

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

1:23-cr-00453-NYW-MEH

Appeal from Case No. 1:22-po-07015-MEH

USA;

Plaintiff,

v.

CHRISTOPHER CORDOVA

Defendant.

OPENING BRIEF

Oral Argument Requested

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STATEMENT OF RELATED CASES

Pursuant to Tenth Circuit Rule R. 28.2(C)(3), Appellant states that there are no prior or related appeals.

JURISDICTION

The United States District Court for the District of Colorado had jurisdiction over this matter pursuant to 18 U.S.C. § 3231. It entered judgment on October 19, 2023. On October 30, 2023, Mr. Cordova filed a timely notice of appeal under Rule 58(g)(2)(B) of the Federal Rules of Criminal Procedure.

STATEMENT OF THE ISSUES

1. Whether the evidence was sufficient to convict Mr. Cordova of count one.
2. Whether the court erred in considering subsequent criminal charges arising out of potentially protected First Amendment activity prior to any conviction and without due process to determine whether such conduct was protected activity.
3. Whether the court erred in not holding that 41 C.F.R. § 102-74.420 is facially unconstitutional
4. Whether the court erred in holding that 41 C.F.R. § 102-74.420 was not vague as applied to Defendant.

STATEMENT OF THE CASE

On August 2, 2022, Defendant Christopher Cordova went to the offices of the United States Social Security Administration. AA1. When he arrived at this public facility, Mr. Cordova began video recording as part of his journalistic expression. *Id.* The entirety of Mr. Cordova's conduct and the circumstances surrounding his conduct are captured on video and were submitted into evidence at trial. AA1-2. When Mr. Cordova arrived at the SSA Office, he stood in a small entryway between the outside doors and a set of inside doors. The interior doors lead to a lobby or waiting area where there are chairs. AA2. SSA employees appear to mostly be behind glass kiosks and there appear to be interior offices not accessible from this space.

After a period of time, Mr. Cordova decided to walk into this secondary space. As soon as he entered this space, Mr. Cordova was detained and later charged with 1 count under 41 C.F.R. § 102-74.385 and 1 charge under 41 C.F.R. 102 § 74.420.

During the trial, evidence was presented which included video of the space in which Mr. Cordova entered and was arrested for filming in as well as statements by officers who arrived at the SSA office. AA23, 24-29. These statements included that Mr. Cordova was advised “that [he] was not allowed to film in the lobby of the SSA.” AA27. The same report provides that when Mr. Cordova “entered the lobby and began filming, Commander Whiles calmly walked up to the individual and advised him that he was under arrest. The auditor was later identified as CORDOVA, Christopher.” AA28. The other officer statement refers to this space as a “waiting area.” AA24.

Under 41 C.F.R. 102 § 74.420, “[e]xcept where security regulations, rules, orders or directives apply...persons entering in or on Federal property may take photographs of ... (c) Building entrances, lobbies, foyer, corridors, or auditoriums for news purposes.”

After the hearing was held, the Court entered a verdict on March 20, 2023 finding Mr. Cordova guilty of both offenses. In support of its conclusion that the space Mr. Cordova entered was not protected under 41 C.F.R. 102 § 74.420, the Court held that “entrances, lobbies, foyer, corridors, or auditoriums” as used in the statute are *ejusdem generis* or *noscitur a sociis*. AA5-6. In doing so, the Court found that the space Mr. Cordova entered was not a lobby within the meaning of the statute. In support, the Court held that these 5 enumerated spaces were spaces “in which the public congregates but would not be engaging in individual, personal transactions.”

SUMMARY OF ARGUMENT

Mr. Cordova’s conviction on count one was based upon insufficient evidence that the space he entered and filmed in was not a lobby under the common use of the word. The court instead held that building entrance, foyer, lobby, and corridor were essentially the same concept

as opposed to recognizing that each is a distinctly different space. In doing so, the court failed to recognize or acknowledge that under both common usage and dictionary definitions, a lobby is generally understood as a waiting room. The space Mr. Cordova entered was a waiting room or at least was reasonably understood as such a space.

In addition, the Court, at the government's urging, wrongly considered subsequent protected filming activity in deciding to impose a jail sentence. The government first urged only a sentence of community service, but later requested jail solely based on municipal offenses arising out of potentially protected activity. This request by the government and the consideration by the court of these allegations without any warrant or indictment, deprived Mr. Cordova of the due process of law and subjected him to punishment for conduct which was protected by the First Amendment.

Lastly, 41 C.F.R. 102 § 74.420 is both facially unconstitutional and vague as applied to Mr. Cordova. The term lobby as used in this regulation lacks definiteness and accordingly, deprived Mr. Cordova of fair notice of whether the space he was entering to film was subject to criminal prosecution or exempted from such prohibition.

ARGUMENT

I. There Was Insufficient Evidence to Convict Defendant Christopher Cordova for Violating 41 C.F.R. 102 § 74.420

The Court “review[s] the issue of whether there is sufficient evidence to sustain a jury verdict de novo.” *United States v. Garcia*, 65 F.4th 1158, 1177 (10th Cir. 2023) (citing *United States v. Brooks*, 438 F.3d 1231, 1236 (10th Cir. 2006)). It “examine[s] ‘the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have

found the essential elements of the crime beyond a reasonable doubt.” *Id.* (quoting *United States v. Miller*, 987 F.2d 1462, 1464 (10th Cir. 1993)).

At the close of the government’s case-in-chief, Mr. Cordova preserved this issue by moving for a judgment of acquittal on grounds that the evidence was insufficient to support a conviction for counts one and four. Supp. A. 52:23-25.

The question at issue in Mr. Cordova’s conviction under 41 C.F.R. 102 § 74.420 is whether the space he entered should be understood as a lobby. The evidence in this case is undisputed - rather it is the Court’s interpretation of the nature of the space Mr. Cordova entered which is at issue and indeed, is determinative in this case. As the court acknowledged in its verdict, the common definition of lobby includes a space used as a waiting room. AA5. Here, the video introduced at trial shows that the space Mr. Cordova entered into was a waiting room. The Court erred when it held that the space Mr. Cordova entered was not a lobby.

II. Mr. Cordova was denied due process of law through the reliance on allegations of other conduct in sentencing by the United States

When the United States filed its Sentencing Statement on July 7, 2023, it asked for 160 hours of community service. AA16. A little over a month later, the United States supplemented its Sentencing Statement, asking instead for twenty (20) days of jail instead based solely on a new municipal offense that Mr. Cordova had been charged with in Colorado state court. This new municipal offense was based on conduct while Mr. Cordova was filming in a municipal government building. Later at the sentencing hearing, the United States raised a second incident where Mr. Cordova was charged again in Colorado Springs for filming police officers in a public

parking lot.¹ Indeed, almost all argument offered by the United States was not based on Mr. Cordova's past criminal history nor on his conduct at issue in this case - instead the government focused almost solely on the fact that Mr. Cordova had been charged with two new low level offenses arising out of his filming of public officials.

However, neither of these cases had been adjudicated.² Under Tenth Circuit caselaw, filming police while they perform their duties in public is protected by the First Amendment. *Irizarry v. Yehia*, 38 F.4th 1282, 1289 (10th Cir. 2022). Here, one of the two charges upon which the United States based its request for jail was based on the filming of police officers while they were conducting witness and victim interviews. Supp. A. 111. The other charge related to filming public officials as well.

In asking for jail only based on Mr. Cordova's subsequent conduct in filming, including the filming of police officers engaged in their duties in public, the United States asked for a more severe penalty based on conduct which may have been protected by the First Amendment. However, a sentencing hearing is not an appropriate venue for litigating whether a local police department may have charged Mr. Cordova with a crime in violation of his First Amendment rights. The Court's consideration of this subsequent conduct denied Mr. Cordova of his due process rights. He was subjected to more severe penalties based on conduct for which he lacked the opportunity to truly defend himself and lacked the opportunity to determine whether he was being sentenced more harshly based on protected activity in which he engaged after the incident in this case. Accordingly, the government's use and reliance on subsequent filming activity, and

¹ The Colorado Springs Police Department has a history of arresting First Amendment Auditors, at times in violation of the First Amendment.
<https://www.kktv.com/content/news/Colorado-Springs-to-pay-cameraman-41000-after-First-Amendment-audit-of-police-484291511.html>

² Mr. Cordova has not been convicted of either of these charges as of the date of this filing.

the court's consideration of such activity in its sentence, violated Mr. Cordova's First Amendment right to film and his Fifth Amendment right to due process and his sentence to jail was accordingly, unconstitutional.

III. The Court Erred in Not Holding that 41 C.F.R. § 102-74.420 is Facially Unconstitutional

41 C.F.R. § 102-74.420 prohibits the act of photographing or recording under certain conditions in spaces occupied by federal agencies. Because the act of recording implicates the First Amendment, this is a restraint on freedom of speech. Plaintiff challenges the constitutionality of this regulation on federal property - in particular, "[s]pace occupied by a tenant agency for [commercial or] non-commercial purposes."

"[V]ideorecording is 'unambiguously' speech-creation, not mere conduct." *Irizarry v. Yehia*, 38 F.4th 1282, 1289 (10th Cir. 2022); *Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219, 1228 (10th Cir. 2021). 'There is practically universal agreement that a major purpose of the First Amendment 'was to protect the free discussion of governmental affairs.'" *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 755, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (per curiam)). This purpose enables "the press . . . to serve as a powerful antidote to any abuses of power by governmental officials." *Mills v. Alabama*, 384 U.S. 214, 219, 86 S. Ct. 1434, 16 L. Ed. 2d 484 (1966). Filming the police and other public officials as they perform their official duties acts as "a watchdog of government activity," *Leathers v. Medlock*, 499 U.S. 439, 447, 111 S. Ct. 1438, 113 L. Ed. 2d 494 (1991), and furthers debate on matters of public concern. As the First Circuit noted, "An important corollary to this interest in protecting the stock of public information is that

'there is an undoubted right to gather news from any source by means within the law.'" *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011). Accordingly, the question of whether an individual may record on public land implicates the First Amendment.

"The First Amendment, as applied to state and local governments through the Fourteenth Amendment, provides that state actors 'shall make no law . . . abridging the freedom of speech.' U.S. Const. amend. I. The First Amendment applies not only to legislative enactments, but also to less formal governmental acts." *Hawkins v. City and County of Denver*, 170 F.3d 1281, 1286 (10th Cir. 1999). "The extent of the government's ability to restrict protected speech on public property depends upon the nature of the forum and whether the speech restriction is content-based or content neutral." *Hawkins*, 170 F.3d at 1286. In determining the nature of the forum, the Supreme Court has divided public property into (1) traditional public fora; (2) designated public fora; and (3) nonpublic fora. *Id.* (citing *Arkansas Educ. Tele. Common v. Forbes*, 523 U.S. 666, 677, 118 S.Ct. 1633, 1641, 140 L.Ed.2d 875 (1998)).

Traditional public fora are places, such as streets, sidewalks and parks, which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussion of public questions." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). *See also Hague v. CIO*, 307 U.S. 496, 515, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939) (public streets and parks fall into the category of traditional public fora). The government has the highest burden in defending a restriction of free speech in a public forum. Such a restriction may be content-neutral or content-based. A content-based restriction must be shown to be "necessary to serve a compelling state interest" and "narrowly drawn to achieve that end." *Perry*, 460 U.S. at 45.

Content-neutral restrictions in a public form will be upheld if they are "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry*, 460 U.S. at 45; *Hawkins*, 170 F.3d at 1286.

The second category, a designated public forum, is one created by the government "by intentionally opening a non-traditional forum for public discourse." *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 802, 105 S.Ct. 3439, 3449, 87 L.Ed.2d 567 (1985); *Hawkins*, 170 F.3d at 1286. Neither party contends that the areas at issue were intentionally opened for public discourse by the City.

The third category, non-public fora, is any other government property; e.g. any that is "not by tradition or designation a forum for public communication." *Perry*, 460 U.S. at 46; *Hawkins*, 170 F.3d at 1287. The government has greater latitude to regulate speech in a non-public forum. A restriction in a non-public forum, whether or not content-neutral, will be upheld if it is reasonable in light of the purpose served by the forum and is "not an effort to suppress expression merely because public officials oppose the speaker's view." *Hawkins*, 170 F.3d at 1287.

The public land at issue in this case falls within this third category. Accordingly, the question is whether this restriction on all recording activity is reasonable in light of the purpose served by the forum. The issue here is that this is a broad regulation that applies to all public buildings. It is unclear what purpose is served by the forum because each forum may be wildly different. Moreover, as opposed to other forms of expression, the act of recording is silent and non-disruptive. Accordingly, this regulation is not reasonable as there is no defined purpose served through this restriction as applied to all public buildings.

IV. The Court Erred in Holding that 41 C.F.R. § 102-74.420 Was Not Vague

“Criminal offenses must be defined "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *United States v. Orona*, 724 F.3d 1297, 1310 (10th Cir. 2013). When challenging a regulation for vagueness, the relevant question in void for vagueness challenges is merely whether the defendant before us "had fair notice from the language" of the law "that the particular conduct which he engaged in was punishable." *Parker v. Levy*, 417 U.S. 733, 755, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974); *see also United States v. Franklin-El*, 554 F.3d 903, 910-11 (10th Cir. 2009).

Here, 41 C.F.R. § 102-74.420 provides an exception to the general rule prohibiting recording on public land. It permits recording in “[b]uilding entrances, lobbies, foyers, corridors, or auditoriums for news purposes. Defendant was recording and live streaming for news purposes. That leaves the only question of whether this carve out applies to him. In this case, the area he entered into was a large waiting room. A reasonable person may understand the term lobby to include this area - an understanding of which Defendant indeed possessed. As defined by the Cambridge dictionary, a lobby is “a large, open space just inside the main entrance of a public building such as a hotel, office building, or theater.”

<https://dictionary.cambridge.org/us/dictionary/english/lobby>. Similarly, the Britannica Dictionary defined lobby as “a large open area inside and near the entrance of a public building.”

<https://www.britannica.com/dictionary/lobby>.

As these definitions make clear, the lobby includes an area inside the entrance of a public building. Indeed, one of the security guards referred to the space as the lobby in his personal

statement. Here, Defendant was arrested immediately after entering the facility. At the very least, it is unclear from the language of this regulation whether Defendant's conduct was specifically exempted or not. Accordingly, Defendant was denied fair notice of the law's demands. On this basis, the charges against Defendant conviction was unconstitutional because the regulation is vague.

CONCLUSION

For the foregoing reasons, the evidence was insufficient for the court to have found beyond a reasonable doubt that Christopher Cordova recorded in a space not exempt from 41 C.F.R. § 102-74.420 because such space was a lobby. Moreover, the Court denied Plaintiff his First Amendment right to record by punishing him for such conduct without knowledge as to whether his conduct was protected or not and deprived him of his due process rights by considering evidence of subsequent municipal offenses related to filming in public without the opportunity to confront those charges and invoke his right to record under the First Amendment. Finally, 41 C.F.R. § 102-74.420 is both facially unconstitutional and was vague. These errors, separately or taken together, compel a reversal of his conviction and remand for sentencing without account for subsequent municipal charges.

Respectfully submitted this 25th day of March, 2024.

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CERTIFICATE OF COMPLIANCE

1. The foregoing brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) because the brief contains 2894 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. The brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman 14-point font.

Dated: March 25, 2024

/s/ E. Milo Schwab

E. Milo Schwab

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I certify that all required privacy redactions have been made in this brief pursuant to 10th Cir. R. 25.5. I further certify that the hard copies of this brief to be submitted to the Court are exact copies of the version submitted electronically and that the electronic submission of this brief was scanned for viruses with the most recent version of a commercial virus scanning program, and is free of viruses.

Dated: March 25, 2024

/s/ E. Milo Schwab

E. Milo Schwab

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2024, I electronically filed the foregoing brief with the United States District Court for the District of Colorado by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users.

Dated: March 25, 2024

/s/ E. Milo Schwab

E. Milo Schwab

ADDENDUM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-po-07015-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER J. CORDOVA,

Defendant.

VERDICT

Michael E. Hegarty, United States Magistrate Judge.

This matter came before me for a bench trial on March 16, 2023. The Information charged two counts: (1) failing to comply with official signs of a prohibitory, regulatory, and directory nature and with lawful direction of Federal police officers and other authorized individuals under 41 C.F.R. § 102-74.385; and (2) unlawfully photographing Federal property under 41 C.F.R. § 102.74.420. Based on the following, I find Mr. Cordova guilty on both counts.

FACTS

The underlying facts of this case are not disputed. Mr. Cordova went to the offices of the United States Social Security Administration (SSA) at 8000 Southpark Lane, Littleton, Colorado (SSA Office) on Tuesday, August 2, 2022. He used a video camera as he entered the building, being a self-described journalist. This was an ordinary business day, during normal work hours, and in the SSA Office were SSA employees, persons seeking the SSA's assistance, contract security officers, and Homeland Security uniformed officers. Virtually the entirety of Mr.

Cordova's experience in the SSA Office that day (and certainly anything of relevance) was recorded, and material portions were replayed during the trial.

The SSA Office is a free-standing building with the SSA as the sole tenant. As one enters the building from the outdoors through exterior glass doors, there is a rectangular space of perhaps several hundred square feet with no furnishings of any kind, with plate glass windows at the fore and aft, and frame construction on the right and left. The glass in this space had taped signs in several places stating that photography and videography were prohibited, citing "Federal law and SSA policy." The signs bore the SSA's official seal. There was also a sign posting the SSA Office's hours as 9:00 a.m. to 4:00 p.m. As one walks through this first space, there is another set of glass doors; these interior doors lead to the office space in which SSA employees do business with the public. Immediately inside the office space on the left are chairs for waiting customers. The rest of the office space includes desks, tables, other chairs, a check-in kiosk, and five stations (marked A-E) with partial walls between each, at which customers approach and talk confidentially with SSA employees who are behind glass windows.

On the day in question, Mr. Cordova entered the exterior glass doors and filmed inside the first space. He was there perhaps three hours. Although contract and uniformed law enforcement officers were with him much of the time, they did not impede his filming or monologue. Because there were large plate glass windows on either side of this space, Mr. Cordova was able to freely film what was occurring beyond the interior, second set of glass doors. He filmed persons going in and out of the office, persons sitting in the office, and persons being assisted by SSA employees, with virtually an unobstructed view of the entirety of the office area.

At a defined moment during his visit, Mr. Cordova declared his intention to walk through the second set of doors, into the office area, and continue filming. The officers who were present

informed him that was against SSA regulations, and that he would be arrested if he proceeded. The posted signs informed him of the same prohibition. And he was shown a copy of the actual regulation. Mr. Cordova testified at trial that when he went to the SSA Office, he already knew the regulation and its contents. Further, immediately inside the interior, second set of doors was an obtrusive sign on a stand stating, “[p]ersonal electronic devices (cell phones, cameras) may not be used to take photographs or to make video recordings.” This sign also had the official SSA seal.

Mr. Cordova indeed entered the SSA office area while filming and monologuing and was arrested at that time. These charges ensued.

LEGAL AUTHORITY

First, I begin with the proposition, although not raised by either party at trial, that the regulations in question “purport to impose criminal penalties.” *United States v. Baldwin*, 745 F.3d 1027, 1031 (10th Cir. 2014). These regulations jurisdictionally form the proper basis for a criminal charge. *Id.*

Second, I should “assum[e] that the ordinary meaning of the regulation’s language expresses” its purpose and enforce it “according to its terms.” *See Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) (internal quotation marks omitted). “When called on to resolve a dispute over a [law’s] meaning, this Court normally seeks to afford the law’s terms their ordinary meaning.” *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1480 (2021). I believe this applies with equal force to interpreting a regulation. As the Supreme Court has noted with regard to Federal regulations: “[A] court must apply all traditional methods of interpretation to any rule, and must enforce the plain meaning those methods uncover.” *Kisor v. Wilkie*, 139 S. Ct. 2400, 2419 (2019). The Tenth Circuit has further stated, “[w]hen interpreting regulations, ‘we begin our analysis by examining the plain language of the text of the regulation, giving the words their ordinary meaning.

. . . If the meaning of the text is clear, our endeavor is at an end, and we must enforce the regulation in accordance with its plain meaning.” *Nat. Res. Def. Council v. McCarthy*, 993 F.3d 1243, 1251 (10th Cir. 2021) (quoting *Bd. of Educ. of Gallup-McKinley Cnty. Schs. v. Native Am. Disability Law Ctr., Inc.*, 959 F.3d 1011, 1013 (10th Cir. 2020)). “[U]nless there is a clear manifestation to the contrary, general words, not specific or limited, should be construed as applicable to cases or matters of like kind with those described by the particular words.” *United States v. Stever*, 222 U.S. 167, 174 (1911).

Finally, both the Supreme Court and the Tenth Circuit commonly rely on an ordinary dictionary to ascertain the meaning of a law’s wording. *See, e.g., Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1759 (2018) (using Webster’s Third New International Dictionary (1976)); *Nat. Res. Def. Council v. McCarthy*, 993 F.3d 1243, 1252 (10th Cir. 2021) (using Merriam-Webster Dictionary).

ANALYSIS

I. Count 1

Count 1 alleges Mr. Cordova violated 41 C.F.R. § 102-74.385. Under that section, “[p]ersons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.” *Id.* Based on my analysis of Count 2, *see infra* § II, I find beyond a reasonable doubt the SSA law enforcement officers gave Mr. Cordova “lawful direction[s]” to not film in the SSA interior office and warned him that he would be arrested if he did, yet Mr. Cordova failed to comply. *Id.* Mr. Cordova also failed to comply with “official signs of a prohibitory, regulatory, [and] directory nature.” *Id.* Incidentally, unlike the language in the following regulation under Count 2, Mr. Cordova does not challenge the meaning of these words.

II. Count 2

Count 2 alleges Mr. Cordova violated 41 C.F.R. § 102-74.420 which *prohibits* photographing “[s]pace occupied by a tenant agency” without permission of the occupying agency. *Id.* at (a), (b). It *permits* photographing “[b]uilding entrances, lobbies, foyers, corridors, or auditoriums for news purposes.” *Id.* at (c). I accept Mr. Cordova was filming for news purposes. So, was Mr. Cordova in “space occupied by” the SSA, or was he filming in a subsection (c) space at the time he was arrested?

I start with subsection (c). From the textual presentation in the regulation, subsection (c) is clearly intended to address a different physical space than subsections (a) and (b) describe. The spaces identified in subsection (c) appear to describe a series of like kind words and should be interpreted as such. I agree with the following pertinent explanation:

Ejusdem generis refers to the principle that “when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration.” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 223, 128 S. Ct. 831, 169 L.Ed.2d 680 (2008) (internal quotation marks and citation omitted). Relatedly, the doctrine of *noscitur a sociis* “raises the implication that the ‘words grouped in a list should be given related meaning.’” *S.D. Warren Co. v. Maine Bd. of Env’tl. Prot.*, 547 U.S. 370, 378, 126 S. Ct. 1843, 164 L.Ed.2d 625 (2006) (internal quotation marks and citation omitted). Together, these rules “instruct that words in a series should be interpreted in relation to one another.” *Ali*, 552 U.S. at 229, 128 S. Ct. 831 (Kennedy, J., dissenting).

Alice F. v. Health Care Serv. Corp., 367 F. Supp. 3d 817, 825 (N.D. Ill. 2019). The Merriam-Webster Dictionary provides the following definitions of subsection (c)’s spaces:

Entrance: “[T]he means or place of entry.” *See Entrance*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/entrance> (last visited on Mar. 20, 2023).

Lobby: “[A] corridor or hall connected with a larger room or series of rooms and used as a passageway or waiting room.” *See Lobby*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/lobby> (last visited on Mar. 20, 2023).

Foyer: “[A]n entrance hallway.” *See Foyer*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/foyer> (last visited on Mar. 20, 2023).

Corridor: “[A] passageway (as in a hotel or office building) into which compartments or rooms open.” See *Corridor*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/corridor> (last visited on Mar. 20, 2023).

Auditorium: “[T]he part of a public building where an audience sits.” See *Auditorium*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/auditorium> (last visited on Mar. 20, 2023).

Under all the interpretation rules and methods described above, I do not hesitate to ascribe to the first four of these a meaning that encompasses the first space into which Mr. Cordova entered on August 2, 2022, the glassed entry space where, logically, persons seeking to do business with the SSA would collect themselves, wipe their feet, brush off snow, or otherwise prepare to enter the SSA Office. No SSA business would logically occur in this space, nor did any occur during the hours of filming on August 2, 2022.

At first glance, the word “auditorium” has an apparently different meaning than the previous four words, but when applying *ejusdem generis* and *noscitur a sociis*, in the context of this regulation, it describes a space in which the public congregates but would not be engaging in individual, personal transactions with the occupying agency, corporation, school, church, theater, or other organization.

On the other hand, through that interior, second set of doors, the SSA conducted its primary business of assisting the public. During Mr. Cordova’s filming, members of the public (including children) were indeed conducting business there, people were in chairs waiting for their turn, a customer check-in kiosk with a video screen was there, along with other indicia of a typical office setting.

Mr. Cordova argues that 41 C.F.R. § 102-74.420 is unconstitutionally vague in employing the terms defined above. He contends that the area in which he was arrested could reasonably be included within the subsection (c) list. I disagree under the facts and circumstances of this case.

The Tenth Circuit in the *Baldwin* case has noted in this regard: “The Supreme Court has told us (repeatedly) that the relevant question in void for vagueness challenges is merely whether the defendant before us ‘had fair notice from the language’ of the law ‘that the particular conduct which he engaged in was punishable.’” 745 F.3d at 1031-32 (quoting *Parker v. Levy*, 417 U.S. 733, 755 (1974)). It is clear based on the regulation, the signage in the SSA entryway, the instructions given by law enforcement, and Mr. Cordova’s own understanding of the law that he had fair notice of the law and that his conduct in filming beyond the interior glass doors was punishable.

The facts established Mr. Cordova knew the SSA and its law enforcement officials interpreted the law as prohibiting filming inside the second set of interior doors where the SSA was conducting business with its customers. He had fair notice of the language of the regulation, and that his conduct would be punishable under the Government’s interpretation of it. Granted, he has a philosophical disagreement with that interpretation, for which he was prepared to, and in fact expected to, be arrested. Although I respect his right to challenge the law and test his constitutional rights to their outer limit, he is wrong in this instance.

Under a different set of facts, where a person might enter from the outdoors directly into a Federal office, the outcome could be different. Here, there was a distinct entryway from the outdoors, corresponding with a subsection (c) space, after which was a set of interior doors leading to a distinct and unmistakable office space, corresponding with subsections (a) and (b). Without the SSA’s permission to film in this office, which Mr. Cordova did not have, he violated the law.

For these reasons, I find beyond a reasonable doubt that Mr. Cordova entered in and on Federal property and unlawfully photographed space occupied by a Federal agency, without permission, in violation of 41 C.F.R. § 102-74.420.

CONCLUSION

For the foregoing reasons, Mr. Cordova is adjudicated guilty on Counts 1 and 2 of the Information, and the Court will enter judgment consistent with this verdict. This matter will be set for sentencing at a time convenient for all parties.

Entered March 20, 2023, at Denver, Colorado.

BY THE COURT:



Michael E. Hegarty
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>v.</p> <p>CHRISTOPHER J. CORDOVA,</p> <p>Defendant.</p>	<p>Criminal No. 22-PO-07015-MEH</p>
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UNITED STATES' SENTENCING STATEMENT

This case arose because Christopher Cordova thought YouTube fame and money trumped the privacy rights of Social Security Administration (SSA) customers and justified the harassment of security officers tasked with protecting these customers' confidential information. After his arrest, he doubled down on his crime to gain more profits: he posted to his YouTube channel highlight and recap videos and, weeks later, created a further video berating one of the same security officers when he found him at a daycare operated in a different federal building. YouTube records suggest Cordova earned more than \$11,000 in ill-gotten gains from video content related to his crime. Based on the factors in 18 U.S.C. §§ 3553(a) and 3572(a), his conduct warrants 160 hours of community service and a \$5,000 fine.

I. Background

On November 10, 2022, the government charged Cordova in a two-count information for: (1) failure to comply with official signs and lawful directions (in violation of

41 C.F.R. § 102.74-385) and unlawful photography (in violation of 41 C.F.R. § 102.74-420). See ECF no. 3. The maximum term of imprisonment for these convictions is 30 days; the maximum fine is \$5,000. 41 C.F.R. § 102-74-450; 18 U.S.C. § 3571(b)(6).

A. Facts related to incident

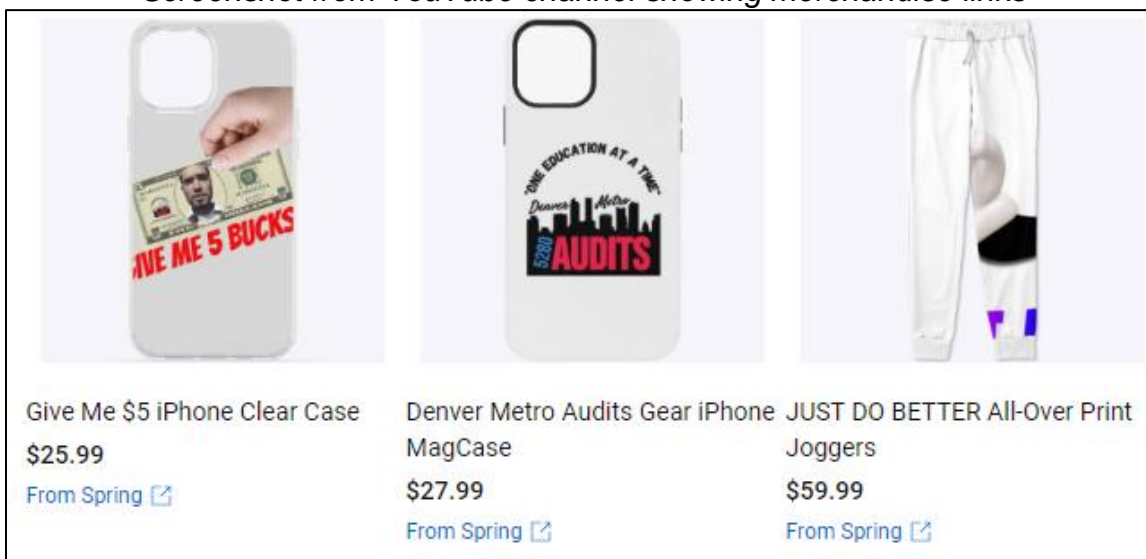
At trial, the government’s evidence established that, on August 2, 2022, Cordova viewed at least four signs and was told at least eight times he could not record inside the SSA office in Littleton, Colorado. He stated when he began recording—more than three hours before he tried to film inside—that he knew he “was not allowed to record” but planned to “just mob right in there” anyway. Trial Exhibit (TX) 1, at 0:54 to 1:13. He was told multiple times his conduct was prohibited by both the Code of Federal Regulations and SSA policy. Signs were posted. Instructions were given. The reasons underlying the prohibitions were explained (including protecting customer privacy for official business that involved sensitive personally identifiable information). He was told if he filmed inside the agency space he would be arrested. He did and was. On March 20, 2023, the Court found Cordova guilty of both counts after a one-day bench trial that occurred on March 16, 2023. See ECF. no. 16.

B. Facts related to post-arrest conduct

Further attempts to monetize August 2. Cordova posted at least three summary videos about his arrest. This included at least two “shorts”—which are brief highlight videos or compilations—and an hour-long livestream around early September where he had a panel discussion with others to recap his arrest. See, e.g., Sentencing Exhibit (SX) 1 (recap video); SX 2 (screenshot of YouTube shorts captured on April 4, 2023, with those

from August 2 appearing on page 6). Cordova's videos encouraged viewers to send money, to join as members by paying a monthly membership fee, and to subscribe to and watch previous and future content. Videos also contained links to Cordova's merchandise, including sweatpants and phone covers that contain catch phrases he used in the August 2 video. Some merchandise, for example, refers to Cordova's "Give me 5 bucks" catchphrase, which he said to security guards on August 2 to explain that he asks for five bucks when law enforcement give him orders he doesn't like. See, e.g., TX 1 at 43:17 to 43:27 ("I have my own policy that everyone I talk to has to **give me five bucks** that gives me unlawful directives, so that's, that's how it goes guys." (emphases added)).

Screenshot from YouTube channel showing merchandise links



New livestream created based on August 2. Following his first court appearance on his violation notices, Cordova found one of the security officers who had been at the SSA office stationed across the street from the courthouse at a day care operated in a federal building. As parents dropped off children, Cordova livestreamed himself for twenty

minutes yelling from outside the door at the officer based on his August 2 arrest, such as the following:

“Freaking idiot, who you going to call on me bud, ghostbusters? You can’t do nothing, man. You don’t have authority, remember, we talked about that. You can’t touch us bud. What you’re doing right there is all you are allowed to do. Observe and report. You freaking clown. You’re a disgrace, man. You’re a psychopath narcissist and you shouldn’t have any authority over any other human. You clown. You are a coward in a clown suit, you piece of crap. That’s what you are, bro. You’re a disgrace. You’re the biggest piece of shit I’ve ever met in my whole life, bro, since I’ve been doing this. Literally. You’re the biggest piece of shit I’ve ever met since I’ve been doing this you freaking idiot. You’re a piece of shit bud. That’s what you are. You are a coward in a clown suit you piece of shit. That’s all you are. Is a little bitch ass piece of shit. Pussy. You’re a fucking pussy, bitch. Fuck you. You ain’t going to do shit. Idiot. Fucking idiot. Sorry guys, I don’t like getting that mad, but I can’t stand this guy.”

SX 3 (video) at 13:35 to 15:00; see also *id.* at 19:10 to 20:20 (similar, as parent drops off child).

Money earned from August 2-related content. Records obtained from Google show that Cordova earned over \$700 in earnings attributable to the unique webpage of the August 2 video and over \$11,000 from his YouTube channel in the months while he continued to post content related to August 2:

Month	Earnings from Aug. 2 video URL	Earnings from YouTube channel
August	\$ 625.75	\$ 2,718.78
September	\$ 26.79	\$ 1,630.23
October	\$ 23.00	\$ 1,874.04
November	\$ 18.78	\$ 2,133.99
December	\$ 12.97	\$ 3,223.69
Total	\$ 707.28	\$ 11,580.73

Revenues¹ earned by Cordova were visible to him in real-time during the livestream feed. As one example, YouTube allowed Cordova to enable “SuperChats” where users could fund Cordova and get their comments and donation amounts posted prominently in the Live Chat Replay. See SX 6 (screenshots from August 2 video). Throughout the livestream, Cordova reminded viewers to support his work by transferring money to him directly on YouTube or through his CashApp, PayPal, and Venmo accounts. *Id.* Indeed, after he was arrested, he made a direct appeal for money and told viewers he preferred they send money via other money transfer applications like Venmo because YouTube took a cut before it went to his account. TX 4, at 3:54:36 to 3:55:37.

Subsequent arrests and convictions. Following the filing of an information in this case in November 2022, Cordova was arrested, charged, and convicted twice for misdemeanors involving impeding or disregarding law enforcement. On December 14, 2022, he was arrested in Sheridan, Colorado for conduct related to filming in a public space in violation of state law. On June 14, 2023, he was found guilty and sentenced to six months of unsupervised probation and twenty hours of community service. On March 13, 2023, he was arrested on an obstruction charge. He was found guilty in June 2023.²

¹ For the detailed records from Google underlying this summary chart, see SX 4 (detail for URL of August 2 video); SX 5 (detail for Cordova’s Denver Metro Audits channel).

² The government has limited information about the arrests, charges, and convictions based on law enforcement and court databases and statements posted by Cordova to his YouTube channel. As the circumstances of these convictions may justify a more severe sentence including jail time based on § 3553(a) factors, the government renews its request that the Court order the Probation Office to prepare a pre-sentence criminal history report. See ECF No. 17 ¶ 1.

II. Legal Analysis

When sentencing a defendant convicted of a Class B misdemeanor, the same statutory sentencing factors in 18 U.S.C. § 3553(a) apply but the sentencing guidelines do not. See *United States v. Pierce*, 75 F.3d 173, 177 n.1 (4th Cir. 1996); U.S.S.G. § 1B1.9. In setting a fine, the court must consider these § 3553(a) factors and additional factors in 18 U.S.C. § 3772(a), including the need to deprive the defendant of illegally obtained gains from the offense and the defendant's income.

Based on (A) Cordova's willful and premeditated decision to engage in criminal disobedience, (B) his history of convictions for similar conduct, (C) the need to deter and punish a crime that consisted of putting profits ahead of agency customers and law enforcement, and who continued his pattern of disregard and harassment of them for months after August 2, and (D) the need to deprive a defendant of ill-gotten profits exceeding \$5,000, the government recommends 160 hours of community service and a maximum fine of \$5,000.

A. *Nature and circumstances of offense*

Cordova willfully chose to photograph inside federal agency space despite warnings about the consequences. His conduct was premeditated: he admitted during the video that he knew before he ever showed up at the SSA on August 2 that filming inside agency space was against SSA rules, and that was precisely the point. See TX 1, at 15:23 to 15:29 ("I've been wanting to do this for a long time."). His premeditated purpose—to break the law for attention on YouTube—existed before he arrived on August 2 and remained unchanged until the moment of his arrest.

The circumstances are aggravated by Cordova's disregard for others while committing his crime. In his livestream, customers seeking disability and elder benefits, often accompanied by caretakers, can be observed entering the SSA office. Several customers directly complained to Cordova about his filming. Others complained to the SSA. Cordova's actions showed no regard for these customers and his disrespect for every security officer whose job was to ensure that these customer's private and sensitive information was protected while accessing government services.

While the willful nature of the violation supports jail time, the government recommends a sentence of community service as appropriate to remedy the community-based harm that Cordova's actions caused to SSA customers in the Littleton community and the needless waste of law enforcement resources and attention he caused in the community on that day.

B. History and characteristics of defendant

Cordova's post-arrest conduct also is an aggravating factor for sentencing. Far from being deterred from his arrest in this case, he was emboldened, as established by:

- his two subsequent arrests for similar conduct.
- his later harassment of one of the security officers present on August 2. Consistent with the pattern observed in his August 2 livestream, Cordova showed little regard for those affected by his actions, such as parents dropping off children at the daycare.
- his decision to create recap videos, where he expresses that his arrest for a crime is something to celebrate rather than to learn from.

Repeatedly, Cordova has elevated his own interests over others' and the law. The court should consider this pattern in imposing a 20-day sentence and maximum fine.

C. Purposes of sentencing

Because Cordova has been willing to disrespect the law if it comes with profit, was not deterred by his arrest, and has multiple convictions for similar petty crimes, a near-maximum sentence is needed to provide deterrence, restore respect for the law, and mete out just punishment to Cordova.

Deterrence. Cordova's post-arrest conduct and convictions for similar conduct show that an arrest or conviction alone will not provide specific deterrence, and that a meaningful sentence is needed. As to general deterrence, it is clear in Cordova's video that there is a community of other YouTube users he follows, and who follow him, that are watching to see what sentence the court imposes and whether they should take similar actions. To this end, Cordova recently appeared on a YouTube video with another YouTube user discussing all three of his recent convictions and stating that he is awaiting his federal sentencing hearing in August. The Court's sentence needs to send a message of general deterrence that the profits that can be earned from crime-related content are not worth the cost.

Respect for the law. Cordova's August 2 video evinces his disrespect for the law and disdain of law enforcement officers. In these circumstances, it is important that his sentence restore respect for the law.

Just punishment. Cordova was not justified in harassing others to earn money. He was not justified in willfully breaking the law and attempting to interfere with security

officers who were trying to protect the personal information of SSA customers. The sentence should provide punishment for someone who put his own desire for fame or fortune over empathy for those affected by his conduct.

D. Defendant's income and ill-gotten gains

A maximum fine is needed to deprive Cordova of the income he earned from his crime. Earnings attributable to Cordova's unlawful conduct on August 2 exceeded \$5,000. By Cordova's own admission, August 2 was a milestone for his YouTube channel in terms of revenue and subscribers: during his livestream, he stated that he had never had more than 700 people viewers previously and repeatedly expressed gratitude for the more than 3,100 viewers that watched him get arrested. TX 1, at 15:12 to 15:23. Cordova wanted to create entertainment—and thus revenues—and his arrest and harassment and disregard of others were tools to entertain viewers and earn profits. He calculated that he would gain more in profit than he would lose in legal consequences for disrespecting the law.

The Court should show he miscalculated through a meaningful fine. The maximum fine of \$5,000 will begin to take away these unlawful gains. It takes back approximately 50% of the \$11,000 in revenue earned from his YouTube channel in the months while he posted August 2-related content. Although meaningful, this fine is a fraction of Cordova's ill-gotten profits from August 2. Among other reasons, he told viewers he preferred they pay him through other money-transfer apps; records from these other accounts would show additional profits. He marketed merchandise based on his arrest. And each new subscriber he gained from August 2-related content also represented an ongoing revenue

stream who would not otherwise have viewed future content, paid for monthly membership, donated money, or purchased merchandise.

III. Conclusion

The United States requests that the Court impose a sentence of 160 hours of community service and impose the maximum fine of \$5,000. Should the Court order a pre-sentence criminal history report before sentencing and obtain additional information that establishes a close relationship between conduct underlying Cordova's two subsequent convictions and his federal convictions, the United States may supplement its filing if warranted by the § 3553(a) sentencing factors.

Respectfully submitted this 7th day of July, 2023.

COLE FINEGAN
United States Attorney

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Attorneys for the Government

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record in this case.

s/ Lamesia Johnson
Lamesia Johnson
Legal Assistant
United States Attorney's Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER J. CORDOVA, Defendant.	Criminal No. 22-PO-07015-MEH
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ADDENDUM TO UNITED STATES' SENTENCING STATEMENT

The government's previous sentencing statement recommended 160 hours of community service and a \$5,000 fine based on Cordova's repeated decision to put his YouTube fame and earnings over following the law and the privacy rights of others, both through publishing YouTube content celebrating each crime and by committing new petty crimes. At the time, the government's concern was that a criminal conviction had not deterred Cordova from further crimes but emboldened him to commit new petty crimes and find new ways to harass the public and officers committed to enforcing the law.

On the eve of sentencing, however, Cordova showed he still has not learned anything from his conviction by this Court. Today, on August 16, 2023, Cordova was arrested in Colorado Springs for conduct mirroring the crimes he committed at the Social Security office on August 2, 2022. At a Colorado Springs Utilities Commission building, he livestreamed despite a prohibition, disrupted agency business, and accosted a customer present with his young child. Cordova disregarded multiple security officer

warnings about the unlawfulness of his conduct and that he would be arrested if he did not stop livestreaming. See Denver Metro Audits, *Denver Metro Audits is going live! Cops Called!!!*, <https://www.youtube.com/watch?v=u87cNDdill4> (accessed on August 16, 2023). Based on the purposes of sentencing, including the need to deter further petty crimes, provide just punishment, and to restore respect for the law, his new arrest shows that a sentence of imprisonment is needed in this case.

As a result, the government now recommends that the Court sentence Cordova to a 20-day jail sentence and a \$5,000 fine, for reasons laid out in the government’s sentencing statement (ECF no. 23) and in this addendum.

Respectfully submitted this 16th day of August, 2023.

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Attorneys for the Government

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record in this case.

s/ Craig G. Fansler

Craig G. Fansler
Assistant United States Attorney
United States Attorney's Office

Placeholder

Exhibit 001

YouTube Video
(Cordova)

CVB SCAN 08/10/2022 9:39

On Tuesday, August 2nd, 2022, at approximately 1327 hours, I had contact with a subject, later verbally self-identified as Christopher Cordova (██████32), at the Social Security Administration (SSA) Office at 8000 Southpark Ave. in Littleton, CO. I had responded to the facility for the report of 1st Amendment "Auditors" at the facility attempting to video inside the facility and refusing to leave.

When I contacted Cordova, he claimed that he had a constitutional right to record video inside the facility and I explained to him that he did not based on the signage posted at the entrance to the facility as well as 41 CFR 102-74.420 which prohibited filming inside the facility without permission of the occupying tenant of the building, in this case, the SSA. Cordova argued that the sign wasn't valid because it didn't list or cite a specific federal law. I provided Cordova with a copy of 41 CFR 102-72.420 (c) on which I highlighted the section prohibiting photography or filming without the tenant's consent.

I explained to Cordova the nature of the sensitive conversations that take place in the facility as well as the prevalence of Personally Identifiable Information (PII) within the facility being the reason for filming being prohibited.

Cordova was accompanied by three other "auditors" and all of them were stating that it was their constitutional right to film inside government buildings. I pointed out the posted signage to all and referenced the CFR provided to Cordova to all "auditors" present. I explained to Cordova and the others that I would allow them to remain in the foyer, but if they were to enter the main waiting area of the facility, where personal conversations and PII were in the open, while recording, they would be criminally charged. Various forms of the same conversation took place multiple times with Cordova during which I repeatedly referred to the posted signage, the copy of the CFR provided, and the verbal notice given personally by me. On each iteration of the conversation, I advised Cordova that if he entered the facility while recording video, he would be cited or arrested, and his recording equipment would be seized as evidence.

A short time later, after discussing the matter with his peers, Cordova made the decision to enter the facility, while recording. As he did so, I immediately approached Cordova and advised him he was under arrest. Cordova's phone, on which he was filming, was taken into evidence.

Cordova was issued Citation #E1280555 for Photography/Filming inside the SSA and Citation #E1280552 for Failing to Comply with Official Signs or Directions of a Law Enforcement Officer. Cordova was provided a court date for appearance in court and signed both citations agreeing to appear in court on the specified day. Cordova was provided a copy of both citations and released.

For additional details of this case see report for case # 22024768D.

**DOUGLAS P
WHILES**

Digitally signed by DOUGLAS P
WHILES
Date: 2022.08.03 14:14:57 -06'00'



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FEDERAL PROTECTIVE SERVICE

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CASE NUMBER F22080136911 / 22024768D		Occur Date Span 08/02/2022thru08/02/2022	Occur Time Span 11:55thru16:28	Report Date 08/02/2022	Report Time 11:55								
<input type="checkbox"/> Follow - Up Report													
A	Code	Type of Offense or Incident Building Rules and Regulations: Unauthorized Photography	Arrive Date 08/02/2022	Arrive Time 12:47									
	Building No. CO1902	Address 8000 SOUTH PARK LN., LITTLETON, CO 80120	Rtn to Svc Dt 08/02/2022	Rtn to Svc Tm 16:28									
	Incident Location 8000 Southpark Avenue	Agency Name SOCIAL SECURITY ADMINISTRATION	Agency Code 2804										
	Est Num Dem	1-10	11-50	51-100	101-300	301-500	500+	Est Num Evc	1-10	11-50	51-100	101-300	301-500
NARRATIVE SEE NARRATIVE CONTINUATION													

INVOLVED PERSON	<input type="checkbox"/> Victim	<input type="checkbox"/> Witness	<input type="checkbox"/> Suspect	<input checked="" type="checkbox"/> X Subject	<input type="checkbox"/> Report Person	<input type="checkbox"/> Govt' Empl	<input type="checkbox"/> Govt' Cont	<input type="checkbox"/> Other	<input type="checkbox"/> Missing Person		
B	No.	Name (last, first, middle) CORDOVA, CHRIS J		Alias	Date of Birth/Age 1982	Sex M	Race W	Height 67	Weight 160	Eyes Brown	Hair Brown
	Address			City		State	Zip Code	Country United States of America			
	Driver's License Number		State	Social Security #		Nationality American	Country of Birth United States		Home Phone		
	Scars, Marks, Tattoos / Other			Arrested No	Citation Number E1280552, E1280555		NCIC Number		Work Phone		
	Employer			Employer City			State	Employer Zip	Employer Country		

INVOLVED PERSON	<input type="checkbox"/> Victim	<input type="checkbox"/> Witness	<input type="checkbox"/> Suspect	<input type="checkbox"/> Subject	<input type="checkbox"/> Report Person	<input type="checkbox"/> Govt' Empl	<input type="checkbox"/> Govt' Cont	<input type="checkbox"/> Other	<input type="checkbox"/> Missing Person		
B	No.	Name (last, first, middle)		Alias	Date of Birth/Age	Sex	Race	Height	Weight	Eyes	Hair
	Address			City		State	Zip Code	Country			
	Driver's License Number		State	Social Security #		Nationality	Country of Birth		Home Phone		
	Scars, Marks, Tattoos / Other			Arrested	Citation Number		NCIC Number		Work Phone		
	Employer			Employer City			State	Employer Zip	Employer Country		

VEHICLE	<input type="checkbox"/> Stolen	<input type="checkbox"/> Damaged	<input type="checkbox"/> Recovered	<input type="checkbox"/> Lost/Missing	<input type="checkbox"/> Suspect	<input type="checkbox"/> Other	<input type="checkbox"/> Govt	Evidence
C	No.	License No	State	Reg Yr	Make	Model	Veh Yr	Value
	R/O Name (last, first, middle)		Color			VIN	NCIC Number	
	R/O Address			City		State	Zip Code	Country

PROPERTY	<input type="checkbox"/> Stolen	<input type="checkbox"/> Damaged	<input type="checkbox"/> Recovered	<input checked="" type="checkbox"/> X Suspect	<input type="checkbox"/> Found	<input type="checkbox"/> Other	<input type="checkbox"/> Govt	<input checked="" type="checkbox"/> X Evidence	<input type="checkbox"/> Weapon
D	No.	Type: Computer Hardware/Software Description: Iphone Cell phone		Make Iphone	Model	Color Blue			
	Owner Name (first, last, middle) CORDOVA, CHRIS J			Serial Number		Value 200	NCIC Number		
	Address			City		State	Zip Code	Country	

Officer Name/Signature/ID#	Date	Supervisor	Date Approved
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Distribution: Investigations AUSA Local Prosecutor RO Other
 Case Status: Open Closed Unfounded ** FOR OFFICIAL USE ONLY **

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Additional Report

Oscar Ramos

08/03/2022 15:55

Douglas P Whites

08/03/2022 16:25

CASE NUMBER F22080136911
/ 22024768D

Officer Oscar Ramos

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3155 Report

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Additional Report

Narrative Continuation

On 08/03/2022 at approximately 12:09 pm, the Denver Mega Center (DMC) contacted me via radio regarding a small group of alleged first amendment auditors at the Social Security Administration (SSA) residential Office. This SSA office is located at 8000 South Park Lane Littleton, Colorado 80120. Inspector D.G. Pritchard and I responded from the Denver Federal Center (DFC), with an arrival time at the above location approximately thirty-five minutes later. In the interim the Littleton Police Department were on scene to maintain law and order.

Upon arrival we entered through the foyer and into the lobby, two auditors were observed in the foyer filming the interior waiting area of the SSA (one white male and one white female unidentified). The individuals were advised by the on duty Protective Security Officers (PSOs') that they were not allowed to film the lobby of the SSA. The auditors ignored their lawful request and continued to film. Given the delicate situation we made the decision not to physically remove them from the foyer only explaining the law regarding the prohibition of filming the interior of a federal tenant space. The two began to argue with me and we departed the foyer and entered the waiting area with the Littleton Police Officers. The female alleged she was assaulted by the PSOs' and wanted to file assault charges.

Approximately 12:50 pm another individual (black male approximately 25 years of age) arrived in the main parking lot and began filming our vehicles. The male auditor then proceeded to join the other two auditors in the foyer and began yelling about their constitutional right to film in public settings. At approximately 1:27 pm hours Commander D. Whiles arrived on scene and attempted to explain the policy regarding filming federal facilities. Specifically, "Photography and video recording are prohibited in Federal space without the permission of the tenant agency (41 U.S.C. § 102-74.420)". It should be noted that proper signage regarding the above is posted in the foyer area. The conversation between Commander Whiles and the three individuals evolved around their civil rights being violated, alleging assaults by the PSOs' and the unconstitutionality regarding filming in federal public space. Commander Whiles allowed them to remain in the foyer and continue filming on two conditions. They do not block the egress and could not enter the lobby if they intended to film (this is based on the sensitive conversations of SSA clients and PII). They were further advised they could enter the building to conduct any business they may have with the SSA, as long as they did not film.

Around 2:40 pm a fourth individual arrived (white male, mid-thirties) and attempted to enter the waiting area. This individual argued with law enforcement about the constitution and the right to film in public spaces. Several auditors began calling the law enforcement officers tyrants, government dogs and other derogatory terms. The four individuals grew louder, with the fourth auditor opening the waiting area door yelling at any officer who would listen. Asking what we would do if they stormed the lobby and the repercussions if they filmed inside. Again, Commander Whiles entered the foyer and attempted to reason with them to no avail. This attempt only further enraged the auditors.

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3155 Report

Officer Oscar Ramos

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Additional Report

The arguing and badgering with Law enforcement continued while customers of the SSA were attempting to conduct personal business. Several elderly customers stated they felt intimidated and threatened by the auditors. In our attempt to ensure the privacy of the SSA clients and their personally identifiable information (PII), we moved the kiosk computer away from the filming angle of the auditors. This computer kiosk listed names, dates of birth and other sensitive information.

Again, the auditors could not understand why they could not film in the lobby as they interpreted in a 2018 DHS letter that allowed filming. Their misinterpretation of this memo was explained numerous times by Commander Whiles, again the auditors would not listen to reason. The auditors argued this point of contention and continued to taunt and antagonize law enforcement, making statements such as, "if I walked in right now with the camera rolling are you going to arrest me??" "(inaudible)... I will sue your ass, ...I'm not threatening I'm for real." It was during this time an auditor filming placed his foot on the main waiting area door forcing it to stay open. When asked to move and stop blocking the egress he replied. "I'm not moving my foot you're enforcing your feelings bud, you're a law Enforcement Officer."

As tensions increased the decision was made to leave the waiting area and retire to the interview waiting room area. One auditor can be heard. "You mad as shit boy, walk your bitch ass to the back." And another yelling, alright I am going in. The auditor who blocked the lobby door open with his foot, entered the lobby and began filming. Commander Whiles calmly walked up to the individual and advised him that he was under arrest. This auditor was later identified as CORDOVA, Christopher, DOB [REDACTED] 1982. The violator was detained for approximately twenty minutes and issued two United States District Court Violation Notices E1280555 (CFR 102-74-420 C) photography / filming in federal facilities. The second citation E1280552 (CFR 102-74-385) failing to comply with official signs and directions of a law enforcement officer.

Once released the other 4 auditors cheered and appeared to have obtained what they wanted by the arrest. The auditors were advised that the building was closing for the day (4:00 pm) and the main doors had to be secured. The auditors complied and exited to the parking lot and proceeded to film and interview one another. At approximately 4:40 pm the group departed the parking area in their respective vehicles without further incident.

Commander Whiles was able to view the SSA's video footage with the manager Randy LeCavalier, and he saw no indications of an assault on any of the auditors.

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Additional Report

Both PSOs provided statements to include in this report, as they were the first to have interactions with the First Amendment Auditors.

I am working with the manager of the SSA office to make a copy of the video footage for this report and to be included as evidence.

Arapahoe County Sheriff Department assisted FPS on this Incident Report.

Arapahoe County Sheriff Sargeant Adam Workman arrived to assist with the incident. He departed at 4:00 when the SSA office closed for the day.

Littleton Police Department assisted FPS on this Incident Report.

J. Geiser and P. Martens of the Littleton police department assisted with the incident and stood by in the event that their assistance was needed.

Subject: CHRIS CORDOVA

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/ 22024768D

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

UNITED STATES OF AMERICA, . Case No. 22-po-07015-MEH-1
 .
Plaintiff, .
 .
vs. . Alfred A. Arraj Courthouse
 . 901 19th Street
CHRISTOPHER J. CORDOVA, . Denver, CO 80294
 .
Defendant. .
 . March 16, 2023
 . 9:02 a.m.
.

**TRANSCRIPT OF PROCEEDINGS HELD BEFORE THE HONORABLE
MICHAEL E. HEGARTY, UNITED STATES MAGISTRATE JUDGE**

APPEARANCES:

For the Plaintiff: U.S. Attorney's Office
By: Craig G. Fansler
By: Thomas J. Minser
1801 California Street
Suite 1600
Denver, CO 80202
(303) 454-0100

For the Defendant: Ascend Counsel, LLC
By: Edward M. Schwab
2401 South Downing Street
Denver, CO 80210
(303) 888-4407

Court Recorder: Clerk's Office
U.S. District Court
901 19th Street
Denver, CO 80294

Also Present: Christopher J. Cordova
Douglas Whiles

1 Appearances continued:

2 Transcription Service: AB Litigation Services
3 216 16th Street, Suite 600
4 Denver, CO 80202
5 (303) 296-0017
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24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

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1 (Time noted: 9:02 a.m.)

2 THE COURT CLERK: All rise. United States
3 District Court for the District of Colorado is now in
4 session. The Honorable Michael E. Hegarty, United States
5 Magistrate Judge, presiding.

6 THE COURT: Please be seated. On the record in
7 the trial of United States of America versus Christopher J.
8 Cordova, 22-po-07015.

9 Please make your appearances.

10 MR. FANSLER: Good morning, Your Honor. Craig
11 Fansler and Tom Minser on behalf of the United States.

12 THE COURT: Good morning to you.

13 MR. SCHWAB: Good morning, Your Honor. Milo
14 Schwab on behalf of Defendant Christopher Cordova, who is
15 here.

16 And before we get going, I wanted to apologize for
17 our tardiness.

18 THE COURT: I was late, too.

19 MR. SCHWAB: Okay. Thank you, Your Honor.

20 THE COURT: Fortunately, the United States doesn't
21 charge by the hour. They are captive and paid a salary, like
22 I was when I was in the office.

23 Okay. Do we want to have brief opening
24 statements?

25 MR. FANSLER: Yes, Your Honor.

1 THE COURT: When you're ready. First, any
2 preliminary matters at all?

3 MR. FANSLER: Not from the United States.

4 THE COURT: Any preliminary matters?

5 MR. SCHWAB: Not from defense, Your Honor.

6 THE COURT: Okay. When you're ready.

7 MR. FANSLER: Good morning.

8 THE COURT: Good morning.

9 MR. FANSLER: On Tuesday, August 2, 2022, just
10 before noon, this Defendant, Christopher Cordova, went to the
11 Social Security Office in Littleton, Colorado, to commit a
12 crime by live streaming video because he wanted to create a
13 court case.

14 He planned before he got there to ignore every
15 sign and everyone who told him not to film. He did exactly
16 that.

17 He ignored the agency's customers that day, who
18 didn't want them filming their private business inside of the
19 Social Security Office.

20 Of all of the places he could have chosen to
21 engage in criminal disobedience, he chose a Social Security
22 Office. He picked an agency whose business is private
23 confidential information.

24 Inside the office, private information is
25 discussed all day long. Customers hold private documents,

1 they have private conversations, and with their caretakers
2 and other family members, they go to customer service windows
3 where they discuss their personal and private information.

4 On August 2nd, Mr. Cordova saw four signs
5 prohibiting live streaming. He ignored those signs, as he
6 planned to do all along.

7 He was told more than eight times, by four Federal
8 security officers, that he could not film inside. Mr.
9 Cordova ignored these directives, as he planned to do all
10 along.

11 He was also given a copy - twice - of the General
12 Services Administration regulation prohibiting photography.
13 Mr. Cordova ignored this regulation, as he planned to do all
14 along.

15 Instead, he set up his camera so that it faced a
16 sign prohibiting photography, and he did that for 3 hours and
17 13 minutes. It's clear that he did not like the signs.

18 (Video played in open Court)

19 THE COURT: Go ahead. Please stand.

20 MR. SCHWAB: I had stipulated to the admission of
21 this video and to statements made by Mr. Cordova in this
22 video, but not the statements made by other individuals
23 unless they testified. And I think the playing of this is
24 potentially prejudicial at the moment.

25 THE COURT: Okay. Do you think it's admissible

1 under the Rules of Evidence?

2 MR. SCHWAB: I do not believe statements made by
3 other individuals in this video are admissible for the
4 purposes -- because they are hearsay.

5 THE COURT: Okay.

6 MR. SCHWAB: If they're being introduced just to
7 say that people said -- people talked to him, sure. But for
8 any information contained within those statements, no, that's
9 hearsay.

10 THE COURT: Okay. Response, please?

11 MR. FANSLER: I think the opportunity to raise
12 this would have been before trial. Nothing was raised before
13 trial.

14 Be that what it is, this video is replete with
15 admissions from the Defendant, and there's lots of other
16 statements that show context, they show the effect on the
17 listener that show knowledge. He's the one that's recording
18 this. He sees everything.

19 I also think at a Bench trial, Your Honor is able
20 to evaluate relevance and hearsay at a later point if he does
21 feel that arises.

22 But there's really no question that these are not
23 for the truth of the matter.

24 THE COURT: Sure. That's what I will find in any
25 kind of recording like this, statements made by others are

1 typically admissible for the purpose of the response they
2 elicited. So if they're not being introduced necessarily for
3 the truth of the matter, but was stated in the response that
4 was stated back.

5 Furthermore, if we just had the statements of your
6 client, it would be completely out of context.

7 And so I find it is admissible. Go ahead.

8 MR. SCHWAB: Sure. Just to clarify, he also --
9 the U.S. also just stated that he was told multiple times,
10 and I'm worried that they are going to be introducing this
11 video. Those statements were made by security guards, and
12 those security guards have been noticed as witnesses.

13 And so to the extent that they're talking about he
14 was told multiple times, that would be inadmissible.

15 THE COURT: Okay. What's your response to that?

16 MR. FANSLER: Again, it's all in the video that
17 what is said to him and the effect it has to him, and how he
18 then moves his camera to show what he's seeing, there is a
19 law enforcement witness that's going to testify and was there
20 that day, and can -- we can certainly revisit that later on
21 if counsel wants to.

22 THE COURT: So I think they -- well, certainly
23 they are potentially admissible -- well, they are relevant to
24 show the issue of knowledge, for example. So if someone
25 doesn't have knowledge of the law, or they do have knowledge

1 of the law, is a relevant issue.

2 And if proper peace officer is giving somebody
3 notice of a law, and the person receiving it, in this case
4 your client, understands that and hears that, and acts in
5 whatever way that the evidence will show he acted, that
6 demonstrates knowledge and intent.

7 And so, again, it's potentially admissible for the
8 purpose of knowledge and intent on your client, but not
9 necessarily for the truth of the matter.

10 MR. SCHWAB: Sure. And just to be clear, I'm not
11 contesting relevance. What I would say --

12 THE COURT: Sure.

13 MR. SCHWAB: And I'm not contesting effect on the
14 listener. What I'm saying is if it's being introduced for
15 the purpose of proving that these statements were provided to
16 him, these warnings were made to him, that itself is hearsay.

17 The introduction of evidence that a person not
18 testifying in Court made a statement, that is hearsay.

19 THE COURT: Understood.

20 MR. FANSLER: Your Honor, just to add context to
21 that. I mean, these statements were made, and the Defendant
22 hears them, he responds to them, he admits hearing them, he
23 shows -- he responds and zooms in on the signs after getting
24 these directives.

25 And, again, if we wanted to go clip-by-clip, I

1 would have loved to hear this objection in advance, because
2 we could have talked about the clips the Government plans to
3 use, and discussing these could have come in that way.

4 But I think it will be clear once we show the
5 clips during the trial the effect they had on Mr. Cordova.

6 THE COURT: Okay. Just a second.

7 (Pause)

8 THE COURT: Okay. Well, I'm going to find that
9 it's 8031. It's a statement describing or explaining an
10 event or condition made while perceiving the event.

11 So as the officers are perceiving the event that
12 your client purportedly created, then that's an 8031 presence
13 and suppression. You can't do that. That's illegal. This
14 is against the law.

15 So those are statements describing or explaining
16 an event or condition under 8031.

17 So to the extent they are hearsay, I believe that
18 exception would cover the statements of the officers.

19 MR. SCHWAB: I would just reserve that for when
20 you see more of this video and the context, and whether it's
21 within that or it's just simply "look at this sign," which is
22 not an observation, but a direction in that statement.

23 THE COURT: Very good. And those are good
24 objections.

25 MR. SCHWAB: Thank you, Your Honor.

1 THE COURT: Overruled.

2 MR. FANSLER: I'll start the video over.

3 (Video played in open Court)

4 THE COURT: Was the woman in the upper left
5 associated with the event, or just a bystander?

6 MR. FANSLER: Associated with the event.

7 THE COURT: Okay.

8 MR. FANSLER: A piece of paper. So he ignored it,
9 as he planned to do all along.

10 Finally, between 3:00 and 4:00 p.m., after at
11 least 3 hours and 13 minutes filming from outside the office,
12 he committed the crime he went there to commit. He walked
13 inside while continuing to live stream, as he had planned to
14 do all along.

15 (Video played in open Court)

16 MR. FANSLER: Mr. Cordova got the Court case he
17 wanted. Mr. Cordova intended to commit a crime. He set out
18 to commit one that day, and he did, because he viewed the
19 First Amendment as a license to ignore every sign and every
20 officer. It is not that type of license.

21 So he got two violation notices. They match the
22 two counts against him in this case. Count 1 is for non-
23 compliance with official signs and lawful directions. Count
24 2 is for taking photographs where prohibited, and a space
25 occupied by an agency.

1 This is a simple case. Proof of each element is
2 on the video that Your Honor will see.

3 The Defendant made one long confession, and he
4 posted it to YouTube. That confession proves his guilt
5 beyond a reasonable doubt on both counts.

6 Thank you.

7 THE COURT: Leigh, do we have an actual criminal
8 file? I don't have that. Is it an information, or just a
9 ticket or citation?

10 MR. FANSLER: There's a criminal information with
11 two counts.

12 THE COURT CLERK: Your Honor, I can pull the
13 information for you.

14 THE COURT: Usually we have at least a yellow
15 folder that has the original information and other potential
16 documents. If you could print that out?

17 THE COURT CLERK: Okay.

18 MR. FANSLER: I believe it's ECF 3, if that's
19 helpful.

20 THE COURT: ECF 3. Thank you. All right. Mr.
21 Schwab?

22 MR. SCHWAB: Your Honor, I don't know how you
23 operate your courtroom. May I reserve my opening for after
24 the People's presentation?

25 THE COURT: Yes, you may.

1 MR. SCHWAB: Thank you. I'd prefer to do that,
2 Your Honor.

3 THE COURT: Please call your first witness.

4 MR. FANSLER: Your Honor, the Government calls
5 Commander Douglas Whiles.

6 THE COURT: Thank you.

7 (Pause)

8 THE COURT: So did you guys agree on sequestration
9 of witnesses?

10 MR. FANSLER: We did not discuss that.

11 THE COURT: Okay.

12 MR. SCHWAB: There was no discussion of it, but I
13 would prefer -- I would ask for an order on sequestration,
14 Your Honor.

15 THE COURT: Any objection?

16 MR. FANSLER: No.

17 THE COURT: Fine. That will be the order of the
18 Court. Come on forward.

19 THE COURT CLERK: If you'll please have a seat in
20 the witness stand. Please raise your right hand.

21 Do you solemnly swear or affirm that the testimony
22 you shall give in this matter now before the Court shall be
23 the truth, the whole truth, and nothing but the truth, and
24 this under the pains and penalties of perjury?

25 MR. WHILES: I do.

1 THE COURT CLERK: Thank you.

2 Whereupon,

3 DOUGLAS WHILES

4 was duly sworn.

5 THE COURT CLERK: Please be seated in the witness
6 stand. I'm going to ask you to scoot all the way up to that
7 microphone. Your chair doesn't roll, so you'll have to --

8 THE COURT: Yeah, and I'll remind everybody. We
9 actually sought a court reporter. There are so many trials
10 occurring in the courthouse today that we don't have a court
11 reporter.

12 So if you want to be on the record, you have to be
13 near a microphone. Okay?

14 DIRECT EXAMINATION

15 BY MR. FANSLER:

16 Q. Good morning.

17 A. Good morning.

18 Q. Would you introduce yourself and spell your name
19 for the record?

20 A. My name is Doug Whiles, it's W-H-I-L-E-S.

21 Q. And where do you work?

22 A. For the Federal Protective Service, Department of
23 Homeland Security in the Lakewood Command here in the Denver
24 area.

25 Q. What's your title in the Lakewood Command?

1 A. Area Commander.

2 Q. How long have you been with the Federal Protective
3 Service?

4 A. Since December of 2015.

5 Q. How about in law enforcement?

6 A. Since March 11, 1996.

7 Q. Before joining law enforcement did you also serve
8 in the military?

9 A. I did.

10 Q. What's your -- you said you're Area Commander.
11 What's your area of command?

12 A. Pretty much everything west of I-25 in the Denver
13 area.

14 Q. Does that include the Social Security
15 Administration office in Littleton, Colorado?

16 A. It does.

17 Q. As part of your duties have you also been to other
18 Social Security offices in the Denver area?

19 A. I have.

20 Q. When does Federal Protective Service have
21 jurisdiction over a building?

22 A. If it's owned or leased by GSA, the General
23 Services Administration. We have the responsibility to
24 provide law enforcement services at those facilities.

25 Q. And is the Social Security office in Littleton

1 owned or leased by General Services Administration?

2 A. Yes.

3 MR. SCHWAB: Objection, Your Honor. I'd ask for
4 more foundation for how he has knowledge of the lease.

5 THE COURT: Go ahead. More foundation --

6 BY MR. FANSLER:

7 Q. How do you know whether buildings are under GSA
8 authority?

9 A. We maintain a database in conjunction and
10 cooperation with GSA of all the buildings that they own or
11 operate that we have jurisdiction and a responsibility to
12 provide services for. It's called -- there's a number of
13 databases out there.

14 The one that I use predominantly is called MIST
15 and it has a list of all the buildings in the country broken
16 down by region, then broken down by command, which buildings
17 are GSA owned and operated.

18 Q. And is the Social Security office in Littleton one
19 of those buildings?

20 A. Yes.

21 Q. And that's at -- do you know the exact address?

22 A. 8000 South Park.

23 Q. I'm going to turn your attention to August 2nd,
24 2022. Where were you at in the morning of that day?

25 A. I was at the range -- the firing range.

1 Q. Did something happen to cause you to leave the
2 range that day?

3 A. Yes.

4 Q. What happened?

5 A. I received a phone call from one of my inspectors
6 advising that they had a situation at the Social Security
7 office, 8000 South Park, where some First Amendment auditors
8 were attempting to film inside the facility. They had been
9 asked to leave, and were refusing. According to my
10 inspector, the situation was escalating.

11 Q. When you arrived did you encounter an individual
12 you later found out to be named Christopher Cordova?

13 A. I did.

14 Q. Do you see him in the courtroom today?

15 A. Yes.

16 Q. Can you point to him and describe just something
17 about him for the record?

18 A. Yes. Gray suit, beard, mustache, sitting right
19 here.

20 MR. FANSLER: Your Honor, the Government would
21 just ask that the record reflect that the witness identified
22 the Defendant, Christopher Cordova, as the individual --

23 THE COURT: It will so reflect.

24 BY MR. FANSLER:

25 Q. When you arrived did you see individuals recording

1 video?

2 A. I saw individuals with cameras. Yeah, I'm not
3 sure if they were recording at the time or not.

4 Q. How many individuals?

5 A. Two for sure. Mr. Cordova and then another
6 identified -- only known to me as Sweet Tea.

7 Q. Did you later see two videos from that day posted
8 to YouTube?

9 A. I did.

10 Q. Did those videos show the Social Security office
11 as it looked on August 2nd, 2022 when you were there?

12 A. It was an accurate reflection, yes.

13 Q. And they also show events that occurred on that
14 day?

15 A. Yes.

16 Q. And in those videos -- were you able to view them?

17 A. Not in their entirety, but bits and pieces of both
18 of them. Yes.

19 Q. Did those videos show the individuals you saw with
20 camera equipment that day?

21 A. Yes.

22 MR. FANSLER: The Government would offer into
23 evidence Government Exhibit 1, which has been stipulated --
24 at least as to admissibility with the hearsay objections
25 noted. And Government Exhibit 4 at this time, which are

1 those two videos that the witness has just talked about.

2 THE COURT: Response?

3 MR. SCHWAB: Yeah, Your Honor. As discussed
4 earlier for Exhibit 1, we have stipulated to it with the
5 exception of those hearsay objections. For Exhibit 4, I
6 don't know what -- where he was present for, and my
7 understanding --

8 THE COURT: When who was present?

9 MR. SCHWAB: The witness.

10 THE COURT: Okay.

11 MR. SCHWAB: He can testify to those moments that
12 he visually watched, but to say I watched the video and
13 therefore I know its contents, I think that's hearsay. He
14 doesn't have personal knowledge of most of the video.

15 He only watched snippets, but certainly he only
16 would have knowledge of those moments when he actually was
17 visually watching that moment. Any time before he showed up
18 he has no knowledge of and can't offer any evidence as to the
19 authentication or --

20 THE COURT: Authenticity?

21 MR. SCHWAB: Yeah.

22 THE COURT: Yeah, that's undoubtedly true. So what
23 is relevant to this witness' testimony would be over those
24 matters that he saw or perceived.

25 Unless you qualify him as an expert, he wouldn't

1 have foundation to testify about a video and describing in
2 that video whether things are lawful or unlawful, so you'd
3 have to qualify him as an expert if you want him to render
4 those opinions.

5 MR. FANSLER: Your Honor, the video is posted
6 online. It's posted publicly. He can view all parts of the
7 video. He was there and observed that setting and how things
8 looked. The video -- and I think Your Honor will see this,
9 it's -- they're recording at the same time, so it shows
10 different camera angles of the same event.

11 I think it's just like any other video that a
12 witness who can say it's true and accurate, that it reflects
13 what it looked like that day --

14 THE COURT: Right, and it can be used as a
15 demonstrative too. So you could take a witness through a
16 video if the video is accurate and say this is where this
17 part of the Social Security building is. This is where --
18 that is fine. So it depends on the use that's being made.
19 So I'll let you reverse that objection.

20 I'll admit it provisionally, but if there are uses
21 that you make of it that -- to which you object you can renew
22 your objection.

23 MR. SCHWAB: And then I would object as it was not
24 disclosed as a demonstrative exhibit either. It was
25 disclosed for this purpose, and my planning was under the

1 correct understanding that he did not have personal knowledge
2 to much of this video.

3 THE COURT: Okay. Understood.

4 MR. SCHWAB: And I'd object to the admission of it
5 for any purpose on that basis.

6 THE COURT: Thank you. Overruled.

7 MR. FANSLER: Did we admit the -- I guess I want
8 to formally move for admission of Government Exhibit 4.

9 THE COURT: I think you already did, and I'm
10 admitting it. By the way, I'm not sure the video would be
11 hearsay because it's not an oral, written, or non-verbal --

12 MR. SCHWAB: I didn't actually say -- I mean it is
13 hearsay for statements made in it for the truth of the
14 matter. No, I was actually speaking to authentication. He
15 doesn't -- and knowledge. He doesn't have the knowledge. He
16 wasn't present.

17 THE COURT: So laying a foundation for the fact
18 that this is true and accurate.

19 MR. SCHWAB: Sure, and him saying I watched it
20 later, that's not sufficient. He has to have been present to
21 say yes, these are the conditions.

22 THE COURT: Well, so if he can describe in the
23 video that this is the office then under any condition I
24 would -- do you actually challenge authenticity though?

25 MR. SCHWAB: I challenge his knowledge and the

1 ability to get this video in through him.

2 THE COURT: Right.

3 MR. SCHWAB: He's not been disclosed as an expert.

4 So he can't speak to that. He didn't show up for over an
5 hour of recording, and clearly hasn't even watched most of
6 it.

7 THE COURT: But who took the video we're about to
8 see?

9 MR. SCHWAB: An individual who is not a witness.

10 MR. FANSLER: Your Honor, if I can, I guess, just
11 add to that. The videos were taken, one by the Defendant,
12 one by an individual that was with him. I think the
13 Government cited in its trial brief, and I think the case law
14 is clear on this point, that anyone who views a video on a
15 public website can testify to its authenticity.

16 So the extent he's raising that because it's on a
17 website he can't authenticate it somehow through this witness
18 just is not in accord with the case law --

19 THE COURT: No, I agree the origin of the -- of
20 where you found the video is not relevant. The relevance is
21 does this witness have personal knowledge of the content,
22 such as I am familiar with this building, I've been in this
23 building 50 times. This is the building. This was August
24 2nd.

25 Was I there at that precise moment that this part

1 or that part was filmed? I don't think that's necessarily
2 required in order to establish that the video is authentic.
3 So it's admitted.

4 BY MR. FANSLER:

5 Q. I want to play the video from your arrival,
6 Commander Whiles, Government Exhibit 1. I'll quote the times
7 because I'm going to play the volume from Government Exhibit
8 1 running from 1:33:0 to 1:33:55 in Exhibit 1. In Exhibit 4,
9 that would be from 1:30:59 to 1:31:54. The audio will come
10 from Government Exhibit 1, which is the Defendant's own
11 video.

12 (Video played in open Court)

13 THE COURT: What now?

14 MR. SCHWAB: So first of all, all the videos that
15 have been produced are one image, and this has never been
16 produced to me so I don't know -- I don't actually know where
17 -- are these both videos that Mr. Cordova took? Is this one
18 video that Mr. Cordova took and one that is Exhibit 4?

19 THE COURT: Well, let me ask just as a blanket
20 question, is everything you're going to show me today -- any
21 type of evidence -- has already been produced to the Defense?

22 MR. FANSLER: All of it has been, Your Honor.
23 Both of these are public videos we actually downloaded from
24 the website, both Mr. Cordova's video, which is Government
25 Exhibit 1, and Sweet Tea's video, which is Government Exhibit

1 4 on the right. Just for the Court's convenience we put them
2 on to play them side by side.

3 THE COURT: That's fine, as long as the material
4 has all been produced you can rearrange it however you want.

5 MR. FANSLER: Yeah.

6 MR. SCHWAB: I mean, I think for presentation
7 purposes in an oral argument, sure. I think for presentation
8 to a witness it's a little more iffy.

9 THE COURT: I don't know of any rule against it.

10 MR. SCHWAB: Okay.

11 THE COURT: Overruled.

12 MR. FANSLER: Can you re-start it please?

13 (Video played in open Court)

14 BY MR. FANSLER:

15 Q. Commander Whiles, what did you do after that
16 initial interaction?

17 A. I went inside and spoke with the PSO, my
18 inspectors that were on scene, as well as -- there was a lot
19 going on in there. I talked to a lot of people. Talked to
20 the facility manager who gave me access to the surveillance
21 video footage, reviewed that. Just got everybody's
22 perspective on what had taken place prior to my arrival.

23 Q. Were there other Federal Protective Service
24 officers on the scene when you arrived?

25 A. There were two.

1 Q. Who were those individuals?

2 A. Inspector Doug Pritchard and Inspector Oscar

3 Ramos.

4 Q. Does Federal Protective Services also use contract
5 security officers?

6 A. We do.

7 Q. Were Federal Protective Service contract security
8 personnel also present when you arrived?

9 A. Yes.

10 Q. As part of Federal Protective Services agreements
11 with contract security officers did they have authority to
12 enforce rules and restrictions in that building?

13 A. Yes.

14 Q. What gives them that authority? Is there a
15 contract or is there something else?

16 A. Yes, there's a contract between their agency and
17 FPS.

18 Q. Is there -- they have authority to do some things
19 and not others? Can you describe that?

20 A. Yes, they don't have powers of arrest necessarily,
21 but they do -- they are equipped with the equipment,
22 handcuffs, to detain people if they're violating laws.

23 Q. Do you recall the names of the Federal Protective
24 Service contract security personnel that were there when you
25 arrived?

1 A. One for sure, Dave Williams. I'm not sure of the
2 other guy's name.

3 Q. Would you recognize him if you saw a photo?

4 A. I certainly would.

5 Q. After that initial interaction did you later
6 inspect the signs that had been posted?

7 A. I did.

8 MR. FANSLER: I'm going to show him Government
9 Exhibit 3 to admit it. Usually I wouldn't publish it because
10 of a jury. I don't know how Your Honor wants to do that.

11 THE COURT: Well, you don't have to ask to publish
12 because I have the book in front of me. So -- but it's not
13 admitted, you have to lay the foundation.

14 MR. FANSLER: It's not admitted, right.

15 BY MR. FANSLER:

16 Q. I'm going to just show you Government Exhibit 3
17 and then ask you a few questions. Do each of those photos
18 show signs that were posted on August 2nd, 2022 at the Social
19 Security office?

20 A. Yes.

21 MR. SCHWAB: Objection, Your Honor. Leading.

22 THE COURT: Just ask him what are those.

23 BY MR. FANSLER:

24 Q. Commander Whiles, do you recognize those pages you
25 just looked through?

1 A. Yes. That signage was posted at the Social
2 Security office on that date.

3 Q. Do these photographs truly and accurately reflect
4 the signs that were posted that day?

5 A. Yes.

6 Q. That you observed with your own eyes?

7 A. Correct.

8 MR. FANSLER: The Government moves to admit
9 Government Exhibit 3.

10 THE COURT: Any objection?

11 MR. SCHWAB: No objection, Your Honor.

12 THE COURT: They'll be admitted.

13 BY MR. FANSLER:

14 Q. Commander Whiles, I'm going to play one more clip
15 and then ask you some questions about it. This clip is from
16 Government Exhibit 1 on the left side running from 1:34:01 to
17 1:35:10. On the right side it's going to be from Exhibit 4
18 from 1:32:00 to 1:33:09. Again, the audio comes from
19 Government Exhibit 1, which is the Defendant's video.

20 (Video played in open Court)

21 BY MR. FANSLER:

22 Q. What are you doing in that video?

23 A. Reading the signage that's posted on the windows
24 of the foyer there.

25 Q. I'm going to show Government Exhibit 3-2. Was

1 that sign in the video that we just watched?

2 A. It was.

3 Q. And is that the one you looked at?

4 A. Yes, sir.

5 Q. Can you just read what it says and what you saw
6 that day?

7 A. Sure. It says, "Social Security Administration
8 warning. Photography and videography prohibited. Federal
9 law and SSA policy prohibits taking pictures or video inside
10 SSA offices without the expressed written consent of an
11 authorized official of the Agency. These rules apply to all
12 devices with camera and video capability."

13 Q. Before we get to what goes on inside the office I
14 want to direct your attention to the posted signs in more
15 detail. As part of your responsibilities do you visit
16 multiple Social Security Administration offices in the Denver
17 area?

18 A. Yes.

19 Q. Have you seen no photography signs posted at other
20 Social Security offices?

21 A. All of them.

22 Q. Who developed the signs that were posted at the
23 Social Security office that day?

24 A. I'm not sure who develops them, but I know where
25 they get them. They have a -- their central office -- I'm

1 not sure of the terminology they use, but their headquarters
2 division has an internet website where they post this
3 signage, or they make it available to all the branch offices
4 to go retrieve that signage and post it. It's required
5 posting at all facilities.

6 Q. So you're understanding is it's an official sign
7 from the headquarters.

8 A. Absolutely. Yes.

9 MR. SCHWAB: Objection, Your Honor. That was
10 leading. It's an official sign, right?

11 THE COURT: Okay. So as you know, the rules of
12 evidence permit leading questions for the purpose of
13 developing testimony. In a bench trial there's going to be a
14 lot more leniency than there would be a jury trial, so for
15 the purpose of developing testimony under the rule -- which
16 is 611 -- leading questions should not be used on a direct
17 exam except as necessary to develop the witness' testimony.
18 I find that that's an appropriate use of a leading question
19 and overrule the objection.

20 BY MR. FANSLER:

21 Q. Did I hear you correctly? You said it's
22 classified as a security sign? Did you just say --

23 MR. SCHWAB: Objection, Your Honor. Misstating
24 any testimony.

25 MR. FANSLER: I thought he just said that.

1 THE COURT: Well, so yeah, I'll let the witness
2 clarify. What is the sign? How would you classify it?

3 MR. FANSLER: I can re-ask it.

4 BY MR. FANSLER:

5 Q. I thought I heard you say that.

6 A. I didn't say that.

7 Q. Okay. Does the Social Security Administration
8 have different categories of official signs?

9 A. They do.

10 Q. What are those categories?

11 A. I don't know them all. There's a group called
12 occupational signage, directional signage, security signage.
13 There's at least one more, I don't recall the category of
14 that.

15 Q. Do you know what category this no photography sign
16 is in?

17 A. Yes, these fall under the security signage.

18 THE COURT: What would the masking signs fall
19 under?

20 A. I don't know. They have their own category
21 actually. I think COVID has its own category.

22 BY MR. FANSLER:

23 Q. In your experience and observations at different
24 Social Security offices where are these signs posted?

25 A. Well, this one's on the front window of the

1 vestibule as you come in.

2 THE COURT: That is not relevant. We've already
3 seen all the signs that were posted, right? So is it
4 relevant anywhere else they're posted, or just the ones we
5 know were here in the path of Mr. Cordova?

6 MR. FANSLER: That's a good --

7 THE COURT: So let's just focus on what is really
8 at issue in the case.

9 MR. FANSLER: I will do that. Thank you, Your
10 Honor.

11 BY MR. FANSLER:

12 Q. I'm going to direct your attention back to August
13 2nd, 2022. I'll play a clip first from Government Exhibit 1
14 at 1:57:35. This one is a little bit of a longer clip to
15 2:02:38. On the right side it's going to be from Government
16 Exhibit 4 at 1:55:34 to 2:01:10. Audio is from Government
17 Exhibit 1.

18 (Video played in open Court)

19 THE COURT: Why?

20 MR. SCHWAB: Now it's hearsay of he's saying what
21 somebody else said.

22 THE COURT: Right. So do you know why we have a
23 rule against hearsay?

24 MR. SCHWAB: It's to -- it's for the purposes of
25 trustworthiness.

1 THE COURT: Correct.

2 MR. SCHWAB: Yeah.

3 THE COURT: And if we have the actual words then
4 this would clearly be an 807 residual exception.

5 MR. SCHWAB: Sure. And I'm not saying that his
6 words are hearsay. I'm saying him repeating someone else's
7 statement that could have very well been brought in to talk
8 today -- testify today -- that statement --

9 THE COURT: Whose words was he repeating?

10 MR. SCHWAB: He was repeating somebody that worked
11 in Social Security Administration.

12 THE COURT: I see. Okay, so it's hearsay within
13 hearsay is what you're saying.

14 MR. SCHWAB: Yes, Your Honor.

15 THE COURT: Okay. So I don't find any -- under
16 807 I'm going to allow any original statements made on these
17 videos because they're simply trustworthy, we don't have to
18 worry about whether they were actually made, or even what the
19 words were. We have it recorded.

20 There is a proper objection as to when someone
21 repeats words that another person said. What's your response
22 to that objection?

23 MR. FANSLER: A few things, Your Honor. The
24 Defendant all along is asking both for FPS' interpretation of
25 the rule and why Social Security has that rule. He's coming

1 out and explaining it to them. That gives the Defendant
2 knowledge and notice, which is something he expressly asked
3 for. It has an effect on him because then he decides whether
4 he's going to follow that --

5 THE COURT: Right, but don't you think the signs
6 provide sufficient notice without the oral commands of
7 anybody?

8 MR. FANSLER: I mean the fact is that the
9 Defendant throughout is making statements that he wants more,
10 and more, and more information, and so I don't really want to
11 give him the profit of keeping out admissible statements that
12 he keeps asking for.

13 THE COURT: I'll grant the objection to this
14 extent, that it refers to matters that someone in the video
15 repeats what someone else said, because that is hearsay. I
16 will compartmentalize and strike that.

17 MR. SCHWAB: I appreciate it, Your Honor.

18 THE COURT: All right, thank you. But otherwise,
19 the video can be played. I'll just disregard when somebody
20 says hey somebody else said.

21 MR. FANSLER: Understood, thank you.

22 (Video played in open Court)

23 BY MR. FANSLER:

24 Q. Commander Whiles, what did you give him in that
25 video?

1 A. A copy of 41 CFR 102-74.420.

2 Q. I want to show you now what's marked as Government
3 Exhibits 8 and 9. Do those videos truly and accurately show
4 the way that the Social Security Administration office looked
5 on August 2nd?

6 A. Yes.

7 Q. And do the screen shots truly and accurately
8 reflect what you could see on the YouTube web page that you
9 have viewed?

10 A. Yes.

11 MR. FANSLER: Your Honor, the Government would
12 move to admit Exhibits 8 and 9, the screen shots from the
13 YouTube videos that are already admitted.

14 THE COURT: Any objection?

15 MR. SCHWAB: No objection, Your Honor.

16 THE COURT: Admitted 8 and 9.

17 MR. FANSLER: I want to show the witness
18 Government Exhibit 9, page 2.

19 BY MR. FANSLER:

20 Q. Are there markings on that document?

21 A. There's a highlighted portion, yes.

22 Q. I'm going to show you Government Exhibit 14. Do
23 you recognize this?

24 A. I do.

25 Q. What is it?

1 A. It's a copy of the CFR rules and regulations
2 governing conduct on Federal property.

3 Q. Does it match the one you gave -- the document you
4 gave from that day?

5 A. Yes.

6 Q. And can you just circle the area you highlighted
7 on that regulation? Do you recall what that area -- what the
8 highlighted area related to?

9 A. I do.

10 Q. What did it relate to?

11 A. It was the portion that talks about when
12 photography and videography is prohibited in the Federal
13 space.

14 Q. I think that's good enough. We don't need to see
15 the notation.

16 THE COURT CLERK: I'm a little bit concerned,
17 Counsel, that now [inaudible] and that kind of looks like
18 where we are right this second. I may have to ask IT to come
19 [inaudible].

20 THE COURT: Wouldn't be the first time. We have
21 IT up here every single trial.

22 THE COURT CLERK: Let me go ahead and make that
23 call. Actually, before I do that would you mind just
24 plugging that and let me disconnect the router entirely and -
25 -

1 (Pause)

2 MR. FANSLER: I do have an area that can kind of
3 be some general questions for just a couple minutes.

4 THE COURT: Please proceed.

5 BY MR. FANSLER:

6 Q. Commander Whiles, we've watched a few clips now.
7 Why didn't you just give Mr. Cordova a ticket when you
8 arrived?

9 A. It's really not the way I like to do business. I
10 like to give people the opportunity to do the right thing,
11 educate them, explain the situation, give them the
12 opportunity to follow the rules and the laws.

13 Q. And why do you do that?

14 A. I think it's good police work. I just think a lot
15 of times people are, I guess, misled or have a misconception
16 of what's okay and what's not. So I believe in education
17 versus incarceration, if at all possible.

18 Q. You discussed having phone calls. Who did you
19 talk to on the phone that day?

20 A. I talked to a lot of people that day, so
21 originally I talked to the District Commander and advised him
22 of what was going on. Then to his boss, the Acting Deputy
23 Regional Director at that time.

24 I talked to the Assistant U.S. Attorney's office.
25 I talked to our legal staff in headquarters in D.C. Most of

1 those people multiple times, multiple phone calls explaining
2 the situation as it developed, and getting guidance from
3 them.

4 Q. We don't need to display this. Can you turn to
5 Government Exhibit 9-3? Can you describe what 9-3 shows? I
6 think it's actually 8-3. So Exhibit 8 -- tab 8. It should
7 be page 3 of 11.

8 A. So this is the one you're talking about?

9 Q. That's the one. Yeah. Can you describe what you
10 see in that picture?

11 A. Yes, this looks like an image taken in the
12 vestibule looking inside the Social Security office at 8000
13 South Park.

14 Q. What kinds of business happen in that area?

15 A. All kinds of personal business is being taken care
16 of there. People have to log in on a kiosk, put in some
17 personal information there. There are discussions being had
18 at all the windows you can see on the back wall of this
19 photo. There's conversations taking place there of a
20 personal nature, as well as often times in the seating it's
21 just this side of those windows on the back wall. People
22 talking to each other about their business, their attorneys,
23 whoever may be involved in their particular situation.

24 Q. What reasons, in your observations, what reasons
25 do people go to a Social Security office?

1 A. Social Security benefits or lack thereof,
2 depending on their situation.

3 Q. And so that photo that we just looked at, there's
4 -- in the middle of the page there's something marked D.
5 What's on the other side of that service window?

6 A. Generally speaking, or in this picture?

7 Q. In this picture. I guess the people that we see
8 there with the white shirt and the other people sitting down,
9 who are those people?

10 A. Customers of the Social Security office. Then on
11 the other side are the Social Security employees.

12 THE COURT: Could we just get a stipulation from
13 you that citizens go into the Social Security office in order
14 to address benefits from Social Security Administration?

15 MR. SCHWAB: I mean, I would assume that they do
16 to some degree, but I don't know. I certainly --

17 THE COURT: You're not old enough to know.

18 MR. SCHWAB: -- never have been a Social Security
19 Administrator or employee. I think an employee that could
20 testify to that would have been valuable.

21 THE COURT: Sure.

22 MR. SCHWAB: And I don't know what his personal
23 knowledge as to the operations and business conduct is.
24 Obviously there must be something related to Social Security,
25 but are people applying for new numbers? I don't know.

1 THE COURT: Does it matter for purposes of the
2 trial?

3 MR. SCHWAB: I don't think it actually matters. I
4 don't think this testimony is really relevant.

5 THE COURT: Yeah, I don't think it is either.
6 Well, it's --

7 MR. SCHWAB: I don't think it's relevant to any
8 element of either of these offenses.

9 THE COURT: And I'm going to accept -- having been
10 an attorney for Social Security 14 years earlier in my career
11 -- that what goes on in a Social Security office are citizens
12 who come in to address their relationship with the Social
13 Security Administration, including Social Security numbers,
14 Social Security benefits, questions about benefits, questions
15 about the program. So I will accept that.

16 MR. FANSLER: Is that working again? No, okay.
17 That was my couple minutes of content while I was waiting for
18 the system.

19 THE COURT: Very good. IT is not here yet?

20 THE COURT CLERK: They may be, Your Honor. Let me
21 check.

22 (Pause)

23 BY MR. FANSLER:

24 Q. I just want to play one clip here before we have a
25 couple of concluding questions. That clip is from -- let me

1 lead into it. During your observations that day how did
2 Social Security Administration customers react to Mr. Cordova
3 filming?

4 A. There were a variety of reactions.

5 Q. Not the words they used, just non-verbal.

6 A. Some people were visibly uncomfortable with what
7 was going on. There was a pretty large police presence at
8 times. Some people were concerned, reluctant to come inside
9 because of the heavy police presence. Other people were, you
10 know, visibly shielding their faces from the cameras. Maybe
11 even exchanging comments with the videographers as they were
12 coming or going from the building.

13 At one point there was actually a confrontation
14 outside between somebody who was filming and one of the
15 customers who was exiting. That caused several people to go
16 outside and -- including myself -- to try to -- for different
17 reasons. I'll speak to why I went outside. To de-escalate
18 the situation because it was seeming to get pretty heated in
19 a verbal exchange.

20 Q. I just want to play one clip here, which is
21 Exhibit 1, starting at 2:38:42.

22 (Video played in open Court)

23 BY MR. FANSLER:

24 Q. Was that one of the interactions you were
25 discussing?

1 A. Yes.

2 Q. I want to direct your attention now to your
3 interactions with Mr. Cordova.

4 MR. FANSLER: Before we play this, Government
5 Exhibit 1 from 3:09:43, if Defense counsel wants to object.
6 This is just the front -- what's going to happen here, this
7 is a clip of another officer when Commander Whiles is present
8 giving a command. Just to note, the Defendant had notice
9 from multiple officers -- the non-hearsay purpose of notice
10 from multiple individuals and not just this officer. So
11 that's what I want to play, just a four second clip showing
12 that notice from another officer.

13 (Video played in open Court)

14 BY MR. FANSLER:

15 Q. Who is in that video?

16 A. Inspector Ramos.

17 Q. Were you also present at that time?

18 A. I don't know.

19 Q. You can't see it from that clip. Did you
20 personally ever give Mr. Cordova an order not to film inside
21 the Social Security office?

22 A. I did. Multiple times actually.

23 Q. I'm going to show you a couple of clips. I'm
24 going to show two of them and then ask you questions about
25 them. So starting at 2:13:36 to 2:13:55. This is just from

1 Government Exhibit 1.

2 (Video played in open Court)

3 BY MR. FANSLER:

4 Q. Mr. Cordova in that video -- let me -- do you know
5 whose voice that is in that video?

6 A. That sounds like Mr. Cordova.

7 Q. And he called it a directive in that video, do you
8 agree?

9 A. Yes.

10 THE COURT: Does he agree that he said it or does
11 he agree that it's a directive?

12 BY MR. FANSLER:

13 Q. Do you agree that he -- did you hear him say that
14 it was a directive?

15 A. I did.

16 Q. The last clip I want to play is Exhibit 1 from
17 3:13:30 to 3:14:57 on the left side with volume. On the
18 right side is going to be Exhibit 4 at 3:11:29 to 3:12:56.

19 (Video played in open Court)

20 BY MR. FANSLER:

21 Q. Commander Whiles, what did you do after Mr.
22 Cordova filmed inside the Social Security office?

23 A. Took him into custody. Advised him he was under
24 arrest and escorted him to the back room.

25 Q. Who was the arresting officer?

1 A. Me.

2 Q. Did you seize any physical evidence from him?

3 A. I did.

4 Q. What did you take?

5 A. His cell phone that he was filming with.

6 MR. FANSLER: No further questions, Your Honor.

7 THE COURT: Cross?

8 CROSS EXAMINATION

9 BY MR. SCHWAB:

10 Q. Good morning, Mr. Whiles.

11 A. Good morning.

12 Q. Did you write a report after this incident?

13 A. I did.

14 Q. Do you recall all the statements in it?

15 A. For the most part, yeah. Couldn't recite it to
16 you verbatim but I know the general context of the report.

17 Q. Do you recall describing the location where they
18 were filming for those three hours as the foyer?

19 A. I don't recall, but that's likely.

20 Q. If I were to hand you your report do you think
21 that would refresh your recollection?

22 A. Sure.

23 MR. FANSLER: Your Honor, to the extent it helps,
24 this is in the Government's exhibit binder too.

25 MR. SCHWAB: Is it? Oh, I apologize. I was going

1 to --

2 THE COURT: Just refer to the exhibit please.

3 MR. FANSLER: I believe it's Exhibit 13.

4 THE COURT: So this is only for refreshing your
5 memory, and you may look at it to determine what you called
6 that area.

7 MR. FANSLER: Exhibit 12, page 1 and 2. Or just
8 page 1.

9 BY MR. SCHWAB:

10 Q. Just to direct your attention, it's going to be
11 the fourth paragraph, the fourth line in the middle. Does
12 that refresh your recollection?

13 A. Yes.

14 Q. And in your statement did you refer to the area
15 they were filming in as the foyer?

16 A. Yes.

17 Q. Now earlier you testified that the sign was a
18 security sign, correct?

19 A. Yes.

20 Q. Where do you know that from?

21 A. I've actually seen the categories, and what signs
22 fall under which category.

23 Q. Can you list out all of those categories?

24 A. Well, I previously stated I don't know them all
25 but I can give you the ones that I do recall.

1 THE COURT: What's the source of the information?
2 Is it a sheet that your agency types up? Or your knowledge?
3 Is it a policy statement? Is it a CFR?

4 A. There was an inquiry as to where these signs
5 officially come from, how each Social Security office obtains
6 them. That email specifically directed us to the internet
7 website where the signs are available for retrieval. These
8 particular videography signs were in the security signage
9 folder on that internet website. So I didn't actually visit
10 that myself, but that was provided as an attachment directly
11 from the website in the email.

12 BY MR. SCHWAB:

13 Q. So you don't have personal knowledge to its
14 location as a security regulation.

15 A. I've not been there to retrieve a sign. Correct.

16 Q. And you don't know who described it as a security
17 regulation.

18 A. I couldn't tell you the name but I will also tell
19 you that one of my inspectors was tasked with contacting the
20 facility director at this particular facility asking him
21 where those signs came from. That's the information that he
22 provided as well verbally, which was --

23 MR. SCHWAB: Objection, Your Honor. This is
24 getting into hearsay.

25 THE COURT: Sure, but is it even relevant? The

1 Count 1 says official sign of a prohibitory, regulatory, and
2 directory nature. It doesn't say anything about security, so
3 it's not relevant --

4 MR. SCHWAB: Sure, but as to the second -- as to
5 Count 1 -- one of the two counts says a security regulation.

6 THE COURT: Count 2 says a violation of security
7 regulations, rules, orders, and directives. So that will be
8 a matter of law --

9 MR. SCHWAB: Sure, and I want to get a little more
10 into that, okay?

11 THE COURT: Okay.

12 BY MR. SCHWAB:

13 Q. You're familiar with this Social Security office.
14 You've been there?

15 A. Yes.

16 Q. Was there a metal detector?

17 A. No.

18 Q. Were there any other security mechanisms in that
19 office?

20 A. Define a security mechanism.

21 Q. A mechanism for the security of the individuals
22 entering in or those employees that are present.

23 THE COURT: HALO camera.

24 A. There are video cameras, yes.

25 THE COURT: Locked doors. Doors you can lock.

1 A. Security officers, video cameras.

2 BY MR. SCHWAB:

3 Q. And do you recall if you described in your report
4 the purpose of these signs?

5 A. The purpose -- did I describe the purpose of those
6 signs? I don't know.

7 Q. So let's take a step back. You said in the moment
8 you received information as to the purpose of these signs,
9 correct? When you were there you called around and you were
10 told that these were security signs, right?

11 A. No, not at the time. No.

12 Q. No? Okay, but did you call around to get
13 information as to the purpose of these signs?

14 A. No, I didn't need to do that. The purpose of the
15 signs is self-evident when you read them.

16 Q. And what is the purpose of those signs as you
17 described that day?

18 A. To prohibit the filming -- or photography or
19 videography in the facility.

20 Q. Let me put it a different way. Did you say that
21 you explained to Mr. Cordova that due to the sensitive nature
22 of the conversations that take place in the facility and the
23 prevalence of personally identifiable information within the
24 facility, that's the reason that filming is being prohibited?

25 A. Yes.

1 Q. So it was about the personal information.

2 A. Correct. I may have been confused about what you
3 were asking me there, but yes.

4 Q. In your report -- and you can refer back to it --
5 you described the purpose -- the reason for the prohibition
6 on filming is the sensitive conversations that take place in
7 the facility, as well as the prevalence of personally
8 identifiable information, correct?

9 A. Correct.

10 Q. You don't write anywhere in here that it's to
11 protect security concerns. And I'm talking about this report
12 that you generated I assume that same day?

13 A. I don't think I used the word security in this
14 report at all.

15 Q. Do you know who placed that particular sign -- the
16 individual that placed the sign in this window?

17 A. Of course not, no.

18 Q. Have you seen these exact signs elsewhere? And I
19 mean in like these are official signs. Have you seen that
20 sign?

21 A. Yes.

22 Q. Who adopted those signs? Based on your personal
23 knowledge, what individual signed off this sign has been
24 adopted?

25 A. Well, I don't know the answer to that, but what I

1 do know, as I stated previously, it's required signage at all
2 Social Security offices, and all the ones that I've been to
3 have this signage.

4 Q. But you can't tell me where the -- what action
5 created the adoption of this sign?

6 A. No. A directive from their headquarters is what I
7 assume, but I don't know.

8 Q. But you don't know.

9 MR. SCHWAB: No further questions, Your Honor.

10 THE COURT: Thank you. Any redirect?

11 MR. FANSLER: No, Your Honor.

12 THE COURT: You may step down, sir.

13 THE WITNESS: Thank you.

14 THE COURT: Do you want to take a break or call
15 your next witness?

16 MR. SCHWAB: I would appreciate a five minute
17 break, Your Honor.

18 THE COURT: Okay.

19 MR. FANSLER: That's fine. The Government rests.

20 THE COURT: So we'll begin your case -- do you
21 have a case?

22 MR. SCHWAB: Your Honor, I was relying on the
23 Government also calling Oscar Ramos. I was relying on their
24 exhibit list.

25 THE COURT: Well, he's here. So you can call him.

1 MR. SCHWAB: Well, I intend to call him.

2 MR. FANSLER: Your Honor, we don't have --

3 Inspector Ramos is not here because he wasn't going to

4 testify. We did file a witness list because we thought we

5 might have two witnesses. We decided we didn't need to call

6 him --

7 THE COURT: Well, if it was a will call -- if he

8 was a will call then he's entitled to rely on your will call

9 list.

10 MR. FANSLER: It wasn't a will call. It was just

11 this is the proposed witness list.

12 THE COURT: Did we not do will calls in this case?

13 MR. FANSLER: No, we just filed these are the

14 possible witnesses.

15 MR. SCHWAB: I don't believe there was any

16 indication of a possible. Certainly it's not listed as a may

17 call.

18 MR. FANSLER: Your Honor, in every case the

19 Government has lots of witnesses and sometimes calls all,

20 sometimes calls some, sometimes -- I don't know --

21 THE COURT: Well, I mean you didn't have a will

22 call or a may call, you just had your witness list. You

23 listed 30 minutes for Officer Ramos, so -- let me get a

24 proffer of what you would purport to establish through

25 Officer Ramos to make sure that it's sufficiently relevant.

1 MR. SCHWAB: Sure. It's actually his statement.
2 His report that he wrote.

3 THE COURT: Is that an exhibit? Because the
4 Officer Whiles' was.

5 MR. SCHWAB: I'd have to review Exhibit -- it
6 potentially is here. Yes, it is an exhibit, but I don't
7 believe 12 has been admitted into evidence.

8 MR. FANSLER: Yeah, Your Honor, we just included
9 all the reports in there just because it is common for
10 defendants to use these for impeachment --

11 THE COURT: Do you want to move for the admission
12 of 12 and --

13 MR. SCHWAB: I would move to admit 12. Yes.

14 THE COURT: In lieu of testimony?

15 MR. SCHWAB: You know what? Hold on. You know,
16 my preference would be to admit Exhibit 12 for the first six
17 pages. The remaining six are statements that are people who
18 were never noticed as witnesses here.

19 THE COURT: Understood. Six itself is also --
20 that's a security guard. You don't want --

21 MR. SCHWAB: I apologize. Let me -- page one
22 through six -- no, six is the end, I believe, of Mr. Ramos'
23 report. So the first page would be Mr. Whiles' report. The
24 second page is -- I'm not completely certain. It looks like
25 an intake form. Then pages three through six are Mr. Ramos'

1 report.

2 THE COURT: So Exhibit 12, pages 1 to 6, have been
3 proffered as an admission in lieu of testimony. Any
4 objection?

5 MR. FANSLER: I just need one minute to look at
6 the report, if I can.

7 THE COURT: Very good.

8 (Pause)

9 MR. FANSLER: The Government doesn't object to
10 admitting that in lieu of testimony.

11 THE COURT: Exhibit 12, pages 1 through 6 are
12 admitted. You ready for your break?

13 MR. SCHWAB: Yes, Your Honor. And I would ask for
14 ten minutes. We're going to -- if the Government is resting
15 I'd ask for a ten minute break.

16 THE COURT: The Government has rested, and so
17 we'll be in recess for ten minutes.

18 MR. SCHWAB: Thank you, Your Honor.

19 THE COURT CLERK: All rise. Court is in recess.

20 (Recess from 10:26 a.m. until 10:38 a.m.)

21 THE COURT CLERK: All rise, court is in session.

22 THE COURT: For the Defense.

23 MR. SCHWAB: Your Honor, before I make my opening
24 statement I'd like to move under Rule 29 for judgment of
25 acquittal.

1 THE COURT: Okay, did you want to make argument or
2 not?

3 MR. SCHWAB: Yes, Your Honor.

4 THE COURT: Go ahead.

5 MR. SCHWAB: So we have two counts. The first
6 issue is that the second count -- I apologize, I keep
7 confusing which count is which. I don't seem to have that --

8 THE COURT: Count 1 is failed to comply with
9 official signs. Count 2 is took video.

10 MR. SCHWAB: Okay. As to Count 1, I have several
11 different arguments. The first is that this is a lesser
12 included of the first. The -- or the second charge. You
13 can't violate both independently. The second one requires a
14 sign because otherwise the rule is that they're allowed to
15 film certainly in certain areas. We'll get to that in a
16 moment.

17 But they both ultimately rely on the same conduct
18 and should merge.

19 Now additionally, Mr. Cordova can't be charged in
20 the first charge because of the rule of specificity. The
21 specific governs the general. Here what we have is that to
22 have violated this secondary -- the second count requires
23 that there have been a sign or regulation.

24 It is more specific. It says a security
25 regulation. And that means that this 102-74.420 governs

1 issues of recording and signs related to recording on public
2 property. The violation of a sign on recording is subject to
3 this and not the other one.

4 So my -- I submit to the Court that these two
5 merge. And really it makes this second count the operative
6 count. And ultimately then the question becomes two fold.
7 Was this a security regulation that prohibited Mr. Cordova's
8 recording, and was the area he entered into -- we already
9 heard testimony that first area was a foyer. In fact --

10 THE COURT: Well, let's talk about this. So Count
11 2 would not rely on signage because the CFR says except by
12 permission of the tenant, you can't film in certain areas.
13 That's not dependent on signage. It's free standing, it's
14 self-executing. It seems Count 2 then does -- Count 1 then
15 does depend on signage. So why would -- I don't -- I'm not
16 yet agreeing that 1 is consumed within the other.

17 MR. SCHWAB: Okay, and let me re-order that
18 argument and I think you'll see where I'm headed. So Count 2
19 says that persons may enter and take photography. It doesn't
20 prohibit it. It says they may, except where security
21 regulations prohibit it, they may enter into spaces occupied
22 by tenant agencies.

23 I would say that that and is exclusive. So it's
24 spaces occupied by tenants for non-commercial purposes.
25 That's one scenario in which someone can enter into and film.

1 A second is spaces occupied by tenant agencies for commercial
2 purposes with written permission of an authorized official.
3 And an additional option is building entrances, lobbies,
4 foyers, corridors, and auditoriums.

5 Those are three separate bases on which people can
6 film. It's not all three. It doesn't have to be all three.
7 It can be any one of those three.

8 THE COURT: They're disjunctive.

9 MR. SCHWAB: Yes.

10 THE COURT: Yes.

11 MR. SCHWAB: So then the question is if he was
12 solely within a foyer and lobby, then there must be a
13 security regulation, okay? So what we already heard
14 testimony on is that that area he was in was a foyer. So
15 then the secondary question is when he enters through those
16 doors, what is the nature of that space.

17 If you turn to Exhibit 12 -- this would be Officer
18 Ramos' statement -- Officer Ramos repeatedly refers to this
19 space as a lobby.

20 THE COURT: Right, but he doesn't get to define
21 the law for me. These statements are not binding --

22 MR. SCHWAB: Sure.

23 THE COURT: -- on the Court for determining as a
24 matter of law where somebody is at a given moment.

25 MR. SCHWAB: Sure. But for matters of perception

1 of what this space is, and what would be reasonable for an
2 individual subject to criminal offense to understand the
3 space to be, Mr. Ramos repeatedly -- at least five or six
4 times in this report -- refers to it as the lobby. The place
5 that he enters into, if Mr. Cordova -- we told them -- Mr.
6 Cordova if he entered into the lobby he would be subject to
7 arrest.

8 THE COURT: Have you been to this place?

9 MR. SCHWAB: I have not.

10 THE COURT: But you saw the video?

11 MR. SCHWAB: I have seen the video.

12 THE COURT: Is there any more possible interior
13 space than what your client entered?

14 MR. SCHWAB: I do not know, and there's no
15 evidence to say that there is or is not.

16 THE COURT: Well, from the video is there any more
17 possible interior space than what he entered?

18 MR. SCHWAB: We've seen other interior space in
19 the video.

20 THE COURT: You mean the glassed areas?

21 MR. SCHWAB: Well no, there's other -- well,
22 there's the glassed area. There are certainly doors. I don't
23 know if there are spaces that people enter into to have
24 private conversations, but throughout all of the discussions
25 --

1 THE COURT: Okay, so let me ask this. Did you see
2 anybody doing any kind of transactions in what we've heard as
3 the foyer or vestibule?

4 MR. SCHWAB: Not that I'm aware of.

5 THE COURT: Did you see people possibly doing
6 transactions through those glass doors?

7 MR. SCHWAB: Possibly.

8 THE COURT: Okay, so the regulation says space
9 occupied by a tenant agency is where you can't go without
10 their permission. So I would, at least for the moment,
11 unless convinced otherwise, believe that that initial space
12 where most of the filming occurred, was not a space occupied
13 by that tenant. It was a common area for people to be.

14 Going beyond those doors would be space occupied
15 by a tenant agency because clearly there were transactions
16 going on. If you actually look at Exhibit 8, first page --
17 tell me when you're there.

18 MR. SCHWAB: Okay.

19 THE COURT: Do you see the kiosk that says
20 customer check in?

21 MR. SCHWAB: Yes, Your Honor.

22 THE COURT: Do you see a screen evident in the
23 video?

24 MR. SCHWAB: Sure.

25 THE COURT: Okay. So if a person had entered

1 personally identifiable information like a Social Security
2 number and address, other information on that screen, a
3 person videoing from right there could enhance that video and
4 collect information off that screen. That I believe is a 201
5 to a scientific certainty that that could happen.

6 So what do I do with that? I mean standing in the
7 lobby you're fine. Having full access to people's
8 information where a tenant -- I assume GSA owns these
9 buildings and SSA is the tenant -- doing the work of -- that
10 the regulation anticipates would be done inside a government
11 building is a step too far. That's what I think is going on.
12 And I know you know that too.

13 MR. SCHWAB: So again, there's -- whether they do
14 work inside of a lobby is not the point. The point is
15 whether this would be properly understood as a lobby. And
16 one of the arresting officers did interpret it -- understand
17 it to be a lobby.

18 THE COURT: Are you in a lobby right now?

19 MR. SCHWAB: I am not in a lobby right now.

20 THE COURT: Is there a lobby behind you about 20
21 feet? Probably we would call that a lobby?

22 MR. SCHWAB: I would not -- what? Between the
23 doors?

24 THE COURT: 30 feet --

25 MR. SCHWAB: I don't know --

1 THE COURT: Beyond those two doors, would you call
2 that a lobby?

3 MR. SCHWAB: I don't have -- oh, I would define
4 that as a hallway.

5 THE COURT: A hallway --

6 MR. SCHWAB: Or a corridor.

7 The COURT: A corridor is good. There you go.
8 But there's no business going on out there, and we don't
9 conduct transactions -- official business in that hallway.
10 We do here.

11 MR. SCHWAB: And I didn't see any individuals of
12 the Social Security Administration walking around this
13 seating area conducting business either. Again, this was
14 understood as a waiting room. As I provided to you in my
15 motion to dismiss, a public waiting room is one definition of
16 a lobby. One of the officers referred to it as a lobby.

17 And again, this is not a question -- they have to
18 prove beyond a reasonable doubt that this was not a lobby,
19 right?

20 THE COURT: Sure.

21 MR. SCHWAB: And I think that there is a
22 reasonable doubt as to the proper classification, and if this
23 was a lobby, whether they were conducting business there is
24 actually irrelevant under this statute. Once it becomes a
25 lobby then it is subject to this except if there is a

1 security regulation.

2 THE COURT: I'm equating conducting business with
3 tenant occupancy.

4 MR. SCHWAB: I understand. What I'm saying is
5 that these are disjunctive. So if he -- he has the right to
6 film in a building entrance, lobby, foyer, corridor, or
7 auditorium for news purposes, except where there is a
8 security regulation. It doesn't have to be all these other
9 things. It doesn't have to be that he -- because you can't -
10 - A and B cannot be --

11 THE COURT: Right.

12 MR. SCHWAB: -- complied with together. One is
13 non-commercial, one is commercial. So you can't be there for
14 both non-commercial and commercial.

15 THE COURT: The initial clause of that CFR limits
16 sub-section C. You agree with that.

17 MR. SCHWAB: Which one is that? Persons entering
18 --

19 THE COURT: No, except where security regulations,
20 rules --

21 MR. SCHWAB: Sure.

22 THE COURT: -- orders or directives is a
23 limitation on C.

24 MR. SCHWAB: I agree.

25 THE COURT: So in the absence of any of those

1 things, C applies. If there are those things C may not
2 apply. You agree that that's the way the statute reads.

3 MR. SCHWAB: And when you're saying all those
4 things, you mean a security regulation, rule, or order,
5 right?

6 THE COURT: Correct.

7 MR. SCHWAB: Okay, yes. So the first question for
8 the Court is the determination of the status of this room.
9 If it is a lobby then the only regulation can be a security
10 regulation, rule, order, or directive.

11 THE COURT: Well, do you agree --

12 MR. SCHWAB: If it's not, then it's a different
13 story.

14 THE COURT: Do you believe that C was intended to
15 collect like locations? Similar locations using different
16 words to describe a similar location?

17 MR. SCHWAB: No, because an auditorium is not a
18 foyer.

19 THE COURT: Yeah. And you know what? You just
20 pointed out the only difference between those five.

21 MR. SCHWAB: And I would argue a corridor and a
22 foyer are not the same either. I would say that they are all
23 separate. An entrance is the outside, when you enter into.
24 Foyer is like, I suppose, outside of the -- downstairs,
25 outside of the security gate. Once you enter in you're in

1 the lobby where people do go up to the Clerk of the Court and
2 potentially conduct business.

3 THE COURT: No. Downstairs, at least in this
4 building, you have to go through a set of doors and then
5 you're into the Clerk of the Court. But you enter from the
6 lobby.

7 MR. SCHWAB: So I would define the area between
8 the outside front doors and the security as the foyer. Then
9 the area between the security and you know --

10 THE COURT: So what you're saying is that what the
11 Government believes is the distinct space has sections in it
12 under your interpretation. So ten feet in maybe you're still
13 in something that would equate to an entrance, lobby, foyer,
14 corridor. As you get closer to people actually doing
15 transactions, then you are not. Is that what you're saying?
16 Are you saying the entire interior beyond those glass doors
17 where your client was arrested is one of those things, a
18 building entrance, lobby, foyer, or corridor? I've got to
19 know exactly what you're saying.

20 MR. SCHWAB: I would say the entrance in the
21 waiting room, and the areas where there are public materials,
22 that is a public lobby space. That the Social Security
23 office chooses to confront -- to conduct their business in --
24 partially out in the open -- and again, if we're concerned
25 about privacy then they shouldn't be doing this in a public

1 space where someone can stand and listen.

2 THE COURT: But it's still -- but you didn't
3 answer my question. Are you sectioning up beyond those glass
4 doors calling a certain distance part of what's in subsection
5 C, and then beyond that, what's not in subsection C, are you
6 claiming beyond those glass doors, the whole thing is
7 subsection C?

8 MR. SCHWAB: You know, I would leave that for the
9 Court. I would submit that the area, the first entrance into
10 the area where there are public materials, the area where
11 there's a waiting room -- there's clearly conduct that would
12 be tolerated in this area that wouldn't be tolerated along
13 the walls where someone is conducting business. Looking over
14 someone's shoulder while they're looking through pamphlets,
15 standing next to someone in the waiting room -- or sitting
16 next to someone. That might be tolerated, but at the same
17 time, walking up while they're at that window wouldn't be.
18 And there is a distinction between those two conditions of
19 that property.

20 THE COURT: But I've got to know what you're
21 arguing.

22 MR. SCHWAB: Sure.

23 THE COURT: Do you believe that there were spaces
24 in that large room your client could not photograph under the
25 law?

1 MR. SCHWAB: I believe there were spaces in that
2 room that he could not stand and photograph, because that is
3 what -- you know, I -- would assert the whole thing is a
4 lobby, to tell you the truth.

5 You know, the Social Security office, they can
6 choose to conduct business in the lobby, as they did. They
7 can choose to have more private office space, which they
8 didn't. But that was their choice. If they wanted to they
9 could have certain regulations that would apply to
10 potentially -- though I think under this it's about security
11 only and not about that.

12 If the Social Security office is flip, is
13 negligent with people's privacy, that's their choice, but
14 that space was a lobby.

15 THE COURT: But you don't disagree there's time,
16 place, and manner restrictions on free speech.

17 MR. SCHWAB: I don't disagree, and that's what
18 this is. I'm saying -- talking about this particular
19 regulation, if that space was a lobby -- and at the very
20 least there is a question as to whether that space was a
21 lobby, and there is evidence that one of the arresting
22 officers interpreted that space as a lobby, and there is --
23 so it's not beyond a reasonable doubt that that space was not
24 a lobby.

25 If that's the case, if that is the status of that

1 space, then the only regulations are security based, and not
2 privacy based. Maybe the law should be better, but that's
3 not what the law is.

4 And we are -- when we're going to subject citizens
5 to criminal sanction, we have to be specific. While I
6 personally would believe that there should be a privacy
7 exception here, that's not stated. And we should know what
8 we're subject to. Here, it says a security regulation. So
9 if it's a lobby, then the only applicable regulations would
10 be a security regulation, which again -- and that's where
11 that first one falls into the --

12 THE COURT: So are you moving only on the video
13 and not on the signage count?

14 MR. SCHWAB: I think if -- I move on both because
15 if you agree with me on the latter --

16 THE COURT: On which?

17 MR. SCHWAB: On charge two. Then charge one falls
18 within charge two, because that is a more general prohibition
19 from -- to the specific of charge two, which is security
20 regulation. It narrows the scope on which regulations can
21 be. That's for security purposes.

22 So if the only way he could violate this was by
23 violating security regulations, then he can't violate -- then
24 the other one folds.

25 THE COURT: Well, I think you can violate 74.420

1 without violating 74-385, and I think the opposite is true
2 also. You can violate 74.385 without violating 74.420.
3 That's why I don't think they're lesser included.

4 MR. SCHWAB: I think it depends on the
5 circumstance here --

6 THE COURT: Sure. Of course, but --

7 MR. SCHWAB: -- and here I think it would. And if
8 you were to agree that it was a lobby, then the way that he
9 would necessarily have violated this was because there was a
10 security regulation. Charge one is the only way he violates
11 it is if there is a regulation essentially. A poster
12 regulating his conduct.

13 So if it's a lobby, the only way he can violate
14 charge two is if it's a specific regulation and a security
15 regulation. And the only way he can violate charge one is if
16 it was a generalized -- I believe that the general yields to
17 the specific here. So if it were the case that this was a
18 lobby, and this was not a proper security regulation, then
19 both charges would need to be dismissed.

20 THE COURT: Anything further?

21 MR. SCHWAB: No, Your Honor.

22 THE COURT: Anything -- you want to offer any
23 argument?

24 MR. FANSLER: I'm happy to if the Court would like
25 me to --

1 THE COURT: You can if you want. I mean, I'm not
2 going to make you. I'm going to reserve ruling under 29B
3 anyway, but you're free to make argument.

4 MR. FANSLER: I'll just say a couple of quick
5 things. First, just to respond to this lesser included
6 argument, which I think Your Honor already did to some
7 degree. The argument assumes that the GSA regulations
8 somehow preempts agencies from having their own signs and
9 policies or anything else. I mean whether or not there's a
10 GSA regulation on photography wouldn't affect whether the
11 Social Security Administration, for SSA policy or any other
12 reasons, can have official signs.

13 Like Your Honor indicated -- or suggested --
14 there's not -- one doesn't necessarily preclude the other.
15 So this lesser included thing, I think, fails from that. And
16 the fact that it was never raised in pre-trial motions. That
17 would be an argument basically that there's a legal defect in
18 the indictment, which should have been raised in pre-trial
19 motions.

20 I don't know if I have much to add on what's in
21 the papers previously filed in pre-trial motions too on the
22 other point, other than to say that this is clearly, from the
23 photos, and I think the facts clearly show that it is space
24 occupied by an agency.

25 There's kiosks -- even in the one report he was

1 citing to, on page five of that report it talks about the
2 officers actually moving the kiosk so it's out of view of the
3 cameras.

4 It's clear the agency occupies the space, controls
5 the space, moves things, and so to say that it's not space
6 occupied by an agency, or that paragraph C somehow subsumes
7 the first two paragraphs for any lobby. And so there's
8 always a reconsideration as you get further into agency
9 space, this seems a reading of that statute that doesn't
10 really work out.

11 So that's the only thing I would really add.

12 THE COURT: Okay. Did you want to put on any
13 evidence at all?

14 MR. SCHWAB: Yes, Your Honor.

15 THE COURT: Please proceed.

16 MR. SCHWAB: I'm going to call Mr. Cordova.

17 THE COURT: Very good.

18 THE COURT CLERK: Please raise your right hand.

19 Do you solemnly swear or affirm, under the pains
20 and penalties of perjury, that you, in this matter before the
21 Court, shall tell the truth, the whole truth, and nothing but
22 the truth?

23 MR. CORDOVA: Yes.

24 THE COURT CLERK: Thank you.

25 Whereupon,

1 CHRISTOPHER CORDOVA

2 was duly sworn.

3 DIRECT EXAMINATION

4 BY MR. MR. SCHWAB:

5 Q. Good morning, Mr. Cordova.

6 A. Good morning.

7 Q. Can you state your name for the record?

8 A. Christopher Cordova.

9 Q. And can you tell me your occupation?

10 A. I am an independent citizen journalist.

11 Q. And how do you operate your journalism? Or in
12 what methods in which -- do you conduct your journalism?

13 A. I record anywhere that is publicly accessible.

14 Q. And how do you publish your journalism?

15 A. I have several platforms. YouTube is my main one.

16 Q. Tell me about what brought you to the Social
17 Security office this day.

18 A. We were doing a story on the Social Security
19 office.

20 Q. Okay.

21 THE COURT: First of all, let me remind the
22 witness -- I should have done that already. You realize you
23 have the right to remain silent under the Fifth Amendment of
24 the Constitution. Anything you say in this court can
25 certainly be used against you in the prosecution of this

1 case. You understand that.

2 MR. CORDOVA: Yes.

3 THE COURT: Do you wish to waive your Fifth
4 Amendment right to remain silent?

5 MR. CORDOVA: Yes, I do.

6 THE COURT: Please proceed.

7 BY MR. SCHWAB:

8 Q. Tell me what brought you to the Social Security
9 office that day.

10 A. We were doing a story on the Social Security
11 office.

12 Q. And in preparation for going out there did you
13 review any regulations?

14 A. Yes, I did review the CFR in question.

15 Q. And what was your understanding of what was
16 permitted?

17 MR. FANSLER: Objection. Relevance.

18 THE COURT: Well, he's -- okay, go ahead and
19 explain your --

20 MR. SCHWAB: State of mind.

21 THE COURT: Yeah, he's not asking him to interpret
22 it as a matter of law. Intent is an element in most crimes,
23 so I'll find that it's relevant enough for him to testify to.
24 Overruled.

25 BY MR. SCHWAB:

1 Q. What did you understand that regulation to permit?

2 A. It permits for news purposes audio and video
3 recording in public accessible areas, including the foyer,
4 the lobby, hallways, corridors, stuff like that. And I
5 believe that that area that I walked into was a lobby.

6 Q. Okay. And you were -- several -- I believe we've
7 heard testimony earlier today that certain posters were
8 pointed out to you, correct?

9 A. Correct.

10 Q. Did anyone tell you the nature of how those signs
11 were official?

12 A. No.

13 Q. Did they explain why you weren't allowed to record
14 under those signs?

15 A. No.

16 Q. Did anyone tell you that there was -- did you see
17 any security lines in this office?

18 A. No.

19 Q. Did you see any security being done in this
20 office, aside from several security guards?

21 A. No.

22 Q. Do you recall if those signs prohibited conduct
23 related to security?

24 A. No, I do not.

25 Q. Do you recall being told that the reason you

1 weren't allowed to record was for privacy reasons?

2 A. Yes.

3 Q. Did you ever record anyone's private information?

4 A. No.

5 Q. Was your intent to go and record people's private
6 information?

7 A. Absolutely not.

8 Q. What did you intend to record?

9 A. I intended to record just the public area. I
10 wanted to get some pamphlets. I wanted to just kind of get
11 some B roll footage of what -- of the Social Security office,
12 what it looks like. Just the public area, but absolutely
13 wasn't trying to record someone's personal information.

14 Q. Were you ever going to walk up to one of those
15 vestibules, or the windows where people were conducting
16 business?

17 A. No.

18 Q. And were you expecting to be there for three
19 hours?

20 A. No.

21 Q. How long did you think you'd be there for?

22 A. Maybe 10 minutes. 20 minutes max. Probably 10 to
23 20 minutes.

24 Q. And that area -- so the area you were standing in,
25 what did you understand that area to be?

1 A. A foyer.

2 Q. And what did you understand the area through those
3 next doors to be?

4 A. A lobby.

5 Q. Okay.

6 MR. SCHWAB: No further questions, Your Honor.

7 THE COURT: Thank you. Cross examination?

8 CROSS EXAMINATION

9 BY MR. FANSLER:

10 Q. You said on direct that you were there to make --
11 you said on direct that no one explained why you could not
12 record in there? Did I hear you say that?

13 A. They -- correct.

14 Q. So the whole time you were there, the three and a
15 half hours, no one explained to you why you could not record
16 in the Social Security Administration space.

17 A. I can't recall them explaining why.

18 Q. You recorded a video of all your interactions with
19 the officers that day, didn't you?

20 A. I did.

21 Q. I'm going to play just a couple of clips from that
22 video. Starting with Government Exhibit 1 at 2:48:58 to
23 2:51:00.

24 (Video played in open Court)

25 BY MR. FANSLER:

1 Q. Actually, I'm going to play you a different one.
2 That one is a longer clip. From Government Exhibit 1, 42:00
3 to 44:06.

4 (Video played in open Court)

5 BY MR. FANSLER:

6 Q. Did you hear the officer on that video state that
7 you can't record in there because of people's personal
8 information?

9 A. I did.

10 Q. Mr. Cordova, you also told your viewers that day
11 that you were there to create a court case. That was your
12 purpose, right?

13 A. That's incorrect.

14 Q. You did not tell your viewers that you were there
15 to create a court case?

16 A. I don't know if I said that I was there to create
17 a court case. That was not my intent. My intention was to
18 do my story. If subsequently I get arrested, that would
19 create a court case, but I am there to exercise my First
20 Amendment right. That is true.

21 Q. I want to play you a clip from Government Exhibit
22 4 at 3:48:46 to 3:49:14.

23 (Video played in open Court)

24 THE COURT: So what is the statement that you're
25 using to impeach, please?

1 BY MR. FANSLER:

2 Q. The very -- so at the very end of that video you
3 said we're here trying to create case law. Did I hear that
4 right?

5 A. After I was arrested, then yes, I would like to
6 create case law. But my intent was not to specifically go in
7 there to be arrested.

8 Q. Your intent before you were arrested though was to
9 create a paradigm shift, right? A paradigm shift in First
10 Amendment law.

11 A. No, my intention was to do a story on the Social
12 Security office.

13 Q. Did you tell your viewers before you ever went in
14 that day that you were there to create a paradigm shift?

15 A. I never used the word paradigm shift.

16 Q. Government Exhibit 1 at 1:11:14 to 1:11:39.

17 (Video played in open Court)

18 BY MR. FANSLER:

19 Q. So in the video you said we're here to have a
20 paradigm shift. Did I hear that right?

21 A. You did hear that.

22 MR. FANSLER: Nothing further, Your Honor.

23 THE COURT: Okay, do you want redirect? By the
24 way, did you ever do your story?

25 MR. CORDOVA: I was not able to do my story.

1 THE COURT: Why?

2 MR. CORDOVA: Well, I wasn't able to -- I did
3 publish the video, but I wasn't able to go inside and do what
4 I wanted to do inside the lobby.

5 THE COURT: I thought you said you wanted to write
6 a story.

7 MR. CORDOVA: Well, it's not a written story.
8 It's a video story.

9 THE COURT: Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. SCHWAB:

12 Q. Briefly, we just heard you say the term paradigm
13 shift.

14 A. Uh-huh.

15 Q. You heard that was an hour into your video, right?

16 A. Yeah.

17 Q. Did your intentions change from before you went
18 there to an hour in?

19 A. Yes.

20 MR. SCHWAB: No further questions, Your Honor.

21 THE COURT: Okay. Any re-cross? You may step
22 down. Thank you so much. Any other evidence?

23 MR. SCHWAB: No, Your Honor.

24 THE COURT: And would you -- you didn't make an
25 opening statement.

1 MR. SCHWAB: I'll just close.

2 THE COURT: You waive?

3 MR. SCHWAB: Yeah. I mean obviously -- I don't
4 think it makes sense to make a statement and then close.

5 THE COURT: Do you want to do an oral summation or
6 a written summation from the United States?

7 MR. FANSLER: The United States is prepared to do
8 an oral summation.

9 THE COURT: How about you?

10 MR. SCHWAB: I'd prefer to do an oral.

11 THE COURT: Very good. Please proceed.

12 MR. FANSLER: This is not a complicated case.
13 It's not complicated regulations. It's about official signs.
14 It's about lawful directions, about security rules, orders,
15 and directives. And it's about space occupied by an agency.

16 So two counts. Count 1 is non-compliance with
17 official signs or lawful directions. The Government must
18 prove first, either that there were official signs posted, or
19 second, that Federal authorized individuals gave lawful
20 directions. Second, that the Defendant didn't comply.

21 The official signs, Commander Whiles said that
22 they were official signs. They weren't developed by this
23 field office. They were from Social Security Administration.
24 You saw the text of them that clearly prohibited this
25 conduct.

1 You saw multiple Federal officers, either FPS
2 employees or those contractors for the Federal Protective
3 Service, which Commander Whiles testified were also Federal
4 authorized individuals, give those lawful directions.

5 Mr. Cordova didn't comply.

6 (Video played in open Court)

7 BY MR. FANSLER:

8 Q. That brings us to Count 2, unlawful photography.
9 The elements are that first, the Government must show the
10 Defendant took photographs that either security regulations,
11 rules, orders, or directives prohibited photography, that the
12 photographs were of space occupied by an agency. You don't
13 have to be standing in the space, it just has to be of space
14 occupied by an agency. That there were non-commercial
15 purposes, and that the Defendant didn't have permission.

16 He took photographs. He posted photographs in the
17 form of a three and a half hour YouTube clip. We saw many
18 videos -- many clips from that video.

19 THE COURT: Well, go back to the previous -- that
20 slide. The previous one. So where do you get the third
21 element?

22 MR. FANSLER: Well so, I mean it's a -- so in the
23 paragraph A and B, if you're taking photos of space occupied
24 by an agency, it can either be for non-commercial or
25 commercial purposes.

1 THE COURT: Well, this would clearly be commercial
2 purposes. Engaging in commerce. So it seems to me that the
3 Social Security Administration, when dealing with customers,
4 their finances, their access to benefits from the United
5 States, that would be commerce.

6 So wouldn't it be -- this is a space occupied by a
7 tenant agency for commercial purposes? Then if so,
8 photography may be had only by written permission of an
9 authorized official of the occupying agency concern.

10 But nowhere in the regulation does it address the
11 purpose of the photographs. That third elements seems that
12 you're actually contending that there's -- if he didn't have
13 a non-commercial purpose that it would be lawful.

14 So I'm not sure the regulation deals with the
15 purpose of the taking of the photographs. It deal with the
16 space occupied where the photographs are being taken. Do you
17 agree with me?

18 MR. FANSLER: I don't think it matters ultimately
19 for this case because he didn't have permission. So whether
20 it was commercial or non-commercial purposes.

21 I think you're right that the way it's written
22 sounds like it's the agency's purpose and whether it's a
23 commercial or non-commercial space --

24 THE COURT: Right, but that's -- the title of the
25 regulation is inconsistent with the text of the regulation.

1 MR. FANSLER: That's -- and that's where I think
2 there is also a good argument that -- yeah, I don't think it
3 matters for this one because the important thing is that is
4 it space occupied by an agency, and if it is, did he have
5 permission. So I guess whether it's commercial or non-
6 commercial and whether the agency's purpose is commercial or
7 non-commercial doesn't matter, because in any event the
8 Government just needs to prove that it was space occupied by
9 an agency and he had no permission, whether written or --

10 THE COURT: Either way he had no oral or written
11 permission.

12 MR. FANSLER: That's right.

13 THE COURT: Okay.

14 MR. FANSLER: So he took photographs. Security
15 regulations, rules, orders, or directives prohibited
16 photography. There was a rule. The rule very clearly has a
17 warning sign with exclamation points, photography and
18 videography prohibited.

19 The Defense Counsel made a lot of the argument
20 that -- whether the reports knew it was a security sign or
21 not. Ultimately the people testified were Federal Protective
22 Service employees, and they didn't know at the time. Whether
23 that's in the report doesn't really matter. What Commander
24 Whiles testified today is it was a security sign. He
25 followed up and found that out.

1 There were orders --

2 (Video played in open Court)

3 MR. FANSLER: -- and there were directives. Mr.
4 Cordova calls it a directive.

5 (Video played in open Court)

6 MR. FANSLER: An unlawful directive. And the
7 space was occupied by the agency. You see the kiosk, you see
8 the customers meeting with agency officials. You see agency
9 chairs, agency signs, agency pamphlets. It was clearly space
10 occupied by an agency.

11 And he didn't have permission, so whether it was a
12 commercial or non-commercial purpose doesn't matter because
13 he didn't have written or oral permission, and there's no
14 evidence otherwise.

15 So the Government submits it's proven its case
16 beyond a reasonable doubt on both counts, and the Court
17 should find the Defendant, Mr. Cordova, guilty of both
18 counts.

19 THE COURT: Thank you.

20 MR. SCHWAB: So I'm going to do something rare
21 here and agree with the Prosecution regarding the
22 interpretation of this rule. There are three purposes under
23 which this rule -- the second claim or second charge, 41 CFR
24 102-74.420 applies. There are the commercial purposes of an
25 individual, there are the non-commercial purposes of the

1 individual, and there are the news purposes of an individual.
2 And there is not the sense of these spaces are occupied and
3 these spaces aren't occupied --

4 THE COURT: You know what? Hold on. I think I
5 may be misreading that. So it is photographing for a
6 commercial purpose or photographing for a non-commercial
7 purpose. It's not whether the tenant is using it for a
8 commercial purpose --

9 MR. SCHWAB: Correct. That's my reading.

10 MR. FANSLER: I would agree with that reading,
11 Your Honor.

12 THE COURT: So I -- it's drafted poorly. I mean
13 the space -- obviously may take photographs for commercial
14 purposes if -- for non-commercial purposes if -- and of
15 building entrances. But now I see what you're saying, and I
16 agree with you. Go ahead.

17 MR. SCHWAB: Okay. And that means that that third
18 section, for news purposes, is distinct and different. The
19 idea that the distinction between A and B and C is whether
20 the tenant agency is occupying the area or not, that's not --
21 that's not a correct reading of the statute.

22 Auditoriums, are those just free floating spaces
23 that nobody owns? Of course, they're occupied by that
24 tenant. All of these spaces are occupied by the tenant,
25 including a lobby. A lobby is not a free floating space that

1 nobody owns, and nobody manages, and nobody has rights over,
2 and nobody locks the doors.

3 THE COURT: And you can't spend the night there
4 either, probably.

5 MR. SCHWAB: I would presume that you can't spend
6 the night. And in fact, they even talk about that being a
7 foyer, and that they lock the front doors outside. I assume
8 that no one can sleep in that vestibule.

9 So the distinction is not this was a tenant
10 occupied space, so therefore three doesn't apply. The
11 question instead is was this an entrance, lobby, foyer,
12 corridor, or auditorium? Those are all distinct and
13 different spaces.

14 Certainly a corridor is something like a hallway,
15 which is not a building entrance. And I would -- as I've
16 made this argument multiple times, a lobby is different than
17 a foyer. A foyer is where you walk into when you first walk
18 in, and maybe that's where you take your coat off. A lobby
19 is where you wait. A lobby is a public space where you wait
20 to be served.

21 And at the very least, both for the purposes of
22 whether the People have proved beyond a reasonable doubt, but
23 also for the purposes of ambiguity under the First Amendment.
24 The First Amendment is absolutely called into question here
25 because this was photography.

1 The Tenth Circuit recently, in Yehia, observed and
2 recognized a First Amendment right to film public operations.
3 Now obviously there are -- that makes it subject to further,
4 you know, forum, non-forum, and if you'd like I can give you
5 a cite for Yehia v. Irrizary. I was on that case.

6 THE COURT: I know Mr. Irrizary very well. So let
7 me ask you this.

8 MR. SCHWAB: Sure.

9 THE COURT: So from a textual standpoint, A, B,
10 and C are distinct.

11 MR. SCHWAB: Yeah.

12 THE COURT: And C attempts to distinguish a space
13 from that identified in A and B. You agree with that.

14 MR. SCHWAB: Yes.

15 THE COURT: So what is the difference, we have to
16 ask, right? And you're saying it's so vague it doesn't give
17 somebody notice? Is that what you're arguing?

18 MR. SCHWAB: I believe that there is an element to
19 that, yes. The fact that one of the police officers himself
20 described the space as a lobby and another doesn't, that goes
21 to showing this ambiguity --

22 THE COURT: You mean one says lobby, one says
23 foyer?

24 MR. SCHWAB: One refers to it as a waiting room.

25 THE COURT: Okay.

1 MR. SCHWAB: If you look -- review the two -- in
2 fact, if you were to review all of those -- I know they
3 weren't admitted, but in Exhibit 12, every single person --
4 the other people refer to it as a waiting room.

5 THE COURT: The space he was in first for most of
6 the time?

7 MR. SCHWAB: No, the later space. It's never
8 referred to as the offices. It's referred to as a waiting
9 space, as a lobby. But that -- whether it was --

10 THE COURT: Who refers to it as the lobby? And
11 where do they do that?

12 MR. SCHWAB: Officer Ramos, I believe.

13 THE COURT: The space beyond the second set of
14 glass doors.

15 MR. SCHWAB: Yes. Yes. I'll turn your attention
16 to Exhibit 12. And upon arrival we entered through the foyer
17 and into the lobby. The male then proceeded to join the two
18 others in the foyer and began yelling about their
19 Constitutional rights.

20 And I apologize, Your Honor, I have this -- so at
21 the very -- the first -- in the second paragraph he says yes,
22 upon arrival we entered into the foyer -- through the foyer
23 and into the lobby. Later he advised the individuals -- the
24 individuals were advised by the on duty PSO that they were
25 not allowed to film in the lobby of the SSA.

1 THE COURT: But are you aware of the word lobby
2 being used in any of those videos?

3 MR. SCHWAB: I'm not aware of that --

4 THE COURT: Are you aware of the word lobby being
5 used in any of those videos?

6 MR. FANSLER: I am aware of a clip I did not play
7 where Commander Whiles actually explains why he does not
8 consider it a lobby.

9 THE COURT: Consider what a lobby?

10 MR. FANSLER: That area where they end up going.
11 Where Mr. Cordova --

12 MR. SCHWAB: And I'm not familiar with that clip,
13 but regardless --

14 THE COURT: No, not regardless.

15 MR. SCHWAB: Sure.

16 THE COURT: If he had called it a lobby to Mr.
17 Cordova's face, that next space --

18 MR. SCHWAB: Sure.

19 THE COURT: -- that could be a problem for the
20 Government.

21 MR. SCHWAB: Of course, that would --

22 THE COURT: Because the word lobby is explicitly
23 used in the regulation as a place you can photograph.

24 MR. SCHWAB: And I understand. Of course, that
25 would be better for me. Of course. I would say that would

1 categorically make it so that this was a lobby.

2 THE COURT: It would have been a problem.

3 MR. SCHWAB: What I'm saying is instead, it is not
4 categorically not a lobby. They have a burden of proof here,
5 that it is beyond a reasonable doubt that that was not a
6 lobby. Here is one of these two arresting officers calling
7 it a lobby.

8 But also, for the purposes of the First Amendment
9 there's the question of vagueness, that we are not subject to
10 -- we are not able to -- should not be subject to criminal
11 sanction for otherwise protected activity unless it is
12 definite. And if one of the arresting officers calls this a
13 lobby, I don't know how that's not vague.

14 THE COURT: So the vagueness doesn't depend on the
15 person who happens to be at that moment subjected to the law.
16 It depends on the Court's interpretation as applicable
17 broadly to everybody, whether it's unconstitutionally vague,
18 correct?

19 MR. SCHWAB: Sure, but I would submit that one of
20 the individual's involved impression of that space is helpful
21 for understanding how the average person would understand the
22 space.

23 THE COURT: Well, I only would agree with you if
24 the case law has defined that as relevant to the analysis.
25 But if the case law doesn't define the individual's own

1 perception as relevant to the analysis, then of course, it's
2 not.

3 MR. SCHWAB: No, but the thrust of that line of
4 reasoning is that we should be -- that citizens shouldn't be
5 subject to vague regulations. Of course, the Court makes the
6 legal determination as to whether it's vague, but I would say
7 it certainly assists the Court in seeing how others
8 interpreted it to see what the average person --

9 THE COURT: So that's where we are. That is the
10 essence of what your dispute is right now.

11 MR. SCHWAB: For the First Amendment argument.

12 THE COURT: Because there's no fact dispute as to
13 what happened.

14 MR. SCHWAB: No, I don't believe there is, Your
15 Honor.

16 THE COURT: Right, there's only a legal dispute as
17 to whether, number one, that was one of those items in C,
18 which is what you're relying on.

19 MR. SCHWAB: For this, yes, Your Honor.

20 THE COURT: You're arguing that where your client
21 ultimately was at 74.420.c space.

22 MR. SCHWAB: Correct.

23 THE COURT: And if it's not, then the statute is
24 vague. That's what you're saying.

25 MR. SCHWAB: Correct.

1 THE COURT: All right.

2 MR. SCHWAB: That's my -- my primary is that he
3 was protected by this. The secondary would be they haven't
4 proven actually beyond a reasonable doubt that this was a
5 lobby. And I suppose that's kind of a subsection of that
6 first argument.

7 Then the third would be that if it is determined
8 that this was not a lobby, that this was not within that
9 space in C, then it's at least vague to the degree that it
10 does not provide --

11 THE COURT: But does proving beyond a reasonable
12 doubt analysis even apply to a Court's legal decision about
13 what a space is and whether a statute is Constitutional or
14 not? Because proof of a reasonable doubt is what factually
15 occurred.

16 MR. SCHWAB: Sure, and I believe that one of the
17 elements here must be that he was not in a foyer -- or was
18 not doing -- performing news services or news -- was not
19 engaged in activity for news purposes in a building entrance,
20 lobby, foyer, corridor, or auditorium.

21 That is an element. I believe that that element
22 needs to be proven beyond a reasonable doubt too. They must
23 prove beyond a reasonable doubt that all three, A, B, and C -
24 - now we're not contesting A and B. He did not have
25 permission. So it really relies on C.

1 But they have to prove C beyond a reasonable
2 doubt, and to prove that they must prove that he was not
3 performing news services, or that he was performing news
4 services, but was not doing so in a building entrance, lobby,
5 foyer, corridor, or auditorium. And that proof, that
6 element, must be met beyond a reasonable doubt.

7 THE COURT: So is there any argument at all that
8 this isn't except where security regulation, rule, order, or
9 directive applies?

10 MR. SCHWAB: So that would be the next step. If
11 you were to determine that it absolutely was not a lobby or
12 foyer beyond a reasonable doubt, then the security regulation
13 --

14 THE COURT: No, if I was to determine that it was
15 a lobby he was in ultimately, but also determine that a
16 security regulation prohibits otherwise --

17 MR. SCHWAB: Yes.

18 THE COURT: -- then he still might be in violation
19 of the law.

20 MR. SCHWAB: Correct.

21 THE COURT: Okay.

22 MR. SCHWAB: What I'm saying is you first have to
23 make the determination on the lobby. If you determine it was
24 a lobby then you turn to the security regulation question.
25 And that's where I'm headed next.

1 So I believe at this point that the United States
2 has not proven beyond a reasonable doubt that this was not a
3 lobby space. They've introduced one -- testimony of one
4 individual who does not work there, who does not frequent
5 that space, but we do have evidence where there is some
6 understanding of this space by these Federal officials that
7 it was a lobby.

8 THE COURT: Right. Well, because -- I mean you've
9 probably seen the Supreme Court law on when there's actual
10 video of something, really it's up to a Court to decide from
11 that video whether there's some legal consequence. And
12 honestly, anybody's testimony about it is just not going to
13 be relevant because I could see it live as it's happening,
14 and then can make the determination under the law whether
15 that is one of those spaces and see whether it's more
16 interior space described under A and B.

17 MR. SCHWAB: Fair enough. But again -- and I
18 refer to my motion to dismiss where I provide those
19 definitions of what a lobby is in support of, in fact, Mr.
20 Ramos' understanding as well that it's a waiting space where
21 you wait for services. And that space very clearly is a
22 waiting space.

23 But again, the question is not do you believe
24 absolutely that it wasn't a lobby -- or rather that you're
25 not sure, you would lean away from lobby. You have to be 100

1 percent convinced beyond a reasonable doubt that that wasn't

2 --

3 THE COURT: Not 100 percent.

4 MR. SCHWAB: Sorry, beyond a reasonable doubt.

5 THE COURT: Don't misstate the burden.

6 MR. SCHWAB: I apologize, Your Honor. I tried to
7 trick you. Turning then, these regulations, these signs that
8 they've posted, they're not security regulations. You have
9 the burden -- or the job of making that determination, but
10 we've heard over and over this was for privacy purposes.

11 Those are maybe important policy considerations --

12 THE COURT: Right, but what the --

13 MR. SCHWAB: -- but they're not security.

14 THE COURT: How are you viewing the word security
15 in this context?

16 MR. SCHWAB: I believe that that is akin to you
17 can't record security officers, the ways in which we secure
18 the building. If we were to say security means securing
19 people's personal information, I don't know, I worry that we
20 could say we're securing people's ability to eat lunch, and
21 so no filming in public courtyards. We are securing -- it
22 would stress the word security beyond anything if it goes
23 beyond what is actually securing the building. If that were
24 to be --

25 THE COURT: Have you been to the National

1 Archives?

2 MR. SCHWAB: Not in many years.

3 THE COURT: Have you seen the U.S. Constitution or
4 the Declaration of Independence?

5 MR. SCHWAB: No, I've never seen that --

6 THE COURT: You can walk in and see the original,
7 and it's behind a very thick piece of glass.

8 MR. SCHWAB: Sure.

9 THE COURT: You can stand there and look at it.

10 MR. SCHWAB: Yeah.

11 THE COURT: Would you call that piece of glass a
12 security device for that document?

13 MR. SCHWAB: Certainly the document I wouldn't. I
14 don't think the Constitution would count as a security device
15 --

16 THE COURT: No, no, no. The piece of glass that
17 both filters out light, air, so it doesn't deteriorate --

18 MR. SCHWAB: I think that's arguably yes, a
19 security device.

20 THE COURT: For the purpose of securing a piece of
21 paper.

22 MR. SCHWAB: Correct.

23 THE COURT: So security can refer to both the
24 security of a person, and the security of property.

25 MR. SCHWAB: Sure.

1 THE COURT: You agree?

2 MR. SCHWAB: Yes.

3 THE COURT: So anything in there that's intended
4 to secure both information, paper, property, and persons
5 could be reasonably viewed as security.

6 MR. SCHWAB: I would agree, but again, we're
7 talking about now protecting, not securing. And those are
8 two different terms. Protecting people's personal rights or
9 privacy rights is different than securing -- security of the
10 Constitution from theft.

11 THE COURT: I'm not so sure. So you see that
12 kiosk that had the two sides where somebody standing next to
13 it couldn't see what the person was doing?

14 MR. SCHWAB: Yes.

15 THE COURT: That's a security device for making
16 sure someone over here can't see what somebody is entering on
17 a computer. Would you agree?

18 MR. SCHWAB: No. I would submit that that's a
19 privacy device. They weren't trying to secure people from
20 harm, and they weren't trying to secure documents from theft.

21 THE COURT: Well, theft can be both physically
22 taking and actually -- mean when identity theft occurs no one
23 is physically taking anything.

24 MR. SCHWAB: Sure.

25 THE COURT: They are taking information and using

1 it in an improper way. That's still theft, correct?

2 MR. SCHWAB: Yes. It's -- I just think we're
3 torturing this definition of security beyond -- you know, I
4 worry, if all of privacy is encompassed within security, then
5 there's a lot -- then this is a much broader statement. I
6 think personally --

7 THE COURT: We're having some fun here.

8 MR. SCHWAB: Yeah.

9 THE COURT: You have any problem -- would your
10 client have any problem with a U.S. Government drone flying
11 over his property that has one of those cameras so good you
12 can see from outer space and videoing everything that he's
13 doing, including through his windows into his house? Do you
14 have any problem with that?

15 MR. SCHWAB: Yes, but that's not a concern of
16 security. That's a concern of privacy under the Fourth
17 Amendment. I'm distinguishing. I think that there's a
18 distinction between privacy and security.

19 THE COURT: Take that same camera, and it's
20 looking sideways into somebody's personal information. Any
21 different?

22 MR. SCHWAB: I'm not saying that there shouldn't
23 be a regulation for privacy. I'm saying that this one
24 doesn't. That it is -- the plain language is clear here and
25 it says security. They very well could have written security

1 or privacy --

2 THE COURT: You mean 74.385.

3 MR. SCHWAB: Yes. I'm not speaking to what would
4 be good policy. I'm speaking to what's written. And what's
5 written does not contemplate or discuss privacy concerns. It
6 discusses security. I think largely what is intended here
7 would be the security line. You know, security cameras,
8 making sure that people aren't breaking into facilities and
9 that we're securing these buildings. This is not what should
10 be, but what is, Your Honor. And what is does not say
11 personal information here. Nobody ever said the word
12 security until they read over the regulations and got into
13 court. There was no discussion -- these are for people's
14 personal information, their confidential information. This
15 is not this is for security purposes.

16 THE COURT: Well, your client testified he was
17 aware of the regulation before he entered the building.

18 MR. SCHWAB: Yes, of this. Of this, not of the
19 signs.

20 THE COURT: No, of the regulation.

21 MR. SCHWAB: Of 102-74.420. Yes, Your Honor.

22 THE COURT: Right, Exhibit 14.

23 MR. SCHWAB: Yes, Your Honor. So again, I've seen
24 no proof other than some -- I would argue -- self-serving
25 testimony that this was a security regulation. We have not

1 seen where this comes from. We have not seen the folders, we
2 have not seen testimony from someone that drafted it, an
3 administrator that said this was this was for.

4 We've heard some testimony that this is held
5 somewhere on some database in a security folder, but more to
6 the point, these signs don't specify the purpose, they don't
7 narrow in on security purposes. They just have a general
8 broad prohibition.

9 THE COURT: Well again, an agency -- actually in
10 administrative law agencies' interpretations of their own
11 regulations do carry weight. You know that probably. I
12 don't know if you do administrative law or not.

13 MR. SCHWAB: I don't, but he's not a Social
14 Security administrative employee.

15 THE COURT: No, I understand. But an
16 administrative agency's interpretation of their own
17 regulations is, under the law of entitled deference, in that
18 context. And I don't know if it applies to the criminal
19 context, but that's a general proposition in administrative
20 law.

21 MR. SCHWAB: Yeah. I don't know if it applies to
22 criminal --

23 THE COURT: Agreed.

24 MR. SCHWAB: -- I will tell you I did a case law
25 research for security regulation, and essentially every

1 single result that popped up was Homeland Security regulation
2 or Social Security regulation.

3 THE COURT: So you don't think my research is
4 going to show anything that interprets this particular
5 regulation.

6 MR. SCHWAB: I mean there are only about -- yeah,
7 I doubt it. I doubt it, and if there -- I have not seen any
8 interpretation by the Social Security Administration as to
9 what this means.

10 So yes, they would be potentially -- I don't want
11 to concede that criminal is not different. I would argue
12 that it is. But even if it weren't different, I've seen no
13 interpretation, certainly no evidence has been produced as to
14 how the Social Security Administration interprets the term
15 security regulation.

16 It would seem problematic to me for them to
17 interpret it differently at each case whenever they're
18 pursuing a conviction. I think it would need to be ahead of
19 time.

20 But I don't believe that there is such an
21 interpretation out there.

22 Turning to those signs, those signs are not clear
23 that they prohibit his conduct. They say in the offices. I
24 don't believe that this was an office space. This was a
25 large space, but the office would be behind those glass

1 doors. They would be in those hallways. They would be in
2 private spaces.

3 This is where we turn to that first claim. Really
4 it's kind of both. The first one, it says while in the
5 office. The second one says Federal law and SSA policy
6 prohibit taking pictures inside SSA offices. Also does not
7 differentiate between -- it suggests the lobby question.

8 Then the last one, it looks like it is a copy of
9 that same -- it looks like we have two different signs. Both
10 of them refer to offices. And offices, plural. Not the
11 office. Not the Social Security office, but offices. Right?

12 THE COURT: That's because the sign was intended
13 to be put on multiple kind of building and spaces.

14 MR. SCHWAB: Sure.

15 THE COURT: They may be -- this sounds like a free
16 standing Social Security building, but there may be -- as you
17 know, the Federal building at 1961 Stout has a dozen Federal
18 agencies in it. You get off the elevator on any one floor
19 you're in a different agency.

20 MR. SCHWAB: Yeah.

21 THE COURT: So they -- in order to save money, I'm
22 sure, they make these broadly applicable to different kinds
23 of places.

24 MR. SCHWAB: Sure. But my -- I guess, and I
25 apologize, I kind of got away from that. My point is that it

1 says offices here, and I would submit that this space was a
2 lobby and not an office.

3 THE COURT: Right. So look at Exhibit 3, the
4 fifth page.

5 MR. SCHWAB: Okay.

6 THE COURT: See what the top sign says?

7 MR. SCHWAB: I do. I would say that office hours
8 is a slightly different term of art than office. We are
9 picking at threads here.

10 THE COURT: That one's not a thread.

11 MR. SCHWAB: No, no, no. What I'm saying is
12 distinguishing different spaces is different -- you're never
13 going to have lobby -- well, I guess you could have lobby
14 hours. Probably not going to have foyer hours. These are
15 the hours you're allowed in the foyer. But I think it's
16 pretty indisputable that this space that they were in for the
17 three hours was a foyer.

18 But I would say that that term refers to the whole
19 space, but offices is a distinct word. Or at least is
20 reasonably understood to be a distinct phrase of you don't
21 get to video tape when you're in someone's office. When
22 you're at that space. That's different than when you're in a
23 lobby.

24 Again, ultimately I fall back on my previous
25 argument, that the specific overrules the general. There is

1 a very specific statute here, or regulation, that both
2 creates an affirmative protection or right, or something to
3 that -- akin to that right.

4 THE COURT: Well, it reflects a right created
5 elsewhere in a more important document.

6 MR. SCHWAB: Sure. And that's what's going to
7 control here. I would say that these are not security
8 regulations broadly in that case.

9 Regardless, this would be subsumed into that.
10 They can issue lots of rules and posters that aren't spoken
11 to elsewhere, but as it relates to photography, 420 is clear.
12 It has to be a security regulation. These, as we've heard,
13 refer to confidentiality and personal information, not
14 security mechanisms.

15 The last issue I would point out, Your Honor, is I
16 don't know how to tease this out. Believe me, I've thought
17 about it. I don't know what makes a sign official and not.
18 I haven't heard testimony as to who placed this, if this was
19 just a janitor who threw this up, if someone with a printer
20 that didn't want to be photographed threw this up, or if this
21 was an officially -- you know, enacted, adopted poster by the
22 person that controls this office. Certainly that person was
23 not here to testify today as to how this poster came to be
24 posted.

25 THE COURT: Yeah, you're not going to die on that

1 hill though, probably.

2 MR. SCHWAB: I'm not going to die on that hill,
3 but -- and the truth is I really don't know how the People
4 would prove that, other than bringing someone in to testify
5 yes, I did adopt that.

6 But it doesn't say signs of a regulatory or
7 directory nature, but official signs. And at least I would
8 say the evidence does not support a finding on a reasonable
9 doubt that these are official signs. You know, the United
10 States could have brought someone in to speak to how these
11 signs came to be posted. They didn't. That was their
12 choice.

13 But they have an obligation to prove each element
14 beyond a reasonable doubt, and one of those elements is that
15 these signs were indeed official. I have seen no evidence.
16 Certainly Mr. Whiles does not have that personal knowledge or
17 information and could not speak to whether these particular
18 signs were adopted by --

19 Unless you have any other further questions, or
20 would like to just rap here for a minute, Your Honor, I'll --

21 THE COURT: I'm here for you. So you have the
22 floor.

23 MR. SCHWAB: I have nothing further, Your Honor.

24 THE COURT: Thank you.

25 MR. SCHWAB: Thank you.

1 THE COURT: Any rebuttal?

2 MR. FANSLER: The only thing -- I know that we
3 talked about the signs not being a hill to die on. Commander
4 Whiles did talk about them coming from the central Social
5 Security Administration.

6 The other thing, I don't think Your Honor even
7 needs that testimony. You have the photos that show the
8 official seal on the bottom, the GSA seal and the SSA seal.
9 It says Federal Law and SS policy does this.

10 THE COURT: It says produced at the U.S. taxpayer
11 expense. It actually gives a publication number. It gives
12 an ICN number. Again, he said he's not going to die on that
13 hill.

14 MR. FANSLER: That's right. Yeah. I don't have
15 anything beyond that to add that we haven't already --

16 THE COURT: Okay.

17 MR. SCHWAB: Your Honor, briefly --

18 THE COURT: You may.

19 MR. SCHWAB: Those numbers, you should Google
20 them.

21 THE COURT: Okay.

22 MR. SCHWAB: I haven't found anything.

23 THE COURT: The ICN?

24 MR. SCHWAB: Yeah.

25 THE COURT: Well, not everything is on the

1 internet.

2 MR. SCHWAB: I would hope that the Government
3 regulations are though.

4 THE COURT: I'm not even sure what ICN stands for.
5 International something number. Whatever.

6 Okay, so are we considering the case submitted?
7 You have no further desire of submitting any findings of fact
8 or conclusion of law, which I'm not asking for.

9 MR. FANSLER: The Government is good with it being
10 submitted.

11 MR. SCHWAB: No, Your Honor.

12 THE COURT: Okay, we'll be in recess. I'll take
13 the matter under advisement. Would hope to have something
14 out in about a week to ten days.

15 MR. SCHWAB: Thank you, Your Honor.

16 THE COURT: Thank you all for your presentation
17 today.

18 THE COURT CLERK: All rise.

19

20 (Time noted: 11:48 a.m.)

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CERTIFICATE

I, RANDEL RAISON, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my ability.



March 11, 2024

Randel Raison

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

UNITED STATES OF AMERICA, . Case No. 22-po-07015-MEH-1
Plaintiff, .
vs. . Alfred A. Arraj Courthouse
CHRISTOPHER J. CORDOVA, . 901 19th Street
Denver, CO 80294
Defendant. .
. September 27, 2023
. 1:12 p.m.

**TRANSCRIPT OF PROCEEDINGS HELD BEFORE THE HONORABLE
MICHAEL E. HEGARTY, UNITED STATES MAGISTRATE JUDGE**

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 (Time noted: 1:12 p.m.)

2 THE COURT CLERK: All rise. Court is now in
3 session.

4 THE COURT: Please be seated. 22-po-7015, United
5 States of America versus Christopher Cordova.

6 Please make your appearances.

7 MR. FANSLER: Good afternoon, Your Honor. Craig
8 Fansler on behalf of the United States.

9 THE COURT: Thank you.

10 MR. SCHWAB: Good afternoon, Your Honor. Milo
11 Schwab on behalf of the Defendant, Christopher Cordova, who
12 appears in person beside me.

13 THE COURT: Thank you both. All right. We're
14 here for sentencing.

15 You have the floor.

16 MR. FANSLER: Your Honor, the United States
17 recommends a \$5,000.00 fine, and 20 days of imprisonment, as
18 sufficient, but not more than necessary, based on the
19 sentencing factors in Title XVIII of the United States Code,
20 sections 3553(a) and 3572(a), which relates to fines.

21 Three brief points to highlight on the 3553(a)
22 factors before I turn to the fine, Your Honor.

23 The first relates to greed. The nature of
24 Defendant's conduct in this case is that he repeatedly put
25 his own interests over the public interests. He didn't care

1 about concerns raised by Social Security customers on August
2 2nd. His videos show belligerence, and, frankly, animus
3 toward law enforcement officers. He gets officers' names,
4 badge numbers, and phone numbers, so he can encourage his
5 audience to call and harass the officers and their
6 supervisors, to post on their social media pages, and to file
7 reports with their employers.

8 His actions, as seen in the trial, were calculated
9 to provoke. He knew before he arrived at the Social Security
10 office that day that he wasn't going to follow any directions
11 or listen to anyone. His purpose was to get viewers and
12 attention, and get arrested, and that's what he did.

13 His post-arrest conduct is especially troubling.
14 When it comes to that greed factor, it shows the same pattern
15 of caring more about fame and YouTube viewers than the people
16 that he was harming.

17 Exhibit 3 to the Government's sentencing statement
18 is a good example of that. It's a video of one of those
19 security officers at a day care across the street from the
20 courthouse. Basically stands outside the courthouse and
21 yells and berates that security officer for 20 minutes, and
22 posts it to his YouTube channel so he can get additional
23 donations from the same event.

24 The Government sends an addendum at ECF 26, again
25 to the same end. It shows that on August 16th of 2023, so

1 over a year after this conduct, he did almost the exact same
2 thing at the Colorado Springs Public Utilities Commission
3 building. He showed the same disregard for the public and
4 law enforcement.

5 In that video, which we provide a link in our
6 sentencing statement, you'll see an individual who is
7 actually in the courtroom today who politely comes up to the
8 Defendant and asks him to stop filming him, says he doesn't
9 give him permission to film. The Defendant yells at him and
10 does a lot of the same things he did a year earlier and
11 before the conviction in this case.

12 Second, Your Honor, turning to the lack of
13 remorse, which the Government views as especially relevant
14 here. The record shows that he didn't learn anything from
15 his arrest or his conviction here. He continued to celebrate
16 his crimes post-arrest and post-verdict. He posted on
17 YouTube statements showing a complete lack of remorse.

18 Just to point out a few examples, again, exhibit
19 3, the security officer at the day care. The video from
20 August 16th, which I just referred to.

21 And then I think related directly to the crimes
22 for which he was convicted, afterwards he posted a number of
23 short videos and recap videos where he highlighted for his
24 viewers what had gone on, why they should donate, why he was
25 in the right, why he still didn't admit that he did anything

1 wrong.

2 And then during those videos, he also gave links
3 to his merchandise, using the same phrases he used in those
4 videos, again, to drive profits over the people and the
5 agencies and the law enforcement personnel that he had
6 antagonized over a period of time.

7 He has made -- I think it's not too strong of a
8 statement to say he's made his professional brand getting
9 arrested. He said during the trial that his profession was
10 posting these videos. Each arrest grosses his audience and
11 his revenues. He has committed similar crimes four times at
12 the local level after his arrest in this case.

13 MR. SCHWAB: Objection. Committed is --

14 THE COURT: Stand.

15 MR. SCHWAB: Committed is something that is -- I
16 think he's applying two of those four committed are things
17 that he's been accused of only. And that is a complete --

18 THE COURT: Just clarify between convictions and
19 charges.

20 MR. FANSLER: Sure, Your Honor. It's all relevant
21 conduct. He's been arrested four times. He's been convicted
22 twice.

23 For the two recent arrests, the Government does
24 provide, just for the record today, exhibits that I believe
25 Your Honor has already seen, which is narrative descriptions

1 of those later arrests.

2 So the one on August 16th for filming inside the
3 Colorado Springs Public Utilities Commission building even
4 after he was asked to stop.

5 And the second one relating to filming while
6 officers were conducting witness and victim interviews, and
7 not moving out of the area where the ambulance was pulling
8 up. That was on September 2nd of 2023.

9 As Your Honor is aware, during sentencing the
10 Government can provide evidence like this to the Court. The
11 Court just needs to find by a preponderance that there is --
12 that it's relevant conduct, and that there is a minimal
13 indicia of reliability, which those narrative exhibits and
14 officer statements more than provide.

15 I do also have available two clips from the video
16 of his arrest on August 16th that show the lack of remorse.
17 I can play them for Your Honor if that would be helpful.

18 THE COURT: Please.

19 MR. FANSLER: Okay. So the first clip I'm going
20 to play is from that August 16th arrest.

21 (Court confers with Court Clerk)

22 MR. SCHWAB: Your Honor, I'm going to object to
23 the playing of a clip. If he's going to play an interaction
24 with an individual, he needs to play the entirety for the
25 purpose of completeness, Your Honor.

1 THE COURT: Rule 106.

2 MR. SCHWAB: Yes, Your Honor.

3 THE COURT: How long is that whole video?

4 MR. FANSLER: The whole video -- the clip I'm
5 playing is from 26:49 to 28:52, so I'd say it's probably -- I
6 think he gets arrested around the 29:30 mark.

7 The clips I was going to play were about a 2-
8 minute clip leading up to his arrest, and interaction with
9 the customers actually in the courtroom today.

10 THE COURT: Okay.

11 MR. FANSLER: At the beginning of the video. It's
12 about a minute and a half.

13 THE COURT: You can direct to play whatever you
14 want to play, in addition during your presentation. Okay?

15 MR. SCHWAB: All right.

16 MR. FANSLER: So, Ms. Libid, I'm going to direct
17 to play starting at 26 minutes and 49 seconds of this clip.

18 (Video played in open Court)

19 MR. FANSLER: So, as Your Honor will recognize, a
20 lot of the language in there very similar to what we saw in
21 the August 2nd video, stated that he just wanted to go there
22 to pick up brochures, but the Agency already told him that he
23 wasn't able to film while he was doing that. Yet he ignored
24 the law enforcement. He was arrested right after that, and
25 that's where the narrative picks up.

1 I do note that during the clip, it looked like
2 there was an area that may have skipped. That was taken --
3 that video was taken from Mr. Cordova's YouTube channel, so
4 that's just the way that the video was on-line.

5 The second clip I'm going to play from that is
6 from -- beginning at 4 minutes and 48 seconds. This is the
7 interaction with the customer on the -- that he was referring
8 to in that clip, going to 6 minutes and 6 second.

9 (Video played in open Court)

10 MR. FANSLER: So I have those clips to show -- I
11 think they just demonstrate the lack of remorse, the lack of
12 learning any lesson from what happened, the lack of any care
13 about concerns raised by other people because Mr. Cordova
14 sees YouTube profits and YouTube views as more important than
15 concerns of others.

16 Rather than feeling remorse, he's become
17 emboldened, and these four other arrests show that, because
18 other courts have not imposed any jail time or fines.

19 Third and finally on the 3553(a) factors is the
20 need for deterrence here. This case presents a high need for
21 specific and for general deterrence.

22 As to specific deterrence, the Defendant has
23 repeated the same petty crimes, very similar petty crimes,
24 over and over. He's been arrested at least for similar
25 crimes four times after the one in this case.

1 As to general deterrence, the Defendant has posted
2 content, and posted this content to a community of YouTube
3 content creators. He has told them his sentencing date on
4 those videos. He's expressed that he's going to keep doing
5 what he's doing. He's received thousands of views on his
6 arrest videos.

7 He and others, I don't think it's too strong to
8 say, commit crimes like the ones at the Social Security
9 Office for profit. And he did it because he's seen others do
10 it before him.

11 On the August 2nd video, he talks about seeing
12 another content creator, Bay Area Transparency, doing a
13 similar thing, and that made him think that he could get away
14 with it here just like that individual did.

15 So the general deterrence is important here, and
16 the Government believes that the Court's sentence should send
17 a message to those who are contemplating similar action,
18 about the consequences of putting YouTube fame above the
19 public interest.

20 THE COURT: So I'm not going to be sending
21 messages today. I have one case in front of me, and I'll
22 make my decisions made on that case alone. But I don't think
23 it's the business of Courts to send messages. Those are
24 politicians, but not judicial officers.

25 MR. FANSLER: Understood. I was just making a

1 point about general deterrence, which 3553(a) --

2 THE COURT: But that's the deterrence of this
3 person, is what I'm concerned with. Are you saying that
4 Statute speaks of general deterrence to others outside of
5 this case?

6 MR. FANSLER: Yes.

7 THE COURT: Okay.

8 MR. FANSLER: I think it does.

9 THE COURT: All right. Thank you. Anything
10 further?

11 MR. FANSLER: Yeah. I just want to turn briefly
12 to the fine, because that does have additional factors under
13 3772, and the Government is seeking a substantial fine here.

14 THE COURT: Understood.

15 MR. FANSLER: A \$5,000.00 fine here is warranted,
16 because it was a financially motivated crime, and the
17 Defendant profited. And so a fine is necessary here.

18 Looking at some of the 3572 factors, they include
19 the Defendant's income, earning capacity, ability to pay.
20 The Government provided evidence showing that he had received
21 a substantial amount of money from his YouTube channel during
22 the months when he was posting content related to his August
23 2nd arrest.

24 Another factor under 3572 that's especially
25 important here is not letting Defendant keep illegally

1 obtained gains from their crimes. The Government provided
2 exhibits 4 and 5 in its sentencing statement to support an
3 approximately \$11,000.00 calculation of profits.

4 And as the sentencing statement noted, this is a
5 conservative calculation of profit. This is what his YouTube
6 channel earned during that period while he continued to post
7 content related to August 2nd.

8 But he had other means of profit. So on his
9 August 2nd video, Your Honor heard that he preferred people
10 watching his video to donate money through other money
11 transfer apps, like Venmo or PayPal, because those apps
12 didn't take a cut of the money like YouTube did. Those are
13 not included in the Government's exhibit.

14 He gained new subscribers, or would gain new
15 subscribers and viewers as a result of these videos, that can
16 pay membership fees, can buy merchandise that's marketed and
17 linked on his website.

18 He continued to post related content, like the
19 short videos and the recap videos, and the follow-up video
20 with the security officer when he found him in 2022, and in
21 2023 when he talks about kind of the stage of his Federal
22 proceedings.

23 He continued to post these videos, in short,
24 because it's profitable to do so, because he was getting
25 viewers when he did that.

1 His brand, and the videos on his website show,
2 that his brand has become to get arrested on YouTube to gain
3 profits. And the sentence today should take those profits
4 away.

5 And for all of those reasons, the Government
6 believes that a fine of \$5,000.00, and a sentence of 20 days
7 of imprisonment, is sufficient but not more than necessary
8 under all of the sentencing factors.

9 THE COURT: Thank you. You'll have a chance for
10 rebuttal.

11 Mr. Schwab?

12 MR. SCHWAB: Thank you, Your Honor. Mr. Cordova
13 will also like to speak.

14 THE COURT: That's fine.

15 MR. SCHWAB: The Government puts you in a weird
16 position here, Your Honor. They raised serious First
17 Amendment issues. What is similar across these four cases is
18 that he was recording. But the First Amendment protects the
19 right to record, including the most recent charge, which is
20 recording a police officer in public.

21 He hasn't had the opportunity to face that.

22 THE COURT: But that's an appellate argument,
23 isn't that?

24 MR. SCHWAB: Is that an appellate argument?

25 THE COURT: Correct. There's a conviction here.

1 There's a conviction. I'm not going to overturn it based on
2 the First Amendment. The Appellate Court could, but that's
3 not what we're doing. I understand.

4 But you say a First Amendment problem may be or
5 maybe not, but that's not a consideration for me, is it?

6 MR. SCHWAB: I'm not talking about the conviction.

7 THE COURT: Okay.

8 MR. SCHWAB: I'm saying that the Government is
9 asking you to impose, and in fact changed their stance on
10 sentencing, on the basis that Mr. Cordova continues to video.
11 Not that he continues to go into public facilities, into
12 Social Security Offices or other Federal facilities under
13 this, it's that he just generally is out recording, and
14 sometimes gets arrested by police officers for interference.

15 What is the common thread here? That he's
16 filming. He's filming police officers and other public
17 officials.

18 THE COURT: But isn't it also a common thread that
19 those people allow him to film up to a certain point, and he
20 crosses a line that they believe exists? They tell him
21 that's the line. You can film here, you can't film there.
22 That's one thing they're arguing.

23 The other thing they're arguing is that this is
24 not a pure First Amendment motive. They are strongly arguing
25 that this is for money.

1 Now, a purist First Amendment activist doesn't do
2 it for money. They do it for principle. Right?

3 MR. SCHWAB: Sure.

4 THE COURT: Would you agree?

5 MR. SCHWAB: And I think that Mr. Cordova does
6 this for principle. And, you know, aspersions aside, he is
7 out there putting himself in -- you know, in potential legal
8 jeopardy because he believes in the principle that public
9 officials, not just police officers, but public officials at
10 large, when they are in public spaces, including the public
11 lobbies of a utility, a public utility, which is a publicly
12 owned building that is a sub-division of the City of Colorado
13 Springs, --

14 THE COURT: My Chambers is publicly owned.

15 MR. SCHWAB: Sure, but that's a private --

16 THE COURT: Can your client walk back into my
17 Chambers freely?

18 MR. SCHWAB: No.

19 THE COURT: Why not?

20 MR. SCHWAB: It's different than a public lobby.

21 THE COURT: Well, I agree.

22 MR. SCHWAB: And but beyond that, --

23 THE COURT: We've already crossed that bridge,
24 though, here. You argued that what he went in to was a
25 lobby. I found that it wasn't. He was in a lobby, but he

1 moved into an area where they do the business with the
2 customers. So we're beyond that.

3 MR. SCHWAB: So would you like -- I mean, do we
4 want to rule today on whether this lobby functions -- this
5 lobby in Colorado Springs --

6 THE COURT: No, no. You mean the subsequent
7 alleged offense?

8 MR. SCHWAB: Yeah. I'm talking about Colorado
9 Springs.

10 THE COURT: Sure.

11 MR. SCHWAB: Which is the basis for which the
12 Government moved from community service to asking for a jail
13 sentence.

14 THE COURT: Understood.

15 MR. SCHWAB: So that means the Government's
16 premise on seeking this punishment now is based not on his
17 conduct in the Social Security Office, but subsequent conduct
18 based on his recording, conduct for which he has not yet had
19 the opportunity to contest. He hasn't even had a -- he had
20 his first appearance this week, in fact, for both of these,
21 and he has not had the opportunity to go to trial.

22 He has defenses to be raised, and, as I mentioned
23 last time, one of the concerns I have with the Government's
24 position here on bringing these new things in as a basis for
25 their argument on sentencing, is he has due process issue, he

1 hasn't had the opportunity to present his defense, which
2 include First Amendment defenses on these subsequent charges.

3 He has a potential double jeopardy argument. If
4 you sentence him to jail on the basis that he has been
5 charged with these crimes, --

6 THE COURT: Well, I couldn't do that. Any
7 sentence is --

8 MR. SCHWAB: That's what the Government has asked
9 you to do today.

10 THE COURT: Okay. So just like any detention or
11 incarceration consideration, they're using provisions in the
12 law that I can consider, but not the basis for the -- the
13 legal basis for whatever I do is the underlying conviction
14 solely.

15 MR. SCHWAB: I understand.

16 THE COURT: Okay.

17 MR. SCHWAB: But if the Government's position is
18 you should charge him -- you should sentence him to jail now,
19 because he's been charged with filming in a public space, and
20 then he goes and wins that case, but you've sentenced him to
21 jail because of this added conduct that the Government now is
22 basing their request for jail time, he's now been sentenced
23 based on conduct for which he's later acquitted, but will
24 serve a sentence under this.

25 THE COURT: Well, so, you know, I did ask for a

1 criminal history.

2 MR. SCHWAB: Sure. And I'm talking about -- I'm
3 solely focused on subsequent conduct for which the Government
4 bases its entire argument for jail time.

5 THE COURT: I understand. But you're not
6 disputing I can take his criminal history into consideration,
7 are you?

8 MR. SCHWAB: I am not.

9 THE COURT: Okay.

10 MR. SCHWAB: I am not, Your Honor. And I'd be
11 happy to talk about the only two instances that he has any
12 criminal history in the decade before this incident.

13 One of them was filming in a city hall lobby,
14 because he believes that there is a right for the citizen,
15 for citizens to film non-disruptively in a city council or
16 city hall lobby. That's what he was doing.

17 The second one was he was filming a police van,
18 police doing the speed enforcement with video tickets. He
19 was recording that, and he got charged with I think
20 interference with a police sign or something.

21 All again related to his political activity and
22 his news gathering activity, which is protected under the
23 First Amendment.

24 You heard even in that clip "I'm here to collect
25 brochures and things." We don't know if there are other

1 instances where he does go in because the Government hasn't
2 produced those, where he goes into public lobbies like this,
3 shows the public lobby for the viewers, collects those
4 brochures, and walks out without incident. It's only when
5 these officers confront him.

6 THE COURT: I'll watch or listen or read anything
7 you submit that you believe is relevant.

8 MR. SCHWAB: Sure. I don't think any of that is
9 relevant in truth. I don't think that this is relevant.

10 And, like I said, I think that it raises serious
11 issues. The Government's stance and conduct in raising
12 subsequent offenses, I think raises serious issues under the
13 First Amendment and under the Fifth Amendment, both from a
14 due process and a double jeopardy perspective.

15 And I don't know how you can un-do that web here.
16 The Government first asked for community service, and then on
17 the sole basis of subsequent charges asked to impose jail
18 time.

19 THE COURT: But I'm not bound by a recommendation
20 from the United States Government, or from you.

21 MR. SCHWAB: I agree. But it muddies --

22 THE COURT: I have my own independent decision to
23 make.

24 MR. SCHWAB: I agree. But, however, the
25 Government's stance certainly clouds this water as to the

1 basis for your decision making. It is now introduced in the
2 Government's stance is he should be punished for subsequent
3 offenses for which he has not been convicted.

4 THE COURT: Punished more severely. They have
5 always argued he should be punished.

6 MR. SCHWAB: Sure. They are now arguing that he
7 should be punished much more severely for conduct for which
8 he has not had the opportunity to address.

9 And I raised that the last time we were here, that
10 if Your Honor would like to have a trial within a trial to
11 really evaluate his conduct in these two other incidents,
12 you're welcome to do that and spend the next two hours, three
13 hours, having this trial or these two trials within trials.

14 THE COURT: But there were two convictions.

15 MR. SCHWAB: Yes.

16 THE COURT: For activity that occurred after the
17 activity here.

18 MR. SCHWAB: I would have to look at the timing.
19 I think yes.

20 THE COURT: So the activity for one was December
21 of '22, and the activity for the other was March of '23.
22 Both resulted in convictions, correct?

23 MR. SCHWAB: Sure. But the Government didn't even
24 talk about those. They're talking about and showing video
25 from subsequent.

1 THE COURT: Understood. So you're asking me to
2 disregard that?

3 MR. SCHWAB: The subsequent activity, of course.

4 THE COURT: This what I saw today?

5 MR. SCHWAB: Yes. And the Government -- that's
6 all subsequent to your enter of conviction -- your entry of
7 conviction. It's all subsequent to that.

8 And like I said, those are still pending cases.
9 He has only been accused of these issues -- of these crimes.

10 But the Government's request, and I think any jail
11 time, therefore, would violate Mr. Cordova's rights under the
12 First and Fifth Amendments.

13 They never asked for that prior to these
14 incidents, and they've only asked for that on the basis of
15 these incidents.

16 So I think that jail time here would be a grave
17 injustice. And, like I said, and potentially implicate a
18 violation of Mr. Cordova's First and Fifth Amendment rights,
19 because he has the right to contest and to challenge those
20 convictions on a First Amendment basis, as well, since he was
21 recording, one of which was outside in public.

22 Police officers, unfortunately, and far too often,
23 arrest individuals filming on the side of the street and call
24 it interference. That is -- I have gone to trial on that
25 five or ten times at this point, because unfortunately

1 officers, not all, but some do not like to be recorded.

2 But recording officers in public, especially when
3 they're outside interacting with people, is necessary. If we
4 would not have seen the abuses of the police system without
5 recording, without Rodney King, without George Floyd, these
6 are issues. And that is part of why he's out there recording
7 both in and out of public buildings.

8 But never in private buildings. He's never
9 walking back into people's offices. He's never doing
10 anything like that.

11 THE COURT: So let's talk about that for a second.

12 MR. SCHWAB: Sure.

13 THE COURT: Those filmings you're talking about,
14 which are quite different --

15 MR. SCHWAB: Yes.

16 THE COURT: -- than what we're dealing with here.

17 MR. SCHWAB: Two of the four incidents that people
18 talk about --

19 THE COURT: Right.

20 MR. SCHWAB: -- are filming outside.

21 THE COURT: The purpose was to record what was
22 seen as Constitutional violations by the police. Agreed?

23 MR. SCHWAB: Yes. At least as a possible --

24 THE COURT: Sure. The Fourth and Fifth
25 Amendments, excessive force?

1 MR. SCHWAB: Sure. Well, as a general induced
2 gathering.

3 THE COURT: Maybe even racial discrimination.
4 Those were those allegations.

5 What are the allegations of Government wrong doing
6 that your client is filming?

7 MR. SCHWAB: Oh, it's not to say that he's there
8 to respond to an allegation of wrong doing. He believes that
9 the Government works for us, and when they're conducting
10 business in a public lobby space, when there are brochures,
11 that as a news gathering function, --

12 THE COURT: What is the news, though? That's what
13 I'm interested in your perspective on the news.

14 MR. SCHWAB: He tours public facilities and
15 gathers pamphlets and things.

16 THE COURT: What is the --

17 MR. SCHWAB: He's not necessarily sitting there
18 and just -- you know, and certainly the Government has never
19 provided you any evidence that he's trying to record people's
20 private information, that he goes up to screens and looks at
21 their credit cards, or anything like that.

22 What you see is that he walks into a general
23 public lobby in a publicly owned space. We don't know, for
24 example, if there is a regulation in place always, you know.

25 But in particular, the Statute that we're talking

1 about -- not the Statute, but -- yeah, the Statute in the
2 Federal level, it's really not about recording. It's about
3 -- well, I guess it is about recording.

4 But it is distinct from the conduct he's been
5 accused of in the rest of these.

6 THE COURT: You still didn't answer what the news
7 value is. Certainly reporting on something is intended to
8 provide value to whoever looks at it.

9 MR. SCHWAB: Sure.

10 THE COURT: What is the news value of the Social
11 Security Office or the Public Utilities Office?

12 MR. SCHWAB: You know, I can't say. But I don't
13 think that I or you, respectfully, should be judging the
14 value of the content.

15 THE COURT: No, you proffered the information.
16 I'm asking you to explain what you said.

17 MR. SCHWAB: I'm saying that I don't think we
18 should be making determinations on the respective value of
19 the content. If he has a good faith argument and a good
20 faith belief that what he is doing is gathering news, whether
21 that's truly valuable news or not, is just -- it's
22 unnecessary, it's outside of the bounds of whether that
23 actually is protected by the First Amendment.

24 The quality of the speech is not an issue. It's
25 just whether there is speech. And if he is attempting to

1 gather news, whether it's valuable or not, once we start
2 deciding yes that is true news gathering and that's not
3 really what's interesting about going in there. Now we're
4 engaged in content and viewpoint.

5 THE COURT: No, but credibility is always an issue
6 in a courtroom.

7 MR. SCHWAB: Sure. Yeah.

8 THE COURT: And if you say I'm gathering news, and
9 if you can't possibly identify what news you're gathering,
10 that's a credibility issue more than anything.

11 MR. SCHWAB: And Mr. Cordova obviously can speak
12 to this more than I can.

13 THE COURT: Okay.

14 MR. SCHWAB: But is this a good faith effort to
15 gather information, including pamphlets, including how these
16 officers work, and how people can engage with them? Viewers
17 potentially could engage with this office, what it's like to
18 go there. I can speculate, certainly.

19 THE COURT: I think you are.

20 MR. SCHWAB: Oh, of course I am, because you know
21 what? I'm not the one out there doing it.

22 THE COURT: Sure.

23 MR. SCHWAB: My interest in this side of it is
24 right here.

25 But the through thread here is truly that he's

1 filming public officials. There is no allegation that he's
2 gone to another Federal facility. The video they talk about
3 with the day care, I don't -- I've never seen a day care in
4 that video. He doesn't go inside. And, in fact, the
5 suggestion that he found this guy, it looks like he walked
6 out of this courtroom, perhaps, and saw that security guard,
7 and filmed him on a public sidewalk.

8 THE COURT: Well, I think the last clip he was
9 filming a person who is not a public official, and the
10 person's son.

11 MR. SCHWAB: And I'd be happy -- and the
12 Government's -- I'm happy to get to that. The Government's
13 representation to you is -- call it misleading, to say that
14 he accosted this individual. We should watch -- let's watch
15 the whole interaction. It starts at, I believe, 4:40.

16 And, again, this is also subsequent. This is an
17 event that's subsequent, and I think any consideration of
18 this is significantly prejudicial and problematic from the
19 perspective of --

20 THE COURT: I will not find that you're waiving
21 any argument by playing more of the clip.

22 MR. SCHWAB: Okay. But I do think we need to play
23 it for totality, because the Government's suggestion to you
24 that Mr. Cordova accosted this individual is just flat out
25 wrong.

1 In fact, why don't we go back to 4:15, just so you
2 can see about 30 second beforehand.

3 (Video played in open Court)

4 MR. SCHWAB: It's earlier than that. I'm
5 obviously working from a different video than you.

6 THE COURT: Sure.

7 MR. SCHWAB: We can just watch it from the
8 beginning. I think it's only a two or three minute video.

9 THE COURT: Fine.

10 (Video played in open Court)

11 MR. FANSLER: Your Honor, just briefly. If he's
12 going to play that, I would just like a copy. Note that I
13 haven't seen the full video.

14 THE COURT: Sure. Was there a discovery order in
15 this case?

16 MR. FANSLER: No, there wasn't. I was just saying
17 -- and I don't need it in advance, I would just like the full
18 copy.

19 THE COURT: Fine. Yes, since it's being shown in
20 Court, it will be part of the record. I think that would be
21 fine. Thank you so much.

22 MR. FANSLER: That's fine.

23 (Pause)

24 (Video played in open Court)

25 THE COURT: We've already seen that.

1 MR. SCHWAB: I think we can stop there. I think
2 he leaves a few minutes after this.

3 But you've seen the interaction. Did Mr. Cordova
4 accost him? No. He never follows him, he never goes up to
5 him, he never starts any engagement. Every time it's this
6 guy coming up aggressively, getting in his face.

7 In fact, Mr. Cordova doesn't initiate any
8 interaction with any of these individuals you see. He says
9 "I'm here to tour the facility."

10 Again, all of this is completely irrelevant, and
11 the consideration of any of this raises serious
12 Constitutional issues.

13 But I just wanted to call attention to the United
14 States' brief saying that Mr. Cordova accosted him to
15 question their credibility and what they represent to you
16 about his intentions and all of the things that they know
17 that he did. He didn't accost him. He was accosted.

18 Mr. Cordova has a political respect here. It is
19 that a public sphere, including public spaces of buildings,
20 but the streets, everywhere else, that the best disinfectant
21 is sunshine, and that he does so with his camera.

22 THE COURT: That disinfectant is what?

23 MR. SCHWAB: Sunshine.

24 THE COURT: Oh.

25 MR. SCHWAB: That he does so with his camera, and

1 does he push boundaries? Sure. That's how we learn what our
2 rights are. There is a raging debate across the Circuits in
3 this country, in the First, Third, Seventh, Fifth, Seventh,
4 Ninth, Tenth now with *Irizari v. Mejia*, and the Thirteenth.
5 They go to different lengths on the right to record in public
6 spaces and public officials.

7 THE COURT: There is no Thirteenth Circuit.

8 MR. SCHWAB: What's that?

9 THE COURT: It stops at Eleventh.

10 MR. SCHWAB: Oh yeah, you're right. I don't know
11 why. I mean, there are thirteen, but you're right. Sorry
12 about that.

13 In my mind, I was like it's all the odds, and then
14 we got to --

15 THE COURT: D.C., and Federal.

16 MR. SCHWAB: Yeah, I know.

17 THE COURT: Okay.

18 MR. SCHWAB: I apologize. There is a raging
19 debate on the limits in the -- not really the limits, but how
20 far the person and extent. Does it extend to public lines?
21 Does it extend to public officials outside of police
22 officers?

23 That is a live issue in this society. And to seek
24 to punish people for that is problematic.

25 When Mr. Cordova went to the Social Security

1 Office, he didn't try to film anyone's personal information.
2 He didn't try to egg people on. In fact, he was very clear
3 "I don't believe that this regulation is Constitutional, that
4 my First Amendment rights allow me to go in to this -- past
5 this door to report."

6 You've answered in the negative. But we wouldn't
7 know if you hadn't done so. But it was not an aggressive
8 thing.

9 The people -- the United States cast aspersions
10 all over the place for his motive, but his motive is sincere,
11 that he wants to bring more public interactions in the
12 provision of public services in public spaces to the public.

13 There would be -- now, the nature and
14 circumstances of the offense, as I'm just discussing, are not
15 severe. He didn't do anything other than a technical
16 violation of that Statute. Perhaps he didn't know beforehand
17 that there was a question as to whether doing so violated a
18 Federal petty offense.

19 But he was clear that he believed that the First
20 Amendment protected. And what did he do? He walked in and
21 was arrested. He did not engage, he did not yell at people,
22 he did not disrupt, he did not try to get personal
23 information, he didn't go over and film on someone's
24 handwritten thing. He walked in, and I believe even in that
25 video, he says "I'm here to get pamphlets."

1 And under the first factor under 3553, the nature
2 and circumstances of the offense are so minor as to make any
3 sentence of jail or significant probation or public service
4 even, inappropriate.

5 Under 3553(2)(a), similarly, the seriousness of
6 the offense. It's not a serious offense.

7 And just to go back, I think that is where you
8 would consider his deep held belief in efforts to push the
9 boundaries of what the First Amendment protects. We'll call
10 into question that that is the nature and circumstances of
11 this offense.

12 Now, the seriousness, as I mentioned, he didn't do
13 anything that would cause concern. It was maybe some
14 perspective or speculative concern that there might be in the
15 future that he or potentially another individual might go in
16 and try to collect personal information. But he certainly
17 didn't in this incident.

18 Under 3553(b) -- or 3553(2)(b) and (c), to call
19 this criminal conduct is an exaggeration. This is much more
20 akin to a civil offense, a civil infraction, a technical
21 violation of where you are or are not allowed to record.

22 There is no violence, there is no, you know,
23 potential for deep community harm here. This is someone that
24 is trying to push the bounds of what the First Amendment
25 protects, similar to a protester in the streets, maybe on

1 Federal property, you know, on the steps of the Supreme
2 Court, trying to push the bounds of what is a forum.

3 But to the degree the United States asks you to
4 deter him, they're not asking you to deter him from criminal
5 conduct. They're asking you to deter him from all filming.
6 All filming of public officials, of public spaces. They
7 don't make a distinction between lobbies and police on the
8 street.

9 And that's the concern here, is that that effort
10 in deterrence may go beyond deterring him from committing
11 serious offenses, and instead deter him from engaging in
12 protected activity. And yes, sometimes that line between
13 what is protected and what isn't is really hard to know.

14 But considering that, that pushes that bounds.
15 That calls into question whether what we're deterring here is
16 protected activity, as well.

17 Accordingly, an imposition of a sentence of jail
18 is incredibly out of line and out of -- it's just
19 unnecessary, and would an exaggerated thing.

20 I'm going to ask that you impose 20 hours of
21 community service. One month of full working time of
22 community service, the United States' last offer was also
23 incredible. This is the lowest Federal offense.

24 And as we've seen, this is not a malicious
25 individual. This is someone who is out, maybe wrong, maybe

1 misguidedly, but in a good faith belief that he is engaged in
2 protected First Amendment activity. And that would support
3 an imposition of only 20 hours of community service.

4 Relating to the request for a \$5,000.00 fine, the
5 United States says that Mr. Cordova made \$11,000.00 off this,
6 yet they take a long period of time in all videos and all
7 content protected activity, other engagements that were
8 protected, and they just lump it all in.

9 In fact, if you look over, they only say that I
10 believe \$872.00 were related to this and those videos that
11 were related to this.

12 Yes, he has catch phrases from his protected
13 activity, too. Things that he says in video after video
14 after video, "do better." Sometimes, you know what, police
15 officers do need to do better.

16 And to try to impose a fine on the basis that he
17 sells merchandise, that is stretching the bounds of saying
18 that he is getting ill-gotten profits. If you want to impose
19 a fine on the basis of ill-gotten profits, \$872.00 is -- I
20 apologize. I have to look back, but I believe that is the
21 right number. It is exceedingly low. There are many, many,
22 many dates, and the people got those records from YouTube.
23 They could have gotten any records they wanted to, but they
24 only got the records from YouTube.

25 Many of those dates it's a penny. He makes a

1 penny that day. He makes two pennies that day. \$11,000.00,
2 that's like saying, you know, you got into a car accident,
3 and therefore every time you've ever gotten into the car
4 should count for, you know, the charges.

5 Now, I'm going to let Mr. Cordova speak to his
6 income. There is no restitution to be considered in this
7 case.

8 And as you'll hear, Mr. Cordova does make -- have
9 a significant income that can support this type of award --
10 this type of fine.

11 That's why I'm going to ask you to not impose any
12 fine here. But if the Court is determined to issue a fine,
13 then it should be limited to the actual profits from that
14 video, and nothing more.

15 I'm going to let Mr. Cordova speak directly to
16 you. Thank you.

17 THE COURT: Thank you.

18 MR. SCHWAB: Do you have any other questions?

19 THE COURT: I do not.

20 MR. CORDOVA: Hi.

21 THE COURT: Good afternoon.

22 MR. CORDOVA: The first thing I'd like to do is to
23 answer your question about what I do as far as gathering
24 news.

25 So I do more than -- so there's lots of titles for

1 what I do, and I give myself the title of a civil liberties
2 activist. Okay? And so I do actual stories where I just
3 covered a story in Edgewater where there was a murder, and
4 the man was pepper sprayed, and then he was shot in the back
5 twice. And that's been over five months ago, and still no
6 charges have been brought against the man who murdered him.

7 I do actual news. And when I was in City Hall for
8 the arrest that the U.S. Attorney is bringing up for
9 Sheridan, the reason why I was there is because I'm actually
10 trying to do public records requests. So for the van that my
11 attorney was speaking of, there was a public employee who was
12 taking pictures of me.

13 And so this is news also when I'm recording the
14 van, you know, like this is, you know, they take pictures of
15 you and they send you fines. My viewers are interested in
16 that type of information.

17 But she got out of her vehicle and started taking
18 pictures of me. So if she's in her official capacity and
19 she's taking pictures of me, that's a public record she
20 created.

21 So I went to the City of Sheridan to do a public
22 records request, which I think it's CCJRA, it's not CORA, so
23 it's a little bit differently written, but they have a
24 reasonable amount of time to respond to it. And three months
25 went by with no response. They just completely ignored it.

1 So when I go back in to the City Hall, that's my
2 business. I'm documenting my interactions with government.

3 And so I was dealing with the City Attorney, I was
4 dealing with people giving me the run around. Like I said,
5 several emails. Months and months and months had gone by
6 with no response in regards to my records request.

7 And so eventually it got to the point where we
8 were going there all the time to say "hey, we have a lawful
9 right to get these records. This is my news that I'm
10 reporting on."

11 And it got to the point where they just didn't
12 like it anymore, so then they just drafted up an
13 administrative order that the City Attorney did that states
14 that there's no recording. Basically, they ban recording in
15 a public space.

16 So there is no CFR like there is in the Social
17 Security Office that says that you can't record in City Hall.
18 In fact, City Hall is widely known to be -- people record in
19 City Halls all the time. So that's what happened. So that's
20 what happened with that one.

21 But a lot of my news purposes really, like my
22 attorney said, is to stress test the First Amendment. And so
23 when I'm out here and I'm doing my work, I'm doing it because
24 I believe in what I'm doing, and I'm trying to create case
25 law in the State of Colorado.

1 And I'm not here -- like there's people in this
2 courtroom, and the U.S. Attorney said that I'm here
3 specifically to get arrested so I can profit from my arrest.
4 I lost money from these arrests. I didn't gain money.

5 And there's all the people in the courtroom that
6 would say that I'm just here for clicks and views to make
7 money on YouTube, and I don't care about people's rights.

8 Well, if that was the case, then I made a really
9 bad career change, because I took a huge pay cut to do this.
10 I've been doing this full-time now for two years. I made
11 \$22,000.00 last year from YouTube.

12 I live in poverty. I went from being an
13 electrician to making a good living to struggling. And not
14 to say that I don't want to make money. Yes, I ask for
15 donations. My supporters, if they want to donate, it's not
16 required, but yes, they can donate.

17 He brought up Venmo or PayPal, yes, because
18 YouTube takes about 40 percent of those donations. So yes,
19 if you want to donate, you can donate to me directly and more
20 money comes to me.

21 But there is a lot of costs associated with
22 fighting for your rights. I've been arrested and locked in
23 cages several times now, and I have to pay for bond, I have
24 to pay for my attorney.

25 And, yes, like you said, that you would consider

1 my past criminal history, and I have been -- I'll be up-front
2 with you, you already know, I've been in trouble with the law
3 a lot as an adolescent.

4 THE COURT: Well, in your 20s.

5 MR. CORDOVA: In my 20s, yeah. In my 20s.

6 THE COURT: That's not an adolescent.

7 MR. CORDOVA: Early adulthood, I guess, right?

8 THE COURT: Yes.

9 MR. CORDOVA: It did take me a little bit longer
10 to grow up than others, but I finally did. And I haven't --
11 my last charge was from 2009, I believe. And all of my
12 charges now within the last 15 years have been from my
13 activism.

14 So, you know, I -- the fact that there is, you
15 know, the U.S. Attorney and so many people out there who
16 think that I don't care about rights and I'm just here just
17 to make money, that's absolutely not true. I honestly feel
18 like the Constitution, it's like a protein shake. You can't
19 just drink protein shakes and get buff. You have to
20 exercise.

21 So if you don't exercise your rights, they are
22 just words written down on a piece of paper.

23 And so, you know, I'm not here just to make money.
24 The real reason why I do this is because every American's
25 rights are more important than my paycheck. That's why I

1 made \$22,000.00 last year, and the only reason I'm able to
2 survive is because I have good credit. And I'm selling my
3 condo now so I can pay off my debt.

4 So, you know, I would like to also tell you that I
5 appreciate during the trial that you were asking my attorney
6 clarifying questions, and I really felt like you were really
7 trying to understand our argument. So I do appreciate that,
8 because I have been in courtrooms and bench trials before,
9 like the attorney brought up, in Sheridan, the interference
10 charge where there's a municipal charge. I was guilty before
11 I even walked in there. You could tell. So I do appreciate
12 that.

13 But the thing is that we disagree on the fact of
14 whether that space that I went to was a lobby. I believe
15 that it was a lobby and they were conducting business in a
16 lobby. You disagree, and that's your opinion.

17 And I understand that your opinion is the only one
18 that matters today. So moving forward, I plan to be more
19 cognizant of where I record on Federal property, because this
20 is a learning experience for me, too. I'm not perfect.

21 The things that I do are not to maliciously break
22 the law. I do them because I believe they are lawful, and I
23 believe they are just.

24 So how do I fight for people's rights? I do that
25 by engaging in civil disobedience. So in the '60s, Rosa

1 Parks was thought of as a trouble maker. But today, she's
2 regarded a hero.

3 THE COURT: But what rights are you fighting for?
4 That's what I don't understand.

5 MR. CORDOVA: Oh. Yeah, sure, absolutely. So I'm
6 fighting for mainly the First Amendment right to record in
7 public, right?

8 But so like the interference charge, so if I'm
9 recording and the police officer -- there's no Supreme Court
10 ruling that I know of that says you have to be X amount of
11 feet away. He wanted us specifically because we had cameras.
12 There was other people all around to be further back.

13 And so to interfere, I have to use force, threaten
14 to use force, physical interference, or an obstacle, to
15 prevent him from doing his job, which I wasn't doing. I was
16 already behind the ambulance.

17 And so I believe that was an unlawful order. But
18 then when he gave the order and started counting down from
19 five, I actually was in the process of moving back. I was
20 obeying his order, but by the time he got to one, it was a
21 very fast countdown, I wasn't back fast enough. I got
22 arrested.

23 But again, like my attorney said, that doesn't
24 have any relevance here.

25 But the rights that I'm fighting for are not just

1 the First Amendment right. It's our lawful right to obtain
2 information through CORA, like I was saying. There's several
3 -- since I've been doing this for two years, I've been denied
4 public records requests or ignored of them.

5 I'm trying to educate my audience about
6 transparency and how you go about doing these things, and how
7 you do public records requests, and why I do those.

8 And so just recently there was a video -- there's
9 actually a gentleman here who is the librarian of the library
10 that we were at. And a public employee was taking pictures
11 of me, and so I did the public records request and they said
12 there is no picture, even though she admitted that she was
13 taking a picture of me, and then I saw her phone. I had a
14 picture of her phone, but on record mode.

15 So CRS 18-8-114, which is abuse of public records,
16 an employee knowing they don't have the authorization to do
17 so deletes, mutilates, or destroys, any public record, that's
18 a misdemeanor crime punishable up to 120 days in jail.

19 So these are the types of things, like I'm here to
20 engage in a First Amendment protected activity and to educate
21 that we have a right to record in a public space. But when
22 another opportunity arises for me to educate my audience on,
23 let's say public records requests, and how it's against the
24 law for public officials to delete stuff out of their -- even
25 if it's a personal cell phone, I take that opportunity to

1 educate my audience.

2 It's not just the First Amendment. It's all kinds
3 of stuff. I just kind of play it by ear and I try to learn
4 as much as I can from my attorney, from others in this
5 community, from my own audience that I learn from. I have
6 police officers who used to record with me. I have my friend
7 here who served in Iraq.

8 So we have a lot of police officers that agree
9 with what we do and say "man, you know, the reason I watch
10 your videos is because it just disgusts me the way some of
11 these -- not all, but some of these officers treat the
12 public."

13 And they swear an oath to the Constitution. And
14 if you swear an oath to the Constitution, it doesn't give you
15 much credibility when you just enforce your feelings or, you
16 know, you arrest someone because you claim that they're
17 interfering when they're not really interfering. Right?

18 So like my attorney said, even if you don't like
19 what I'm doing, you swore an oath to protect that.

20 So just in conclusion, that's the real reason why
21 I'm here, Your Honor. I don't make a lot of money. I can
22 prove it to you. I made -- I'm sorry I didn't make more
23 money now, actually, but I've been consistently making about
24 \$1,200.00 to \$2,000.00 a month, and I've got to pay taxes on
25 that, too.

1 So like I said, my tax return for last year, 2022,
2 was \$22,000.00. So the last two years I've racked up
3 \$60,000.00 in debt in order to do this because, again, I
4 believe in this. And my rights and your rights and everyone
5 in here's rights, even the people that don't like me, are
6 more important to me than my own paycheck.

7 So with that said, Your Honor, thank you for your
8 time. And, again, thank you for hearing our side and really
9 listening to understand what we had to say. I do appreciate
10 that.

11 And that's it. Thank you.

12 THE COURT: Thank you. You may wrap it up.

13 MR. FANSLER: Yes. Just a couple of legal
14 responses, Your Honor.

15 One is the importance of considering post-arrest
16 and even post-conviction conduct.

17 The Tenth Circuit is very clear on that, as is the
18 Supreme Court. I can give you one case cite, which is *United*
19 *States v. Lente*, 759 F. 3d 1149, the pin cite would be 1167-
20 1168, which calls that kind of conduct highly relevant, and
21 says that it's very important when a court gets the most up-
22 to-date picture possible of a defendant's history and
23 characteristics.

24 So that one wasn't even charged conduct. It was
25 prison disciplinary records that enhanced the sentence.

1 And what those Courts find out when actually it's
2 different, that it's even post-sentencing that's later
3 vacated. That post-sentence conduct is even important. So
4 the Tenth Circuit is very clear on that issue, and that's why
5 the United States believes that the additional arrests are a
6 reason why he should have a prison sentence here.

7 You've seen the full video clip was kind of
8 illuminated. The Government's main point was that these
9 interactions do show that it's the Defendant's interests that
10 matter. I mean, when he came in, he was immediately told by
11 the security officer "don't film in here." He then had the
12 interaction with the other individual. All of those were
13 disregarded.

14 And just to address briefly the point about the
15 Government is asking you to penalize him for filming. That's
16 never been what the Government has asked to do. We've asked
17 that he be punished for crimes he's been arrested for, that
18 he seems to do them because he wants to post them, and that
19 seems to be the incentive to do them.

20 But we're not asking to penalize the filming,
21 although if the Court were inclined to impose a sentence of
22 probation, then we do think that there should be a
23 occupational filming restriction in there.

24 That's all. I don't -- I think Your Honor has
25 heard all of the other arguments. I just wanted to briefly

1 address those legal and other arguments.

2 THE COURT: Okay. Thank you. This is United
3 States versus Christopher J. Cordova, 22-po-7015.

4 The Court finds that the information in the record
5 consisting of the information charging document that was
6 filed, the Court verdict, and the Government's sentencing
7 statement, enables the Court to exercise its sentencing
8 authority under 18 U.S.C. section 3553, without a full pre-
9 sentence investigation report, although there was a pre-
10 sentence report of some nature here.

11 Therefore, the Court will proceed to sentencing.

12 Pursuant to the Sentencing Reform Act of 1984, it
13 is the judgment of the Court that Defendant Christopher J.
14 Cordova, for count one, is hereby committed to the custody of
15 the Bureau of Prisons to serve a term of 15 days, and to be
16 placed on probation for a term of two years as to count two.

17 As to count one, no term of supervised release is
18 imposed, as supervised release is not authorized for class C
19 misdemeanors, infractions, or petty offenses, pursuant to 18
20 U.S.C. section 3583(b)(3).

21 As to count two, while on probation supervision,
22 Mr. Cordova, you must not commit another Federal, State, or
23 local crime, and must not unlawfully possess a controlled
24 substance.

25 You must refrain from any unlawful use of a

1 controlled substance. You must submit to one drug test
2 within 15 days of placement on supervision, and a maximum of
3 20 tests per year of supervision thereafter.

4 You must pay the assessment imposed in accordance
5 with 18 U.S.C. section 3013.

6 This judgment does impose -- I will impose a fine,
7 so you must pay it in accordance with the Schedule of
8 Payments sheet of this judgment.

9 You must notify the Court of any material change
10 in your economic circumstances that might affect your ability
11 to pay restitution -- excuse me, no restitution. A fine or
12 special assessments.

13 You must comply with the standard conditions
14 adopted by this Court pursuant to General Order 2020-20, as
15 listed below.

16 You must report to the probation office in the
17 Federal judicial district where you are authorized to reside
18 within 72 hours of the time you are sentenced, or 72 hours of
19 your release from imprisonment in supervised release cases,
20 unless the probation officer instructs you to report to a
21 different probation office or within a different time frame.

22 After initially reporting to the probation office,
23 you will receive instructions from the Court or the probation
24 officer about how and when you must report to the probation
25 officer, and you must report to the probation officer as

1 instructed.

2 You must not knowingly leave the Federal judicial
3 district where you are authorized to reside without first
4 getting permission from the Court or the probation officer.

5 You must truthfully answer the questions asked by
6 your probation officer.

7 You must be at a place approved by the probation
8 officer if you plan to change where you live or anything
9 about your living arrangements, such as the people with whom
10 you live.

11 You must notify the probation officer at least 10
12 days before the change. If notifying the probation officer
13 in advance is not possible due to unanticipated
14 circumstances, you must notify the probation officer within
15 72 hours of becoming aware of a change or expected change.

16 You must allow the probation officer to visit you
17 at any time at your home or elsewhere, and you must permit
18 the probation officer to take any items prohibited by the
19 conditions of your supervision that he or she observes in
20 plain view.

21 You must work full-time, at least 30 hours per
22 week, at a lawful type of employment unless the probation
23 officer excuses you from doing so. If you do not have full-
24 time employment, you must try to find full-time employment
25 unless the probation officer excuses you from doing so.

1 If you plan to change where you work or anything
2 about your work, such as your position or your job
3 responsibilities, you must notify the probation officer at
4 least 10 days before the change. If notifying the probation
5 officer at least 10 days in advance is not possible due to
6 unanticipated circumstances, you must notify the probation
7 officer within 72 hours of becoming aware of a change or
8 expected change.

9 You must not communicate or interact with someone
10 you know is engaged in criminal activity. If you know
11 someone has been convicted of a felony, you must not
12 knowingly communicate or interact with that person without
13 first getting the permission of the probation officer.

14 If you are arrested or questioned by a law
15 enforcement officer, you must notify the probation officer
16 within 72 hours.

17 You must not own, possess, or have access to a
18 firearm, ammunition, destructive device, or dangerous weapon.
19 In other words, anything that was designed or is modified for
20 the specific purpose of causing bodily injury or death to
21 another person, such as nunchucks or tasers.

22 You must not act as an informant with a law
23 enforcement agency or act as a confidential human source or
24 informant without getting first the permission of the Court.

25 If the probation officer determines that you pose

1 a risk to another person, including an organization, the
2 probation officer may, after obtaining Court approval, notify
3 the person about the risk or require you to notify the person
4 about the risk, and you must comply with that instruction.

5 The probation officer may contact the person and
6 confirm that you have notified the person about the risk.

7 You must follow the instructions of the probation
8 officer related to the conditions of supervision.

9 The Court finds that the following special
10 conditions of supervision are determined to be reasonably
11 related to the facts enumerated in 18 U.S.C. section 3553(a),
12 and 18 U.S.C. section 3563(b), or they are based on the
13 nature and circumstances of the offense and the history and
14 characteristics of this particular Defendant.

15 These conditions do not constitute a greater
16 deprivation of liberty than necessary to accomplish the goals
17 of sentencing.

18 1. If the judgment imposes a financial penalty,
19 you must pay the financial penalty in accordance with the
20 Schedule of Payments sheet of this judgment.

21 You must also notify the Court of any changes in
22 economic circumstances that might affect your ability to pay
23 the financial penalty.

24 2. You must not incur any new credit charges or
25 open additional lines of credit without the approval of the

1 probation officer, unless you are in compliance with the
2 periodic payment obligations imposed pursuant to the Court's
3 judgment and sentence.

4 3. You must provide the probation officer access
5 to any requested financial information, and authorize the
6 release of any financial information, until all financial
7 obligations imposed by the Court are paid in full.

8 4. You must apply any monies received from income
9 tax refunds, lottery winnings, inheritances, judgments, and
10 any anticipated or unexpected financial gains, to the
11 outstanding Court ordered financial obligation in this case.

12 5. If you have an outstanding financial
13 obligation, the probation office may share any financial or
14 employment documentation relevant to you with the Asset
15 Recovery Division of the U.S. Attorney's Office, to assist in
16 the collection of the obligation.

17 The Defendant shall pay a special assessment of
18 \$10.00, which is \$5.00 per count, and a fine of \$3,000.00 as
19 to count two.

20 The special assessment and fine obligation are due
21 immediately. Any unpaid monetary obligations upon release
22 from incarceration shall be paid in monthly installment
23 payments during the term of supervised release.

24 The monthly installment payment will be calculated
25 as at least 10 percent of the Defendant's gross monthly

1 income.

2 You are advised that you have the right to appeal
3 this sentence. If you desire to appeal, the notice of appeal
4 must be filed with the Clerk of the Court within 14 days
5 after entry of judgment, or the right to appeal will be lost.

6 If you are unable to afford an attorney for an
7 appeal, the Court will appoint one to represent you.

8 If you so request, the Clerk of the Court will
9 immediately prepare and file a notice of appeal on your
10 behalf.

11 So the question at the moment is with regard to
12 surrender. Mr. Schwab?

13 MR. SCHWAB: Yes, Your Honor. I would first ask
14 that you stay execution pending appeal. We intend to appeal
15 this case, and obviously no appeal will be heard in 15 days,
16 rendering any potential successful appeal not necessarily
17 moot, but certainly less effective.

18 THE COURT: Understood. Mr. Fansler?

19 MR. FANSLER: No objection to self-surrender or to
20 staying pending appeal.

21 THE COURT: You don't object to a stay pending
22 appeal?

23 MR. FANSLER: I do not. No.

24 THE COURT: Okay. All right. So the order will
25 be self-surrender upon conclusion of the appeal if the

1 conviction stands.

2 You didn't make that request with regard to the
3 fine.

4 MR. SCHWAB: I apologize. I meant to ask.

5 THE COURT: And, Mr. Fansler?

6 MR. FANSLER: I guess I don't -- it's not -- I
7 would oppose a stay of the fine. I think there's no reason
8 to delay payment.

9 THE COURT: What's the legal authority? Is that
10 discretionary?

11 MR. FANSLER: The fine amount?

12 THE COURT: Whether to stay it or not.

13 MR. FANSLER: I believe it is. I don't have a
14 citation for it, though.

15 (Note: Mr. Schwab is not near a microphone)

16 MR. SCHWAB: I didn't know where to look. In
17 State Court, a sentence like this would be automatically
18 stayed across the board, but --

19 THE COURT: That's why I'm asking somebody whose
20 job it is to enforce the U.S. Code.

21 MR. FANSLER: I don't know the authority for that,
22 Your Honor. I don't object to staying enforcement of the
23 whole sentence.

24 THE COURT: What about the term of probation?
25 You're asking for that, too?

1 MR. SCHWAB: Yes, Your Honor.

2 THE COURT: And what's your position on that?

3 MR. FANSLER: Your Honor, the Court will impose
4 the judgment after this.

5 THE COURT: Well, you have to have a final
6 judgment in order to be able to appeal, so.

7 MR. FANSLER: That's right. Yeah. I guess now
8 that I'm thinking through everything, I don't -- I think the
9 whole sentence should be enforced.

10 THE COURT: Would you like to reserve briefing on
11 that?

12 MR. FANSLER: Yeah. I would reserve briefing on
13 that.

14 THE COURT: Okay.

15 MR. FANSLER: Whether we'll oppose the stay or
16 not.

17 THE COURT: So I wouldn't have objected to self-
18 surrender anyway, but I will require a short time frame on
19 the briefing.

20 Since it is your request, Mr. Schwab, how soon can
21 you get a brief on file with regard to staying the sentence
22 of the Court?

23 MR. SCHWAB: I enter a jury trial next week, and I
24 have a significant Title IX action that is on summary
25 judgment motions that I think I'll be responding to right

1 around October 7th. It's probably going to take me a couple
2 of months to be able to just --

3 THE COURT: I've given you some extensions already
4 in this whole process. So.

5 MR. SCHWAB: At least until the 13th of October?

6 THE COURT: Hold on a second.

7 (Court confers with Court Clerk)

8 THE COURT: Okay. So I do think this ought to be
9 a shortened time frame. I'm sorry about the rest of your
10 obligations, but criminal cases supersede civil cases. Did
11 you say you had a civil case coming up?

12 MR. SCHWAB: Yes. I've got a jury trial next
13 week.

14 THE COURT: Okay. It's a very discreet issue
15 whether I should impose a stay of the sentence pending
16 appeal. So I'd like your position by Monday.

17 MR. SCHWAB: May I ask for a secondary stay? Mr.
18 Cordova will be traveling out of the country at attend a
19 wedding. Not out of the country, just out of state for a
20 wedding. He bought tickets and hotels and everything for it.

21 THE COURT: Well, the restriction on travel is
22 during the period of probation, and probation hasn't started
23 until he walks out of prison.

24 MR. SCHWAB: I understand. If the Court were to
25 impose a sentence before the --

1 THE COURT: Where is it?

2 MR. SCHWAB: Massachusetts.

3 THE COURT: And what are the inclusive dates?

4 MR. SCHWAB: The 10th through 17th.

5 THE COURT: Of?

6 MR. SCHWAB: October.

7 THE COURT: And it's whose wedding?

8 MR. SCHWAB: His best friend.

9 THE COURT: Is he a groomsman?

10 MR. SCHWAB: He's best man.

11 THE COURT: Okay. I'll take that into
12 consideration.

13 And how quickly can you get a response?

14 MR. FANSLER: If it's file by Monday, I can
15 respond by Thursday.

16 THE COURT: Okay. Thursday. Monday, you want
17 close of business since you're in trial? You probably should
18 file --

19 MR. SCHWAB: Can I have until midnight?

20 THE COURT: Okay. Monday midnight. Thursday
21 close of business, which is 5:00 o'clock. Okay?

22 MR. FANSLER: Yes, Your Honor.

23 THE COURT: And no reply. Okay? I'll take the
24 burden of a reply off of you.

25 MR. SCHWAB: Thanks, Your Honor. That will mean

1 that final judgment won't enter yet?

2 THE COURT: Correct.

3 MR. SCHWAB: The appeal clock won't start until --

4 THE COURT: Well, no. Final judgment -- all
5 right. So you want --

6 MR. SCHWAB: If the final judgment enters today,
7 and then the stay --

8 THE COURT: No. I mean, the final judgment enters
9 whenever I execute it. So in many trials, there's a lot of
10 post-trial proceedings, and it's months. But I would then
11 propose, if it's okay with you, to enter final judgment
12 concurrent with my decision on whether to stay imposition of
13 the fine, the prison, and the probation.

14 MR. FANSLER: Yes, that's correct, Your Honor. I
15 don't have any objection to issuing the final judgment with
16 the ruling on that issue.

17 THE COURT: Okay. All right. So let's -- since I
18 won't have you back, and it's efficient to talk about this
19 right now, you're proposing to file a brief on October 2nd.
20 The United States responding on October 5th. October 9th is
21 a Federal holiday.

22 So in the event that I reach a decision some time
23 later in the week of October 9th, and I do permit your client
24 to travel, when do you want him to surrender?

25 MR. SCHWAB: I would suggest -- well, I would

1 suggest the 18th or the 19th. The 19th.

2 THE COURT: Okay. Any objection to him
3 surrendering on October 19th?

4 MR. FANSLER: No objection to that date, Your
5 Honor.

6 THE COURT: Okay. All right. Very good. So what
7 is the timing -- is it 14 days for an appeal?

8 MR. FANSLER: That's correct, Your Honor.

9 THE COURT: All right. So you will --

10 MR. FANSLER: The notice of appeal within 14 days.

11 THE COURT: Yes. It will start running on entry
12 of final judgment.

13 MR. SCHWAB: Your Honor, I assume the U.S.
14 Marshals are still in possession of personal property of Mr.
15 Cordova. I would ask that you enter an order releasing that.

16 THE COURT: What is it?

17 MR. SCHWAB: His cell phone.

18 THE COURT: Obtained when?

19 MR. SCHWAB: At this arrest.

20 THE COURT: Okay.

21 MR. FANSLER: I don't think we need an order. We
22 can return it any time.

23 THE COURT: You mean on his arrest months ago?

24 MR. SCHWAB: No. For this Social Security
25 incident.

1 THE COURT: That's what I mean, for this incident.
2 What date did it occur?

3 MR. FANSLER: August 2, 2022.

4 THE COURT: August 2, 2022. So they have had his
5 cell phone since August 2, 2022. Okay. This is the first
6 I've heard of that. You never have requested that back
7 anyway.

8 MR. FANSLER: I did not.

9 THE COURT: Just as evidence?

10 MR. FANSLER: Yes. If counsel wants to email me,
11 we can set up the return.

12 THE COURT: Is that typical?

13 MR. FANSLER: Usually they wait on a request just
14 because they don't like proactively look to return things.

15 THE COURT: Have you ever requested this before?

16 MR. SCHWAB: I don't know if I did a motion.

17 THE COURT: All right. Because any information
18 that was necessary for trial could be imaged off of the
19 physical phone.

20 MR. FANSLER: They have no need for a report at
21 this point.

22 THE COURT: All right. So will you arrange?

23 MR. FANSLER: Yes.

24 THE COURT: Okay. That's independent of anything
25 else. He will arrange return of the phone. Okay?

1 MR. FANSLER: Your Honor, I spoke about the 14 day
2 appeal clock. I just realized that the initial appeal on
3 this is to a District Court Judge.

4 THE COURT: That's fine.

5 MR. FANSLER: Rather than through the Federal
6 Rules of Appellate Procedure.

7 THE COURT: Sounds correct. Is it still 14 days?

8 MR. FANSLER: That's what I was just going to look
9 up. I thought that was going to be your follow up question.

10 MR. SCHWAB: It is 14 days, Your Honor.

11 THE COURT: What's the Statute?

12 MR. FANSLER: I'm looking at it. It's in the
13 Petty Docket Rule, which is the Rule. Let me see if I can
14 find it here. It's Rule 58.

15 (Pause)

16 MR. FANSLER: Paragraph (g) looks like it related
17 to an appeal from a Magistrate Judge's order or judgment.
18 Defendant may appeal a Magistrate Judge's judgment of
19 conviction to a District Judge within 14 days of its entry.

20 THE COURT: Okay. So it still relies on the
21 judgment, so the judgment will start the clock at 14 days.
22 Your clock will start anyway with the judgment.

23 MR. SCHWAB: Yes, but not today, right?

24 THE COURT: Not today.

25 MR. SCHWAB: All right.

1 THE COURT: At least that's my view. I think it
2 has to have a judgment. The Statute says -- the Rule says
3 judgment, and no judgment has been entered. A sentence has
4 been rendered, but the actual formal document is the judgment
5 itself, and that gives the exact terms of the sentence.

6 Mr. Fansler, what else?

7 MR. FANSLER: Nothing further, Your Honor.

8 THE COURT: And Mr. Schwab?

9 MR. SCHWAB: Nothing, Your Honor.

10 THE COURT: All right. Thank you for your
11 appearances today. We'll be in recess.

12 MR. SCHWAB: Thank you.

13 THE COURT CLERK: All rise.

14 (Time noted: 2:41 p.m.)

15 * * * * *

16 CERTIFICATE

17 I, RANDEL RAISON, certify that the foregoing is a
18 correct transcript from the official electronic sound
19 recording of the proceedings in the above-entitled matter, to
20 the best of my ability.

21 

22 _____ March 18, 2024

24 Randel Raison

25