feinberg, Matthew A. (CD) (FBI) [redacted] Perese,
Dogan A. (ITADD) (FBI) [redacted]
Cc: [redacted]

b6 -1
b7C -1
b7E -3

Schlendorf, David W.

Subject: Body Worn Camera Next Steps

Hi Tim, Kacey, Matt [redacted] and Dogan,

To follow up from our many discussions on BWCs [redacted]

b5 -1
b7E -30

Thanks very much.
Nick

<< File: DD Briefing - BWC Phase 1 Site Selection FFD Additions 06.09.21npd.docx >>

From: Feinberg, Matthew A. (CD) (FBI)
Subject: RE: BWC Revisions by DoJ
To: Kelly, Stephen D. (OGC) (FBI)
Sent: August 2, 2021 9:36 AM (UTC-04:00)

Let's chat when you get a chance. Thank you!

Matthew A. Feinberg

b7E -2,3

Federal Bureau of Investigation

From: Kelly, Stephen D. (OGC) (FBI)

Sent: Thursday, July 29, 2021 12:05 PM

To: Feinberg, Matthew A. (CD) (FBI)

Dunham, Timothy M. (TD) (FBI)

Cc: McNally, Richard (OGC) (FBI)

Subject: BWC Revisions by DoJ

b6 -1
b7C -1
b7E -3

All:

Sorry not to get back to folks sooner, but I've been out on vacation and unexpectedly I had to take care of

I've had a chance to review the changes from DoJ.

b5 -1,2
b7E -4,27

That being said

b5 -1,2
b6 -1
b7C -1
b7E -27

Here are a few examples:

I have a proposed a few changes below, as I cannot figure out how to make changes to the document circulated and how to get it to everyone.

Unfortunately, I will not be available later today, but feel free to connect with [REDACTED] with follow-up questions,

Thanks everyone.

Stephen

Proposed Revisions:

b5 -1,2
b7E -27

Stephen D. Kelly
Chief, Operational Law Section
Office of the General Counsel
Federal Bureau of Investigation

b7E -3

From: [REDACTED] (OGC) (FBI)
Subject: BWC and TS
To: Kelly, Stephen D. (OGC) (FBI)
Sent: August 2, 2021 2:46 PM (UTC-04:00)

b6 -1
b7C -1
b7E -3

Hi Stephen,

I didn't see an email setting the call up for 9am tomorrow. I'm happy to be on the call as well. Can you send me the dial information for the call?

Also, RE: Trojan Shield, Jermicha Fomby is the A/DAD over TOC so I will have [REDACTED] include him on the invite.

Thanks.

[REDACTED]

SSA [REDACTED]
Unit Chief
Investigative Law Unit
Office of the General Counsel
Federal Bureau of Investigation

[REDACTED]

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From: Bulletin Intelligence
Subject: [EXTERNAL EMAIL] - FBI Public Affairs - Director's AM News Briefing Thursday, August 05, 2021
To: [REDACTED]
Sent: August 5, 2021 5:00 AM (UTC-04:00)
Attached: FBIDirBriefing210805.doc

b7E -3

This morning's Director's AM News Briefing is attached.

Full-text Links: Clicking the hypertext links in our write-ups will take you to the newspapers' original full-text articles.

Interactive Table of Contents: Clicking a page number on the table of contents page will take you directly to that story.

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FBI PUBLIC AFFAIRS – DIRECTOR’S AM NEWS BRIEFING

THURSDAY, AUGUST 5, 2021 5:00 AM EDT

Authorities Identify Police Officer Killed In Pentagon Attack, Assailant. The AP (8/4, Baldor, Tucker, Balsamo) reports, “As officials seek clues about what prompted a Georgia man to fatally stab a Pentagon police officer, details of the suspect’s troubled past emerged Wednesday through interviews and court records.” Austin William Lanz, 27, was “arrested last April for a break-in at a neighbor’s home and drew police attention months earlier for a harassment campaign involving sexually explicit photos and messages, according to interviews and records obtained by The Associated Press.” Authorities have not “revealed a motive in the ambush-style killing of Pentagon police officer George Gonzalez, 37.” However, “Lanz’s past brushes with the law, and neighbors’ accounts of recent menacing behavior, appear to suggest the violence was more likely the act of a troubled, violence-prone individual than part of a broader conspiracy.”

USA Today (8/4, 12.7M) reports, “Tuesday’s fatal attack on a Pentagon police officer at a transit station outside the building was sudden and unprovoked, according to an account of the incident released by the FBI on Wednesday.” Politico (8/4, Seligman, 6.73M) reports, “The fatal incident began around 10:40 on Tuesday, when an individual exited a bus at the transit center just outside the Pentagon and, without provocation, attacked Gonzalez with a knife, the FBI said Wednesday. In the ensuing struggle, the attacker ‘mortally wounded’ Gonzalez and then shot himself with the police officer’s service weapon, according to the bureau.”

The Hill (8/4, Mitchell, 5.69M) reports, “A civilian bystander was injured during the incident – which prompted a lockdown at the Pentagon – and was taken to a hospital with non-life-threatening injuries.” Authorities said “the individual was later released.” The New York Times (8/4, Ismay, 20.6M) reports the FBI continues to investigate the incident.

Also reporting are the Wall Street Journal (8/4, Youssef, Gurman, Subscription Publication, 8.41M), Fox News (8/4, Betz, 23.99M), PBS NewsHour (8/4, 792K), the Washington Post (8/4, 10.52M), NBC News (8/4, 4.91M), CNBC (8/4, Constantino, 7.34M), NPR (8/4, Bowman, 3.69M), Insider (8/4, Perrett, 2.74M), Inside No9 (VA) (8/4, Pugh, 28K), the Marietta (GA) Daily Journal (8/4, Hartwell, 61K), Yahoo! News (8/4, Seligman, 10.87M), WRC-TV Washington (8/4, 301K), WRC-TV Washington (8/3, 301K), WABE-FM Atlanta (8/4, 12K), and WTVR-TV Richmond, VA (8/4, 173K).

Former Olympian, Others Pursue Plea Agreements In Jan. 6 Cases. Reuters (8/4) reports that “a prosecutor and a defense lawyer said they were close to a plea bargain for swimmer Klete Keller, a U.S. gold medalist in the 2004 and 2008 Olympics, who faces seven riot-related charges, including civil disorder and witness tampering.” Reuters also reports that Karl Dresch, a Michigan man “who declared ‘take back our country’ before” the January 6 riots, “was sentenced on Wednesday to time served after pleading guilty to a misdemeanor” charge of “demonstrating in a Capitol building.” Dresch – who has been held in pretrial detention for six months and “is at least the fourth Jan. 6 defendant to be sentenced” – also agreed “to be interviewed by investigators following his expected release from jail on Wednesday or Thursday.”

Meanwhile, the AP (8/4) reports that Scott Fairlamb, a New Jersey man “facing a 12-count indictment for his role in the Jan. 6 breach of the Capitol,” will plead guilty “to assaulting an officer and obstructing an official proceeding.” Prosecutors are “seeking a 51-month sentence for Fairlamb,” but his attorney “said he will argue for a lesser sentence” at a hearing on Friday.

Broadcast coverage was provided by WGRZ-TV (8/4, 15K).

Judges Reject “Political Prisoner” Arguments In Capitol Cases. The Washington Post (8/4, 10.52M) continues that a “federal judge rejected claims that detained defendants in the Jan. 6 Capitol breach are ‘political prisoners’ or that riot participants acted out of patriotism before sentencing a Michigan man to six months in prison Wednesday.” The Post continues that “in a string of plea and sentencing hearings in the riot cases, federal judges appointed by presidents of both parties condemned such claims.” And some “have gone further to challenge U.S. prosecutors’ acceptance of misdemeanor plea deals for individuals involved in ‘terrorizing members of Congress,’ forcing the evacuation of lawmakers and violence that authorities have led to several deaths and assaults on nearly 140 police officers.”

Boot: Attempts to Normalize January 6th Riots Lay Groundwork For Future Coup. Max Boot writes in the Washington Post (8/4, 10.52M) that “attempts to minimize the horror of” Jan. 6 “come in two varieties: hard and soft. The hard variant is what you hear from the party’s far right. ... They argue that what happened on Jan. 6 was either a ‘normal tourist visit’ and a ‘lovefest’ or a plot by antifa or the FBI to frame the Trumpkins.” ... This narrative is “so obviously nuts that more sophisticated apologists for [former President Donald] Trump’s crimes cannot repeat the new party line with a straight face. Hence a softer version of 1/6 minimization has taken hold among some right-wing intellectuals.” In this version, “the storming of

the Capitol was merely 'a political protest that got out of control.'" Boot says these efforts "to minimize and normalize what happened on Jan. 6" are "laying the groundwork for a potentially more successful coup attempt the next time around."

Congressman Asks For Immunity In January 6th Lawsuits. The [Washington Post](#) (8/4, 10.52M) reports that Rep. Mo Brooks (R-AL) "asked a federal judge to grant him immunity from a lawsuit accusing him of inciting the Jan. 6 insurrection on the U.S. Capitol that resulted in five deaths and hundreds of people being injured." The Post explains that on March 5, Rep. Eric Swalwell (D-CA) "sued Brooks, former president Donald Trump and several others after they gave speeches at a Jan. 6 rally in which they falsely claimed the 2020 election results were fraudulent and encouraged rallygoers to march on the Capitol, where Congress was holding an accounting of the electoral college votes that would make Joe Biden president." The Post adds that the Justice Department rejected arguments that Brooks "was covered by the Westfall Act, legislation that protects federal employees from being sued for doing their jobs."

Idaho Woman Charged In Connection With Capitol Attack. The [AP](#) (8/4, Boone) reports, "An Idaho woman has been charged with four misdemeanors after prosecutors said she participated in the Jan. 6 insurrection at the U.S. Capitol by loyalists of then-President Donald Trump." Like many others "who have been charged in connection with the siege, Pam Hemphill of Boise posted videos to social media sites that showed her in Washington, D.C., in the days surrounding the insurrection and at the Capitol when it was happening." In a sworn statement filed with the case, FBI agent David Shumway "said tipsters sent the FBI screenshots from Hemphill's Facebook page of several posts, including one in which she encouraged people to go to the Capitol on Jan. 6, saying the event wasn't going to be a fun rally but rather a war." Shumway "also said security camera footage from inside the Capitol showed Hemphill inside the building during the insurrection and later being removed from the building by police."

Also reporting is [KTVB-TV](#) Boise, ID (8/4, 412K).

Man Who Stormed Capitol In George Washington Costume Arrested. [HuffPost](#) (8/4, 363K) reports, "Federal agents arrested a man on Wednesday who stormed the U.S. Capitol in a George Washington costume during the deadly Jan. 6 insurrection." The FBI "said in an affidavit that it had received an anonymous online tip on Feb. 26 from someone who claimed that an employee of Yoder Lock and Key in Nevada, Missouri, was involved in the Capitol riot." During a March 16 interview with the FBI, Isaac Yoder "told agents he had entered and exited the Capitol on Jan. 6 through a 'west facing door,' according to the affidavit."

Senators Introduce Legislation To Improve Access To 9/11 Documents On Saudi Terrorists. The [Boston Herald](#) (8/4, 327K) reports, "The September 11th Transparency Act of 2021 – bipartisan legislation to improve access to federal 9/11 investigations – is being introduced Thursday by Sens. Bob Menendez, D-N.J., and Sen. Richard Blumenthal, D-Conn." The legislation is "part of a push to finally crack open secret documents reportedly linking Saudi officials to some of the 9/11 hijackers." Lawmakers from both parties have "written to AG Merrick Garland and FBI Director Christopher Wray to finally go public with the intel that could expose how out of the 19 hijackers that day, 15 of them were citizens of Saudi Arabia."

Man Accused Of Leaving Alleged Firebombs In Los Angeles Subway Station. The [AP](#) (8/4) reports, "A 50-year-old man has been arrested on suspicion of leaving incendiary devices at a Los Angeles subway station, police and the FBI said Wednesday." [KNBC-TV](#) Los Angeles (8/4, 242K) reports, "Frederick Brown, 50, was detained at the MTA MacArthur Park Red Line station near 6th St. and Alvarado St. and was being held with no bail, according to jail records." Police said Brown "had two replica handguns at the time of his arrest." According to authorities, "there was no evidence of a terrorism motive."

Also reporting are the [Washington Examiner](#) (8/4, Beaman, 888K), the [San Diego Union-Tribune](#) (8/4, 587K), and [KTLA-TV](#) Los Angeles (8/4, 348K).

Delaware Man Accused Of Possessing Homemade Bombs, Rifle. The [AP](#) (8/4) reports, "A Millsboro man accused of possessing four homemade bombs and an AK-47 with an altered serial number is facing federal charges, according to prosecutors in Delaware." A federal grand jury "returned a superseding indictment Tuesday charging Job Gillette, 23, with four counts of possession of an unregistered destructive device and one count each of possession of a firearm by a prohibited person, and possession of a firearm with an altered or obliterated serial number." According to Thomas Sobocinski, special agent in charge of the FBI Baltimore field office, "Gillette was stock-piling dangerous explosive materials and an alert from a citizen helped avert a potentially hazardous situation."

Also reporting is [WDEL-AM](#) Wilmington, DE (8/4).

California Man Sentenced To 18 Years For Planning Arson Attacks.

SFGate (CA)

(8/4, 1.9M)

reports, "A Concord man convicted in May of conspiracy to commit arson received an 18-year prison sentence Tuesday for orchestrating the firebombings of properties of people on his enemies list." David Jah, 47, will "also serve a three-year term of supervised release following his prison term, according to the sentence delivered in federal court in San Francisco by U.S. District Judge William H. Alsup." Jah was "convicted of conspiring with two other men – Kristopher Alexis-Clark, 27, of Vallejo, and Dennis Williams, 41, of Fairfield – to conduct multiple firebombings targeting the residences of people Jah believed had wronged him, according to a news release issued Tuesday by Stephanie M. Hinds, acting United States attorney for the Northern District of California."

Ohio Man Facing Federal Charges After Found With Materials Used To Make Explosive Devices.

WEWS-TV

Cleveland (8/4) reports, "A Mogadore man is facing federal charges after he was found in possession of explosive materials inside his car during a traffic stop for an alcohol-related driving offense in Orange Village, according to the Cleveland Division of the Federal Bureau of Investigation." Andrew F. Dodson, 32, was "arrested by the FBI Wednesday on the following charges: destructive device, receiving or possessing an unregistered destructive device and making false statements." According to investigators, "Dodson made references to the Unabomber on his social media accounts, of which he has a tattoo of."

Also reporting is WOIO-TV Cleveland (8/4, 54K).

Louisiana Police Officials Under Investigation For Interference In Probe Of Black Man's Deadly Arrest.

The AP (8/4, Mustian, Bleiberg) reports, "Federal prosecutors are investigating whether Louisiana State Police brass obstructed justice to protect the troopers seen on long-withheld body camera videopunching, dragging and stunning Black motorist Ronald Greene during his fatal 2019 arrest." The development "marks a significant expansion of the federal inquiry that began as a blow-by-blow examination of the troopers' violence against Greene and their apparent efforts to cover it up." Investigators are "now moving up the chain of command, probing allegations that supervisors disregarded the video evidence, quashed a recommendation to arrest one of the troopers and recently pressed a state prosecutor not to bring any charges, according to documents obtained by The Associated Press and a half dozen people familiar with the case."

Newsweek

(8/4, 2.67M) reports, "Also under scrutiny, according to those familiar with the probe, is why the state police failed to provide the body camera video and even the most basic police reports for the official autopsy." The FBI "recently asked the pathologist to make another attempt at such a conclusion accounting for the evidence state police initially failed to provide."

New Jersey Youth Wrestling Coach Charged With Distributing Child Pornography.

The AP (8/4) reports, "A New Jersey youth wrestling coach and former state champion who made headlines for becoming the NCAA's first openly gay college wrestler is facing child pornography charges." Alec Donovan, 24, has been charged "with receipt and distribution of child pornography." Donovan "made an initial court appearance by videoconference and was released on \$100,000 bond."

WOBN-FM

Toms River, NJ (8/4, 30K) reports, "The investigation isn't over yet either as the FBI's Newark Field Office is asking anyone with information related to this case or who may be a victim to contact them at NK-Victim-Assistance@FBI.gov."

Also reporting is New Jersey Star-Ledger (8/4, 1.47M).

DOJ Watchdog Launches Audit Into General Dynamics Grants System.

Reuters

(8/4) reports,

"The U.S. Justice Department's internal watchdog has launched an audit into its \$115 million contract with General Dynamics to build its new grant management software, which since its launch has been plagued by technological glitches and caused delays in funding criminal justice programs." According to the article, "the software program, known as 'JustGrants,' manages the Justice Department's \$4.7 billion portfolio of grants that fund everything from body-worn cameras for police to transitional housing for victims of domestic violence and human trafficking victims." In announcing the audit, the office of Inspector General Michael Horowitz "said it will review the department's transition to the JustGrants system, how it has administered its contract with General Dynamics and whether the company has complied with the contract terms and with federal rules."

FBI Warns About Virtual Kidnapping Scams Targeting Families In Montana.

The Helena (MT) Independent Record (8/4, 97K) reports, "The Federal Bureau of Investigation is warning the public about virtual kidnapping scams targeting families in western Montana." KFBB-TV Great Falls, MT (8/4) reports, "The FBI Salt Lake City Division reported

they recently received reports of victims getting calls from scammers claiming to have kidnapped their loved one, and threatening to harm them unless a ransom is paid.” However, “according to the FBI, nobody is physically kidnapped in the schemes, and many of the calls originate in Mexico.”

Criminal Justice Reform Groups Push DOJ To Keep Inmates At Home After Pandemic.

Reuters

(8/4, Lynch) reports that on Wednesday, a coalition of US “criminal justice reform advocates” sent the Justice Department “a proposal to help prevent the Bureau of Prisons (BOP) from sending thousands of federal inmates released during the pandemic back to prison.” In the letter – which was signed by Families Against Mandatory Minimums, Democracy Forward Foundation, Justice Action Network, and others – the advocacy groups “offered the Justice Department an analysis” that argues “the BOP has legal authority to keep people out on home confinement after the emergency is lifted.” Reuters explains that DOJ’s Office of Legal Counsel has taken the position that once the emergency is lifted, the BOP must “recall prisoners in home confinement to correctional facilities.” Reuters adds that to date, “the emergency has not been lifted, and with the spread of the...Delta variant, it is not immediately clear when it will be.”

Navy Discloses Identity Of Disgruntled Sailor Accused Of Setting Fire Aboard USS Bonhomme Richard.

The New York Times (8/4, Ismay, 20.6M) reports that investigators have named Ryan Sawyer Mays, a 20-year-old seaman apprentice who joined the Navy in 2019, as “the Navy sailor accused of starting a fire that engulfed the warship Bonhomme Richard and burned for days at a Navy base in San Diego last year.” The Times continues that the Navy had “formally charged Seaman Mays with aggravated arson and hazarding a vessel last month but declined to provide additional details until federal search warrants were unsealed by a federal court in San Diego on Tuesday.” According to court filings, Mays “hated” the Navy after being sent to a warship following a brief stint as a SEAL trainee in late 2019.” The Times says Mays “quit the difficult six-month initial SEAL training course...after just five days.”

However, ABC World News Tonight (8/4, 6:42 p.m. EST, story 4, 1:40, Johnson, 5.38M) added that according to Mays’ lawyer, “there is no evidence that directly points to Mays and that his client was not angry about his SEAL experience” and Mays “maintains his innocence.”

Assailant Dead, 3 Wounded In Nashville Workplace Shooting.

ABC World News Tonight

(8/4,

6:40 p.m. EST, story 3, 2:00, Johnson, 5.38M) reported that a “workplace shooting near Nashville that left three people wounded and” the assailant, Antonio King, dead. ABC explained that “security guards in the building” fired back, “keeping King at bay, forcing him outside.” Nashville police arrived on the scene “within minutes,” and after King appeared to raise his weapon, officers opened fire. The officers “rushed to render aid” but King “later died at the hospital.” ABC added that while King’s “exact motive remains under investigation,” his family released a statement saying that the man “suffered from mental illness.”

Despite Heat, COVID, Migrant Crossings Continue To “Surge” At Southern Border.

NBC Nightly

News (8/4, 6:40 p.m. EST, story 6, 2:10, Holt, 4.79M) reported that despite “scorching summer heat...the record migrant surge” at the Southern Border “is growing.” NBC continued that the Border Patrol made “210,000 apprehensions...in July – a more than 20-year high. And 19,000 unaccompanied children were picked up – the largest number ever recorded.” NBC added that as some migrants worry about the spread of COVID, “ICE is...stepping in to provide tests and even offer vaccines.” At the same time, NBC said according to Deputy Border Chief Raul Ortiz, the Biden Administration “is now deporting more families who don’t qualify for asylum” and facing lawsuits from “immigration advocates” who are challenging “COVID-19 restrictions that send some families back.”

Border Agents To Wear Body Cameras.

Reuters

(8/4, Hesson) reports that the United States “will require thousands of border agents to wear body cameras,” in “a major operational change that could increase oversight of agents and also help capture criminal activity.” Reuters adds that the cameras “are expected to be rolled out in parts of Texas and New Mexico during the summer and expanded to Arizona, California, Vermont and Texas’ busy Rio Grande Valley in the fall and winter.”

NSA Warns Workers Public Wi-Fi Networks Pose Security Threat.

The New York Times (8/4, Sanger, Barnes, 20.6M) reports the Biden Administration recently “proclaimed that it’s time for government employees and contractors to get off public Wi-Fi.” The Times says, “In a warning to all federal employees, leading defense contractors and the 3.4 million uniformed, civilian and reserve personnel serving in the military, the National Security Agency issued an unusually specific admonition late last week that logging on to public Wi-Fi ‘may be convenient to catch up on work or check email,’ but it is also an

invitation to attackers.” The warning was “not prompted by any recent uptick in criminals or nation-state adversaries using public internet to steal information or stage hacks, officials say.” Rather, “it appears to be part of a significantly accelerated U.S. government effort to raise awareness about a range of electronic vulnerabilities in recent months.”

Kelly: US Organizations Must Prepare For Growing Threat Of Ransomware. In an op-ed for The Hill (8/4, 5.69M), Tom Kelly, president and CEO of IDX, urges US organizations “to start preparing for the next ransomware attack before it’s too late.” Ransomware gangs are “both prolific and unscrupulous,” Kelly says, and “they’re making too much money to even think about stopping anytime soon; in 2020, ransomware payments rose by 311 percent, and ransomware victims paid a combined total of nearly \$350 million in cryptocurrency.” To begin, Kelly advises organizations “to implement best practices regarding data backups.” In addition, he says “organizations should make cybersecurity a major internal priority.”

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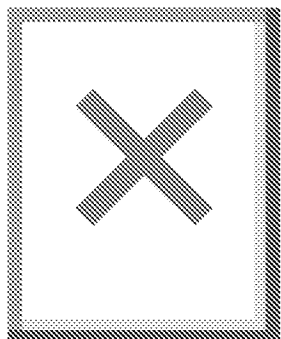
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LEADING THE NEWS

Authorities Identify Police Officer Killed In Pentagon Attack, Assailant.

The AP (8/4, Baldor, Tucker, Balsamo) reports, "As officials seek clues about what prompted a Georgia man to fatally stab a Pentagon police officer, details of the suspect's troubled past emerged Wednesday through interviews and court records." Austin William Lanz, 27, was "arrested last April for a break-in at a neighbor's home and drew police attention months earlier for a harassment campaign involving sexually explicit photos and messages, according to interviews and records obtained by The Associated Press." Authorities have not "revealed a motive in the ambush-style killing of Pentagon police officer George Gonzalez, 37." However, "Lanz's past brushes with the law, and neighbors' accounts of recent menacing behavior, appear to suggest the violence was more likely the act of a troubled, violence-prone individual than part of a broader conspiracy."

USA Today (8/4, 12.7M) reports, "Tuesday's fatal attack on a Pentagon police officer at a transit station outside the building was sudden and unprovoked, according to an account of the incident released by the FBI on Wednesday." Politico (8/4, Seligman, 6.73M) reports, "The fatal incident began around 10:40 on Tuesday, when an individual exited a bus at the transit center just outside the Pentagon and, without provocation, attacked Gonzalez with a knife, the FBI said Wednesday. In the ensuing struggle, the attacker 'mortally wounded' Gonzalez and then shot himself with the police officer's service weapon, according to the bureau."

The Hill (8/4, Mitchell, 5.69M) reports, "A civilian bystander was injured during the incident – which prompted a lockdown at the Pentagon – and was taken to a hospital with non-life-threatening injuries." Authorities said "the individual was later released." The New York Times

(8/4, Ismay, 20.6M) reports the FBI continues to investigate the incident.

Also reporting are the Wall Street Journal (8/4, Youssef, Gurman, Subscription Publication, 8.41M), Fox News (8/4, Betz, 23.99M), PBS NewsHour (8/4, 792K), the Washington Post (8/4, 10.52M), NBC News (8/4, 4.91M), CNBC (8/4, Constantino, 7.34M), NPR (8/4, Bowman, 3.69M), Insider (8/4, Perrett, 2.74M), Inside NoVa (VA) (8/4, Pugh, 28K), the Marietta (GA) Daily Journal (8/4, Hartwell, 61K), Yahoo! News (8/4, Seligman, 10.87M), WRC-TV Washington (8/4, 301K), WRC-TV Washington (8/3, 301K), WABE-FM Atlanta (8/4, 12K), and WTVR-TV Richmond, VA (8/4, 173K).

CAPITOL VIOLENCE NEWS

Former Olympian, Others Pursue Plea Agreements In Jan. 6 Cases.

Reuters (8/4) reports that "a prosecutor and a defense lawyer said they were close to a plea bargain for swimmer Klete Keller, a US gold medalist in the 2004 and 2008 Olympics, who faces seven riot-related charges, including civil disorder and witness tampering." Reuters also reports that Karl Dresch, a Michigan man "who declared 'take back our country' before" the January 6 riots, "was sentenced on Wednesday to time served after pleading guilty to a misdemeanor" charge of "demonstrating in a Capitol building." Dresch – who has been held in pretrial detention for six months and "is at least the fourth Jan. 6 defendant to be sentenced" – also agreed "to be interviewed by investigators following his expected release from jail on Wednesday or Thursday."

Meanwhile, the AP (8/4) reports that Scott Fairlamb, a New Jersey man "facing a 12-count indictment for his role in the Jan. 6 breach of the Capitol," will plead guilty "to assaulting an officer and obstructing an official proceeding." Prosecutors are "seeking a 51-month sentence for Fairlamb," but his attorney "said he will argue for a lesser sentence" at a hearing on Friday.

Broadcast coverage was provided by WGRZ-TV (8/4, 15K).

Judges Reject "Political Prisoner" Arguments In Capitol Cases. The Washington Post (8/4, 10.52M) continues that a "federal judge rejected claims that detained defendants in the Jan. 6 Capitol breach are 'political prisoners' or that riot participants acted out of patriotism before sentencing a Michigan man to six months in prison Wednesday." The Post continues that "in a string of plea and sentencing hearings in the riot cases, federal judges appointed by presidents of both parties condemned such claims." And some "have gone further to challenge US prosecutors' acceptance of misdemeanor plea deals for individuals involved in 'terrorizing members of Congress,' forcing the evacuation of lawmakers and violence that authorities have led to several deaths and assaults on nearly 140 police officers."

Boot: Attempts To Normalize January 6th Riots Lay Groundwork For Future Coup. Max Boot writes in the Washington Post (8/4, 10.52M) that "attempts to minimize the horror of" Jan. 6 "come in two varieties: hard and soft. The hard variant is what you hear from the party's far right. ... They argue that what happened on Jan. 6 was either a 'normal tourist visit' and a 'lovefest' or a plot by antifa or the FBI to frame the Trumpkins." ... This narrative is "so obviously nuts that more sophisticated apologists for [former President Donald] Trump's crimes cannot repeat the new party line with a straight face. Hence a softer version of 1/6 minimization has taken hold among some right-wing intellectuals." In this version, "the storming of the Capitol was merely 'a political protest that got out of control.'" Boot says these efforts "to minimize and normalize what happened on Jan. 6" are "laying the groundwork for a potentially more successful coup attempt the next time around."

Congressman Asks For Immunity In January 6th Lawsuits.

The Washington Post (8/4, 10.52M) reports that Rep. Mo Brooks (R-AL) "asked a federal judge to grant him immunity from a lawsuit accusing him of inciting the Jan. 6 insurrection on the U.S. Capitol that resulted in five deaths and hundreds of people being injured." The Post explains that on March 5, Rep. Eric Swalwell (D-CA) "sued Brooks, former president Donald Trump and several others after they gave speeches at a Jan. 6 rally in which they falsely claimed the 2020 election results were fraudulent and encouraged rallygoers to march on the Capitol, where Congress was

holding an accounting of the electoral college votes that would make Joe Biden president." The Post adds that the Justice Department rejected arguments that Brooks "was covered by the Westfall Act, legislation that protects federal employees from being sued for doing their jobs."

Idaho Woman Charged In Connection With Capitol Attack.

The AP (8/4, Boone) reports, "An Idaho woman has been charged with four misdemeanors after prosecutors said she participated in the Jan. 6 insurrection at the U.S. Capitol by loyalists of then-President Donald Trump." Like many others "who have been charged in connection with the siege, Pam Hemphill of Boise posted videos to social media sites that showed her in Washington, D.C., in the days surrounding the insurrection and at the Capitol when it was happening." In a sworn statement filed with the case, FBI agent David Shumway "said tipsters sent the FBI screenshots from Hemphill's Facebook page of several posts, including one in which she encouraged people to go to the Capitol on Jan. 6, saying the event wasn't going to be a fun rally but rather a war." Shumway "also said security camera footage from inside the Capitol showed Hemphill inside the building during the insurrection and later being removed from the building by police."

Also reporting is KTVB-TV Boise, ID (8/4, 412K).

Man Who Stormed Capitol In George Washington Costume Arrested.

HuffPost (8/4, 363K) reports, "Federal agents arrested a man on Wednesday who stormed the U.S. Capitol in a George Washington costume during the deadly Jan. 6 insurrection." The FBI "said in an affidavit that it had received an anonymous online tip on Feb. 26 from someone who claimed that an employee of Yoder Lock and Key in Nevada, Missouri, was involved in the Capitol riot." During a March 16 interview with the FBI, Isaac Yoder "told agents he had entered and exited the Capitol on Jan. 6 through a 'west facing door,' according to the affidavit."

COUNTER-TERRORISM

Senators Introduce Legislation To Improve Access To 9/11 Documents On Saudi Terrorists.

The Boston Herald (8/4, 327K) reports, "The September 11th Transparency Act of 2021 — bipartisan legislation to improve access to federal 9/11 investigations — is being introduced Thursday by Sens. Bob Menendez, D-NJ, and Sen. Richard Blumenthal, D-Conn." The legislation is "part of a push to finally crack open secret documents reportedly linking Saudi officials to some of the 9/11 hijackers." Lawmakers from both parties have "written to AG Merrick Garland and FBI Director Christopher Wray to finally go public with the intel that could expose how out of the 19 hijackers that day, 15 of them were citizens of Saudi Arabia."

FBI, CISA Launch Program To Prevent Extremists From Obtaining Materials To Make Bombs.

WTOP-FM Washington (8/4, 164K) reports, "The Cybersecurity and Infrastructure Security Agency (CISA) and the FBI have teamed up to launch Operation Flashpoint — a program to help retailers detect signs that people or groups may be trying to obtain chemicals to make bombs." Chuck Leas, a section chief in the Office for Bombing Prevention at CISA, sat down to discuss how the program works.

FBI's Albuquerque Field Office Prioritizing Hate Crimes.

KOB-TV Albuquerque, NM (8/4, 69K) reports Special Agent in Charge Raul Bujanda is "focused on targeting hate crimes with the Albuquerque Field Office." Bujanda said, "We're going to commit resources to make sure that every field office is addressing everything that has to do with civil rights and hate crimes to include a big part of it be a financial campaign. Now we want to make sure we get the word out to people that they understand it's okay to come forward, whether it's to your local law enforcement, to our partners, or to the FBI as well, and let us know if you think that you've been victim of a hate crime." The FBI is "working on various campaigns, including on social

media, billboards and busses to encourage people to reach out."

Man Accused Of Leaving Alleged Firebombs In Los Angeles Subway Station.

The AP (8/4) reports, "A 50-year-old man has been arrested on suspicion of leaving incendiary devices at a Los Angeles subway station, police and the FBI said Wednesday." KNBC-TV Los Angeles (8/4, 242K) reports, "Frederick Brown, 50, was detained at the MTA MacArthur Park Red Line station near 6th St. and Alvarado St. and was being held with no bail, according to jail records." Police said Brown "had two replica handguns at the time of his arrest." According to authorities, "there was no evidence of a terrorism motive."

Also reporting are the Washington Examiner (8/4, Beaman, 888K), the San Diego Union-Tribune (8/4, 587K), and KTLA-TV Los Angeles (8/4, 348K).

Delaware Man Accused Of Possessing Homemade Bombs, Rifle.

The AP (8/4) reports, "A Millsboro man accused of possessing four homemade bombs and an AK-47 with an altered serial number is facing federal charges, according to prosecutors in Delaware." A federal grand jury "returned a superseding indictment Tuesday charging Job Gillette, 23, with four counts of possession of an unregistered destructive device and one count each of possession of a firearm by a prohibited person, and possession of a firearm with an altered or obliterated serial number." According to Thomas Sobocinski, special agent in charge of the FBI Baltimore field office, "Gillette was stock-piling dangerous explosive materials and an alert from a citizen helped avert a potentially hazardous situation."

Also reporting is WDEL-AM Wilmington, DE (8/4).

California Man Sentenced To 18 Years For Planning Arson Attacks.

SFGate (CA) (8/4, 1.9M) reports, "A Concord man convicted in May of conspiracy to commit arson received an 18-year prison sentence Tuesday for orchestrating the firebombings of properties of people on his enemies list." David Jah, 47, will "also serve a three-year term of supervised release following his prison term, according to the sentence delivered in federal court in San Francisco by U.S. District Judge William H. Alsup." Jah was "convicted of conspiring with two other men – Kristopher Alexis-Clark, 27, of Vallejo, and Dennis Williams, 41, of Fairfield – to conduct multiple firebombings targeting the residences of people Jah believed had wronged him, according to a news release issued Tuesday by Stephanie M. Hinds, acting United States attorney for the Northern District of California."

Ohio Man Facing Federal Charges After Found With Materials Used To Make Explosive Devices.

WEWS-TV Cleveland (8/4) reports, "A Mogadore man is facing federal charges after he was found in possession of explosive materials inside his car during a traffic stop for an alcohol-related driving offense in Orange Village, according to the Cleveland Division of the Federal Bureau of Investigation." Andrew F. Dodson, 32, was "arrested by the FBI Wednesday on the following charges: destructive device, receiving or possessing an unregistered destructive device and making false statements." According to investigators, "Dodson made references to the Unabomber on his social media accounts, of which he has a tattoo of."

Also reporting is WOIO-TV Cleveland (8/4, 54K).

CRIMINAL INVESTIGATIONS

Louisiana Police Officials Under Investigation For Interference In Probe Of Black Man's Deadly Arrest.

The AP (8/4, Mustian, Bleiberg) reports, "Federal prosecutors are investigating whether Louisiana State Police brass obstructed justice to protect the troopers seen on long-withheld body camera videopunching, dragging and stunning Black motorist Ronald Greene during his fatal 2019 arrest." The development "marks a significant expansion of the federal inquiry that began as a blow-by-

blow examination of the troopers' violence against Greene and their apparent efforts to cover it up." Investigators are "now moving up the chain of command, probing allegations that supervisors disregarded the video evidence, quashed a recommendation to arrest one of the troopers and recently pressed a state prosecutor not to bring any charges, according to documents obtained by The Associated Press and a half dozen people familiar with the case."

Newsweek (8/4, 2.67M) reports, "Also under scrutiny, according to those familiar with the probe, is why the state police failed to provide the body camera video and even the most basic police reports for the official autopsy." The FBI "recently asked the pathologist to make another attempt at such a conclusion accounting for the evidence state police initially failed to provide."

New Jersey Youth Wrestling Coach Charged With Distributing Child Pornography.

The AP (8/4) reports, "A New Jersey youth wrestling coach and former state champion who made headlines for becoming the NCAA's first openly gay college wrestler is facing child pornography charges." Alec Donovan, 24, has been charged "with receipt and distribution of child pornography." Donovan "made an initial court appearance by videoconference and was released on \$100,000 bond."

WOBN-FM Toms River, NJ (8/4, 30K) reports, "The investigation isn't over yet either as the FBI's Newark Field Office is asking anyone with information related to this case or who may be a victim to contact them at NK-Victim-Assistance@FBI.gov."

Also reporting is New Jersey Star-Ledger (8/4, 1.47M).

Suspect Identified In Cold Case Murder Of California Woman.

KGTV-TV San Diego (8/4, 131K) reports, "San Diego Sheriff's Department said Wednesday it has identified a suspect in a 40-year-old cold case involving the death of a Santee woman." The department said "that through the use of genetic genealogy, it has identified John Patrick Hogan, or 'Pat Hogan,' as the suspect in the sexual assault and murder of Michelle Louise Wyatt in 1980." Hogan, "who died in 2004 at the age of 42, was identified after investigators matched unknown DNA found at the scene of Wyatt's murder to Hogan, investigators said in a release."

Former Indiana Officer Pleads Guilty To Concealing Inappropriate Use Of Force.

The Anderson (IN) Herald Bulletin (8/4, 36K) reports, "A former Muncie police officer, investigated by the FBI for concealing an inappropriate use of force by a fellow officer, is facing a maximum sentence of three years in prison." Dalton Kurtz, 32, "pleaded guilty Wednesday to a federal charge of misprision of felony, which means not reporting a felony he knew about."

Star Of Netflix Docuseries Appears In Court For Ongoing Child Pornography Case.

Fox News (8/4, Roberto, 23.99M) reports, "Netflix star Jerry Harris briefly appeared in federal court on Wednesday for his ongoing child pornography case." Harris "pleaded not guilty to a slew of sex crime and child pornography charges in December." Prior to his arrest in September, "FBI agents reportedly executed a search warrant at a home in Naperville as part of the investigation."

Suspect In Nevada Bank Robbery At Large.

The Reno (NV) Gazette-Journal (8/4, 219K) reports, "A suspect is at large after robbing Umpqua Bank on South Virginia Street Wednesday morning, according to Reno Police." However, "there is 'no threat to the community or surrounding areas' as no weapon was used in the robbery, police say." The FBI is working on the investigation.

Former Georgia Sheriff's Deputy Sentenced To Prison For Unregistered Gun.

The Hill (8/4, Scully, 5.69M) reports, "A former sheriff's deputy in Georgia who was accused of racist posts was sentenced to three years in prison on Tuesday for illegal possession of firearms, federal prosecutors said." Cody Richard Griggers, 28, had "pleaded guilty to one count of owning an unregistered firearm and has been sentenced to three years and eight months in prison." Investigators with the FBI "found Griggers's home to have 11 firearms, including a machine gun

that was not issued to him." Chris Hacker, special agent in charge of FBI Atlanta, said in a statement, "This former law enforcement officer violated his oath of office in many ways, the most egregious was by threatening the very citizens he was sworn to protect with his words of racially motivated violence. Now he is being held accountable by serving time in prison and never being able to wear the blue again."

Also reporting are the New York Daily News (8/4, Feldman, 2.51M) and Yahoo! News (8/4, 10.87M).

Black Man Assaulted At Indiana Lake Faces Criminal Charges Over Confrontation.

The Atlanta Journal-Constitution (8/4, 1.46M) reports, "A Black man who was the victim of an 'attempted lynching' near Bloomington, Indiana, last summer has been charged with felony assault and misdemeanor trespassing in connection with the incident." Vauhxx Booker and his attorney "held a news conference outside an Indiana courtroom Monday after Sonia Leerkamp, the special prosecutor for Monroe County, filed charges against the local rights activist last Friday." Booker "said he believed the charges were leveled by the prosecutor in retaliation for his refusal to sign a confidentiality agreement and participate in a mediation with the suspects arrested in the case." The FBI "opened a hate crime investigation into the alleged attack and two of the men were ultimately charged with felonies."

Atlanta Police Release 911 Call Made By Stabbing Victim's Girlfriend.

The Atlanta Journal-Constitution (8/4, 1.46M) reports Atlanta police on Wednesday "released the 2-minute, 40-second 911 call placed by" the girlfriend of a woman who was fatally stabbed at Piedmont Park. Portions of Emma Clark's call were "redacted by police, but she can be heard sobbing and breathing heavily as she pleaded with the dispatcher to send someone immediately." The FBI is "also investigating after Atlanta police reached out for help with the case, police Chief Rodney Bryant said."

Four People Facing Charges In Gang Case That Involves Drug Trafficking, Murders.

An online KTNV-TV Las Vegas (8/4, 113K) article covers the FBI's involvement in an investigation that led to charges for four alleged MS-13 gang members. The case involves "multiple murders, kidnappings and burglaries, as well as drug trafficking." The AP (8/4, Ritter) and the Las Vegas Review-Journal (8/4, Ferrara, 372K) also cover this story.

Pittsburgh Man Gets Seven-Year Prison Sentence After Pleading Guilty In Drug Case.

The Pittsburgh Tribune-Review (8/4, Signorini, 245K) reports a Pittsburgh man who pleaded guilty "to possession with intent to distribute heroin and fentanyl" has been sentenced to seven years in prison. William Jamar Saunders "became a target of agents from the" DEA and the FBI "after a fatal drug overdose" in Canonsburg, Pennsylvania.

FINANCIAL CRIME & CORPORATE SCANDALS

DOJ Watchdog Launches Audit Into General Dynamics Grants System.

Reuters (8/4) reports, "The U.S. Justice Department's internal watchdog has launched an audit into its \$115 million contract with General Dynamics to build its new grant management software, which since its launch has been plagued by technological glitches and caused delays in funding criminal justice programs." According to the article, "the software program, known as 'JustGrants,' manages the Justice Department's \$4.7 billion portfolio of grants that fund everything from body-worn cameras for police to transitional housing for victims of domestic violence and human trafficking victims." In announcing the audit, the office of Inspector General Michael Horowitz "said it will review the department's transition to the JustGrants system, how it has administered its contract with General Dynamics and whether the company has complied with the contract terms and with federal rules."

FBI Warns About Virtual Kidnapping Scams Targeting Families In Montana.

The Helena (MT) Independent Record (8/4, 97K) reports, "The Federal Bureau of Investigation is warning the public about virtual kidnapping scams targeting families in western Montana." KFBB-TV Great Falls, MT (8/4) reports, "The FBI Salt Lake City Division reported they recently received reports of victims getting calls from scammers claiming to have kidnapped their loved one, and threatening to harm them unless a ransom is paid." However, "according to the FBI, nobody is physically kidnapped in the schemes, and many of the calls originate in Mexico."

INTERNATIONAL RELATIONS

Authorities On Alert After Sinaloa Cartel Enforcers Seen Operating Near Texas Border.

Breitbart (8/4, 1.26M) reports, "Mexico's most powerful cartel surfaced in the border state of Nuevo Leon, a move that has placed authorities on high alert since the region is already contested by other violent networks." According to US law enforcement sources operating in Mexico, "since June, gunmen from the Sinaloa Cartel (CDS) began surfacing in Nuevo Leon, primarily the town of Montemorelos." The Sinaloa Cartel's "main areas of operation are in the western part of the country, south of California, Arizona, and New Mexico." While the cartel's "money laundering operators do have a presence in Nuevo Leon, the criminal organization kept a low profile with no enforcers—until now."

OTHER FBI NEWS

Man Sentenced In Bomb Plot Against Ferguson Officials Looks To Put Past Behind Him.

The Riverfront (MO) Times (8/4, Wicentowski, 108K) reports "a former member of the New Black Panther Party and an FBI-cited example of 'Black Identity Extremism' has returned to St. Louis — but not as he was before, as a militant, activist or would-be rebel trying to live outside the legal system." Today, Olajuwon Davis says "he'd like to return to what was once a promising acting career, to leave his past behind and to again feel the lights of a camera, the eyes of an audience following him onstage." However, "Davis can't escape the events that changed him. In his first post-prison interview, he describes the impact of his unwitting role as a leading man in an FBI sting operation as 'a mind-shaking experience.'"

OTHER WASHINGTON NEWS

New Eviction Moratorium Likely To Face Legal Challenge.

Bloomberg (8/4, Cook, House, Epstein, 3.57M) reports President Biden has "quelled for now a brewing confrontation with progressive Democrats with a new moratorium on evictions during the pandemic." The CDC's order Tuesday "aims to keep tenants who are in arrears from losing their homes until Oct. 3." Bloomberg says the order "came after Biden's White House failed to anticipate outrage and finger-pointing from its own party after he called Thursday for Congress to extend a previous moratorium set to expire just two days later. Lawmakers in the House, under lobbying by landlords, failed to act before leaving town for the rest of the summer." But, Bloomberg said the order "invites a legal fight with high-stakes consequences for public health that the government may well lose."

The Washington Post (8/4, Blake, 10.52M) says a day before the order was issued, "a top administration official had said they had looked hard and hadn't found a legal avenue to do such a thing." The Administration "did pretty much exactly the thing they said they didn't view themselves as having the authority to do: an eviction moratorium targeted at counties with higher rates of infection." Biden "didn't try to say they had finally found a legal loophole for this to pass muster; he instead suggested that it was a stopgap — something they were doing so the moratorium could live on while the courts sort through the mess." The New York Times (8/4, Thrush, 20.6M) describes the move as "a risky strategy intended to reset the legal clock by

creating a new initiative that has not yet been subject to a court challenge from landlords." The Times says one of the order's "main aims is to buy more time to stand up the troubled Emergency Rental Assistance program – which has thus far allocated just \$3 billion of \$47 billion slated by Congress to pay for back rent accrued during the pandemic."

But, the Wall Street Journal (8/4, Kendall, Subscription Publication, 8.41M) says the new moratorium will face an immediate legal challenge. Politico (8/4, O'Donnell, 6.73M) cites "two sources familiar with the matter" who said the "Alabama and Georgia chapters of the National Association of Realtors are expected to file a motion in federal court seeking to halt the ban." The legal challenge "will fuel further chaos around the federal government's safety net for renters still struggling to pay bills during the pandemic. It will likely set off a race against time for policymakers to find ways to accelerate the release of \$46.5 billion in rental aid, which was designed to backstop renters and make landlords whole but has faced severe state and local bottlenecks."

Similarly, Stephanie Ruhl reported for NBC Nightly News (8/4, 6:42 p.m. EST, story 7, 1:45, Holt, 4.79M) that the new moratorium "is designed in part to allow more time for that distribution. And the Biden Administration is pushing for states to simplify their application process. This latest move by the CDC is likely going to face legal challenges right away. In June, the Supreme Court indicated without an act of Congress, it was unlikely to uphold an eviction moratorium."

In an editorial, the Washington Post (8/4, 10.52M) says "the CDC's action was almost certainly illegal." The Administration "may succeed in giving many Americans a short reprieve from eviction. But perhaps not as long as advertised – because courts may strike it down before October – and at the expense of the rule of law." A Wall Street Journal (8/4, Subscription Publication, 8.41M) editorial says when former President Donald Trump's actions overstepped his authority, Washington was up in arms. When Biden did the same thing with the eviction moratorium, it was met with silence.

In another editorial, the Wall Street Journal (8/4, Subscription Publication, 8.41M) says when the Supreme Court ruled the original eviction moratorium was unlawful, it granted a stay pending appeal. Justice Brett Kavanaugh voted to leave the stay in place and said Congress could extend the moratorium through legislation. In response, the Administration criticized him for saying the ban is illegal and reinstated it anyway. The Journal says while the Court may be tempted to avoid confrontation with the other branches of government, it cannot allow that caution to permit lawlessness.

Meanwhile, a USA Today (8/4, 12.7M) editorial says as Biden "took the legally questionable step Tuesday of partially reinstating a federal moratorium on evictions that had expired last weekend, the money for months has been there to pay the rent." Congress "allocated \$25 billion in rental assistance in December and an additional \$21.55 billion in March." But, "only \$3 billion has gone out to renters since states received the first tranche of funds Feb. 10, and there's more than enough blame to go around. That leaves \$43.55 billion unspent."

George Will writes in the Washington Post (8/4, 10.52M) that the "story of the eviction moratorium might yet validate the axiom that nothing is as permanent as a temporary government program." By "ordering yet another extension, as he did on Tuesday, [President] Biden – who is more terrified of progressives than he is impressed by the Supreme Court – has decided to dare the [Supreme Court] to make good on its signaled intent to defend the separation of powers." Will says when the "lawless moratorium seems about to end, there will be another wave of media stories, like last week's, anticipating a tsunami of evictions, thereby triggering calls for what would be a sixth extension. Eventually, the memory of normality having faded, the moratorium would seem normal and warranted as 'social justice.'"

NYTimes: Bush Sit-In "Galvanized" Progressive Revolt Over Evictions. The New York Times (8/4, Fandos, 20.6M) reports "when it became clear on Friday night that neither Congress nor the White House was going to act to stop a pandemic-era federal eviction moratorium from expiring, leaving hundreds of thousands of low-income Americans at risk of losing their homes," Rep. Cori Bush (D-MO), who been evicted three times in her life, so "took a page from her years as an activist and did the only thing she could think of: She got an orange

sleeping bag, grabbed a lawn chair and began what turned into a round-the-clock sit-in on the steps of the United States Capitol that galvanized a full-on progressive revolt." Bush stayed there "until Tuesday, when President Biden, under growing pressure from Ms. Bush's group and Speaker Nancy Pelosi, abruptly relented and announced a new, 60-day federal eviction moratorium covering areas overrun with the Delta variant of the coronavirus."

Politico Analysis: Eviction Ban Shows Lengths Biden Willing To Go To Maintain Democratic Unity. In an analysis, Politico (8/4, Barron-Lopez, Cadelago, 6.73M) reports the Administration enacted a new eviction ban "after days of progressives fuming over the failure to prevent" the previous ban from expiring. Politico says the move "was a symbolic reversal" and calls it "the latest sign of the lengths to which [President Biden] has been willing to go to keep restive Democrats unified amid the push to pass his agenda." Biden's "need to keep the peace inside the Democratic tent has grown more pronounced in the last few weeks, as liberals took direct aim at Biden on multiple fronts." But, Politico says "the administration has privately expressed confidence that the party's left wing will stick with the president as he advances his bipartisan infrastructure deal – which some liberals have decried as too modest in scope – and a Democratic-only spending package on social programs."

Media Analysis: Cuomo Defiant As Impeachment, Investigations Loom.

In the wake of state Attorney General Letitia James' report accusing New York Gov. Andrew Cuomo of sexually harassing numerous women, the media says the Governor is showing no sign of resigning despite calls from an expansive array of public officials, including the President. Coverage in the latest cycle highlights the twin threats to his governorship – a number of criminal investigations along with potential impeachment in the state legislature.

NBC Nightly News (8/4, 6:36 p.m. EST, story 4, 2:10, Holt, 4.79M) reported Cuomo "is digging in, ignoring calls to resign, and now faces possible impeachment after an independent inquiry found he sexually harassed 11 women. Cuomo says it didn't happen." NBC (Gutierrez) added, "From New York City to Albany, today the calls for Governor Andrew Cuomo to resign grew even louder. In a remarkable joint statement, democratic governors of neighboring states are urging Cuomo to step down following President Biden's earlier call for him to resign." In its lead story, CBS Evening News (8/4, 6:32 p.m. EST, lead story, 3:30, Garrett, 3.81M) reported that Cuomo "is holding firm and laying low with no indication he plans to resign." CBS (Battiste) added, "The embattled three-term governor is flatly rejecting calls from across the political spectrum and his accusers to resign. And New York lawmakers now say they have the votes to impeach." ABC World News Tonight (8/4, 6:37 p.m. EST, story 2, 3:10, Johnson, 5.38M) reported that there is "mounting pressure" on Cuomo, but he is "digging in, though, denying the claims."

Bloomberg (8/4, Beckwith, 3.57M) reports Cuomo "worked in the Executive Mansion in Albany on Wednesday, avoiding news cameras that he used to seek out." State Democratic Party chairman Jay S. Jacobs, "who had stood by Cuomo throughout the scandal and called for other Democrats to let the investigation play out, said Wednesday in an interview with Spectrum News that he advised Cuomo to step down and that he had refused." The Albany (NY) Times Union (8/4, Lyons, 315K) reports that Jacobs said, "I cannot speak to the governor's motivations. What I can say is that the governor has lost his ability to govern, both practically and morally. The party and this state will not be well served by a long, protracted removal process designed only to delay what is now, clearly, inevitable."

The Washington Post (8/4, Dawsey, Sonmez, 10.52M) reports that four "current and former advisers to the governor said that they did not expect him to resign and that there was no plan for him to do so." All four "said that they expected him to be removed eventually but that Cuomo intends to put up a fight in the Assembly." USA Today (8/4, Spector, 12.7M) reports that Hank Sheinkopf, "a veteran Democratic strategist who worked for Cuomo and his father, Mario, the three-term governor," said, "What's his next move? Andrew Cuomo will likely try to tough this out as long as he can."

The Wall Street Journal (8/4, Vielkind, Subscription Publication, 8.41M) reports that, according to sources, Cuomo spent Wednesday preparing for a public event during which he would further respond to the charges, but the event didn't happen as his team couldn't settle on a

message or format. Politico New York (8/4, Gronewold) reports Cuomo "has given no signals that he will back down. Instead, he's preparing to fight back." Unlike back in March, Politico adds, "when multiple allegations of sexual harassment first emerged, it's now hard to see any new escape route for the governor, who is under criminal investigation and is facing almost certain impeachment." Politico says that the "one who seems to be unaware of the desperate state of affairs is the governor."

Meanwhile, ABC World News Tonight^{*} (8/4, 6:37 p.m. EST, story 2, 3:10, Johnson, 5.38M) reported the White House is "doubling down" on the President's call for Cuomo to resign. Reuters (8/4, Allen) reports that "asked if there had been contact between the White House and Cuomo or his staff, White House Press Secretary Jen Psaki told reporters 'not that I'm aware of.'" She added, "The president believes Governor Cuomo should do the right thing – resign, leave space for future leadership in New York." Politico (8/4, Ward, 6.73M) reports Psaki "said the White House didn't want to see New Yorkers affected 'in a negative way' by potential leadership turnover in the state as it continues its battle with Covid." Noting that the President has called on Cuomo to resign, she added, "At the same time, we do not want the people of New York to be impacted in a negative way as they're working to fight Covid."

The New York Times (8/4, Rubinstein, Glueck, 20.6M) highlights the breadth of the Democratic opposition to the governor remaining in Power, reporting, "The pillars of Mr. Cuomo's political base now appear to be cracking beneath him, as he suffers consequential defections from core constituencies, including labor, white suburban lawmakers and Black political leaders." His "only apparent hope is that, during the time it takes to draw up impeachment papers as the State Assembly advances its investigation, the reservoir of public good will he earned early in the pandemic will stifle the sentiment against him in the legislature and elsewhere."

Majority Of State Assembly Democrats Favor Impeaching Cuomo If He Doesn't Resign. The AP (8/3, Villeneuve) reports that a "majority of state Assembly members support beginning impeachment proceedings against" Cuomo if he doesn't resign, "according to an Associated Press count Wednesday." At least 86 of the Assembly's 150 members "have said publicly or told The AP that they favored initiating the process of ousting the third-term Democratic governor if he doesn't quit. A simple majority of Assembly members is needed to authorize an impeachment trial."

The New York Times (8/3, Glueck, 20.6M) reports that Cuomo is "confronting an existential threat to his political career." If he doesn't resign, he could face impeachment state Assembly. The Times adds, "Events could move swiftly: A person familiar with the process said it could take just a month to complete the inquiry and draw up the articles of impeachment. A trial in the State Senate could begin as soon as late September or early October."

Meanwhile, the New York Post (8/4, Brufke, 7.45M) reports that Sen. Joni Ernst (R-IA) "targeted" Cuomo "in an amendment to the bipartisan infrastructure bill which would prevent its funding from being allocated to states that are led by an individual that has sexually harassed their subordinates."

Poll: Majority Of New Yorkers Believe Cuomo Should Resign. Reuters (8/4, Goldberg) reports, "Some 59% of New Yorkers think Governor Andrew Cuomo should resign after an investigation found that he groped, kissed or made suggestive comments to 11 women in violation of U.S. and state law, a Marist Poll showed on Wednesday." Among New York Democrats, "52% said he should resign, 41% said he should not and 8% were unsure, while 77% of Republicans said he should quit, 16% said he should stay and 7% were unsure."

At Least Four Jurisdictions To Launch Investigations Of Governor. Reuters (8/4, Allen) reports that a number of jurisdictions are looking into investigating the governor. The office of Manhattan District Attorney Cyrus Vance contacted state AG James' office "to begin requesting investigative materials in their possession pertaining to incidents that occurred in Manhattan," according to a spokesman. The District Attorneys in Nassau County and Westchester County are also exploring investigations. Politico New York (8/4, Durkin) reports that the Albany County district attorney "announced his own probe on Tuesday." Cuomo's "actions, particularly his alleged groping of the executive assistant, could constitute forcible touching, a class A misdemeanor under New York law."

The New York Times (8/4, Bromwich, Rashbaum, 20.6M) says that while the "existence" of the investigations "may heighten the political pressure on the governor to resign, the inquiries are no sure sign that criminal charges will be brought against the governor, given the potential reluctance of victims to come forward and the high legal bar it would take to win a conviction."

De Blasio Calls Cuomo A "Tyrant." Politico New York (8/4, Durkin) reports NYC Mayor Bill de Blasio "took to the morning shows Wednesday to inveigh against" Cuomo, "his longtime nemesis." In "a pair of appearances Wednesday, he said Cuomo was a 'tyrant' of 'Shakespearean' proportions who should face criminal charges for groping an aide." Beyond the sexual harassment allegations, de Blasio "said Cuomo's behavior toward fellow politicians and aides has long been abusive and should not be tolerated."

Report: Cuomo Sought Guidance From Liberal Leaders On Discrediting Accuser. The Washington Post (8/4, Scherer, Dawsey, 10.52M) reports that in the days after the "first accusation of misconduct surfaced last year" against Cuomo, "his staff began reaching out to a prominent advocate for sexual harassment victims and the head of the largest gay rights group for guidance as they mulled how to discredit his accuser." The James investigation "found that the subsequent effort by the governor's office to undermine the credibility of former Cuomo adviser Lindsey Boylan — by leaking her private employee records and circulating a draft of a letter that impugned her credibility — amounted to 'unlawful retaliation.'" The Hill (8/4, Evers-Hillstrom, 5.69M) reports James' report alleged that Human Rights Campaign President Alphonso David "helped leak the confidential personnel file" Boylan.

Governor's Trouble Highlights Role, Relationship With Brother. The New York Times (8/4, Grynbaum, 20.6M) reports on the "conundrum" for CNN, with Cuomo's brother Chris as its "star anchor." Chris Cuomo "has told CNN leadership that he planned to continue on his program and abide by rules preventing him from commenting on his brother's scandal, the people said. He also promised not to discuss Andrew Cuomo's strategic response to the scandal with any government officials besides the governor himself." The Washington Post (8/3, Izadi, 10.52M) reports that while CNN "provided wall-to-wall coverage" of the Cuomo investigation on Tuesday, Chris Cuomo "did not acknowledge his involvement in the investigation or the report's findings during his prime-time show Tuesday night."

The New York Post (8/4, O'Neill, 7.45M) reports, "Media pundits and journalists have said the cable network should fire Chris Cuomo, after it was revealed he advised his embattled brother on how to beat sexual harassment allegations that have the Democrat fighting for his political life. Chris was given confidential and privileged information by the Executive Chamber, and appeared to draft or edit a proposed statement on the governor's behalf, according to Attorney General Letitia James' damning Tuesday report."

Additional Commentary. Karen Tumulty writes in Washington Post (8/4, 10.52M) that Cuomo "would have us believe that all" of his accusers "misread his intentions, imagining motives for words and actions that were simply innocent expressions of his own exuberant personality and the Italian American culture in which he was raised. To hear him tell it, he is the one who should be regarded as the victim. There is a word for what he is doing: gaslighting." Tumulty says that they "were able to summon the strength to tell their stories, however, suggests that the idealism that drew them toward public service has not been crushed entirely. Because of their determination to make a difference, things may actually be better for those who follow in their footsteps."

Alyssa Rosenberg writes in the Washington Post (8/4, 10.52M) that the "flush of enthusiasm" about Cuomo that emerged as his "briefings on the unfolding covid-19 pandemic made him a national icon," has "curdled into the most recent example of why it's better to approach public figures as a citizen than as a fan." Rosenberg argues, "substituting worship for scrutiny is unworthy of voters in a democracy — and creates cover for politicians who fail to serve the people they work for." It is "long past time for Americans to rediscover some self-respect and to adjust the terms of our relationships with public figures. ... Fandom has its place and its pleasures. But do your job as a citizen, too."

US Reportedly Planning To Mandate Vaccinations For Foreign Visitors.

Reuters (8/4, Shepardson) reports that, according to a Biden Administration source, the Administration "is developing a plan to require nearly all foreign visitors to the United States to be fully vaccinated against COVID-19 as part of eventually lifting travel restrictions that bar much of the world from entering the United States." While the Administration "is not ready to immediately lift travel restrictions because of the rising COVID-19 case load and highly transmissible COVID-19 Delta variant," it "has interagency working groups working 'in order to have a new system ready for when we can reopen travel.'"

The AP (8/4, Miller) reports that the Administration "has kept in place travel restrictions that have severely curtailed international trips to the U.S., citing the spread of the delta variant of the virus." The current rules mean that any travelers "are required to show proof of a negative COVID-19 test taken within three days of air travel to the country." NBC Nightly News (8/4, 6:35 p.m. EST, story 3, 0:15, Holt, 4.79M) provides additional coverage.

Secretary Austin Reportedly Considering Military Vaccine Mandate. The New York Times (8/4, Cooper, 20.6M) reports that, according to Pentagon spokesperson John Kirby, Defense Secretary Austin will "decide in the next few days whether to recommend that President Biden make coronavirus vaccinations mandatory for the country's 1.3 million active-duty troops...signaling a major move by the Administration to harden the country's defenses against the highly contagious Delta variant." Kirby said, "He's not going to let grass grow under his feet...We'll have more to say in very short order here." The New York Post (8/4, Chamberlain, 7.45M) reports that Austin's decision "comes days after President Biden said federal employees must either get vaccinated against the virus or submit to regular testing and observe social distancing requirement." The Pentagon "would join the Department of Veterans Affairs in mandating coronavirus vaccinations for key personnel as the number of cases surges nationwide due to the Delta variant."

House Democrats Call For Capitol Hill Vaccine Mandate. The Hill (8/4, Marcos, 5.69M) reports that a group of House Democrats, led by Rep. Emanuel Cleaver (D-MO), are "calling on the Capitol physician to start mandating that lawmakers and staff on Capitol Hill be vaccinated against COVID-19 or be subject to testing at least twice per week." The lawmakers sent a letter on Wednesday, and they "argued that 'unique factors,' such as the frequent travel among members of Congress who hail from all corners of the country, make people who work in the Capitol complex more at risk of exposure to COVID-19."

Poll Shows Public Closely Divided On Vaccine Mandates. CNBC (8/4, Liesman, 7.34M) reports that the latest CNBC All-America Economic Survey "found the public nearly evenly divided on the issue of vaccine mandates countrywide" with 49% of 802 adults surveyed from July 24-28 "favoring vaccine mandates and 46% opposing." The poll also found that vaccinated participants were "far more likely, unsurprisingly, to approve of mandates than the unvaccinated," though even 32% of vaccinated participants "oppose mandates," while 17% of the unvaccinated support mandates. There were also party divisions as 87% of Democrats, 63% of Independents, and 58% of Republicans said they have received at least one dose of a vaccine.

Poll Finds Unvaccinated Have Different View Of Risks Of Vaccine, Virus Than Vaccinated. The Washington Post (8/4, Suliman, 10.52M) reports on a Kaiser Family Foundation survey finding that "there was a big split between unvaccinated and vaccinated adults" as to the relative risk of the COVID-19 vaccines and the virus. Among participants, 53% of unvaccinated adults "said they believed getting vaccinated posed a bigger risk to their health than getting infected with the coronavirus," while 88% of vaccinated adults "said that getting infected with COVID-19 is a bigger risk to their health than the vaccine." The survey also found that unvaccinated participants were "much less worried about the more transmissible delta variant and had less confidence in the safety and effectiveness of the vaccines compared with those who got the shots."

Walgreens Reports Surge In Vaccinations. Reuters (8/4, Mishra) reports that Walgreens announced Wednesday that "it had administered more than 29 million COVID-19 vaccines at its stores so far, led by a surge in parts of the United States that had lagged in vaccinations." Specifically, it reported increases of "more than 30% in states such as Alabama, Florida, Georgia and Kentucky in the past few weeks."

WPost: Vaccines Must Be Used To End The Latest Surge. The Washington Post (8/4, 10.52M) criticizes ongoing vaccine hesitancy throughout the country, saying that there "is a simple, effective and proven firewall that will stop the flames: vaccines." While the Post acknowledges the vaccine breakthrough event in Provincetown, it contends that the incident "should not be seen as a sign that vaccines are broken" because Provincetown "was a jam-packed holiday scene, with many people indoors in bars and restaurants, not wearing masks." The Post calls on the US to "confront delta directly and wear masks and get vaccinated."

Wen: Vaccinated Americans Do Not Need To Hunker Down Over Delta. Dr. Leana Wen writes in the Washington Post (8/4, 10.52M) that the delta variant is causing people "who thought the vaccines allowed them to return to pre-pandemic normal" to question "whether they need to change how they go about their daily lives." Wen argues the delta variant "does change the risk calculus," but "it doesn't mean that we have to go back to hunkering down at home. When deciding which activities to engage in, vaccinated people should consider two factors: the medical risk of your household and the value of the activities to you." The vaccinated "constitute a small minority – some estimate it to be less than 6 percent – of total coronavirus cases. ... Even if we asked the vaccinated to significantly restrict their activities, it would hardly make a dent in total infections, and it could be a major disincentive to vaccination."

DeSantis Criticizes Biden Over Mask Mandates. The Hill (8/4, Chalfant, 5.69M) reports Florida Gov. Ron DeSantis "hit back on Wednesday after President Biden criticized him and other Republican governors for banning mask mandates." DeSantis said, "[President] Joe Biden suggests that if you don't do lockdown policies, then you should 'get out of the way.' But let me tell you this: If you're coming after the rights of parents in Florida, I'm standing in your way. I'm not going to let you get away with it." He added, "If you're trying to deny kids a proper in-person education, I'm going to stand in your way and I'm going to stand up for the kids in Florida. If you're trying to restrict people, impose mandates, if you're trying to ruin their jobs and their livelihoods and their small business, if you are trying to lock people down, I am standing in your way and I'm standing for the people of Florida."

USA Today (8/4, 12.7M) reports DeSantis said of vaccines, "We said from the beginning, we're going to make it available for all, but we're not going to mandate it on anybody. It's ultimately an individual's choice to be able to do it." He continued, "So, why don't you do your job (Biden), why don't you get that border secure and until you do that, I don't want to hear a blip about COVID from you."

The Hill (8/4, Stanage, 5.69M) reports that Florida "had more than 11,000 COVID-19 hospitalizations on Tuesday," and the figure "was 'breaking last year's record for the third straight day and up from just 1,000 in mid-June.'" CBS Evening News (8/4, 6:35 p.m. EST, story 2, 2:40, Garrett, 3.81M) reported that Florida's COVID surge has changed since last year, and Floridian COVID patients "are younger, too, with half between the ages of 25 and 55."

Some School Districts Defying Florida Governor's Mask Mandate Ban. The Washington Post (8/4, Vargas, Kornfield, 10.52M) reports that an assortment of Florida's largest school districts "have announced they will either keep or issue new mask mandates in light of the coronavirus outbreak that is ravaging the state, challenging an order by Gov. Ron DeSantis (R) threatening to withhold funds from school districts if they mandate that students wear face coverings." Politico (8/4, Atterbury, 6.73M) reports that DeSantis spokesperson Christina Pushaw "said state agencies are finalizing health and education emergency rules this week that allow parents to choose whether their kids wear masks."

School Reopenings Troubled By Delta Variant. Politico (8/4, Goldberg, Perez, Payne, 6.73M) reports on the coming school year, that the delta variant "is upending reopening plans across the country, threatening President Joe Biden's promise of a more normal school year and sustained economic recovery." Politico adds that "there's no consensus on how to keep students and staff safe," and "local school leaders, whipsawed by changing federal guidance, find themselves building a patchwork of protections based as much on local politics as public health."

Murthy Suggests Under-12 Vaccination Could Be Approved By Start Of School Year. The Hill (8/4, Schnell, 5.69M) reports Surgeon General Vivek Murthy appeared on the "Skimm This" podcast, which is set to be released on Thursday, and he "said there's a high likelihood that a

vaccine for children under the age of 12 will be approved during the next school year."

Covid-19 Vaccine Mandates Split Business Leaders. The Wall Street Journal (8/4, A1, Cutter, Nassauer, Tita, Subscription Publication, 8.41M) reports there's broad agreement among business leaders that they need to get more workers vaccinated to keep the U.S. economy humming, though they are split on how to do it. Some are offering bigger bonuses or other incentives to convince employees, while others such as Walmart and Microsoft are mandating that employees get vaccinated. Calls for vaccine mandates have also grown louder from other businesses as well. In recent months, many hospital systems, universities and other organizations have adopted them and survived early legal challenges from employees.

Senior Living Community Operators Begin Announcing Vaccine Mandates For Nursing Home Workers. The AP (8/4, Condon, Sedensky) reports that Genesis Healthcare, which is the "largest nursing home operator," has "told its workers this week they will have to get COVID-19 vaccinations to keep their jobs — a possible shift in an industry that has largely rejected compulsory measures for fear of triggering an employee exodus that could worsen already dangerous staffing shortages." The requirement impacts 70,000 employees across 400 nursing homes, and it "is the clearest sign yet that such places may be willing to take that risk amid the surging delta variant and the fact that more than 40% of U.S. nursing home workers still have not gotten the shot."

The New York Times (8/4, A1, Richtel, Abelson, 20.6M) reports Good Samaritan Society "became one of the largest long-term care chains in the country to order mandatory vaccines for staff" in July, "highlighting turmoil within an industry desperate to avoid a repeat of the devastation that swept through this highly vulnerable population."

Pfizer Announces Employee Vaccine Mandate. Reuters (8/4, Erman) reports that Pfizer "said on Wednesday it will require all its U.S. employees and contractors to become vaccinated against COVID-19 or participate in weekly COVID-19 testing." Company spokesperson Pamela Eisele "said the company was taking the initiative in order to 'to protect the health and safety of our colleagues and the communities we serve.'"

Los Angeles City Council Considering Vaccine Mandate. NBC Nightly News (8/4, 6:33 p.m. EST, lead story, 1:10, Holt, 4.79M) reported that the Los Angeles city council "could soon hear an ordinance that would require customers to have at least one dose of a vaccine before they enter public spaces like restaurants, shopping centers, and gyms."

FDA Reportedly Planning To Approve Pfizer Vaccine Within Weeks. NBC Nightly News (8/4, 6:31 p.m. EST, lead story, 1:20, Holt, 4.79M) reported that the FDA "may be moving more quickly to give final approval to Pfizer's vaccine," which "was the first to receive emergency use authorization back in December." Final approval "could happen in just weeks and make it easier for institutions to mandate vaccinations." ABC World News Tonight (8/4, 6:36 p.m. EST, lead story, 0:30, Johnson, 5.38M) reported that while sources "tell ABC News that that full approval could come by early September," NIAID Director Dr. Fauci "says hopefully it will be in the next couple of weeks or even sooner."

Senators Introduce Bill To Create "National COVID-19 Day Of Memorial." The Washington Post (8/4, Wan, 10.52M) reports Sens. Elizabeth Warren (D-MA), Edward J. Markey (D-MA), and Martin Heinrich (D-NM) "introduced a resolution Wednesday to create a national covid-19 day of memorial." Warren's brother "died from COVID" in April 2020. The bill is a companion to one introduced in the House earlier.

Louisiana Pediatricians Issue Warning Over Growing Infections Among Minors. NBC Nightly News (8/4, 6:34 p.m. EST, story 2, 1:30, Holt, 4.79M) reported that Louisiana pediatricians are increasingly warning about growing COVID infections among children. Dr. Mark Klein, who works at New Orleans' Children's Hospital, "says patients under 17 years old make up one in five new cases and are especially vulnerable, since many don't qualify for the vaccine." The warning comes as the American Academy of Pediatrics "report[ed] more than 70,000 new infections just last week."

CDC Projects Number Of COVID Patients Could Triple By End Of Month. ABC World News Tonight (8/4, 6:32 p.m. EST, lead story, 5:00, Johnson, 5.38M) reported that the CDC

released an updated COVID projection for the US, and it "shows the number of COVID patients could triple by the end of August." The projection adds that deaths "could reach as many as 9,000 a week" if preventative measures are not taken soon.

Lander: Congress Must Approve Biden's Proposed Pandemic Programs. In an op-ed for the Washington Post (8/4, Lander, 10.52M), Eric Lander, President Biden's science adviser and director of the White House Office of Science and Technology Policy, writes, "New infectious diseases are emerging at an accelerating pace due to greater contact between humans and animals, and they are spreading faster due to global travel." Because the federal government "is responsible for defending the United States against future threats," the President "has asked Congress to fund his plan to build on current scientific progress to keep new infectious-disease threats from turning into pandemics like covid-19." Lander writes that "we have an opportunity not just to refill our stockpiles but also to transform our capabilities. However, if we don't start preparing now for future pandemics, the window for action will close." The White House, he writes, "will put forward a detailed plan this month to ensure that the United States can fully prepare before the next outbreak. It's hard to imagine a higher economic or human return on national investment."

Tufekci: CDC Must Help Public Better Understand Research Informing New Mask Guidelines. In a guest essay for the New York Times (8/4, 20.6M), contributor Dr. Zeynep Tufekci writes that the CDC's new mask guidelines have "set the nation on edge." He argues that the agency "needs to better take into account the sociological effects of its guidance." He adds that the CDC should "follow the principles it espouses – organize and coordinate the release of information, back up recommendations with solid research, and move as quickly as possible to respond to crises."

COVID Cases Worldwide Surpass 200 Million.

Reuters (8/4, Abrahams, Kavya) reports, "Coronavirus cases worldwide surpassed 200 million on Wednesday, according to a Reuters tally, as the more-infectious Delta variant threatens areas with low vaccination rates and strains healthcare systems." The new results are "highlighting the widening gap in inoculation rates between wealthy and poor nations," with "the countries reporting the most cases on a seven-day average – the United States, Brazil, Indonesia, India and Iran – represent[ing] about 38% of all global cases reported each day."

Politico: Psaki Blames GOP For Holding Up ATF Nominee, But Democrats Not United Behind Him.

Politico (8/4, Sheehey, 6.73M) reports White House press secretary Jen Psaki Wednesday "accused Senate Republicans of 'moving in lockstep' to block" David Chipman's nomination to head the ATF. However, Politico adds, Chipman "has yet to secure the support of all 50 members of the Senate Democratic caucus, which would allow him to be confirmed without any Republican support. ... it is Democrats that have held up Chipman's nomination thus far."

Despite Heat, COVID, Migrant Crossings Continue To "Surge" At Southern Border.

NBC Nightly News (8/4, 6:40 p.m. EST, story 6, 2:10, Holt, 4.79M) reported that despite "scorching summer heat...the record migrant surge" at the Southern Border "is growing." NBC continued that the Border Patrol made "210,000 apprehensions...in July – a more than 20-year high. And 19,000 unaccompanied children were picked up – the largest number ever recorded." NBC added that as some migrants worry about the spread of COVID, "ICE is...stepping in to provide tests and even offer vaccines." At the same time, NBC said according to Deputy Border Chief Raul Ortiz, the Biden Administration "is now deporting more families who don't qualify for asylum" and facing lawsuits from "immigration advocates" who are challenging "COVID-19 restrictions that send some families back."

ISM: Service Sector Growth Accelerated In July.

The AP (8/4, Cruisinger) reports that the data from the Institute for Supply Management released

Wednesday showed that service-sector growth "increased to a record pace in July even as businesses continued to face challenges in hiring workers." ISM reported its monthly survey of service industries rose to 64.1 percent last month from 60.1 in June. A reading above 50 indicates that the sector is growing. Reuters (8/4, Mutikani) reports that demand "is rotating back to services as nearly half of the population has been fully vaccinated against COVID-19, allowing people to travel, frequent restaurants, visit casinos and attend sporting events among services-related activities that were curbed early in the pandemic in favor of goods."

ADP Survey: Private Payrolls Up 330,000 In July, Far Less Than Expected.

Reuters (8/4, Mutikani) reports that private payrolls "increased far less than expected in July as shortages of workers and raw materials constrained hiring in the manufacturing and construction industries." ADP reported on Wednesday that private payrolls rose by 330,000 last month, "less than half of the 695,000 that had been anticipated by a Reuters survey of economists." Bloomberg (8/4, Pickert, 3.57M) says the results show "persistent hiring obstacles despite broader improvement in the economy."

CNBC (8/4, Cox, 7.34M) reports ADP chief economist Nela Richardson said, "The labor market recovery continues to exhibit uneven progress, but progress nonetheless." The ADP report comes two days ahead of the Labor Department's "more closely watched" non-farm payrolls release, which "includes government jobs and is expected to show a total gain of 845,000 after June's 850,000 increase."

Criminal Justice Reform Groups Push DOJ To Keep Inmates At Home After Pandemic.

Reuters (8/4, Lynch) reports that on Wednesday, a coalition of US "criminal justice reform advocates" sent the Justice Department "a proposal to help prevent the Bureau of Prisons (BOP) from sending thousands of federal inmates released during the pandemic back to prison." In the letter – which was signed by Families Against Mandatory Minimums, Democracy Forward Foundation, Justice Action Network, and others – the advocacy groups "offered the Justice Department an analysis" that argues "the BOP has legal authority to keep people out on home confinement after the emergency is lifted." Reuters explains that DOJ's Office of Legal Counsel has taken the position that once the emergency is lifted, the BOP must "recall prisoners in home confinement to correctional facilities." Reuters adds that to date, "the emergency has not been lifted, and with the spread of the...Delta variant, it is not immediately clear when it will be."

USCIS Expected To End Year With 100K Green Cards Unissued.

The Wall Street Journal (8/4, Hackman, Subscription Publication, 8.41M) reports that US Citizenship and Immigration Services will likely end the year with around 100,000 employment-based green cards unissued after the pandemic slowed the pace of issuances. According to the Journal, most of those affected will be Indian nationals who may have to wait another five years before they are approved for permanent residency.

Border Agents To Wear Body Cameras.

Reuters (8/4, Hesson) reports that the United States "will require thousands of border agents to wear body cameras," in "a major operational change that could increase oversight of agents and also help capture criminal activity." Reuters adds that the cameras "are expected to be rolled out in parts of Texas and New Mexico during the summer and expanded to Arizona, California, Vermont and Texas' busy Rio Grande Valley in the fall and winter."

NOAA Expects Above Average Hurricane Season.

The New York Times (8/4, Fountain, 20.6M) reports the National Oceanic and Atmospheric Administration forecasts "that this year's hurricane season will be an above average one." Overall, the NOAA expects "15 to 21 named storms, including 7 to 10 hurricanes, by the end of the season on Nov. 30." The Washington Post (8/4, 10.52M) continues that after "a record start to Atlantic hurricane season in May and June, tropical storminess shut down in mid-July," but it is expected

that there will be "a dramatic ramp-up in activity in the next two weeks, with a number of named storms likely to develop in August and an increasing potential for U.S. impacts." The NOAA on Wednesday "released their latest hurricane outlook calling for even greater odds of an above-average season, which runs through November."

As Residents Flee Western Wildfires, Drought Forces Drastic Measures.

ABC World News Tonight[®] (8/4, 6:44 p.m. EST, story 5, 1:50, Johnson, 5.38M) reported there are now "more than 96 large fires burning in 14 states now." ABC continued that "heat and threatening winds" stoked California's Dixie Fire, causing it to again jump "perimeter lines." The fire is "now more than 274,000 acres in size and forced some 15,000 more people to flee on Tuesday." The Forest Service has indicated "this season is unprecedented, calling it a national crisis."

Meanwhile, CBS Evening News[®] (8/4, 6:42 p.m. EST, story 5, 2:05, Garrett, 3.81M) reported that "there is no relief in sight from the devastating western drought." CBS profiled the effects of the drought on the town of Mendocino in California, saying that as the town's "wells are drying up," a local inn is paying "to truck in water so guests can take a shower." ABC continued that restaurants are also paying to truck in water, with one café owner paying "about \$3,600 a month for water delivery." And, ABC added, the town's groundwater manager, Ryan Rhoades, "is considering bringing water by train."

State Department Investigating Disappearance Of \$5,800 Bottle Of Whiskey Given To Pompeo By Japan.

The New York Times (8/4, 20.6M) reports that the State Department "is investigating the whereabouts of a \$5,800 bottle of whiskey the Japanese government gave to Secretary of State Mike Pompeo in 2019." The Times explains that under the Constitution, "it is illegal for an American official to accept a gift from a foreign government, and gifts are considered property of the U.S. government." However, it is "unclear whether Mr. Pompeo ever received the gift, as he was traveling in Saudi Arabia on June 24, 2019, the day that Japanese officials gave it to the State Department, according to a department filing on Wednesday in the Federal Register documenting gifts that senior American officials received in 2019." The Times adds that high-ranking officials "are often insulated by staff members who receive gifts and messages for them."

Trump Asks Court To Block Release Of Tax Returns To House Panel.

Reuters (8/4, Wolfe) reports former President Donald Trump on Wednesday challenged "last week's U.S. Justice Department order to turn his tax returns over to a House of Representatives committee, part of his long campaign to keep details of his wealth secret." Trump's lawyers argued in a filing in federal court in the District of Columbia that "the House Ways and Means Committee lacks a legitimate basis for seeking his federal tax returns, and that the Justice Department erred when it backed the committee's request."

Bloomberg (8/4, 3.57M) reports the filing said that by complying with the committee's request, the Administration is "both carrying out the Committee's unlawful discrimination and retaliation and engaging in their own unlawful discrimination and retaliation." On its website, CNBC (8/4, Mangan, 7.34M) says Trump's attorneys "asked for a permanent injunction barring the IRS from complying with the committee's request for Trump's tax returns."

The New York Times (8/4, Savage, 20.6M) says the move "means that Congress will not receive Mr. Trump's tax returns any time soon; the committee or Mr. Trump's legal team can appeal any adverse rulings up to the Supreme Court. Even if Congress does eventually obtain them, that would not mean they would become public immediately or at all." The Wall Street Journal (8/4, Gurman, Subscription Publication, 8.41M) provides similar coverage.

QAnon "Adapting To Post-Trump Era."

USA Today (8/4, Carless, 12.7M) reports that "none of the absurd prophecies" promoted by QAnon "have come true. With so many unmet promises, the QAnon movement should be a relic of the political theater of the Trump administration." However, it is "adapting to the post-Trump era. Its

members are shedding the "Q" label that has united them, and they are trying to rewrite the brief history of the movement by falsely claiming the QAnon moniker never really existed — that it was created by the media to sully the reputation of conspiracy researchers."

INTERNATIONAL NEWS

Administration Preparing Overhaul Of Arms Export Policy, Focus To Be More On Human Rights.

In an "exclusive," Reuters (8/4, Stone, Zengerle) reports the Biden Administration is "preparing an overhaul of arms export policy to increase the emphasis on human rights, a departure from former President Donald Trump's prioritization of economic benefits to U.S. defense contractors, four people familiar with the initiative said." A pair of State officials "will brief congressional staff on Biden's draft Conventional Arms Transfer (CAT) Policy on Friday, said two of the people familiar with the situation, with a formal unveiling expected as soon as September." A "senior administration official" confirmed the new CAT policy was being developed, and "will help us build and maintain strategic partnerships that best reflect the values and interests of the United States."

New Study: Satellite Imagery Shows Millions Moving Into Flood Zones Globally.

The Washington Post (8/4, Root, 10.52M) reports a new study published Wednesday in the journal *Nature* shows that tens of million of people "have been moving into flood zones around the world. The influx is as much as 10 times more than previously thought, and if the trend continues on its current trajectory millions more could suffer the impacts of flooding." The change "in population in flood zones varied by location. In Russia and Sri Lanka, for instance, the number of people living in those areas shrank. Jamaica stayed about the same. But many places, such as Bangladesh and India, saw large increases — of up to 14.3 million and 44.8 million people, respectively."

Blinken Says US May Deny Visa To Corrupt Central American Officials.

Reuters (8/4) reports that Secretary of State Blinken "said on Wednesday" that the United States "may deny visas to current or former Guatemalan, Honduran or Salvadoran government officials believed to be responsible for undermining democracy or the rule of law." Blinken "said a person could be designated under the policy for 'acts of corruption or obstruction of democratic processes or institutions, such as subverting the integrity and independence of the judicial sector and anti-corruption prosecutors.'" Reuters adds that the Biden Administration has "cited corruption in the so-called Northern Triangle countries as one of the root causes, along with gang violence and poverty, of the increased flow of migrants to the U.S.-Mexico border."

Mexico Sues US Gun Makers, Distributors In US Federal Court, Blaming Them For Bloodshed.

The AP (8/4, Castillo) reports the Mexican government Wednesday filed an "unusual" lawsuit against US gun manufacturers and distributors on Wednesday in US federal court, "arguing that their negligent and illegal commercial practices have unleashed tremendous bloodshed in Mexico." The Washington Post (8/4, Sheridan, Sieff, 10.52M) reports the suit "maintains that the U.S. arms manufacturers 'are conscious of the fact that their products are trafficked and used in illicit activities against the civilian population and authorities of Mexico,' according to a document from the Foreign Ministry."

Reuters (8/4, Graham, Gottesdiener) reports that Mexico is seeking an "estimated \$10 billion" in damages. The National Shooting Sports Foundation "said it rejected Mexico's claims that U.S. manufacturers were negligent in their business practices." An NSSF official said, "The Mexican government is responsible for the rampant crime and corruption within their own borders."

Threat By Canadian Border Personnel Union Threatens Plan To Reopen To Americans.

The Wall Street Journal (8/4, Vieira, Subscription Publication, 8.41M) reports that Canada's plan to reopen its US border to tourists next week may be in danger after the union representing its

customs and immigration officers said it will cut border services on Friday if a new labor agreement is not reached. Such a disruption could cause economic damage throughout North America, the Journal says, given the supply chain links between the US and Canada.

WSJ: Details, Motive Behind Assassination Of Haitian President Remain Unclear.

In a 3,300-word piece, the Wall Street Journal (8/4, Hinshaw, Vyas, Forero, Subscription Publication, 8.41M) reports nearly a month after the assassination of Haitian President Jovenel Moïse, the circumstances behind the attack, as well as its ringleaders, remain unclear.

Along those lines, the New York Times (8/4, Kurmanaev, 20.6M) reports, "The mastermind behind the assassination...most likely still at large," according to Haiti's Prime Minister Ariel Henry. Henry also said, "I think there were a lot of people involved; there were people with access to a lot of money." He added, "The people they have accused up until now, I don't see that they have the capacity, the web, to do it." The Times adds that "few in Haiti believe the authorities have yet closed in on the people who organized and financed the complex plot."

Meanwhile, Reuters (8/5) reports that Antonio Intriago, the head of a Miami-based security firm, CTU, "that hired the Colombian bodyguards suspected of killing Haiti's president denied involvement in his death, saying on Wednesday he had been tricked and that the president's own guards were to blame." According to a statement from his legal team, "Mr. Intriago had no knowledge of and no part in the tragic events." According to the statement, Intriago "believed that his 'unarmed security contractors' had been hired as personal guards in Haiti, but that there was a last-minute change of plans and the men were asked to serve an arrest warrant on Moïse."

Talks Between Venezuelan Government, Opposition Set For Later This Month.

Reuters (8/4) reports that talks between the Venezuelan government and the opposition "are expected to begin on Aug. 13 in Mexico, two sources with knowledge of the situation said on Wednesday." The negotiations "will be supported by international actors including Norway, which acted as a mediator in a previous dialogue proceeding in 2019 that collapsed before the two sides could hammer out a deal to ease the political standoff."

Taliban Claims Responsibility For Kabul Attack.

The Washington Post (8/4, George, 10.52M) reports the Taliban "claimed responsibility Wednesday for an attack on the acting Afghan defense minister, saying the assault was in retaliation for escalating government attacks on Taliban fighters." A Taliban spokesman said, "The suicide attack was in reaction to the actions of ... the Kabul regime" and those "ordering attacks against innocent people, and bombings of civilian populations."

The Wall Street Journal (8/4, Cullison, Shah, Subscription Publication, 8.41M) reports that the attack on the home of Gen. Bismillah Khan Mohammadi, who became acting defense minister in June, resulted in eight dead and 20 wounded. The general was not at home at the time of the attack.

McConnell Hammers Biden's Handling Of Afghan Pullout. The New York Post (8/4, Brufke, 7.45M) reports Senate Minority Leader McConnell "slammed the Biden administration's decision to pull troops from Afghanistan, noting that Taliban forces have advanced in key provincial capitals in the wake of the U.S. withdrawing from the region." He said, "By any account, the situation in Afghanistan has become worse as we have headed to the exits. We will live with the security, humanitarian, and moral consequences for years to come. And this whole debacle was not only foreseeable; it was foreseen."

Administration Approves Sale Of Artillery Pieces To Taiwan.

Reuters (8/4) reports that the State Department has approved the potential sale of 40 self-propelled howitzers to Taiwan, the Pentagon announced Wednesday. This "comes after a series of arms sales last year that included drones and coastal missile defenses meant to upgrade the island's capabilities and discourage a Chinese invasion." The Hill (8/4, Kheel, 5.69M) says that this is the first arms sale to Taiwan that the current administration has approved and is "sure to stoke Beijing's ire." The DOD notice "kicks off a 30-day congressional review period in which lawmakers

could move to block the sale if they want. But arms sales to Taiwan have generally garnered strong bipartisan support."

Malaysian PM Refuses To Resign; Plans Vote Of Confidence Next Month.

The AP (8/4, Ng) reports "embattled" Malaysian Prime Minister Muhyiddin Yassin "refused to resign Wednesday after some lawmakers in his alliance pulled support for him, but said he will seek a vote of confidence in Parliament next month to prove his legitimacy to govern." Following a meeting with King Sultan Abdullah Sultan Ahmad Shah, Muhyiddin "said in a national broadcast that he had been informed by the monarch that eight lawmakers from a key party in his ruling alliance had withdrawn their support." He also said that "he told the king he has sufficient declarations of support from lawmakers that 'convinced me that I still have the majority support' in Parliament."

WSJournal: Purge Of Hong Kong Teachers' Union Reflects Communist Takeover.

The Wall Street Journal (8/4, Subscription Publication, 8.41M) editorializes that the Hong Kong Education Bureau's decision not to recognize the Hong Kong Professional Teachers' Union is the latest sign the city is under Communist control. The union faces accusations of using education as a pretext for political propaganda. But the Journal says the actual concern is the union will not uphold a law requiring teachers to promote patriotism and national security in classrooms.

Amid Concerns About Safety, Belarusian Sprinter Fled To Austria Instead Of Poland.

The AP (8/4, Isachenkov, Schuller) reports Belarusian Olympic sprinter Krystsina Tsimanouskaya arrived in Vienna on Wednesday "after she resisted an attempt by her Olympic team's officials to send her home, where she feared reprisals from the authoritarian government." Reuters (8/3, Tétrault-Farber, Slodkowski) reports that she had been expected to fly to Warsaw, but "a member of the Belarusian community in touch with Tsimanouskaya said diplomats had changed her flight due to security concerns."

Two Belarusian Opposition Leaders On Trial. The AP (8/4, Karmanau) reports, "Leading members of the Belarusian opposition went on trial Wednesday, part of a multi-pronged crackdown on dissent in the ex-Soviet nation that was rocked by months of protests over a disputed presidential election." Maria Kolesnikova "is accused of conspiring to seize power, creating an extremist organization and calling for actions damaging state security," and lawyer Maxim Znakh "faces the same charges." Their trial "started Wednesday behind closed doors at the Minsk Regional Court in the Belarusian capital. They could face up to 12 years in prison if convicted."

Biden Pledges Aid To Lebanon, But Calls For Reform.

On the one-year anniversary of the "catastrophic" explosion that devastated Beirut, Reuters (8/4, Mason) reports that the US "will give nearly \$100 million in additional humanitarian aid" to Lebanon. NBC Nightly News (8/4, 6:44 p.m. EST, story 8, 1:30, Holt, 4.79M), for its part, reported that the President "is pledging \$100 million in humanitarian aid to Lebanon, as the country marks one year since more than 200 people died in a catastrophic explosion."

The AP (8/4, Corbet) reports that overall, the French presidency "said an international conference on Lebanon has gathered over \$357 million in aid required to meet the country's humanitarian needs, one year after the massive explosion at Beirut's port." The AP adds that Biden addressed the group, warning that "no amount of outside assistance will ever be enough, if Lebanon's own leaders do not commit to do the hard but necessary work of reforming the economy and combating corruption. That's essential, and has to start now."

Meanwhile, Reuters (8/4) reports that "thousands of people, many holding pictures of the dead and waving Lebanese flags, gathered near the port" where the explosion occurred. As "a memorial service got under way at the port, water cannon and tear gas were fired at protesters who threw stones towards security forces near parliament. Eight people were wounded, the Red Cross said." Later in its segment, Molly Hunter reported for NBC Nightly News (8/4, 6:44 p.m. EST, story 8, 1:30, Holt, 4.79M) on the protests as they were happening from Beirut, saying, "for

most of the country living under the poverty line, unable to afford food, with the currency in free fall, it's not getting better. And tonight thousands are united, demanding change."

More broadly, the Wall Street Journal (8/4, Malsin, Osseiran, Subscription Publication, 8.41M) reports that the nation is going through a massive economic collapse, among the worst in the world in the last 150 years.

Militants Fire Several Rockets Into Southern Israel, Prompting Retaliation.

Meanwhile, the New York Times (8/4, Kingsley, 20.6M) reports that militants in southern Lebanon "fired rockets into Israel on Wednesday for the second time in two weeks, prompting the Israeli Army to retaliate with artillery fire in a new flare-up after days of tension across the region." The Washington Post (8/4, Rubin, 10.52M) reports the "relatively small-scale operation, in which two rockets landed in open fields near the northern Israeli city of Kiryat Shemona and another came down inside Lebanon, was carried out by Palestinian groups along Lebanon's southern border, according to Israeli media." Reuters (8/4, Heller) adds that an Israeli official "said there were no casualties on the Israeli side of the hilly frontier, where the rockets ignited a brush fire."

Senate Committee Passes Legislation Repealing Two Iraq AUMFs, Schumer Expects Full Senate Vote This Year.

The AP (8/4, Knickmeyer) reports the Senate Foreign Relations Committee on Wednesday voted 14-8 to "finally" repeal the 1991 and 2002 authorizations for use of military force in Iraq, "an early round of action in a growing Democratic push to reclaim congressional say over U.S. military strikes and deployments." Reuters (8/4) reports that committee "sent the joint resolution to the full Senate, where it is strongly supported by Democrats and backers say it is expected to garner enough Republican support to win the 60 votes needed for passage."

The Washington Post (8/4, Demirjian, 10.52M) reports that repeal "will make no difference to the United States' security posture on the ground, according to senior Biden administration officials who testified before the committee Tuesday, saying the 1991 measure is defunct, and the 2002 measure has not been cited as the sole legal justification for any military venture in years." However, "a majority of Republicans contend that the 2002 Iraq War authorization should remain on the books to address potential future threats in an unstable region." The New York Times (8/4, Savage, 20.6M) reports that the officials said the Iraqi authorizations "are obsolete and serve no current purpose. The officials also said that repealing them would send a positive message about a new era of partnership with Iraq."

Politico (8/4, Desiderio, 6.73M) adds the vote "marks a significant step toward Congress reasserting its constitutional authority over matters of war and peace, proponents said, and the effort is on track to become the first successful repeal of an authorization for the use of military force in 50 years." Senate Majority Leader Schumer said Wednesday that he expects a vote on the measure by the full Senate this year. Politico notes that the President backs the repeal, and that the House has already passed repeals of the two AUMFs. The New York Times (8/4, Edmondson, 20.6M) cites Sen. Josh Hawley's (R-MO) support for "reining in" presidential war powers as a sign that the GOP is starting to shift away from supporting them.

UK: Hijackers Have Abandoned Tanker Seized Off UAE's Coast.

The AP (8/4, DeBre, Gambrell) reports the hijackers "who captured a vessel off the coast of the United Arab Emirates in the Gulf of Oman departed the targeted ship on Wednesday, the British navy reported, as recorded radio traffic appeared to reveal a crew member onboard saying Iranian gunmen had stormed the asphalt tanker." The incident "revived fears of an escalation in Mideast waters and ended with as much mystery as it began."

In Crackdown, Nicaraguan Police Arrest Beauty Queen For Attempting To Contest Presidential Election.

Reuters (8/4) reports that in the latest sign that Nicaraguan President Daniel Ortega has no plans to end "a crackdown" against political opposition in his country, "Nicaraguan authorities...detained," Berenice Quezada, "a former beauty queen," for "bidding to contest the November presidential elections." The Nicaraguan attorney general's office "said in a statement on

Wednesday Quezada had committed acts that 'incite hatred and violence,' and that she should be under house arrest." However, Reuters says Quezada's arrest comes as Ortega's government "has been detaining political adversaries...ahead of an election in which the former Marxist guerrilla" will seek a fourth term. Reuters adds that "Washington and the European Union have imposed sanctions against members of Ortega's family...as well as key figures within the government."

WPost: To Advance Democracy, Administration Must Halt Aid To Egypt.

The Washington Post (8/4, 10.52M) editorializes that the Biden Administration faces "a potentially decisive test of whether" the president's "rhetoric" advocating democratic values "will be translated into meaningful action." The Post explains that Secretary of State Blinken "must determine...whether to withhold on human rights grounds" as the regime of Abdel Fatah al-Sissi continues to violate "conditions such as releasing political prisoners and allowing media freedom" that under US law are tied to aid. According to the Post, Cairo's lobbyists obtain waivers by arguing that the US "needs Egypt for help in keeping the peace between Israel and the Palestinians, for fighting terrorism, for transit of U.S. warships through the Suez Canal." But the Post says "in taking those actions" Egypt "is merely pursuing its own vital interests; no bribery should be necessary." By suspending aid "until the regime eases its repression," the US would be "pursuing...the crucial American interest of advancing democracy in a fateful global contest with autocracy."

THE BIG PICTURE

Headlines From Today's Front Pages.

Wall Street Journal:

Businesses Are Loading Up On Credit. Spending Could Follow.
Robinhood Stock Price Jumps As Options Trading Begins
Auto Makers Aim To Boost EV Sales To 40%-50% Of US Sales By 2030
Beirut Port Explosion Fuels Lebanon's Collapse: 'May God Save The Country'
Want To Build An Online Sports-Betting Empire? Start With A Gas Station Casino
COVID-19 Vaccine Mandates Split Corporate America

New York Times:

Facing Loss of Supporters, Cuomo Gains Attention From Prosecutors
Nursing Homes Confront New Covid Outbreaks Amid Calls For Staff Vaccination Mandates
Collapse: Inside Lebanon's Worst Economic Meltdown In More Than A Century
Debate Over Presidential War Powers Sets Up Test For A Divided GOP
Mexico Sues Gun Companies In US, Accusing Them Of Fueling Violence
After Months As A Covid Success Story, China Tries To Tame Delta

Washington Post:

More Families Of Color Choose Home Schooling
Cuomo Defiant As Perils Grow
For Some, Extension Of Eviction Ban Comes Late
In Recreation, Forced Adaptation
Redistricting Battle Kicks Off Early With Lawsuits Signal Fierce Fights On Redistricting

Financial Times:

Year After Beirut Port Blast Families Of Victims Push For Truth
WHO Urges Delay To COVID Booster Shots As Shortages Hit Lower-Income Countries
Robinhood Soars After Retail Traders Flock To Shares

Story Lineup From Last Night's Network News:

ABC: US COVID; Governor Cuomo Investigated For Sexual Harassment; Workplace Shooting In Nashville; New Details In USS Bonhomme Richard Fire; US Wildfires; US Travel Issues; Greece Wildfires; Emperor Penguins At Risk of Extinction; Tokyo Olympics; Three Women Share 100th Birthday.

CBS: Governor Cuomo Investigated For Sexual Harassment; US COVID; US Travel Issues; Tokyo Olympics; US Drought In The West; New Melanoma Research Findings; US Wildfires; Tokyo Olympics.

NBC: US COVID; Biden Vaccine Mandate; Governor Cuomo Investigated For Sexual Harassment; Migrant Surge At US/Mexico Border; CDC's New Eviction Moratorium; Biden Pledges Aid To Lebanon; Tokyo Olympics.

Network TV At A Glance:

US COVID – 12 minutes

Tokyo Olympics – 10 minutes

Governor Cuomo Investigated For Sexual Harassment – 8 minutes, 50 seconds

US Travel Issues – 4 minutes, 20 seconds

Migrant Surge At US/Mexico Border – 2 minutes, 10 seconds

US Wildfires – 2 minutes, 5 seconds

WASHINGTON'S SCHEDULE

Today's Events In Washington.

White House:

President Biden — receives the President's Daily Brief in the Oval Office, meet with Asian American, Native Hawaiian, and Pacific Islander civil rights leaders, delivers remarks on the steps his Administration is taking to strengthen American leadership on clean cars and trucks, signs H.R. 3325, "An Act to award four congressional gold medals to the United States Capitol Police and those who protected the U.S. Capitol on January 6, 2021," into law; the President and the Vice President deliver remarks.

Vice President Harris — meets with Asian American, Native Hawaiian, and Pacific Islander civil rights leaders, the President will sign H.R. 3325, "An Act to award four congressional gold medals to the United States Capitol Police and those who protected the U.S. Capitol on January 6, 2021," into law. The President and the Vice President will deliver remarks.

US Senate:

- Senate Judiciary Committee Executive Business Meeting – Executive Business Meeting, with agenda including 'S. 1787, State Antitrust Enforcement Venue Act of 2021' and the nominations of Myrna Perez to be U.S. Circuit Judge for the Second Circuit, Jia Cobb and Florence Pan to be U.S. District Judges for the District of Columbia, Sarah Merriam to be U.S. District Judge for the District of Connecticut, Karen McGlashan Williams to be U.S. District Judge for the District of New Jersey, and Matthew Olsen to be Assistant Attorney General for the National Security Division

Location: Rm G50, Dirksen Senate Office Building, Washington, DC; 9:00 AM

- Senate Urban Development Committee considers HUD nominees – Nominations hearing considers Julia Gordon, David Uejio, and Solomon Greene to be Assistant Secretaries of Housing and Urban Development

Location: Rm 538, Dirksen Senate Office Building, Washington, DC; 10:00 AM

- Senate Foreign Relations Committee nominations hearing – Hybrid nominations hearing considers Michael Raynor to be U.S. Ambassador to Senegal, and to serve concurrently and without additional compensation as U.S. Ambassador to Guinea-Bissau; Marc Ostfield to be U.S. Ambassador to Paraguay; and Troy Damian Fitrill to be U.S. Ambassador to Guinea * Held via videoconference and in-person

Location: Rm 216, Hart Senate Office Building, Washington, DC; 10:00 AM

- Senate Energy Committee hearing on the DOE Office of Science – Hearing on 'The Role Of And Programs Within the DOE's Office Of Science', with testimony from Department of Energy Office of Science Acting Director and Principal Deputy Director Dr J. Stephen Binkley; Oak Ridge National Laboratory Director Dr Thomas Zacharia; and University of Wyoming President Dr Edward Seidel

Location: Rm 366, Dirksen Senate Office Building, Washington, DC; 10:00 AM

- Senate Agriculture Committee nominations hearing – Nominations hearing considers Dr Homer Wilkes to be Under Secretary of Agriculture for Natural Resources and Environment

Location: Rm 301, Russell Senate Office Building, Washington, DC; 10:00 AM

- Senate Homeland Security Committee latest hearing on domestic terrorism and violent extremism – Hybrid hearing on 'Domestic Terrorism and Violent Extremism: Examining the Threat of Racially, Ethnically, Religiously, and Politically Motivated Attacks, Part II', with testimony from former Assistant Secretary of Homeland Security for Counterterrorism and Threat Prevention Elizabeth Neumann; Arab American Institute Executive Director Maya Berry; Anti-Defamation League CEO and National Director Jonathan Greenblatt; and California State University-San Bernardino Center for the Study of Hate & Extremism Director Brian Levin * Held via videoconference and in-person

Location: Rm 342, Dirksen Senate Office Building, Washington, DC; 10:15 AM

US House: House of Representatives is on recess from July 30, 2021 to August 30, 2021.

Cabinet Officers:

- Secretary of State Antony Blinken continues participation in five virtual ASEAN ministerial meetings – Secretary of State Antony Blinken chairs Friends of the Mekong Ministerial Meeting – which brings together the five Lower Mekong countries and a group of nine likeminded partners (including the World Bank, the Asian Development Bank, New Zealand, Japan, South Korea, Australia, the Mekong River Commission Secretariat, the EU and the U.S.), plus India and the UK as observers – continuing his participation in five virtual ministerial meetings related to Association of Southeast Asian Nations (ASEAN) in five days

Location: Virtual Event

General Events:

- U.S.-China Economic and Security Review Commission meeting – U.S.-China Economic and Security Review Commission meeting to review and edit drafts of the 2021 Annual Report to Congress

Location: Virtual Event; 9:00 AM

- USIP discussion on Pakistan's national security outlook – U.S. Institute of Peace hosts conversation with Pakistan National Security Advisor Dr Moeed Yusuf, discussing Pakistan's national security outlook towards its neighbors and its relationship with the U.S., as well as how the coronavirus (COVID-19) pandemic impacts Pakistan's security and economic policy

Location: Virtual Event; 11:00 AM

- Department of Veterans Affairs Veterans' Advisory Committee on Rehabilitation meeting

Location: Virtual Event; 11:00 AM

- Bicameral Dems discuss the economic benefits of legalizing immigrants – American Business Immigration Coalition, National Urban League, U.S. Conference of Catholic Bishops, and other groups hold a virtual event to discuss the economic benefits of legalizing immigrants with Temporary Protected Status from Haiti, Somalia, Sudan, and Venezuela. Speakers include Democrats Sen. Cory Booker and Rep. Yvette Clarke, Loews Corporation Co-Chairman Andrew Tisch, National Urban League CEO Marc Morial, and former Corn Products International Chairman and CEO Sam Scott

Location: Virtual Event; 1:00 PM

audience-size estimates include Scarborough, GfK MRI, comScore, Nielsen, and the Audit Bureau of Circulation. Data from and access to third party social media platforms, including but not limited to Facebook, Twitter, Instagram and others, is subject to the respective platform's terms of use. Services that include Factiva content are governed by Factiva's terms of use. Services including embedded Tweets are also subject to Twitter for Website's information and privacy policies. The FBI News Briefing is published five days a week by Bulletin Intelligence, which creates custom briefings for government and corporate leaders. We can be found [redacted] or called at [redacted]

b7E -3

From: Kelly, Stephen D. (OGC) (FBI)
Subject: Re: BWC Revisions by DoJ
To: Feinberg, Matthew A. (CD) (FBI)
Cc: [REDACTED] (OGC) (FBI)
Sent: August 10, 2021 9:28 AM (UTC-04:00)

b6 -1
b7C -1

From: Feinberg, Matthew A. (CD) (FBI) [REDACTED]
Sent: Monday, August 2, 2021 10:44:24 AM
To: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Cc: [REDACTED]
Subject: Re: BWC Revisions by DoJ

b6 -1
b7C -1
b7E -2,3

Sorry to bother you. I can go through [REDACTED] I forgot you were still on vacation. Enjoy!!

Matthew A. Feinberg, Chief
[REDACTED]
Federal Bureau of Investigation
[REDACTED]

From: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Sent: Monday, August 2, 2021 10:39:42 AM
To: Feinberg, Matthew A. (CD) (FBI) [REDACTED]
Cc: [REDACTED]
Subject: Re: BWC Revisions by DoJ

b6 -1
b7C -1
b7E -3

I'm still in vacation this week, but I can call in if you give me a good time today. I'm pretty flexible around mid-day, just let me know what works for you.

I'm adding [REDACTED] in hopes that she can join us.

Stephen

Stephen

From: Feinberg, Matthew A. (CD) (FBI) [REDACTED]
Sent: Monday, August 2, 2021 9:36:15 AM
To: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Subject: RE: BWC Revisions by DoJ

b6 -1
b7C -1
b7E -3

Let's chat when you get a chance. Thank you!

Matthew A. Feinberg
[REDACTED]
Federal Bureau of Investigation
[REDACTED]

From: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Sent: Thursday, July 29, 2021 12:05 PM
To: Feinberg, Matthew A. (CD) (FBI) [REDACTED]
Dunham, Timothy M. (TD) (FBI) [REDACTED]
Cc: McNally, Richard (OGC) (FBI) [REDACTED]

b6 -1
b7C -1
b7E -3

FBI (22-cv-00149)-7104

(OGC) (FBI)

Subject: BWC Revisions by DoJ

b6 -1

b7C -1

b7E -3

All:

Sorry not to get back to folks sooner, but I've been out on vacation and unexpectedly I had to take care of

I've had a chance to review the changes from DoJ.

b5 -1,2

That being said,

b7E -4,27

Here are a few examples:

b5 -1,2

b7E -27

b5 -1,2
b6 -1
b7C -1
b7E -27

I have a proposed a few changes below, as I cannot figure out how to make changes to the document circulated and how to get it to everyone. [REDACTED]

Unfortunately, I will not be available later today, but feel free to connect with [REDACTED] with follow-up questions,

Thanks everyone.

Stephen

b5 -1,2
b7E -27

[Redacted]

b5 -1,2
b7E -27

Stephen D. Kelly
Chief, Operational Law Section
Office of the General Counsel
Federal Bureau of Investigation

[Redacted]

b7E -3

From: Kelly, Stephen D. (OGC) (FBI)
Subject: Re: BWC Revisions by DoJ
To: Feinberg, Matthew A. (CD) (FBI)
Sent: August 10, 2021 9:29 AM (UTC-04:00)

Are you free for a call today. I'm working out of the office today, but I want to get an update and see how I can help at this point.

Stephen

[REDACTED]

b6 -1
b7C -1
b7E -2,3

From: Feinberg, Matthew A. (CD) (FBI) [REDACTED]
Sent: Monday, August 2, 2021 10:44:24 AM
To: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Cc: [REDACTED]
Subject: Re: BWC Revisions by DoJ

Sorry to bother you. I can go through [REDACTED] I forgot you were still on vacation. Enjoy!!

Matthew A. Feinberg, Chief

[REDACTED]

Federal Bureau of Investigation

[REDACTED]

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Sent: Monday, August 2, 2021 10:39:42 AM
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Cc: [REDACTED]
Subject: Re: BWC Revisions by DoJ

b6 -1
b7C -1
b7E -3

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Stephen

Stephen

From: Feinberg, Matthew A. (CD) (FBI) [REDACTED]
Sent: Monday, August 2, 2021 9:36:15 AM
To: Kelly, Stephen D. (OGC) (FBI) [REDACTED]
Subject: RE: BWC Revisions by DoJ

b6 -1
b7C -1
b7E -3

Let's chat when you get a chance. Thank you!

Matthew A. Feinberg

[REDACTED]

Federal Bureau of Investigation

[REDACTED]

From: Kelly, Stephen D. (OGC) (FBI) [REDACTED]

b6 -1

Sent: Thursday, July 29, 2021 12:05 PM

b7C -1

To: Feinberg, Matthew A. (CD) (FBI) [REDACTED]

b7E -3

Dunham, Timothy M. (TD) (FBI) [REDACTED]

Cc: McNally, Richard (OGC) (FBI) [REDACTED]

Subject: BWC Revisions by DOJ

All:

b6 -1

Sorry not to get back to folks sooner, but I've been out on vacation and unexpectedly I had to take care of

b7C -1

I've had a chance to review the changes from DOJ. [REDACTED]

b5 -1,2

[REDACTED] That being said [REDACTED]

b7E -27

[REDACTED]

b5 -1,2

b7E -4,27

Here are a few examples:

[REDACTED]

b5 -1,2

b7E -27

b5 -1,2
b6 -1
b7C -1
b7E -4,27

I have a proposed a few changes below, as I cannot figure out how to make changes to the document circulated and how to get it to everyone [REDACTED]

Unfortunately, I will not be available later today, but feel free to connect with [REDACTED] with follow-up questions,

Thanks everyone.

Stephen

FBI (22-cv-00149)-7110

b5 -1,2
b7E -4,27

Stephen D. Kelly
Chief, Operational Law Section
Office of the General Counsel
Federal Bureau of Investigation

b7E -3

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