

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

UNITED STATES OF AMERICA

v.

ELIZABETH LAGESSE,
Defendant.

Case No. 2017-CF2-001356

Chief Judge Robert E. Morin

Trial Readiness: June 15, 2018 10:30 am

Trial: June 25, 2018 9:30 am

DEFENDANT ELIZABETH LAGESSE’S MOTION TO DISMISS THE INDICTMENT
FOR VINDICTIVE OR SELECTIVE PROSECUTION

Defendant Elizabeth Lagesse, through undersigned counsel, respectfully moves to dismiss the Superseding Indictment (hereinafter “Indictment”) entered on April 27, 2017, pursuant to Superior Court Rule of Criminal Procedure 12(b)(3)(A), applicable statutory authority, and the First, Fifth, and Seventh Amendments to the United States Constitution.¹

As discussed in the accompanying Memorandum of Points and Authorities, the government continues its prosecution of Ms. Lagesse – even after it dismissed 129 nearly identical cases – in retaliation for her lawsuit against the Metropolitan Police Department and the District of Columbia for their handling of the inauguration protest, and for her consistent criticism of the U.S. Attorney’s Office in high-profile media outlets regarding the office’s handling of her case.

Because the government cannot prosecute Ms. Lagesse for exercising her protected rights to legal process through the courts and to free speech in the press, the Indictment must be dismissed.

¹ Ms. Lagesse previously moved to dismiss the Indictment on separate grounds pursuant to SCR-Criminal 12(b)(3)(B). *See* Mot. to Dismiss (filed May 26, 2017) (challenging defects in the Indictment and the constitutionality of the D.C. Riot Act). That motion was denied. The instant motion raises additional grounds for dismissal that did not arise until after the previous motion had been filed and ruled on.

Dated: April 25, 2018

Respectfully submitted,

/s/Joshua B. Shiffrin

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
ELIZABETH LAGESSE’S MOTION TO DISMISS THE INDICTMENT FOR
VINDICTIVE OR SELECTIVE PROSECUTION**

STATEMENT OF FACTS

1. The Inauguration Protests

Ms. Lagesse was one of the many thousands of people who came to D.C. last January to participate in widespread public demonstrations during the inauguration of Donald Trump.

Although Ms. Lagesse traveled to the District with only her fiancé, the government contends that she was in fact part of a large group of “Rioting Defendants” that employed a specific tactic called the “Black Bloc,” in which individuals wore dark and concealing clothing and travelled in a pack with the deliberate intent of destroying property and committing violence. *See* Indictment, Count One ¶¶ 8, 9, 10, and 37.

The government does not allege that Ms. Lagesse herself destroyed any property, physically assaulted any person, or was on notice that property destruction and violence would occur. Nor does it contend that Ms. Lagesse was aware of the “Black Bloc” tactic – generally or at this particular demonstration – or that she had the specific intent to utilize this alleged tactic

even if she did know about it. Instead, the government asserts that Ms. Lagesse is culpable for the actions of others because she allegedly associated with a group from which they came.

Although Ms. Lagesse was a peaceful protestor, she was one of the hundreds of people who were corralled at the intersection of 12th and L Streets and held in a “kettle” for almost 10 hours without access to food, water, or bathrooms. During that time, Ms. Lagesse and others were also subjected to heavy streams of OC spray and endured at least two “sting-ball grenades,” which the police detonated amidst the contained crowd. As a result of her treatment in the kettle, Ms. Lagesse sustained physical and psychological injuries.

2. The ACLU Lawsuit

On July 21, 2017, Ms. Lagesse took action to redress her injuries. The ACLU of the District of Columbia filed a lawsuit on her behalf alleging that she had been illegally arrested and that the District, the Metropolitan Police Department, and Police Chief Peter Newsham had violated her rights in the kettle through the use of excessive force by the police (including the indiscriminate and unauthorized use of OC spray and non-lethal weapons) and the deprivation of food and water and use of facilities. A copy of the complaint in that matter is attached hereto as Exhibit 1. The lawsuit is still in the early stages, and Ms. Lagesse and another individual, Milo Gonzalez, are the only two of the 59 remaining defendants who are involved in active litigation against the city and the police, many of whom are expected to be witnesses against them at trial.² Ms. Lagesse has also spoken to several high-profile media outlets about her civil lawsuit, and has at times been critical of the protest prosecutions – and, by extension, the prosecutors handling

² Like Ms. Lagesse, Mr. Gonzalez is not alleged to have engaged in any acts of violence or property destruction or to have been on notice that such conduct would occur.

them. Copies of selected statements by Ms. Lagesse are attached hereto as Exhibit 2. The government is aware of these statements.

3. The Government's Decision to Prosecute Ms. Lagesse After January 18, 2018

In January of this year, shortly after a jury acquitted the defendants in the first trial group, the government announced abruptly that it intended to streamline its remaining 188 cases³ by “focusing its efforts on prosecuting those defendants who: (1) engaged in identifiable acts of destruction, violence, or other assaulting conduct; (2) participated in the planning of the violence and destruction; and/or (3) engaged in conduct that demonstrates a knowing and intentional use of the black-bloc tactic on January 20, 2017, to perpetrate, aid or abet violence and destruction.” Notice 3-4. The government explained that this decision was in response to “the legal rulings by the court and the jury’s verdicts in the first trial of these cases,” *id.* 3, which largely had rebuffed the government’s general theory of guilt by association for those like Ms. Lagesse who had not engaged in the conduct described in the Notice.⁴

The government identified 59 defendants, including Ms. Lagesse, as purportedly satisfying one or more of the three criteria in the Notice, and 129 (the remainder) who presumably did not. Thus, the government announced that all but the 59 would have their cases dismissed. At that time, the ACLU’s lawsuit was ongoing (and remains so today) and Ms.

³ A number of the original defendants had by that time resolved their cases through guilty pleas.

⁴ The jury acquitted all six defendants, and before that the judge presiding over the trial (Hon. Lynn Leibovitz) had granted the defendants’ motions for judgment of acquittal on the lead count of felony incitement of a riot.

Lagesse had spoken to the press about her civil lawsuit and about the criminal prosecutions generally.

Since the Indictment was filed almost a year ago, the government has produced several *terabytes* of discovery material, including thousands of hours of video footage and as many pictures from every conceivable angle, which purport to capture the entire demonstration from start to finish. Nevertheless, the allegations against Ms. Lagesse remain unchanged from how they were presented in the Indictment. Ms. Lagesse appears in just a few videos – from which the government extracted 13 screen shots (several of which are just enlargements of another screen shot) – and one picture. A composite of these images produced by the government is attached hereto as Exhibit 3. It is clear the government has no evidence to present to even suggest that Ms. Lagesse destroyed property or committed any act of violence or physical assault, or provided assistance to anyone who did.

ARGUMENT

The Constitution forbids prosecutors from retaliating against defendants for exercising their statutory or constitutional rights. That prohibition recognizes that “[t]o punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.” *United States v. Goodwin*, 457 U.S. 368, 372 (1982). Such a violation arises where the government punishes a defendant for suing the police under federal civil rights statutes. *See, e.g., United States v. Mahdi*, 777 A.2d 814, 816, 821 (D.C. 2001).

This prohibition on vindictive prosecution is so fundamental that our Court of Appeals has said that “‘due process of law requires that even the *appearance* of vindictiveness must be absent from judicial proceedings.’” *Thorne v. United States*, 46 A.3d 1085, 1088 (D.C. 2012) (emphasis added) (quoting *United States v. Schiller*, 424 A.2d 51, 54 (D.C. 1980)). And because

“the fear of such vindictiveness may unconstitutionally deter a defendant’s exercise of [his or her rights] . . . due process also requires that a defendant be freed of apprehension of such a retaliatory motivation on the part of [the prosecutor].” *Mahdi*, 777 A.2d at 819 (alterations and omissions in original) (quoting *Blackledge v. Perry*, 417 U.S. 21, 28 (1974)).

“Because ‘[m]otives are complex and difficult to prove,’ it is not always necessary to demonstrate actual vindictiveness to establish a due process violation” via vindictive prosecution. *Thorne*, 46 A.3d at 1088 (quoting *Goodwin*, 457 U.S. at 373). Instead, a defendant need only demonstrate that an “accumulation of circumstances . . . give[s] rise to a realistic likelihood of prosecutorial vindictiveness.” *Simms v. United States*, 41 A.3d 482, 490 (D.C. 2012) (quoting *Mahdi*, 777 A.2d at 820). Establishing such a reasonable likelihood is a “low hurdle” that requires “no direct evidence of retaliatory intent.” *Id.* Once a defendant’s allegations clear that “low hurdle,” the Court then applies a presumption of vindictiveness, which shifts the burden to “the government to answer or explain the allegations” with affirmative evidence that its motivations are benign. *Id.* If the government fails to supply a credible explanation for its conduct, then the indictment must be dismissed. *Id.* at 494.

The “accumulation of circumstances” here creates a “reasonable likelihood” of retaliation, or at the very least the appearance of retaliation. Ms. Lagesse does not satisfy any of the criteria the government itself established to “focus[] its efforts” going forward. *See* Notice 3. That is, she is not one of the remaining defendants who “(1) engaged in identifiable acts of destruction, violence, or other assaulting conduct; (2) participated in the planning of the violence and destruction; and/or (3) engaged in conduct that demonstrates a knowing and intentional use of the black-bloc tactic on January 20, 2017, to perpetrate, aid or abet violence and destruction.” *Id.* 3-4.

Although generally prosecutors have discretion to choose the cases they pursue, the decision to streamline here was, even in the government's view, a "significant development", *id.* 4, that was called for by "the legal rulings by the court and the jury's verdicts in the first trial of these cases." *Id.* 3. The jury and judge in the first trial had, in fact, largely rejected the government's theory of guilt by association for defendants who, like Ms. Lagesse, did not fall within one of the categories in the Notice: the judge granted the defendants' motions for judgment of acquittal on the lead charge of felony incitement to riot and the jury subsequently acquitted each defendant on the remaining charges. The government's January filing was simply an attempt to stack the deck and avoid further defeat.

The government has disclosed an unprecedented amount of electronically stored information, including thousands of pictures, thousands of hours of video, and thousands of pages of cell-phone data. It also has made detailed representations in charging documents, motions, letters, in-person discovery conferences, and hearings before the Court. All of those disclosures show that Ms. Lagesse did not commit any acts of violence, destruction, or physical assault (or help anyone commit these acts), and that the most the government could establish is that Ms. Lagesse (i) was present for at least some portion of the protest and police activity, (ii) wore distinctive clothing and had visibly colored hair that was uncovered at all times, and (iii) carried eye and respiratory protection (rubber lab goggles and a bandana) that she wore only after the police began to discharge OC spray and "sting-ball grenades."

It is suspicious, therefore, that the government has included Ms. Lagesse (and Milo Gonzalez) among the 59 remaining defendants even though the government has been unable identify *any* evidence that Ms. Lagesse engaged in the conduct described in the Notice, because that conduct is, by the government's own definition, the only basis for further prosecution given

the government's desire to prosecute only the most serious cases in the hopes of prevailing going forward.

Although the government has alleged that Ms. Lagesse “charg[ed] the [police] line” after she had been trapped in the kettle, *see* Exhibit 4 (email between P. Andonian and J. Kerkhoff) 1, the government does not allege that she did so through “destruction, violence, or assaulting conduct.” Notice 3; Exhibit 4 (which makes no mention of such conduct). Nor is it relevant that Ms. Lagesse was purportedly charged in the Indictment (Count Eleven) with assault on a police officer for this conduct. That charge was based on an iteration of D.C. Code § 22-405 that was replaced by the current version. Whereas the old statute proscribed not only assault, which Ms. Lagesse is not accused of in any context, but also resisting or interfering, which could arguably describe the act of charging a police line in an attempt to escape, the current statute, which took effect in June 2016, applies only to assault and does not cover conduct that only rises to the level of resisting or interfering.⁵

Finally, while factual disputes are best left for trial, the substantial discrepancies between the government's characterization of Ms. Lagesse's alleged “charging of the line” and the contemporaneous video footage⁶ of that moment further expose the government's pretextual

⁵At a hearing on July 27, 2017, the government conceded that the Indictment alleged an offense arising under a deleted code section and agreed to dismiss Count 11. While we understand that the government intends to re-charge Ms. Lagesse by information for the same alleged conduct under the current version of D.C. Code § 22-405, as well as with resisting arrest under D.C. Code § 22-405.01, such a decision would have no effect on the arguments in this motion because non-assaultive conduct can no longer constitute “assault on a police officer” and resisting arrest is not one of the enumerated criteria in the government's Notice.

⁶ We are providing the relevant portion of the video (which the government has designated for use in its case-in-chief) for the Court's consideration. Because the video contains police body camera footage that is under a protective order in this case, we will hand-deliver a flash drive to chambers that will not be part of the public record. We are happy to make a copy of the flash drive part of the filed pleading if the Court wishes.

justification for continuing its case against Ms. Lagesse.⁷ As the video shows, Ms. Lagesse is nowhere near the individuals who attempt to break from the kettle by pushing through the police line, although she is, at one point, being pushed from behind as a throng of people surges forward. In any event, Ms. Lagesse can be seen moving not toward the police line, but rather against the crowd toward a building on the other side. Although the government can obviously charge Ms. Lagesse however it sees fit, simply calling her conduct an “assault” when it clearly is not does not make it so.

Despite requests from counsel, the government has not explained how Ms. Lagesse differs from the 129 defendants whose cases were dismissed last month, or how she compares to the 58 other defendants whose cases remain active. *See* Exhibit 4 (email between P. Andonian and J. Kerkhoff) 1. Since there is no evidence that Ms. Lagesse satisfies any of the three criteria set out in the Notice, which the government represents are the only reasons it is pursuing the remaining cases, it is reasonable to infer that the government is pursuing Ms. Lagesse for *other* reasons not stated in the Notice. The fact that Ms. Lagesse is actively suing the city and the police and is active in the press creates, at the very least, the appearance of a retaliatory motive. For these reasons, the Indictment should be dismissed. At a minimum, pursuant to the legal

⁷ The Court may consider the weakness of the government’s stated basis for prosecuting Ms. Lagesse as circumstantial evidence of the government’s retaliatory intent. *Cf. Reeves v. Sanderson Plumbing Products, Inc.*, which observes that a plaintiff in a Title VII suit “may attempt to establish that he was the victim of intentional discrimination ‘by showing that the employer’s proffered explanation is unworthy of credence.’” 530 U.S. 133, 143 (2000) (quoting *Texas Dep’t of Comty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981)); *see also Miller-El v. Dretke*, 545 U.S. 231, 241 (2005) (applying *Reeves* in the context of a *Batson* challenge during jury selection).

principles discussed above, the burden must now shift to the government to provide a legitimate basis for prosecution.

CONCLUSION

For the foregoing reasons, the Indictment should be dismissed or, in the alternative, the burden must shift to the government to provide a legitimate basis for its further prosecution of Ms. Lagesse.

Dated: April 25, 2018

Respectfully submitted,

/s/Joshua B. Shiffrin

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically filed on April 25, 2018, and served on counsel for the Government via CaseFileExpress and electronic mail and served on all co-Defendants via electronic mail as stated below:

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[PROPOSED] ORDER

Before the Court is the Defendant Elizabeth Lagesse's Motion to Dismiss the Indictment for Vindictive or Selective Prosecution. Having considered Defendant's Motion, it is hereby

ORDERED that the Motion is GRANTED.

This ____ day of ____, 2018.

Chief Judge Robert E. Morin

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHAY HORSE,
JUDAH ARIEL,
ELIZABETH LAGESSE, and
MILO GONZALEZ,*

Plaintiffs,

v.

DISTRICT OF COLUMBIA
c/o Office of the Attorney General
441 4th Street NW
Washington, D.C. 20001,

JOHN/JANE DOE MPD OFFICERS 1-150,
in their individual capacities
c/o Office of the Attorney General
441 4th Street NW
Washington, D.C. 20001,

JOHN/JANE SOE SUPERVISORY MPD
OFFICERS 1-20, *in their individual*
capacities
c/o Office of the Attorney General
441 4th Street NW
Washington, D.C. 20001, and

PETER NEWSHAM
Chief, Metropolitan Police Department,
in his individual capacity
c/o Office of the Attorney General
441 4th Street NW
Washington, D.C. 20001,

Defendants.

Civil Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

(Violation of constitutional and D.C.-law rights of Inauguration Day demonstrators)

* A motion for leave to omit plaintiffs' addresses is being filed contemporaneously.

INTRODUCTION

On January 20, 2017, Donald J. Trump was sworn in as President of the United States. Exercising their constitutional right to freedom of speech and assembly, people from all over the country took to the streets of the nation's capital to express their disapproval of his policies. Journalists came to report on the demonstrations. Legal observers came to document any violations of the demonstrators' legal rights.

During the course of demonstrations in the District of Columbia that day, several acts of vandalism occurred. In response, the District's Metropolitan Police Department (MPD) rounded up and arrested hundreds of people, including people who engaged in no illegal activity, by chasing them and blocking streets so as to force them into a confined area (a "kettle") on a D.C. street corner. During the chase and then while detaining demonstrators for hours, police fired pepper spray, tear gas, and flash-bang grenades at crowds of demonstrators, journalists, and legal observers, frequently without warning or justification. In the course of the roundup and subsequent processing of demonstrators, police held detainees for hours without food, water, or access to toilets; handcuffed detainees so tightly as to cause injury or loss of feeling; and subjected some detainees to manual rectal probing. Much of MPD's misconduct has been independently documented by the District of Columbia's Office of Police Complaints.

Plaintiffs are two individuals who came to the District to express their views concerning the inauguration, a photojournalist who covered the demonstrations, and a legal observer who was present at the scene. Each of them suffered one or more of the constitutional, statutory, and common law violations described here.

Among the violations committed by MPD and its officers were the following: Plaintiff Horse, a photojournalist, was pepper-sprayed while he was taking a photograph of demonstrators and neither posing a safety threat nor breaking the law; he was subsequently arrested even though he was not participating in any unlawful activity. Plaintiff Lagesse was arrested even though she did not participate in any acts of vandalism and was not even close enough to witness any; she was marching to express her views when she was caught up in the stampede created by MPD's pursuit of the demonstrators and its use of chemical irritants. Plaintiff Ariel, a clearly identified legal observer, was pepper-sprayed without warning and for no apparent reason other than standing near the corner where MPD was detaining demonstrators. Pepper spray and tear gas were used against all plaintiffs without justification and without warning. While Plaintiffs Lagesse, Horse, and Gonzalez were detained on a D.C. street corner and later in police transport vehicles, they were unreasonably denied food, water, and access to a toilet for periods ranging from 7 to 16 hours; arresting officers unnecessarily prolonged the arrest process in order to keep detainees in a state of anxiety, hunger, thirst, and other discomfort. Plaintiffs Lagesse and Horse were handcuffed so tightly that one of Plaintiff Lagesse's wrists bled and Plaintiff Horse lost feeling in several fingers, some of which were numb for months afterward. During processing, Plaintiffs Horse and Gonzalez were subjected to intrusive, humiliating, and unjustified manual rectal probing and grabbing of their testicles.

To obtain compensation for their injuries and to vindicate their rights under the First, Fourth, and Fifth Amendments to the Constitution, the D.C. First Amendment Assemblies Act, and the common law, plaintiffs now seek relief in this Court.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because the plaintiffs' claims arise under the First, Fourth and Fifth Amendments to the United States Constitution and are asserted here pursuant to 42 U.S.C. § 1983. Plaintiffs' claims under the statutory and common law of the District of Columbia arise from the same events as the constitutional claims and are within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because the events giving rise to all claims occurred in the District of Columbia.

PARTIES

3. Plaintiff Shay Horse is an adult resident of New York and a freelance photojournalist whose work has been purchased by Getty Images and Associated Press and published in a variety of outlets including Rolling Stone, Al Jazeera America, and The Intercept. On January 20, he was in Washington, D.C. to photograph the Inauguration Day demonstrations.

4. Plaintiff Judah Ariel is an adult resident of the District of Columbia and a licensed attorney. On January 20, he was serving as a legal observer to document any violations of the rights of counter-inaugural demonstrators.

5. Plaintiff Elizabeth Lagesse is an adult resident of Maryland. On January 20, she traveled to Washington, D.C. for the purpose of expressing her opposition to the policy positions of the new President.

6. Plaintiff Milo Gonzalez is an adult resident of New York. On January 20, he was in Washington, D.C. for the purpose of expressing his opposition to the policy positions of the new President and assisting journalists covering the demonstrations.

7. Defendant District of Columbia is a municipal corporation, the local government of Washington, D.C. It operates and governs the MPD pursuant to the laws of the District of Columbia. In this case, the District of Columbia acted through its agents, employees, and servants, including all of the individual Defendants.

8. Defendant MPD Officers John/Jane Doe 1-150 are sworn officers who are employed by the MPD and whose real names are unknown at this time. At the time of the events at issue, all Doe officers were acting within the scope of their employment and under color of law of the District of Columbia. They are sued in their individual capacities.

9. Defendant MPD Supervisory Officers John/Jane Soe 1-20 are sworn officers who are employed by the MPD and whose real names are unknown at this time. The Soe defendants supervised the Doe defendants as indicated herein. At the time of the events at issue, the Soe defendants were acting within the scope of their employment and under color of law of the District of Columbia. They are sued in their individual capacities.

10. Defendant Peter Newsham is the Chief of the D.C. Metropolitan Police Department. At the time of the events at issue, he was the Interim Chief of Police and was acting within the scope of his employment and under color of law of the District of Columbia. He is sued in his individual capacity.

FACTS

Police Weapons

11. On Inauguration Day 2017, MPD officers who interacted with demonstrators were equipped with several types of non-lethal weapons, including:

a. Oleoresin Capsicum spray dispensers, which resemble small fire extinguishers containing 14-48 ounces of solution, depending on the model, with a typical range of 25-30 feet. The solution, commonly known as pepper spray, produces a burning sensation on a person's skin and in a person's eyes and lungs, vision problems, and breathing problems including coughing and choking.

b. "Stingers," which are explosive devices that release smoke, rubber pellets, and a chemical irritant within a radius of approximately 50 feet.

c. Smoke flares, which are explosive devices that release smoke.

d. Concussion grenades, which are devices that produce loud explosive noises.

e. Flash-bang grenades, which are devices that produce loud explosive noises and bright flashes of light.

f. Long range acoustic devices, or LRADs, which are devices that emit an excruciatingly loud tone.

Demonstrators March Down 13th Street NW

12. On January 20, 2017, thousands of people demonstrated in the District of Columbia to express their opposition to the new President.

13. The overwhelming majority of the demonstrators were peaceful and law-abiding.

14. Between 10 and 11 a.m. on January 20, hundreds of demonstrators walked south on 13th Street NW from Logan Circle toward the National Mall.

15. Plaintiff Shay Horse was walking alongside the demonstrators in order to photograph the demonstration for journalistic purposes. He intended to sell his photographs commercially, and had a well-founded expectation that he would be able to do so.

16. Mr. Horse was wearing dark jeans, a hooded sweatshirt with the hood down, a leather jacket, and a camera around his neck. He carried a bag onto which he had affixed silver duct tape to make the bag more identifiable.

17. Between 10 and 11 a.m. on January 20, some demonstrators engaged in acts of vandalism on or near 13th Street NW between Logan Circle and Franklin Square.

18. The individuals who engaged in vandalism were dressed in all-black clothing with hoods over their heads and masks over their faces.

19. Mr. Horse was not wearing a hood or a mask.

Police Confront the Demonstrators

20. As demonstrators walking south on 13th Street NW reached Franklin Square, they encountered a group of MPD officers, who diverted protestors away from Franklin Square to the east.

21. Many demonstrators and Mr. Horse moved away from the police down streets to the east and south of Franklin Square.

22. Additional police officers converged on the demonstrators as they were diverted down side streets, and some began discharging pepper spray and various types of noise-emitting devices at the demonstrators.

23. Plaintiff Horse continued to take photographs of the events, including photographs of a few demonstrators in hoods and masks breaking a storefront window and a photograph of Defendant Officer John Doe 1 as he pepper-sprayed demonstrators. A photograph of Officer John Doe 1 is attached to the complaint as Exhibit A.

24. Although Officer John Doe 1 had observed Mr. Horse with a large, professional-quality camera around his neck taking photographs, Officer John Doe 1 pepper-sprayed Mr. Horse without warning.

25. At the time Officer John Doe 1 pepper-sprayed Mr. Horse, Mr. Horse was not engaged in any unlawful or dangerous activity. He was not disobeying any orders by any police officer.

26. As a result of the pepper spray, Mr. Horse choked and gasped for breath. As the pepper spray flooded his eyes, they began to burn.

27. As Mr. Horse and a number of demonstrators ran away from the police assault, Defendant Officers Doe 1-60 confronted them on the streets immediately east and/or south of Franklin Square and discharged pepper spray, flash-bang grenades, concussion grenades, stingers, smoke flares, and LRADs at demonstrators and other individuals in the vicinity, including Plaintiff Horse.

28. Neither Defendant Officers Doe 1-60, nor any other MPD officers or officials, ordered anyone to disperse, halt, or turn back, before Does 1-60 deployed their weapons.

29. Defendant Officers Doe 1-60 deployed pepper-spray, flash-bang grenades, concussion grenades, stingers, smoke flares, and LRADs against individuals (including Mr. Horse) in many instances in which the officers faced no threat to themselves or to public safety or disobedience of any commands they had given.

30. Defendant Supervisory Officers Soe 1-10 directed the Doe defendants to deploy their weapons against individuals (including Mr. Horse) in many instances in which the Doe defendants faced no threat to themselves or to public safety or disobedience of any commands they had given.

31. Using pepper spray, flash-bang grenades, concussion grenades, stingers, smoke flares, and LRADs, Defendant Officers Doe 1-60 chased Mr. Horse and many of the demonstrators back to the north and west.

Plaintiff Lagesse Marches Down 13th Street NW

32. Plaintiff Elizabeth Lagesse arrived at Logan Circle later than most of the demonstrators. She walked south down 13th Street NW from Logan Circle approximately thirty minutes after most of the demonstrators had begun marching.

33. Ms. Lagesse was wearing a black and white T-shirt, a bright-colored inner jacket, and a long grey rain jacket that she removed as she marched, and she was carrying a multi-colored bag. She did not wear a hood or mask. Having encountered overzealous police officers using pepper spray at prior demonstrations, Ms. Lagesse brought a bandana and a pair of lab safety goggles she owned. They were not on her face as she walked south from Logan Circle.

34. Ms. Lagesse did not engage in or witness any acts of vandalism.

Continued Police Assault and Mass Detentions

35. On or near 13th Street NW, Defendant Officers Doe 1-60 deployed pepper spray and/or tear gas against individuals, including Mr. Horse and Ms. Lagesse, without warning or a dispersal order, and in many instances in which the officers faced no threat to themselves or to public safety or disobedience of any commands they had given.

36. Defendant Supervisory Officers Soe 1-10 directed the Doe defendants to deploy pepper spray against individuals (including Mr. Horse and Ms. Lagesse) in many instances in which the Doe defendants faced no threat to themselves or to public safety or disobedience of any commands they had given.

37. The pepper spray caused Mr. Horse's and Ms. Lagesse's eyes to burn.

38. Ms. Lagesse put on her safety goggles and pulled her bandana from around her neck to cover her mouth in an attempt to protect herself from the pepper spray that MPD officers were discharging.

39. Although neither Ms. Lagesse nor Mr. Horse had committed any unlawful act, the police conduct put each of them in fear for their safety and so they ran away from the police, ultimately heading north on 14th Street NW.

40. Defendant Officers Doe 61-90 strategically blocked numerous alternative egress routes in order to force Mr. Horse, Ms. Lagesse, and many demonstrators to flee north up 14th Street NW and then east on L Street NW to the corner of 12th and L Streets NW.

41. At the corner of 12th and L Streets NW, Defendant Officers Doe 91-140 established a blockade to trap individuals running east on L Street NW.

42. Although some individuals on L Street NW managed to escape by evading the MPD blockade before it closed in, Ms. Lagesse, Mr. Horse, and most of the other individuals on L Street NW were detained by police at the northwest corner of 12th and L Streets NW and on L Street NW itself.

43. Defendant Officers Doe 91-140 detained more than 200 individuals in the cordoned area (the “kettle”) they had created at 12th and L Streets NW.

44. Defendant Supervising Officers Soe 11-15 supervised and/or commanded MPD officers to act in a coordinated manner to funnel individuals into the kettle by chasing them to 12th and L Streets NW and by blocking off alternative routes of dispersal.

45. Neither Defendant Officers Doe 61-140 nor Defendant Supervisory Officers Soe 11-15 took any actions to try to ensure that only individuals whom they had probable cause to believe had committed crimes would be detained in the kettle.

46. Defendant Supervising Officers Soe 11-15 were well aware that the police had no ability to identify which, if any, of the kettled individuals had committed crimes.

47. Defendant Newsham later acknowledged to the Washington Post that his officers strategically maneuvered the demonstrators to trap them in the kettle. On information and belief, Defendant Newsham ordered or approved this action at the time it took place, and/or approved the continued detention and arrest of the kettled demonstrators despite becoming aware that the police had no ability to identify which, if any, of these individuals had committed crimes.

48. Because of Defendants’ intentional and coordinated action in chasing individuals north on 14th Street NW, then east on L Street NW, while driving them on by using pepper spray, flash-bang grenades, concussion grenades, and stingers, and blocking

their egress via different routes, the individuals who were trapped in the kettle at 12th and L Streets NW were not there by virtue of having acted unlawfully but merely because they were present on particular downtown D.C. streets on the morning of January 20 and then tried to disperse when police chased and assaulted them.

49. Mr. Horse did not engage in any vandalism or other unlawful activity on the streets of Washington, D.C. on January 20, 2017. He did not encourage anyone to do so or cheer for anyone who did so. He was not dressed the same as anyone who did so.

50. Mr. Horse was detained in the kettle without probable cause and merely because he was exercising his First Amendment right to document the demonstrations as a photojournalist, was present on particular downtown D.C. streets on the morning of January 20, and tried to run away when police officers chased and assaulted him.

51. Ms. Lagesse did not engage in any vandalism or other unlawful activity on the streets of Washington, D.C. on January 20, 2017. She did not encourage anyone to do so or cheer for anyone who did so. She was not dressed the same as anyone who did so.

52. Ms. Lagesse was detained in the kettle without probable cause and merely because she wished to exercise her First Amendment right to demonstrate peacefully in opposition to the Inauguration, was present on particular downtown D.C. streets on the morning of January 20, and tried to run away when police officers chased and assaulted her.

In the Kettle

53. The kettle of detainees at 12th and L Streets NW was formed by Defendants at about 10:45 a.m.

54. Plaintiffs Horse and Lagesse were detained there along with approximately 200 other individuals, one of whom was Plaintiff Milo Gonzalez.

55. Plaintiffs, Horse, Lagesse, and Gonzalez were detained in the kettle for hours.

56. While individuals were detained in the kettle, Defendant Officers Doe 91-140 repeatedly deployed pepper spray and tear gas against individuals or groups of individuals in the kettle, including Plaintiffs Horse, Lagesse, and Gonzalez.

57. Many of these deployments came without warning or dispersal order—indeed, the individuals in the kettle were physically prevented from dispersing—and were carried out in the absence of any threat to officer or public safety or any disobedience of police orders on the part of the detainees.

58. Defendant Supervisory Officers Soe 16-20, overseeing the conduct of officers at the kettle, directed the Doe defendants to deploy pepper spray against individuals (including Plaintiffs Horse, Lagesse, and Gonzalez) in many instances in which the Doe defendants faced no threat to themselves or to public safety or disobedience of any commands they had given.

59. The pepper spray and tear gas were so thick that at times they created a haze over the kettle and all the individuals detained there.

60. The repeated deployment of chemical irritants caused panic among the kettled detainees, including Plaintiffs Horse, Lagesse, and Gonzalez, because they were having difficulty breathing, were tightly pressed together with other detainees, and could not escape the kettle.

61. Each time Plaintiffs Horse and Gonzalez were hit with pepper spray or tear gas, their eyes began to burn painfully, and they began to cough and to gasp for breath.

62. Because Plaintiff Lagesse had goggles on by this time, her eyes were protected, but the pepper spray caused her to cough, to have difficulty breathing, and to experience a burning sensation on the uncovered part of her face.

63. While Plaintiffs Horse, Lagesse, and Gonzalez were detained in the kettle, the defendants failed to provide them with food, water, or access to a toilet.

64. Many demonstrators, including Ms. Lagesse and Mr. Gonzalez, specifically requested food, water, and access to a toilet.

65. While the detainees were kettled, Defendant Officers Doe 91-95 threw edible food in a garbage can in view of the detainees, including Plaintiffs Horse and Gonzalez, to taunt them. Mr. Gonzalez specifically asked the officers for food that they were throwing away and they refused to provide it. Defendant Officers Doe 91-95 laughed at Mr. Gonzalez as they threw their food away.

66. Hungry, Mr. Horse and Mr. Gonzalez both resorted to rummaging in a city trashcan for the food the officers had discarded.

67. One of the MPD officers, Defendant Officer John Doe 96, made clear to the detainees that no toilets would be made available by stating in response to one detainee's request that she should "shit [her] pants" to prove she needed a toilet.

68. Having no other place to urinate, some of the demonstrators urinated on the street or against the side of buildings. Some demonstrators rummaged in the trash for empty bottles in which to urinate. At least one demonstrator crouched against the side of a building and defecated into a paper bag.

69. Mr. Gonzalez badly needed to use a toilet, but, fearing that he could be charged with public urination, did not dare to urinate on the street.

70. Holding his bladder was painful for Mr. Gonzalez.

71. Defendant Officer John Doe 97 taunted Mr. Gonzalez, saying “If you wanted to go to the bathroom, you shouldn’t have gotten arrested.”

72. In the early afternoon, MPD began handcuffing detainees and placing them into vehicles for transport to detention facilities.

73. Neither Defendant Officers Doe 91-140 nor Defendant Supervisory Officers Soe 16-20 took any actions to try to ensure that only individuals whom they had probable cause to believe had committed crimes would be handcuffed and transported to detention facilities.

74. Defendant Officers John Doe 91-140 purposefully proceeded slowly with the arrests to maximize the detainees’ discomfort.

75. The level of coordination in slow-walking the formal arrest of detainees reflects that Defendant Supervisory Officers Soe 16-20 instructed the arresting officers to process the detainees slowly to maximize their discomfort.

Bystanders and Legal Observers Are Pepper-Sprayed

76. Plaintiff Judah Ariel had started working as a legal observer at 6:30 a.m. on January 20 at various demonstrations throughout the District. He was dressed in a brown jacket and blue jeans, and he was wearing the distinctive bright neon green hat commonly worn by legal observers to identify themselves. He was not wearing a hood or mask.

77. At approximately 1:30 p.m., Mr. Ariel was walking east from McPherson Square on K Street NW.

78. Because Mr. Ariel had heard from another legal observer about police activity in the area of 12th and L Streets NW, he walked north on 12th Street NW toward that intersection to see if he could be of use as a legal observer there.

79. Mr. Ariel joined a crowd of people at the southeast corner of 12th and L Streets NW, outside the kettle. The crowd included multiple legal observers along the sidewalk, clearly identifiable by on their bright neon green hats.

80. The south side of the intersection was cordoned off by yellow police tape and blocked by a row of police motorcycles. In the intersection, and extending west on L Street NW, a row of MPD officers lined up facing south towards the crowd. Additional MPD officers were lined up behind the first police line.

81. Mr. Ariel observed the kettled group of detainees surrounded by police at the northwest corner of the intersection.

82. Many members of the crowd outside the kettle shouted at the police to demand the release of the people being detained.

83. While Mr. Ariel was present, neither he nor the other individuals outside the kettle menaced, threatened, or assaulted the police or their vehicles.

84. At approximately 1:45 p.m., suddenly and without warning or a dispersal order, Defendant Officers Doe 141-149 began to pepper-spray the people outside the kettle, including Mr. Ariel, on the south side of L Street NW.

85. When the pepper-spraying began, there was no threat to public or officer safety, and neither Mr. Ariel nor other individuals in the crowd were disobeying police orders.

86. The coordinated action by multiple officers reflects that Defendant Supervisory Officers Soe 16-20, overseeing the conduct of officers at the kettle, ordered the pepper-spraying of bystanders, despite the absence of a threat to officer or public safety or disobedience of any officer's command.

87. The crowd began to retreat from the spray.

88. Officers Doe 141-149 moved forward down 12th Street NW, advancing on the retreating crowd, continuing to deploy pepper spray indiscriminately on people in the crowd.

89. One MPD officer, Defendant Officer John Doe 141, held his spray gun in front of him, sweeping the spray back and forth across the crowd.

90. Mr. Ariel coughed and felt his lungs and eyes burn from the spray.

91. Mr. Ariel covered his mouth with a cloth but a few seconds later, he began to choke.

92. Fearing for his safety, Mr. Ariel fled. He felt that he was on the verge of passing out.

The Formal Arrests

93. The pace of the formal arrests of the kettled detainees speeded up in the mid- to late afternoon.

94. When Mr. Horse was formally arrested, Defendant Officer John Doe 101 handcuffed him (using zipties) so excessively tightly that he lost feeling in some of the fingers on both of his hands.

95. Mr. Horse complained to Defendant Officer John Doe 102 that the zipties were painfully tight, but the officer refused to remove them, explaining that the zipties were not supposed to be comfortable.

96. Mr. Horse's zipties were not removed for approximately three hours.

97. When Ms. Lagesse was arrested, Defendant Officer John Doe 103 handcuffed her using zipties so excessively tightly that one of her wrists was cut and began to bleed.

98. Ms. Lagesse complained to Defendant Officer John Doe 104 that the zipties were painfully tight, but the officer refused to remove them.

99. Ms. Lagesse's zipties were not removed for approximately two hours.

100. Mr. Horse was detained in the kettle for approximately 7 hours.

101. By the time Mr. Horse was formally arrested and transported to a detention facility, he had gone approximately 9-10 hours without access to a toilet.

102. Mr. Horse was not given food or drink until later in the evening; he was detained an approximate total of 10-11 hours without being provided food or drink.

103. Ms. Lagesse was detained on the street for approximately 5-6 hours.

104. By the time Ms. Lagesse was formally arrested, transported to a detention facility, and had her belongings inventoried, she had gone approximately 7-8 hours without access to a toilet.

105. The toilet to which Ms. Lagesse was finally given access had no toilet paper. Several of the women detained with her asked for toilet paper but none was provided.

106. Ms. Lagesse was not given access to water until late that night; she was detained an approximate total of 11-12 hours without water.

107. Ms. Lagesse did not receive food at the detention facility until the early hours of the following morning; she was detained an approximate total of 13-16 hours before she was given food.

108. Mr. Gonzalez was detained on the street for approximately 7 hours.

109. By the time Mr. Gonzalez was formally arrested, transported to a detention facility, and given the opportunity to use a toilet, he had gone approximately 9-10 hours without access to a toilet.

110. By the time he was allowed to urinate, Mr. Gonzalez was in pain from having held his urine for so long.

111. When Mr. Gonzalez was allowed to use a portable toilet, MPD officers held the door open and watched him urinate. They rushed Mr. Gonzalez out of the toilet before he had finished emptying his bladder.

112. Mr. Gonzalez was not given food or drink until later in the evening; he was detained an approximate total of 10-11 hours without being provided food or drink.

The Rectal Searches

113. After Plaintiffs Horse and Gonzalez were arrested, they were detained at a facility they believe to have been the Metropolitan Police Academy on Blue Plains Drive SW, off I-295 near the Maryland state line.

114. MPD officers took them inside the facility to what appeared to be an officer-training area that was set up to look like a mock street. There the officers searched both of them along with several other detainees.

115. Defendant Officer John Doe 150, who was wearing rubber gloves, ordered Mr. Horse, Mr. Gonzalez, and three other detainees to remove their pants.

116. Without warning, Defendant Officer John Doe 150 grabbed Mr. Horse's testicles and yanked on them.

117. He then put his finger into Mr. Horse's rectum, through his underwear.

118. As Defendant Officer John Doe 150 pushed his finger into Mr. Horse's rectum, he ordered Mr. Horse not to flinch.

119. Defendant Officer John Doe 150 pushed his finger an inch deep into Mr. Horse's rectum and wiggled it around for several seconds.

120. Defendant Officer John Doe 150 then reached inside Mr. Gonzalez's underwear and fondled his testicles.

121. Defendant Officer John Doe 150 reached inside Mr. Gonzalez's underwear and put his finger into Mr. Gonzalez's rectum.

122. As the Defendant Officer John Doe 150 pushed his finger into Mr. Gonzalez's rectum, he ordered Mr. Gonzalez not to resist.

123. Defendant Officer John Doe 150 and other officers laughed at Mr. Gonzalez while this degrading search was performed.

124. Defendant Officer John Doe 150 then moved down the line and subjected the other three detainees there to similar treatment; Mr. Horse heard another detainee yelp.

125. Defendant Officer John Doe 150 did not change gloves when he moved from one individual to the next.

126. The manual rectal searches were performed in the presence of several other detainees and approximately five to ten other MPD officers, including at least one or two female officers.

127. No circumstances provided reasonable suspicion or probable cause to suspect Mr. Horse or Mr. Gonzalez of concealing contraband in any body cavity.

128. No contraband was found on either Mr. Horse or Mr. Gonzalez.

Plaintiff Horse's Injuries

129. As a result of Defendants' use of pepper spray and tear gas, Plaintiff Horse suffered severe pain as his eyes burned from the pepper spray. Pepper spray remained in his hair throughout his detention, which lasted more than 24 hours; every time his long hair touched his face, it caused a burning sensation and coughing. Mr. Horse had a rash on his scalp for a week after his arrest. Mr. Horse suffered emotional distress from the panic at being trapped and unable to breathe while he was pepper-sprayed during the kettle.

130. As a result of his arrest without probable cause and in response to his exercise of his First Amendment rights, Mr. Horse was detained for approximately 33 hours.

131. Because Mr. Horse's arrest and detention led to the confiscation of his photographs and camera for approximately two months, Mr. Horse lost income because he was unable to sell his photographs of the January 20 demonstrations in a timely manner and did not have the equipment he needed to cover other newsworthy protests in the weeks following his arrest.

132. As a result of the application of excessively tight zipties, Mr. Horse experienced pain in his hands and lost feeling in several fingers on both hands. Several fingers on his left hand remained numb for more than four months after his arrest. Because of the numbness, Mr. Horse has had difficulty with important daily tasks, including typing

on a keyboard and operating his camera. Mr. Horse had scarring on his left wrist from the zipties for more than two months after the arrest.

133. As a result of the denial of food, water, and access to a toilet, Mr. Horse experienced hunger, thirst, discomfort, and anxiety.

134. As a result of Defendants' manual rectal probing and grabbing of his testicles, Mr. Horse suffered humiliation, anxiety, and emotional distress. He feels as if he has been raped. Mr. Horse's anus was sore for a day or two after the intrusion. Mr. Horse has felt irritable and withdrawn from other people, and he has found it harder to trust and confide in other people. The emotional distress has negatively affected Mr. Horse's relationships, including impinging on his sex drive and performance. Mr. Horse remains haunted by what he experienced.

135. As a result of the defendants' conduct described above, particularly the kettling and the rectal probing, Mr. Horse has suffered bouts of anxiety and has had difficulty sleeping since January 20. He suffers from nightmares filled with violent imagery and wakes up approximately every three hours, often in a panicked state. Covering demonstrations—a crucial part of Mr. Horse's job—heightens his anxiety as he remembers what happened to him on January 20.

Plaintiff Lagesse's Injuries

136. As a result of Defendants' use of pepper spray and tear gas, Plaintiff Lagesse coughed, had difficulty breathing, and experienced a burning sensation on her face and in her eyes. Ms. Lagesse also suffered emotional distress from the panic at being trapped and unable to breathe when she was pressed in a crush of people and pepper-sprayed while being detained in the kettle.

137. As a result of her exposure to pepper spray, the skin on Ms. Lagesse's face was peeling for more than a week after the arrest.

138. As a result of her arrest without probable cause and in response to her exercise of her First Amendment rights, Ms. Lagesse was detained for approximately 37 hours.

139. As a result of Defendants' application of excessively tight zipties, Ms. Lagesse's wrist bled and she experienced pain in her wrists and hands. More than four months after her arrest, she still has a quarter-inch-long scar on her right wrist.

140. As a result of the denial of food, water, and access to a toilet, Ms. Lagesse experienced hunger, thirst, discomfort, and anxiety.

141. As a result of the defendants' conduct described above, Ms. Lagesse suffered stress, anxiety, and emotional distress both on January 20 and subsequently. For weeks after her arrest, she experienced heightened anxiety whenever she heard helicopters or loud noises such as fireworks. She continues to feel increased anxiety around police officers. Ms. Lagesse participated in many political demonstrations prior to January 20, but is now reluctant to do so because she fears that she may again be subjected to police violence through no fault of her own. Although she has nevertheless attended two demonstrations since January 20, she was nervous while demonstrating, constantly watching for police and worrying about their whereabouts, and she sometimes avoided chanting or carrying a sign because she feared that if she called attention to herself she might be again become a target of police violence.

Plaintiff Ariel's Injuries

142. As a result of Defendants' use of pepper spray and tear gas, Plaintiff Ariel coughed, choked, had difficulty breathing, and experienced a burning sensation in his eyes and lungs. He feared he would pass out and suffer further injury.

143. As a result of Defendants' unjustified and sudden pepper-spraying, Mr. Ariel suffered emotional distress and anxiety during and after his encounter with the police. He often continues to feel increased anxiety around police officers.

Plaintiff Gonzalez's Injuries

144. As a result of Defendants' use of pepper spray and tear gas, Plaintiff Gonzalez coughed, had difficulty breathing, and experienced a burning sensation in his eyes, on his face, and in his lungs and chest. He experienced extreme panic when he was being pepper-sprayed in the kettle and felt unable to breathe and unable to escape. When Mr. Gonzalez attended a Chinese New Year celebration shortly after his arrest, the fireworks caused Mr. Gonzalez to panic and feel as if concussion grenades were being detonated near him.

145. As a result of the denial of food, water, and access to a toilet, Mr. Gonzalez experienced hunger, thirst, discomfort, and anxiety. Specifically, Mr. Gonzalez experienced pain and discomfort in his midsection as a result of holding his bladder; the pain persisted for two weeks after his arrest. Additionally, Mr. Gonzalez experienced difficulty urinating for two weeks after his arrest. He sought medical attention for both of these conditions.

146. As a result of Defendants' manual rectal probing and the grabbing of his testicles, Mr. Gonzalez suffered humiliation, anxiety, and emotional distress. He feels more withdrawn from people and has had difficulty relating to people since the search.

147. As a result of all the conduct described here, Mr. Gonzalez has had difficulty sleeping since January 20. He has regular nightmares about being chased, attacked, or locked up by the police. He frequently cannot sleep for hours and occasionally goes all night without sleeping. Mr. Gonzalez also feels nervous about attending protests. When he encounters police, he becomes extremely fearful, and begins to shake and sweat. After experiencing these symptoms at several demonstrations after January 20, he has ceased attending demonstrations entirely because of his fear and anxiety.

The District's Responsibility for Plaintiffs' Injuries

148. The actions of the Defendants described above were taken pursuant to a municipal policy, practice and custom of responding to demonstrations at which some law-breaking occurs by using excessive force against participants who have not broken the law.

149. Chief Newsham has acknowledged that the Defendant Officers' kettling of detainees was not mere happenstance but a coordinated strategy. Indeed, all of the Defendants Officers' actions in pepper-spraying, assaulting with additional noise- and light-emitting weaponry, and detaining demonstrators were carried out in a coordinated manner.

150. Chief Newsham spent the day on January 20 in an MPD command center, where he was well aware of and (on information and belief) directed the massive and coordinated MPD response to the march down 13th Street NW, in accordance with MPD Standard Operating Procedure 16-01 ("Handling First Amendment Assemblies And Mass

Demonstrations”), which provides (at page 11) that “During periods in which the Department is fully mobilized for mass demonstration operations . . . [t]he Chief of Police, as the commanding official of the MPD, shall oversee all police activities”

151. To whatever extent Chief Newsham did not direct the coordinated MPD response himself, he nonetheless was aware of the large-scale MPD actions taken against the individuals who marched down 13th Street NW, and he deliberately failed to supervise and restrain Defendants under his command from violating the rights of Plaintiffs and others repeatedly and continually throughout January 20.

152. The coordinated MPD response is part of a custom of the District of Columbia of responding with overwhelming and unlawful force to non-violent demonstrators at largely peaceful demonstrations where some law-breaking is occurring. For instance, MPD has:

a. Used excessive force against and unconstitutionally detained demonstrators during the counter-inaugural demonstrations in Adams Morgan in January 2005; the pepper-spraying and arrest of numerous peaceful demonstrators led to lawsuits resolved by large settlement payments to victims of MPD violence.

b. Used excessive force against demonstrators during the counter-inaugural demonstrations near the White House in January 2005 after other demonstrators had removed a portion of security fencing; the pepper-spraying of law-abiding demonstrators led to a lawsuit resolved by large settlement payments to victims of MPD violence.

c. Used excessive force against and unconstitutionally detained demonstrators during the World Bank protests in Pershing Park in September 2002; the mass arrests and hogtying of protestors led to lawsuits resolved by large settlement payments to victims of MPD violence.

d. Used excessive force against and unconstitutionally detained anti-globalization demonstrators in April 2000, including kettling, use of pepper spray, and denying detainees of access to food and water, all of which led to lawsuits resolved by large settlement payments to victims of MPD violence.

153. The prior incidents in which MPD used excessive force against and unconstitutionally detained peaceful demonstrators where some law-breaking occurred made clear to the District that its officers required training regarding the constitutional limits of their authority to detain demonstrators and use force against them. To whatever extent the individual Defendants' actions described here did not reflect municipal custom or carry out affirmative instructions from Chief Newsham, these actions were the result of the District's failure to train, or its inadequate training of, MPD officers.

154. Dozens of individuals detained by MPD on January 20, including individuals who were transported to detention facilities at various times during the afternoon and evening, report that MPD officers subjected them to manual cavity searches and other molestations similar to those experienced by Plaintiffs Horse and Gonzalez.

155. The widespread and pervasive nature of MPD's abusive cavity searches demonstrates that they were undertaken pursuant to a central policy or pervasive custom of the District to humiliate and degrade individuals arrested for demonstrating.

156. When asked to comment on the conduct of MPD officers on January 20, Chief Newsham responded by ratifying the officers' conduct in an interview with WTOP radio, in which he stated: "[A]ll the police officers were outstanding in the judgment that they used. They used the least amount of force necessary to bring those folks safely and respectfully into custody. I couldn't be more proud of the way this department responded." Chief Newsham further stated to WTOP that he was "very, very pleased" with the way police responded to the demonstration.

157. Following a report by the Office of Police Complaints raising concerns about MPD's conduct on Inauguration Day, an official MPD spokesperson reaffirmed that its officers' actions conformed to the District's expectations: "The Metropolitan Police Department stands by its assertion that our officers acted responsibly and professionally during Inauguration Day," MPD spokesperson Rachel Reid said in a statement emailed to the news media.

Notice of Claim

158. Plaintiffs have timely given notice in writing to the Mayor of the District of Columbia of the "approximate time, place, cause, and circumstances" of their injuries, pursuant to D.C. Code § 12-309. The Notice of Claim letter was hand-delivered to the D.C. Office of Risk Management on June 12, 2017.

CLAIMS FOR RELIEF

Claim 1: Fourth Amendment / 42 U.S.C. § 1983 – arrest without probable cause (Plaintiffs Horse and Lagesse against Defendants District of Columbia, Doe 61-140, Soe 11-20, and Newsham)

159. The actions of Defendants Doe 61-140, namely the warrantless arrests of Plaintiffs Horse and Lagesse without probable cause, and the actions of Defendants Soe

11-20 and Newsham in ordering or approving such arrests, violated Plaintiffs' rights under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures.

160. Defendants Doe 61-140, Soe 11-20, and Newsham are jointly and severally liable to Plaintiffs Horse and Lagesse pursuant to 42 U.S.C. § 1983 for this violation of their rights.

161. Defendant District of Columbia is liable to Plaintiffs Horse and Lagesse pursuant to 42 U.S.C. § 1983 for this violation of their rights, because the violation was caused by a policy, practice, or custom of the District of Columbia.

**Claim 2: First Amendment / 42 U.S.C. § 1983 – arrest for protected speech
(Plaintiffs Horse and Lagesse against Defendants District of Columbia, Doe 61-140,
Soe 11-20, and Newsham)**

162. The actions of Defendants Doe 61-140, namely the arrest of Plaintiffs Horse and Lagesse for exercising their First Amendment freedoms to report the news or to express their views, respectively, and the actions of Defendants Soe 11-20 and Newsham in ordering or approving such arrests, violated the rights of Plaintiffs Horse and Lagesse under the First Amendment to the United States Constitution, which provides for the freedoms of speech and press.

163. Defendants Doe 61-140, Soe 11-20, and Newsham are jointly and severally liable to Plaintiffs Horse and Lagesse pursuant to 42 U.S.C. § 1983 for this violation of their rights.

164. Defendant District of Columbia is liable to Plaintiffs Horse and Lagesse pursuant to 42 U.S.C. § 1983 for this violation of their rights, because the violation was caused by a policy, practice, or custom of the District of Columbia.

**Claim 3: False arrest / false imprisonment
(Plaintiffs Horse and Lagesse against Defendants District of Columbia, Doe 61-140,
Soe 11-20, and Newsham)**

165. The actions of Defendants Doe 61-140, namely the warrantless arrest of Plaintiffs Horse and Lagesse without probable cause, and the actions of Defendants Soe 11-20 and Newsham in ordering or approving such arrests, constituted false arrest and false imprisonment under the laws of the District of Columbia.

166. Defendants Doe 61-140, Soe 11-20, and Newsham are jointly and severally liable to Plaintiffs Horse and Lagesse for these tortious acts.

167. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 4: Negligence per se / First Amendment Assemblies Act – kettling
(Plaintiffs Horse and Lagesse against Defendants District of Columbia, Soe 11-20,
and Newsham)**

168. The actions of Defendants Soe 11-20 and Newsham, namely ordering the kettling or encircling of Plaintiffs, violated the rights of Plaintiffs Horse and Lagesse under the First Amendment Assemblies Act because Defendants lacked “probable cause to believe that a *significant* number or percentage of the persons located in the area or zone have committed unlawful acts” and because the police did not “have the ability to identify those individuals.” D.C. Code § 5-331.08 (emphasis added).

169. Defendants Soe 11-20 and Newsham are jointly and severally liable to Plaintiffs Horse and Lagesse for this violation of their rights, because Defendants’ violation of the First Amendment Assemblies Act constitutes negligence per se and/or is redressable under the First Amendment Assemblies Act.

170. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 5: Negligence per se / First Amendment Assemblies Act –
failure to give dispersal order
(Plaintiffs Horse, Lagesse, and Ariel against Defendants District of Columbia, Doe
1-149, Soe 1-20, and Newsham)**

171. The actions of Defendants Doe 1-149, namely the failure to give Plaintiffs “at least one clearly audible and understandable order to disperse using an amplification system or device” and to “provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal” violated the rights of Plaintiffs Horse, Lagesse, and Ariel under the First Amendment Assemblies Act. D.C. Code § 5-331.07(e)(1).

172. Defendants Soe 1-20 and Newsham are liable for these actions of Doe 1-149 because Soe 1-20 and Newsham ordered the police to assault the plaintiffs without a dispersal order or knew about, condoned, and failed to correct this conduct.

173. Defendants Doe 1-149, Soe 1-20 and Newsham are jointly and severally liable to Plaintiffs Horse, Lagesse, and Ariel for this violation of their rights, because Defendants’ violation of the First Amendment Assemblies Act constitutes negligence per se and/or is redressable under the First Amendment Assemblies Act.

174. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 6: Fourth Amendment / 42 U.S.C. § 1983 –
excessive force (use of chemical irritants)
(Plaintiffs Horse, Lagesse, Ariel and Gonzalez against Defendants District of
Columbia, Doe 1-60 & 91-149, Soe 1-10 & 16-20, and Newsham)**

175. The actions of Defendants Doe 1-60 & 91-149, namely the use of pepper spray and tear gas against nonviolent and non-resisting demonstrators, detainees, and bystanders, and the actions of Defendants Soe 1-10 & 16-20 and Newsham in ordering or approving such use of pepper spray and tear gas, violated the rights of Plaintiffs Horse, Lagesse, Ariel, and Gonzalez under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures.

176. Defendants Doe 1-60 & 91-149, Soe 1-10 & 16-20, and Newsham are jointly and severally liable to Plaintiffs Horse, Lagesse, Ariel, and Gonzalez pursuant to 42 U.S.C. § 1983 for this violation of their rights.

177. Defendant District of Columbia is liable to Plaintiffs Horse, Lagesse, Ariel, and Gonzalez pursuant to 42 U.S.C. § 1983 for this violation of their rights, because the violation was caused by a policy, practice, or custom of the District of Columbia.

**Claim 7: Assault and battery – use of chemical irritants
(Plaintiffs Horse, Lagesse, Ariel, and Gonzalez against Defendants District of
Columbia, Doe 1-60 & 91-149, Soe 1-10 & 16-20, and Newsham)**

178. The actions of Defendants Doe 1-60 & 91-149, namely the use of pepper spray and tear gas against nonviolent and non-resisting demonstrators, detainees, and bystanders, and the actions of Defendants Soe 1-10 & 16-20 and Newsham in ordering or approving such use of pepper spray and tear gas, constituted the torts of assault and battery against Plaintiffs Horse, Lagesse, Ariel, and Gonzalez.

179. Defendants Doe 1-60 & 91-149, Soe 1-10 & 16-20, and Newsham are jointly and severally liable to Plaintiffs for these tortious acts.

180. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 8: Negligence per se / First Amendment Assemblies Act –
unlawful use of chemical irritants
(Plaintiffs Horse, Lagesse, Ariel, and Gonzalez against Defendants District of
Columbia, Doe 1-60 & 91-149, Soe 1-10 & 16-20, and Newsham)**

181. The actions of Defendants Doe 1-60 & 91-149, namely the use of pepper spray and tear gas against nonviolent and non-resisting demonstrators, detainees, and bystanders, and the actions of Defendants Soe 1-10 & 16-20 and Newsham in ordering or approving such use of pepper spray and tear gas, violated the rights of Plaintiffs Horse, Lagesse, Ariel, and Gonzalez under the First Amendment Assemblies Act because Defendants used “[l]arge scale canisters of chemical irritant” when not “reasonable and necessary to protect officers or others from physical harm or to arrest actively resisting subjects” and because they used “[c]hemical irritant ... to disperse a First Amendment assembly” absent a circumstance where “assembly participants or others are committing acts of public disobedience endangering public safety and security.” D.C. Code § 5-331.16(b).

182. Defendants Doe 1-60 & 91-149, Soe 1-10 & 16-20, and Newsham are jointly and severally liable to Plaintiffs Horse, Lagesse, Ariel, and Gonzalez for this violation of their rights, because Defendants’ violation of the First Amendment Assemblies Act constitutes negligence per se and/or is redressable under the First Amendment Assemblies Act.

183. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 9: Fourth Amendment / 42 U.S.C. § 1983 –
excessive force (zipties)
(Plaintiffs Horse and Lagesse against Defendants Doe 101-04)**

184. The actions of Defendants Doe 101-04, namely the excessively and painfully tight handcuffing of Plaintiffs Horse and Lagesse and the refusal to remove the restraints despite knowing that they were too tight, violated their rights under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures.

185. Defendants Doe 101-04 are jointly and severally liable to Plaintiffs Horse and Lagesse pursuant to 42 U.S.C. § 1983 for this violation of their rights.

**Claim 10: Fourth and Fifth Amendments / 42 U.S.C. § 1983 –
unconstitutional conditions of pre-trial confinement
(Plaintiffs Horse, Lagesse, and Gonzalez against Defendants District of Columbia,
Doe 91-140, Soe 16-20, and Newsham)**

186. The actions of Defendants Doe 91-140, namely the detention of Plaintiffs Horse, Lagesse, and Gonzalez for a prolonged period without access to food, water or toilets, and the decision of Defendants Soe 16-20 and Newsham to order or approve such prolonged detention under these conditions, violated Plaintiffs' rights under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures and under the Fifth Amendment to the United States Constitution to due process of law.

187. Defendants Doe 91-140, Soe 16-20, and Newsham are jointly and severally liable to Plaintiffs Horse, Lagesse, and Gonzalez pursuant to 42 U.S.C. § 1983 for this violation of their rights.

188. Defendant District of Columbia is liable to Plaintiffs Horse, Lagesse, and Gonzalez pursuant to 42 U.S.C. § 1983 for this violation of their rights, because the violation was caused by a policy, practice, or custom of the District of Columbia.

**Claim 11: Negligence per se / First Amendment Assemblies Act –
unreasonable delay in providing food to arrestees
(Plaintiffs Horse, Lagesse, and Gonzalez against Defendants District of Columbia,
Doe 91-140, Soe 16-20, and Newsham)**

189. The actions of Defendants Doe 91-140, namely the failure to provide food to detainees “not released within a reasonable time of arrest,” and the decision of Defendants Soe 16-20 and Newsham to order or approve such prolonged detention under these conditions, violated the rights of Plaintiffs Horse, Lagesse, and Gonzalez under the First Amendment Assemblies Act. D.C. Code § 5-331.12(b)(2).

190. Defendants Doe 91-140, Soe 16-20, and Newsham are jointly and severally liable to Plaintiffs Horse, Lagesse, and Gonzalez for this violation of their rights, because Defendants’ violation of the First Amendment Assemblies Act constitutes negligence per se and/or is redressable under the First Amendment Assemblies Act.

191. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 12: Negligence per se / First Amendment Assemblies Act –
failing to process arrestees promptly
(Plaintiffs Horse, Lagesse, and Gonzalez against Defendants District of Columbia,
Doe 91-140, Soe 16-20, and Newsham)**

192. The actions of Defendants Doe 91-140, namely the failure to “promptly process any person arrested in connection with a First Amendment assembly to determine whether the person is eligible for immediate release pursuant to a lawful release option,” and the decision of Defendants Soe 16-20 and Newsham to order or approve delays in processing, violated the rights of Plaintiffs Horse, Lagesse, and Gonzalez under the First Amendment Assemblies Act. D.C. Code § 5-331.12(a)(1).

193. Defendants Doe 91-140, Soe 16-20, and Newsham are jointly and severally liable to Plaintiffs Horse, Lagesse, and Gonzalez for this violation of their rights, because Defendants’ violation of the First Amendment Assemblies Act constitutes negligence per se and/or is redressable under the First Amendment Assemblies Act.

194. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 13: Intentional infliction of emotional distress – denial of access to toilets
(Plaintiff Gonzalez against Defendants District of Columbia, Doe 91-140, Soe 16-20,
and Newsham)**

195. The actions of Defendants Doe 91-140, namely the detention of Plaintiff Gonzalez for a prolonged period without access to toilets, and the decision of Defendants Soe 16-20 and Newsham to order or approve such prolonged detention under these conditions, constituted extreme and outrageous conduct that intentionally or recklessly caused Plaintiff Gonzalez severe emotional distress.

196. Defendants Doe 91-149, Soe 16-20, and Newsham are jointly and severally liable to Plaintiff Gonzalez for these tortious acts.

197. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agents while acting within the scope of their employment as MPD officers and on behalf of and in the interests of their employer.

**Claim 14: Fourth Amendment / 42 U.S.C. § 1983 – unreasonable search
(Plaintiffs Horse and Gonzalez against Defendants District of Columbia and John
Doe 150)**

198. The actions of Defendant John Doe 150, namely the manual rectal probing of Plaintiffs Horse and Gonzalez and the grabbing of their testicles without reasonable suspicion or probable cause, violated the rights of Plaintiffs Horse and Gonzalez under the Fourth Amendment to the United States Constitution to be free from unreasonable searches.

199. Defendant John Doe 150 is liable to Plaintiffs Horse and Gonzalez pursuant to 42 U.S.C. § 1983 for this violation of their rights.

200. Defendant District of Columbia is liable to Plaintiffs Horse and Gonzalez pursuant to 42 U.S.C. § 1983 for this violation of their rights, because the violation was caused by a policy, practice, or custom of the District of Columbia.

**Claim 15: Assault and battery – bodily invasion
(Plaintiffs Horse and Gonzalez against Defendants District of Columbia and John
Doe 150)**

201. The actions of Defendant John Doe 150, namely the manual rectal probing of Plaintiffs Horse and Gonzalez and the grabbing of their testicles, constituted the torts of assault and battery against Plaintiffs Horse and Gonzalez.

202. Defendant Doe 150 is liable to Plaintiffs Horse and Gonzalez for these tortious acts.

203. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agent while acting within the scope of his employment as an MPD officer and on behalf of and in the interest of his employer.

**Claim 16: Intentional infliction of emotional distress – bodily invasion
(Plaintiffs Horse and Gonzalez against Defendants District of Columbia and John
Doe 150)**

204. The actions of Defendant John Doe 150, namely the manual rectal probing of Plaintiffs Horse and Gonzalez and the grabbing of their testicles, constituted extreme and outrageous conduct that intentionally or recklessly caused Plaintiffs severe emotional distress.

205. Defendant Doe 150 is liable to Plaintiffs Horse and Gonzalez for these tortious acts.

206. Defendant District of Columbia is liable under the doctrine of *respondeat superior* for the damages inflicted by its agent while acting within the scope of his employment as an MPD officer and on behalf of and in the interest of his employer.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

(a) RULE that Defendants' actions violated Plaintiffs' rights under the First, Fourth and Fifth Amendments to the United States Constitution, the First Amendment Assemblies Act, and the law of the District of Columbia;

(b) ENTER JUDGMENT awarding Plaintiffs compensatory damages against all Defendants in an amount appropriate to the evidence adduced at trial;

(c) ENTER JUDGMENT awarding Plaintiffs punitive damages against Defendants John/Jane Doe 1-150, John/Jane Soe 1-20, and Newsham in an amount appropriate to the evidence adduced at trial;

(d) ENTER JUDGMENT awarding Plaintiffs their costs and reasonable attorneys' fees in this action as provided in 42 U.S.C. § 1988(b); and

(e) GRANT Plaintiffs such further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs request a trial by jury.

Respectfully submitted,

/s/ Scott Michelman

Scott Michelman (D.C. Bar No. 1006945)

Arthur B. Spitzer (D.C. Bar No. 235960)

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June 21, 2017

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Exhibit A



EXHIBIT 2

POLITICS

Prosecutors Are Dropping Most Of The Cases Against People Arrested On Trump's Inauguration Day

The US attorney's office in Washington will continue to pursue charges against 59 defendants and will drop the remaining 129 cases, citing previous court rulings and a jury's acquittal of six defendants in the first trial.

Originally posted on January 18, 2018, at 4:44 p.m.

Updated on January 19, 2018, at 2:13 p.m.



Zoe Tillman

BuzzFeed News Reporter



Reporting From
Washington, DC



Mark Tenally / AP

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Cases are pending for 188 defendants following the acquittal of six defendants at the end of the first trial in December. The government explained in its [latest court filing](#) that it planned to proceed with charges, including felony counts, against 59 defendants, but would file a motion to dismiss the indictment in the remaining 129 cases.

Assistant US Attorney Jennifer Kerkhoff, the lead prosecutor, wrote that the government had decided to dismiss the majority of the cases "in light of the legal rulings by the court and the jury's verdicts in the first trial of these cases."

The US attorney's office told the court that it would focus its efforts now on defendants who allegedly engaged in "identifiable acts of destruction, violence, or other assaultive conduct," participated in planning violence and destruction, or who knowingly participated in what's known as "black bloc" tactics in order to aid violence and destruction.

Police arrested 234 people during anti-Trump protests on Jan. 20 in downtown Washington, DC, that turned violent as some demonstrators broke store windows — the government tallied more than \$100,000 in property damage. In the months that followed, prosecutors dropped charges against 20 defendants and 20 others accepted plea deals. Only one defendant, Dane Powell, pleaded guilty to a felony charge. Powell is also the only defendant to receive a sentence that included jail time — he was sentenced to four months.

Most of the 188 remaining defendants faced eight charges, including a felony count of inciting a riot, two misdemeanor counts of engaging in a riot and conspiracy to riot, and five felony counts of property destruction. Although the judge during the first trial granted a motion to acquit the defendants of the felony incitement charge at the conclusion of testimony, the government did not say in Thursday's filing that it planned to drop that charge.

The felony charges carry maximum penalties of 10 years in jail and a \$25,000 fine. The misdemeanors have maximum penalties of 180 days in jail and a \$1,000 fine.

Elizabeth Lagesse, one of the defendants the government says it will still press charges against, told BuzzFeed News in a phone interview that she would continue to maintain her innocence and fight the case. Lagesse is also a plaintiff in a [civil lawsuit](#) alleging excessive force and constitutional violations by the Metropolitan Police Department on Inauguration Day.

"My immediate reaction was just to be really, really happy because 129 people don't have to worry about this anymore. My second reaction was to be a little bit confused that I'm still on the list. I don't fit any of the criteria that they listed and I have absolutely no idea what their justification is."

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that it was logically impossible for 217 defendants to have done the exact same conduct." He declined to comment on his clients' situation.

The 59 defendants still facing charges include Aaron Cantú, a journalist currently working as a staff reporter at the Santa Fe Reporter. His lawyer did not immediately return a request for comment. Press freedom advocates have denounced the arrest of journalists on Jan. 20 and have [called on](#) the government to drop the case against Cantú.

Cantú's lawyers on Friday filed a [motion to dismiss](#) the charges against him, arguing that they "impermissibly infringe his First Amendment rights."

Lawyers for the government and a group of defendants appeared in court on Friday morning for a status hearing. The next trial was set to begin March 5, but the judge set new trial dates for April and farther into the year for those defendants.

The cases have been assigned to a new judge in the District of Columbia Superior Court because of standard calendar reshuffling among the judges. Chief Judge Robert Morin — who last year presided over disputes about the government's efforts to enforce search warrants against [Facebook](#) and a [web hosting company](#) in its investigation of the Inauguration Day cases — will take over from Judge Lynn Leibovitz, who had handled the cases from the start.

In anticipation of a year of trials — the defendants were divided into small groups with trials set through October 2018 — defendants and their supporters took part in a call drive last week to register their opposition to the prosecution with the US attorney's office. Lagesse told BuzzFeed News that several hundred people participated across the United States and in Canada and the United Kingdom, and that some even reached Kerkhoff on the phone. The US attorney's office declined to comment.

This is a developing story. Check back for updates.

Zoe Tillman is a legal reporter with BuzzFeed News and is based in Washington, DC.
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POLITICS 12/10/2017 06:00 pm ET | Updated Dec 10, 2017

Inside The Trial That Could Determine The Future Of Free Speech In America's Capital

Trump inauguration demonstrators are facing severe felony charges that critics say threaten to chill future protests in Washington, D.C.



By Ryan J. Reilly



ADREES LATIF / REUTERS

WASHINGTON — Justice Department prosecutor Jennifer Kerkhoff carried the cardboard evidence box past the jury and placed it next to Officer Andre Reid, the 14-year veteran of the D.C. Metropolitan Police Department seated in the witness stand. Snapping on blue medical gloves inside this downtown courtroom, she took out a JanSport backpack — the government's exhibit number 43 — and began removing its contents: two sharpies, a pencil, a pen, a Florida driver's license, green goggles, a black bandana, black gloves, sunglasses, an energy drink, a phone charger with a cord, and a black hat.

As jurors looked on, Kerkhoff and Reid examined a mask. "Have you ever heard of the term 'balaclava'?" Kerkhoff asked? Reid hadn't. He called it a ski mask. They took a look at a plastic bag containing two bandanas soaked in some mysterious "solution" that had a smell to it. "Can you smell that now?" Kerkhoff asked. Reid could.

The JanSport in question belongs to Michelle Macchio, a 26-year-old from Naples who hasn't had possession of the bag or its contents in nearly 11 months, ever since she was caught up in a mass arrest during a protest just before [President Donald Trump](#) was sworn in as the 45th president of the United States.

Macchio said she was acting as a medic that day. Video shows her with red tape in the shape of a cross on her jacket, and her lawyers say she was carrying a first aid kit. That mysterious foul-smelling solution? Vinegar, which is supposed to dilute the impact of

the pepper spray that videos demonstrate police officers shot with abandon that morning.

In the past three weeks, as special counsel Robert Mueller's investigation into Russian interference in the 2016 election has increasingly jeopardized the Trump presidency's future, Macchio and her co-defendants are facing down their own. Macchio is one of six individuals currently on trial in the nation's capital, facing felony charges that could potentially land them in federal prison for decades, or at the very least leave them with felony convictions that would stunt their career prospects and deprive them of certain rights.

Another 181 individuals are facing felony trials in the coming year, though the ultimate resolution of a large number of those cases could depend on how this first trial plays out. Twenty other defendants arrested that day have already pleaded guilty, but just one defendant pleaded guilty to a felony. Seven others facing misdemeanors are scheduled for a trial by judge.



STEPHEN J. BOITANO VIA GETTY IMAGES

A destroyed car window in downtown Washington of a limo that was later set on fire following the inauguration of President Donald Trump on Jan. 20, 2017.

The charges all stem from a mass arrest conducted by police in downtown D.C. aimed at a group of marchers that included anti-capitalists, anti-fascists and anarchists under the umbrella of an organization called DisruptJ20.

Police had kept an eye on what demonstrators had planned that day, sending an undercover officer into a planning meeting where an organizer said their goal was to "make inauguration a giant clusterfuck." Things quickly got out of control once the group left their gathering point in Logan Circle, with individuals from within the group of mostly black-clad demonstrators breaking store windows, throwing newspaper boxes, spray-painting cars, smashing parking meters and hurling rocks at officers.

How precisely to define the group has been an issue in court, where prosecutors and defense attorneys have sparred outside of the presence of the jury over the use and definition of the term "antifa." Ultimately, Superior Court Judge Lynn Leibovitz told jurors that "antifa is short for anti-fascist or anti-fascism" and that the term was "not as an indication that individuals themselves intended violence." Under threat from the judge, prosecutors and witnesses have also had to avoid the use of the term "black bloc," a reference to a protest tactic intended to anonymize individuals within the group.

But in her opening statement in the trial on Nov. 20, Kerkhoff repeatedly referred to a "sea of black masks" that caused destruction that day. The possession or wearing of black clothing has become a central aspect of the prosecution's case. During one day of the trial, she held up a skull cap featuring an image of a skull that was seized from defendant Christina Simmons, a 20-year-old from Maryland who offered snacks from her backpack to officers who processed her, according to her defense attorney.

Jurors have heard from numerous business owners and employees who had their property damaged by members of the group that day. They've also heard from numerous police officers about the chaos they encountered, including an officer injured as he tried to apprehend an individual who threw a patio chair at his colleague.

What jurors haven't heard, and prosecutors don't intend to offer, is evidence that any of the six individuals currently on trial — Macchio, Simmons, Jennifer Armento, Oliver Harris, Brittne Lawson and Alexei Wood — actually engaged in any property damage or

violence. Under the government's theory of the case, in which anyone arrested in the group is part of a conspiracy and is responsible for any actions taken by others, the lack of individualized wrongdoing doesn't matter.

Prosecutors have charged all six with eight charges, including six felonies. If convicted, they'd be exposed to a potential maximum sentence of more than 60 years in federal prison (though such an extreme sentence is extraordinarily unlikely).

"Each of them made a choice, and each of them played a role," Kerkhoff [told jurors](#) in her opening statement. "You don't personally have to be the one who breaks the window to be guilty of rioting."



RYAN J. REILLY / HUFFPOST

Assistant U.S. Attorney Jennifer Kerkhoff (right) is leading the prosecution of several defendants arrested during a protest of Trump's inauguration. Assistant U.S. Attorney Rizwan Qureshi (left) is assisting.

Kerkhoff, who is leading the prosecution, works for the U.S. Attorney for the District of Columbia, one of 94 U.S. attorney's offices within the Justice Department. The U.S. attorney's office in the nation's capital is unique in that it prosecutes both federal crimes and local crimes that would normally be handled by a local prosecutor, who are typically elected. The office in D.C. is currently headed by a Trump appointee named Jessie Liu, though the cases unfolded until September under former acting U.S. Attorney Channing Phillips, a holdover from the Obama administration who is close with former Attorney General Eric Holder.

At the moment, there's no way to ascribe the handling of these prosecutions to Trump political appointees with any degree of certainty. But it's certainly worth considering that Trump, who branded himself as the law-and-order candidate, had vowed to "end" the "anti-police atmosphere" in America and has made his feelings about protesters on the left well known.

The White House website, [updated](#) on the day of the inauguration, says the Trump administration would not "make life more comfortable for the rioter, the looter, or the violent disrupter." More recently, after the [deadly August attack in Charlottesville, Virginia](#), during a white supremacist rally, the president has talked about the "[advent of antifa](#)" and [compared](#) the loosely-organized anti-fascist movement to actual neo-Nazis.

The Trump administration's charging policy could have also had an impact on the handling of the cases. Attorney General Jeff Sessions, who has [spoken out](#) about his belief that free speech is [under attack](#) on college campuses, [ordered](#) federal prosecutors in May to "charge and pursue the most serious, readily provable offense" possible.



BLOOMBERG VIA GETTY IMAGES

Police officers in riot gear stand lined up during a demonstration in Washington, D.C., after January's inauguration.

Kerkhoff and her colleague, Assistant U.S. Attorney Rizwan Qureshi, have presented jurors with a plethora of evidence from Jan. 20: surveillance videos, aerial footage, body cam video, data from all of the cellphones they seized, and even a livestream of the entire march that was shot by Wood, [photographer among the defendants](#).

Over and over again, jurors have seen individuals clad in black destroying property during the march. In lengthy and at times tedious presentations, they've used videos, screenshots, maps and PowerPoint presentations to prove that the defendants were, in fact, present at the march. The not-so-implicit message to the jury: Someone needed to be held accountable for the damage inflicted that day.

The backdrop of the aggressive charges against so many demonstrators is that law enforcement officials in D.C., home to frequent protests due to its status as the nation's capital, have taken a [relatively progressive approach](#) to policing demonstrations in recent years following lawsuits over their past conduct. Ahead of the inauguration, demonstration organizers discussed their perceptions of the restrictions on police, with one podcast played for jurors referring to D.C. police as "trained little piggies" who had been sued into a "state of fear."

The District of Columbia does have rules that officers are supposed to follow when policing a First Amendment demonstration, and defense attorneys have zeroed in on the inconsistencies between what police are supposed to do and what they actually did.

Did they issue a warning to disperse, as required? "We didn't give any dispersal orders," testified Commander Keith Deville. "We weren't required to tell them, 'stop rioting.'"

Deville, who oversaw the law enforcement response to downtown demonstrations on Jan. 20, testified that he believed Metropolitan Police Department officers showed "enormous restraint" in their handling of the demonstrations. But defense attorneys played a number of clips that appeared to show officers casually deploying pepper spray, even on individuals who had their backs turned to the officers and were walking away. They also played clips that showed officers roughly handling individuals who weren't engaged in any wrongdoing, including video that showed a legal observer getting blindsided with a shove from behind.

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In one instance, Deville testified he couldn't say why an officer shoved a woman with a baton from behind, but said the technique was proper. "There were two hands on it," he said. "They weren't bludgeoning somebody." In another instance, he said he was "not sure what that deployment was for" when confronted with a video of an officer casually spraying people. "I don't know what their intention was," Deville said about another clip that appeared to show improper use of pepper spray.



RYAN J REILLY / HUFFPOST

Commander Keith Deville of the D.C. Metropolitan Police Department was in charge of the police response to demonstrations on Inauguration Day.

Among D.C. elected officials, questions about how police handled the demonstrations has been a matter of controversy. The D.C. City Council has budgeted \$150,000 to investigate how police dealt with the unrest that day. There's also an outstanding ACLU lawsuit, and Deville admitted that he believes "criminal convictions in this case would perhaps limit our civil liability in the matter."

In a separate tense exchange, a defense attorney questioned Deville about past allegations that he had displayed bias toward some minority groups.

Deville admitted repeating a conversation he once had with another officer about the Holocaust Museum road being named after Raoul Wallenberg, who has been credited with saving the lives of tens of thousands of Jews during the Nazi occupation of Hungary. The other officer had referred to Wallenberg as "the one that got away," a comment Deville apparently repeated over the years. He called it a "very morose comment." But Deville testified that he was not biased against Jewish people.

Deville also denied that he was biased against gay people despite allegedly once warning his colleagues to watch what they said when a gay officer joined their unit. And Deville further said that he was not biased against transgender people, despite once complaining that he had to call a transgender woman he'd worked with for four years "Jessica" instead of "Bill." At the time, Deville said, he "was still trying get my head around the change," but he was not complaining that he had to call her Jessica. He was disciplined by the department for the comment.

The prosecution is expected to wrap up their case on Monday, and the defense will likely take over the rest of the week. The jury may begin deliberations sometime next week.

Even if none of these six defendants are convicted, the legal process on its own will still have proven to be a significant form of punishment, with the defendants from various parts of the country essentially moving to D.C. for the duration of the trial.

While the defendants have, for the most part, been reluctant to speak with the handful of reporters who have sporadically covered the trial over the past few weeks, Elizabeth Lagesse was willing to chat. Sitting in a courtroom taking careful, copious notes, it'd be

easy to mistake her for a reporter. But Lagesse is actually a co-defendant, facing her own trial in July with a separate group of individuals on several felony charges in connection with her own Inauguration Day arrest.



RYAN J REILLY / HUFFPOST

Elizabeth Lagesse is facing several felony charges in connection with her arrest during Trump's inauguration.

Lagesse, a former John Hopkins University graduate student who had been planning to move to California and pursue work in the tech sector, said her life has essentially been put on hold as she fights off felony charges that could jeopardize her future. She and her fiancé, who was also arrested that day, have moved to D.C. to defray the cost of traveling back and forth from Baltimore for hearings. They've been living on his salary alone, not necessarily an easy feat in the city, and are now committed to a year lease.

Prosecutors still have the cell phone they seized from her that day,

"We finally saved up and ordered a new phone," Lagesse said. "But he's been using like a broken, not that great phone. I got one awhile back that, you know, works. It has been a really big burden. We've had to coordinate, like, whose phone works today?" She says prosecutors were not able to get anything off of either of their phones because they were encrypted iPhones.

Lagesse, who [wrote an op-ed](#) for The New York Times about her experience and is part of an ACLU lawsuit against D.C. police over their conduct that day, says Jan. 20 was the first time she'd ever been arrested. This is also the first time she's spent significant time inside a courtroom.

She called the process "incredibly frustrating" and scary. "One person makes a decision, and it can disrupt 200 people's lives for more than a year. It just seems nuts," Lagesse said.

But it's also been kind of fascinating for her.

"Lawyers have told me that they never get to hear the whole case before they start a trial, so it's kind of an amazing opportunity. You get to watch a do-over trial," Lagesse said. "It just proves I can nerd out about anything."

Lagesse, who grew up in a conservative family living in northern California, said her family of Trump supporters had a tough time accepting that she was actually facing several felony charges.

"It's hard for a lot of people to believe that this is actually happening, because it is insane. I get that a lot," Lagesse said. "This is happening. It's every bit as crazy as it looks. No, it's not just going to go away."



BRYAN WOOLSTON / REUTERS

Protesters throw rocks at police during a protest near the inauguration site.

The partner of defendant Brittne Lawson, a 27-year-old nurse from Pittsburgh, told HuffPost that she had to quit her job because there was no way to adjust her schedule to accommodate a trial that will likely stretch on for more than a month. "The trial is for sure longer than all of Brit's potential vacation time for the whole year," Lawson's partner, who requested to be identified only by his first name of Jeff, said. "This is a full-time job."

Lawson has been able to get housing in Washington during the trial though the Dead City Legal Posse, an [organization](#) formed to support the defendants shortly after their mass arrest.

"Frankly, when you're going through something really stressful like this, you want a quiet space that is your own, that feels safe," Jeff said. "And instead you're like sleeping on somebody's couch."

Jeff said he believes that people from across the political spectrum should be able to recognize the threat of the aggressive prosecution, but said that even some members of their extended families had bought into the idea of cracking down on protests.

"You see the divisions within the U.S., where there's some people in our extended family who are like, 'Oh, you should be in jail forever for someone else in a protest you were at breaking windows,'" Jeff said.



ANDREW CABALLERO-REYNOLDS VIA GETTY IMAGES



3.6k



Defense attorneys will be calling several witnesses this week, and several of the defendants may take the stand in their own defense. Wood, the [photographer on trial](#), will likely explain to the jury why he had a [press pass](#) in another individual's name.

The six defendants' attorneys, who outnumber the actual jury, will likely also raise First Amendment concerns and say that police made no effort to differentiate between those who were exercising their rights and those who were causing destruction.

Steven McCool, who is representing defendant Harris, told the judge outside of the presence of the jury last week that he'd be requesting a jury instruction on the First Amendment. What kind of jury instruction, Judge Lynn Leibovitz wondered, one that said we "like it a lot?"

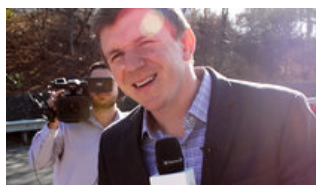
"I wish we liked it more," replied McCool, a former federal prosecutor. "Apparently we don't."

Ryan Reilly is HuffPost's senior justice reporter, covering criminal justice, federal law enforcement and legal affairs. Have a tip? Reach him at ryan.reilly@huffpost.com or on Signal at 202-527-9261.

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Public Safety

The first Inauguration Day protest trial ended in acquittals. But more than 150 defendants await their day in court.

By **Ellie Silverman** December 29, 2017

Hundreds of people, wearing all black and hiding their faces, moved through more than 16 blocks of downtown Washington on Inauguration Day. Some carried hammers, crowbars and bricks. They shattered shop windows, and by the end there was more than \$100,000 in property damage.

Last week, the first six people to go to trial in the case were acquitted by a jury on all the charges of rioting and destruction of property — an outcome that illustrates the challenge for D.C. prosecutors who are preparing for trials of more than 150 others picked up in the Jan. 20 mass arrest.

The six acquitted defendants said they were lawfully exercising their First Amendment right to free speech, while a few others broke away to cause damage. Prosecutors said there was no evidence to show the six participated in the destruction, but they argued that the defendants made a choice to stay with the group and provide cover for those who smashed windows and toppled newspaper boxes. At one point, a prosecutor referred to the protesters as “a sea of black masks.”

ADVERTISING

It is not clear how many of the remaining defendants authorities believe they can prove participated in — or helped plan — protests aimed at vandalism.

Legal experts said the U.S. attorney's office in the District could weigh whether to continue moving forward on the less serious cases after the first trial's jury rejected the government's theory that the entire group of protesters bears some responsibility for the destruction.

"The message from this jury is they're not going to convict people by a guilty-by-association basis," said Preston Burton, a former assistant U.S. attorney for the District and a partner at Buckley Sandler law firm. Burton is not involved in the cases.

A 38-year-old juror, who sought to remain private and asked not to be identified, said that during deliberations, some jurors "unloaded" because they could not hold someone responsible for the mayhem.

During the trial, the panel watched hours of video that showed the destruction and heard from employees of businesses who described their fear in those chaotic moments. In the end, the juror said, the panel concluded there wasn't enough evidence to convict the six people before them. The decision came after a nearly four-week trial and two full days of deliberation.

"There was a frustration across the jury that we had to watch all this video about our city being torn up and destroyed and didn't get to punish people that deserved to be punished based on evidence," the juror said. "I'm hoping that some of the trials down the road really get some of these people that are clearly captured on video that are breaking property."

Prosecutors allege that a group called Disrupt J20 helped plan the protests, pulling in participants from across the country.

More than 200 people were arrested. Twenty have pleaded guilty, prosecutors have dropped cases against 20 others, and the six were acquitted. The remainder are scheduled for trial, in groups of six or seven, through mid-2018.

The defendants have been grouped into four categories based on the type of criminal conduct they allegedly committed and how similar it is to that ascribed to other defendants. Those groupings are based on factors that include the "level of seriousness" and "specific acts of destruction, planning/organizing of the riot, charging the police line, etc.," prosecutors wrote in a March court filing.

Betty Ballester, an attorney who represents a defendant scheduled to go on trial in April, said prosecutors "need to decide what's important for them" as they continue.

"We have a good history of allowing people to protest, and I think the jury really was wondering if these people were just protesting or were they rioting. There has been a distinct separation," she said. "If somebody threw a brick through a window and it's on video, then that's pretty clear that's a destruction of property and that's not peaceful protesting."

Bill Miller, a spokesman for the U.S. attorney's office, declined to comment on the government's case.

In a statement released after the acquittals, the U.S. attorney's office said the damage done that day "impacted many who live and work in the District of Columbia, and created a danger for all who were nearby."

"We appreciate the jury's close examination of the individual conduct and intent of each defendant during this trial and respect its verdict," the statement said. "In the remaining pending cases, we look forward to the same rigorous review for each defendant."

Elizabeth Lagesse, a defendant who is scheduled for a trial in July, said she feels "cautiously optimistic" after the Dec. 21 verdict. She said she traveled from Baltimore to the District to protest Trump's victory and then "got swept up in this crazy police battle basically, and then we just were held on the street for hours."

It is "chilling" that prosecutors are holding the group liable for violence not all committed, she said.

"You only have control over what you yourself do," Lagesse said. "Now that there's been a jury of ordinary D.C. residents who you know just didn't buy it, it's time that we start dropping these charges."

David LaBahn, president of the Association of Prosecuting Attorneys and a former deputy prosecutor in California, said to win the upcoming cases, prosecutors need to be able to explain to a jury: "What's the culpability? . . . Of the 200, why am I sitting in judgment of this man or woman?"

Read more:

[Firefighters who've developed PTSD helping others learn to help themselves](#)

[18-year-old is charged in three killings, including that of college-bound teenager](#)

[Romanian hackers took over D.C. surveillance cameras just before presidential inauguration, federal prosecutors say](#)

 **1 Comment**

Ellie Silverman is a metro reporter covering crime and courts. She has previously contributed to the Seattle Times, McClatchy, the Hill and the Capital Gazette. Ellie graduated from the University of Maryland, where she reported for The Diamondback and conducted the independent student newspaper's first Ouija board interview.

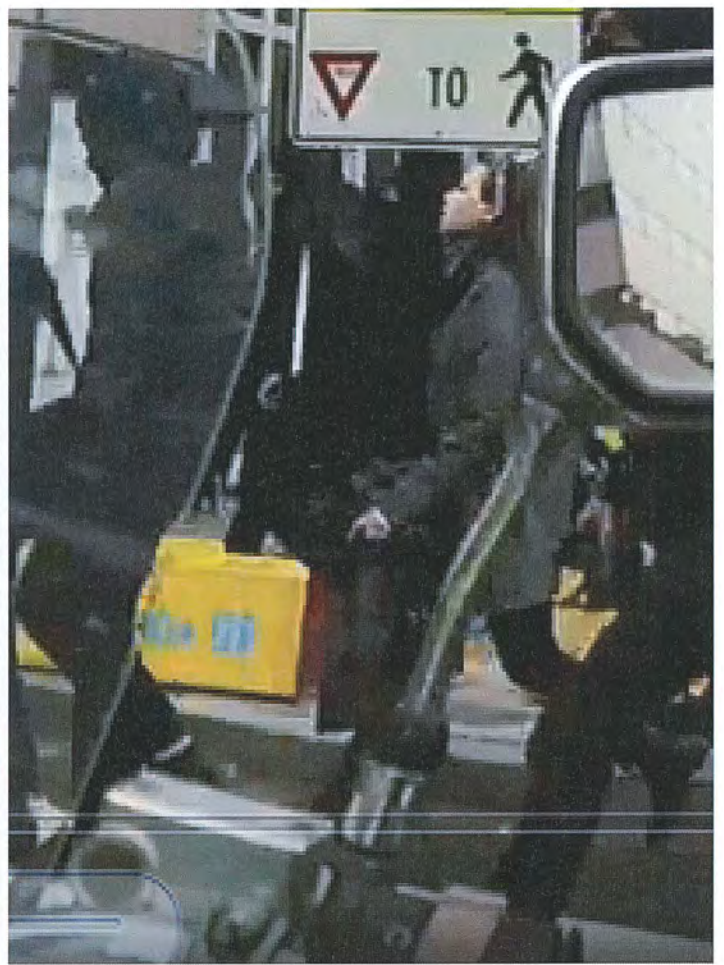
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EXHIBIT 3



BLACK BLOC ANARCHISTS HOT @ 23:57

LAGESE, ELIZABETH



HAUDEN BWC@
3:43

LAGESSSE, ELIZABETH



HARDEN BWC @ 3:43

LAVESSE, ELIZABETH



PHOTO

LAKESSSE, ELIZABETH





PHOTO

LAGASSE, ELIZABETH



RIOTS IN THE NATIONS CAPITAL @ 5:03

LAGESE, ELIZABETH



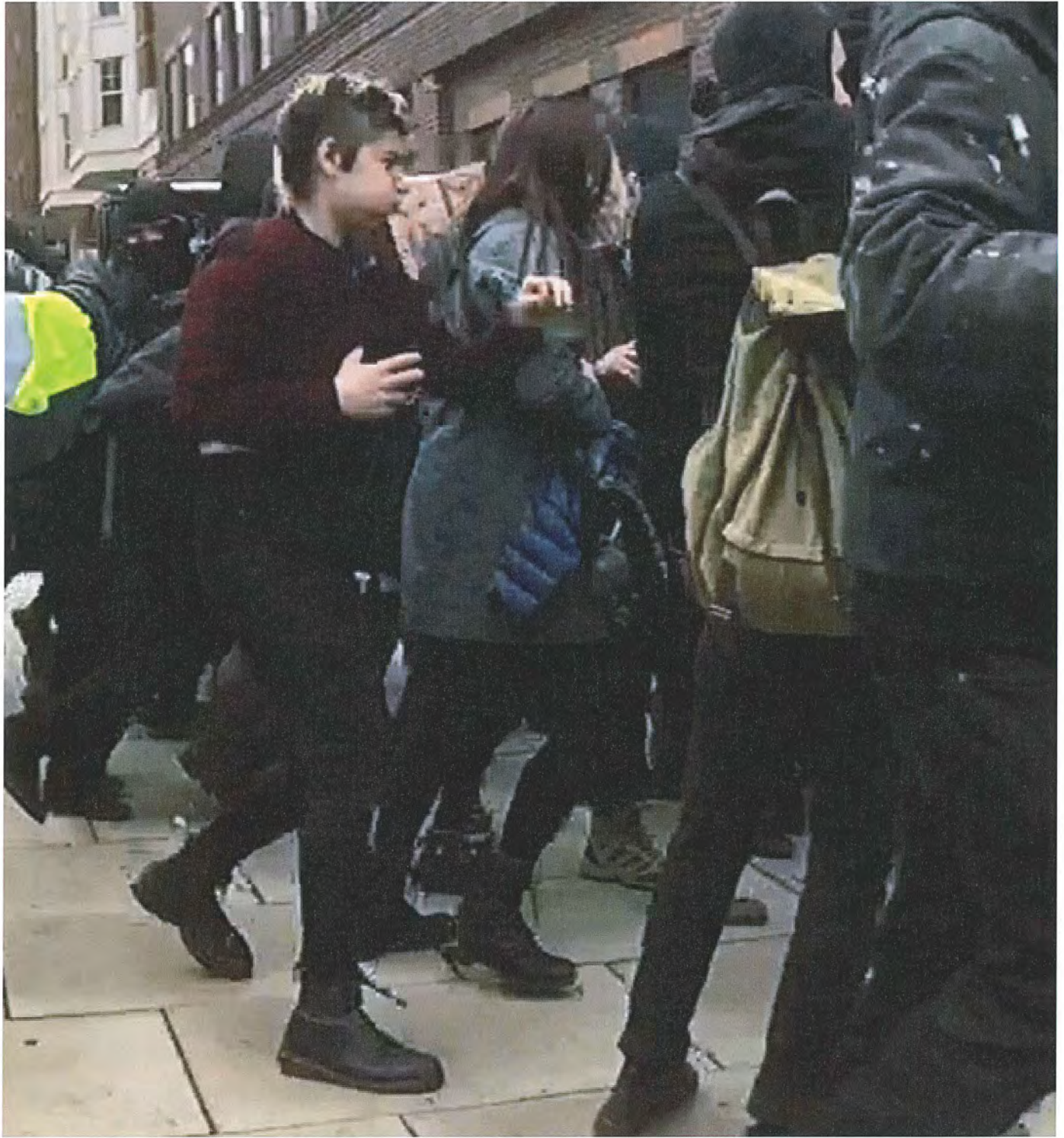
MATTHEW @ 1:04

LAGASSE, ELIZABETH



KANDON BWC @ 8:55

LACASSE, ELIZABETH



Romeo BWC @ 00:30

LAGASSE, ELIZABETH



COLE BWC (PROCESSING)

LAGASSE, E

LAGASSE

COLE, B

EXHIBIT 4

From: [Kerkhoff, Jennifer \(USADC\)](#)
To: [Phil Andonian](#)
Cc: [Joshua Shiffrin](#); [Mahlet Hiruy](#)
Subject: RE: U.S. v. Elizabeth Lagesse (2017-CF2-1356)
Date: Wednesday, February 07, 2018 2:27:21 PM

When did you view the Composite Scans folder? On October 3, 2017, I uploaded numerous photos of your client that had time stamp and video info. I just checked the folder and it looks like a paralegal reuploaded the material over the past few days and included only the arrest photo – however, this was a re-upload (because the portal is not designed to store data and, when counsel don't download material, we have to re-upload it every few months). If you never viewed the materials uploaded on October 3, 2017 until last night, then I would agree that you just saw the single arrest photo. That is being remedied now with the correct material being re-uploaded a third time under the October 3, 2017 uploads. I ask that you wait 20 minutes and view it again and see where we have ID'd your client, to include video of her charging the line and changing her clothing. (Also, because both you and Mr. Shiffrin were not only present, but active participants in the July 2017 motions hearing, you undoubtedly heard me state that, where appropriate we would be filing information for APO and Resisting for defendants prior to their trial. Just making sure I flagged that for you.). I would note that the Composite Scans have been on the portal until on or about February 2, 2018 when the storage expired; it was only then that the error in re-uploading occurred. I repeatedly stated in court – (and I believe you and Mr. Shiffrin were present on at least one occasion) – when I noted that the Oct 3 uploads folder contained the Composite Scans. I even identified each folder by defendant's name, which is also searchable at the time of the folder. I am confused as to your representation in your letter that we never provided the material or evidence to you.

From: Phil Andonian [mailto:pandonian@bredhoff.com]
Sent: Tuesday, February 6, 2018 11:14 PM
To: Kerkhoff, Jennifer (USADC) <Jkerkhoff@usa.doj.gov>
Cc: Joshua Shiffrin <jshiffrin@bredhoff.com>; Mahlet Hiruy <mhiruy@bredhoff.com>
Subject: RE: U.S. v. Elizabeth Lagesse (2017-CF2-1356)

Jen—thanks for the reply. The reason for our letter was to seek clarification of the government's evidence against Ms. Lagesse in light of your representations in the Notice of Intent. Since you identified in the pleading the specific grounds on which you are prosecuting the 59 remaining defendants, we do not think a response to our letter requires disclosure of your private mental impressions or case theories. And although we appreciate your cooperation in providing the Rule 16 designations, you offered to provide this tailored list of evidence for each defendant from the beginning, and it seems clear that the Court expects this practice to continue in order to facilitate an orderly and timely resolution of the remaining cases.

As I said in my letter, we were surprised to see Ms. Lagesse among the remaining defendants because our understanding of the evidence against her does not square with the government's theory as to the remaining defendants. The single photograph in Ms. Lagesse's "Composite Scans" folder on the evidence portal was taken during processing, after she had been arrested. (For this reason, it seems unlikely that we will learn anything from comparing Ms. Lagesse's composite scan with the composite scans of other defendants.) The one additional picture we are aware of was taken at some point during the protest, in which Ms. Lagesse appears to be walking and is doing nothing unlawful. And the short video in which Ms. Lagesse is allegedly seen in the kettle around the time *some* individuals attempt to break free seems apropos of nothing. Although the government initially charged Ms. Lagesse with assaulting a police officer based on this footage, it did so under the old APO statute, which is no longer valid, and declined to charge her under the new, more narrow statute that requires a showing of an actual assault. The footage does not otherwise show Ms. Lagesse engaged in any conduct encompassed by the categories in the Notice. Of course, if you have any evidence that "show[s] [Ms. Lagesse] changing her clothing and charging/running at the police," please provide it as soon as possible. Finally, the list of evidence you provided below appears to be identical to the list you provided to the November trial group, and to our knowledge it is not at all specific to Ms. Lagesse; indeed, it was used to prosecute six other defendants who have no alleged connection to Ms. Lagesse (all of whom were acquitted).

We need to understand the government's evidence against Ms. Lagesse in light of your representations in the Notice, which differ significantly with your previous representations as to Ms. Lagesse's alleged conduct, as well as with the evidence you have disclosed. If you have additional evidence against her that you have not previously disclosed, please provide it as soon as possible. If you have no additional evidence beyond what you have already disclosed, please let us know that as well so we can proceed accordingly.

From: Kerkhoff, Jennifer (USADC) [mailto:Jennifer.Kerkhoff@usdoj.gov]
Sent: Tuesday, February 06, 2018 4:53 PM
To: Phil Andonian
Cc: Joshua Shiffrin; Mahlet Hiruy
Subject: RE: U.S. v. Elizabeth Lagesse (2017-CF2-1356)

Brady does not entitle you to the government's thought process or decision-making. Neither Rule 16 nor *Brady* entitles you to an explanation of why the government is proceeding as to some defendants and not others. If you are asking about your client's conduct, I encourage to review the composite scans where we have identified your client – to include those videos that show your client changing her clothing and charging/running at the police. I further encourage you to review the composite scans for all defendants – especially the 59 who remain – so you can satisfy yourself that there are a number of "similarly situated defendants" whose cases remain pending and who engaged in the same kind of conduct as your client.

As for the designations, Rule 16 does not require them, but as a courtesy, at this time, please note that we may seek to introduce all or portions of any of the following materials at your client's trial --- (and no, this is not a complete recitation of all evidence provided to you through discovery; it is a narrowed list, much of which you and Mr. Shiffrin personally watched/observed during the November trial). To the extent we create or locate additional exhibits, I will make sure you have sufficient notice of them. I trust this answers your questions. I am unaware of any additional outstanding matters articulated in your letter:

A. Videos (with time/counter designations as the video appears on USAfX unless otherwise noted):

1. Starbucks (surveillance video): 00:00 – 7:19
2. Crown Plaza (surveillance video) (4 camera angles): entire video
3. IMG_03341.3gp (video from inside Bobby Van's): 00:00 – 00:18
4. CBPaerial.mp4: 00:00 – 57:00
5. Anarchist_Video_Protesters_MPDC.mp4: 00:00 – 30:41
6. Disrupt1.mp4: 00:00 – 2:05
7. Contompasis No. 50: 1:30 – 10:35
8. Contompasis No. 51: 00:00 – 5:47
9. Contompasis No. 52: 00:00 – 5:00
10. USPP BWC MVI_0005: 00:30 – 3:30
11. USPP BWC MVI_0006: 10:45 – 12:30
12. MPD BWC videos for the following officers (as produced on USAfX with the designated counter times on the videos (not UTC /

“zulu time” shown on the actual BWC footage));

- a. Howden: 00:00 – 14:00
 - b. Forrester: 00:00 – 8:00
 - c. Gelsomino: 10:30 – 25:00
 - d. Grubbs: 00:00 – 18:00
 - e. Mock: 00:00 – 20:00
 - f. Huff: 00:00 – 10:00
 - g. Kopp: 00:30 – 6:30
 - h. McKnight: 00:00 – 4:00
 - i. Tipps: 00:00 – 11:00
 - j. Rosa: 00:00 – 14:00
 - k. Green: 00:00 – 58:00
 - l. Onoja: 00:00 – 10:00
 - m. Riggs: 00:00 – 12:40
 - n. Brazoban: 00:00 – 20:00
 - o. Gamliel: 23:30 – 45:00
 - p. Seaward: 00:00 – 14:30
 - q. Anderson: 00:00 – 19:00
 - r. Harvey: 00:00 – 5:00
 - s. Chatman: 00:00 – 19:00
 - t. Alioto: 00:30 – 4:30
 - u. Romeo: 00:00 – 3:00
 - v. Washington: 00:00 – 10:00
 - w. Bukvic: 00:00 – 15:00
 - x. Shaheen: 22:00 – 40:00
 - y. Whitehead: 00:00 – 22:00
 - z. Rembiszewski: entirety of video on USAfx
1. Planning Meeting Video 1: entire video
 2. Planning Meeting Video 2: entire video
 3. Planning Meeting Video 3: 0:00 – 5:30
 4. Vid_2_DC_Black_Block_started_marching_towards_Disrupt20_Blockades.avi: 00:00 – 00:13
 5. CHAOS_IN_DC_ANTI_TRUMP_PROTEST_PROTESTERS_ARRESTS_BLACK_BLOCK_IN_ANTI_TRUMP_PROTEST.mp4: 00:00 – 5:05, 6:00-8:45, 9:33 – 10:23, 11:03-13:08
 6. USA_black_bloc_against_TRUMP_.mp4: 00:00 – 15:39
 7. TRUMP_Inauguration_Protests_gone_WRONG_MOB_Mentality_COMPILATION_2017.mp4: 00:18 – 1:12, 1:30 – 1:54, 5:44-9:48
 8. The_DC_Police_Allowed_the_Inauguration_Chaos.mp4: 1:48 – 1:55
 9. CHAOS_DC_Protesters_Charge_Riot_Police_Met_With_Heavy_Pepper_Spray.mp4: 00:00 – 3:33
 10. Black_Bloc_Anarchists_Riot_during_Trump_Inauguration_in_Washington_DC_January_20_2017.mp4: 00:00 – 42:18
 11. Inauguration_Protest_In_Washington_Turns_Violent.mp4: 00:00 – 1:08
 12. Donald_Trump_Inauguration_INSANE_Protests_Riots_Compilation_Inauguration_Riots_Compilation_.mp4: 00:39 – 1:00, 1:08 – 6:32
 13. Anti_Trump_agitators_fight_with_D_C_Police_at_Inauguration_throw_bricks_hit_with_flash_bangs.mp4: 00:00 – 19:12
 14. Trump_Protesters_Smash_Windows_Riot_in_D_C.mp4: 00:00 – 1:52
 15. Mayham_Protesters_RUSH_COPS_In_Washington_DC.mp4: 00:00 – 2:21
 16. RAW_Violent_anti_Trump_protest_near_Inauguration.mp4: 00:00 – 9:17
 17. RIOTS_IN_THE_NATIONS_CAPITAL_ON_TRUMPS_FIRST_DAY_JAN_20_2017.mp4: 00:29 – 6:45
 18. Rubenstein.mp4: 00:00 – 3:54
 19. Rubenstein2.mp4: (entire video)
 20. Michael Cali.mp4: 00:00 – 24:00
 21. Nation Divided.mp4: 00:57 – 1:55, 2:13 – 2:22
 22. Rudowski Video.mp4: 00:00 – 1:10
 23. Rudowski Video 2.mp4: 00:00 – 1:32
 24. Violence_breaks_out-ahead_of_Trump_inauguration.mp4: 00:00 – 1:11
 25. DDOT Cams
 - a. 13th St – I St NW p1: 1:31:00 – 1:55:00
 - b. 13th St – I St NW p2: 0:00 – 3:00
 - c. 13th St – K St NW p1: 1:24:00 – 2:00:00
 26. Mazzei Kettle1: 00:00 – 1:00
 27. Anarchists Riot During Trump.mp4: 00:00 – 00:04
 28. FreeHugs.mp4: 00:00 – 1:12
 29. Anti Trump Protestors Throw Rocks Break Windows.mp4: 00:00 – 3:44
 30. No_More_Presidents_Protesting_the_Trump_Inauguration.mp4: 00:13 – 00:22, 00:56 – 1:04, 2:38 – 3:44, 4:48 – 5:00
 31. ChuckHolt_FB_More.mp4: 00:00 – 5:10
 32. ChuckHolt_FB_Anarchist.mp4: 00:00 – 4:25
 33. Protesters_disrupt_Trump_s_inauguration_as_Americans_argue_in_the_streets.mp4: 00:00 – 00:45
 34. Tim Pool.wmv: 00:00 – 17:00
 35. MRC Materials: entirety of videos from MRC Converted AVI folder (40 video clips)
 36. Trailer Cams: entirety of video during the EST time (as reflected at the bottom of the video) of 10:04am – 10:55am
 37. Deplorable Planning Meeting video: entirety of video

A. Audio Recordings

1. IDG.mp4 (podcast): 2:55 – 1:04:18
2. %_The-J20-Protests-and-Beyond-_Anarchists-Bring-in-the-Trump-Era.mp3 (podcast): entire podcast
3. MPD-3 1-20-17.wma (MPD radio run): 3:00:00 – 4:20:00

B. Photographs

1. Photos from HV Processing (285 photos)
2. 17-009-966 (475 photos)
3. Prisoners' Property (301 photos)

4. Mugshot photos
5. Image1.png
6. Image2.png
7. Image4.png
8. Image5.png
9. Image6.png
10. Image7.png
11. Image8.png
12. Image9.png
13. Image10.png
14. Image11.png
15. Image12.png
16. B63C6816.jpg
17. B63C6817.jpg
18. B63C6818.jpg
19. B63C6819.jpg
20. B63C6820.jpg
21. B63C6821.jpg
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33. B63C6833.jpg
34. B63C6834.jpg
35. B63C6835.jpg
36. B63C6836.jpg
37. B63C6837.jpg
38. 705ad02e-d2d1-4c45-96e4-5d2ab39e5177.jpg
39. USPP aerial photos (7 photos)
40. Hazy.jpg
41. Davidhazy_2017_0120_L1005687
42. S_Horse.JPG
43. bcpnews-democracy-in-crisis-activist-home-raided-by-d-c-police-during-a-week-of-actions-supporting-j20-arres-20170407.jpg
44. img_0775.jpg
45. img_0776.jpg
46. 170120news_inauguration_protest.jpg
47. ANTIFSMASH4701.jpg
48. Lstreet.jpg
49. Limo.jpg
50. r.jpg
51. protest-trump-wp_650x400_71484969311.jpg
52. C2n6lqzXcAYI9Az.jpg
53. C2nYnqXUAAw.Fod.jpg
54. C2n1YnrW8AANr-.jpg
55. C2n4q_pXgAA5ntk.jpg
56. C2n5FbWIAAXxBh.jpg
57. C2n5zFKW8AESGUn.jpg
58. C2n5zFKXUAAVmap.jpg
59. C2n_9DXWIAEm70D.jpg
60. C2n_Q_0XEAEKaVt.jpg
61. C2n_Q_yWEAASTUR.jpg
62. C2oCRsxXAAQUZnH.jpg
63. C20lgL_XgAEhAqZ.jpg
64. C2oopEHXgAEgNXJ.jpg
65. C2op-ZxXcAEFKev.jpg
66. C2oq10vWIAAfOfy.jpg
67. 1049829661.jpg
68. 510819615.jpg
69. MRC Materials "Pictures" folder (35 images)
70. 2017-01-20T174757Z_2041433989_RC1C16A64E40_RTRMADP_3_USA-TRUMP-INAUGURATION-PROTESTS.jpg

C. Other Physical Evidence:

1. Items recovered from the area of the riot, to include hammers, sticks, flag poles, crowbars, asps, umbrellas, helmets, flares, etc. as depicted in the photographs, police paperwork, and in the crime scene reports produced during discovery in this case;
2. Items of evidence recovered from defendants, to include (but not limited to) clothing, cell phones, goggles, masks, bandanas and other items documented in the police paperwork and photographs produced during discovery in this case;

D. Cell Phone Data:

1. The cell phone numbers of all defendants and other identified individuals who participated in the planning and/or organization of the event on January 20, 2017;
2. Defendant Spencer Kaaz: the following images / videos (entire video) from the Go-Pro device:
 - a. GOPR0001.mp4
 - b. GOPR0002.mp4
3. Defendant Ian Grant: the following images / videos (entire video) from the GoPro device:

- a. GOPR5167.mp4
 - b. GOPR 5171.mp4
 - c. GOPR 5172.mp4
 - d. GOPR 5173.mp4
 - e. GOPR 5174.mp4
 - f. GOPR 5175.mp4
 - g. GOPR 5168.jpg
 - h. GOPR 5169.jpg
 - i. GOPR 5170.jpg
4. Defendant Payton McDonald: the following images / videos from the media storage device:
 - a. IMG_1575.jpg
 - b. MVI_1557.mp4 through MVI_1591.mp4: entirety of videos^[1]
 5. Defendant Ashley Maclaren: the following images / videos from the media storage device:
 - a. IMG_0935.MOV through IMG_0964.MOV: entirety of videos^[2]
 6. Defendant Joseph Lupo: the following items (designated by the category of item as listed in the PDF report from the phone with the "item number" within that category):
 - a. Signal Private Msg: #33, 35, 38
 7. Defendant Michelle Macchio: the following items (designated by the category of item as listed in the PDF report from the phone with the "item number" within that category):
 - a. SMS: #233-34, 239-40, 245-46, 269-274, 277-282

From: Phil Andonian [<mailto:pandonian@bredhoff.com>]
Sent: Tuesday, February 6, 2018 4:36 PM
To: Kerkhoff, Jennifer (USADC) <JKerkhoff@usa.doj.gov>
Cc: Joshua Shiffrin <jshiffrin@bredhoff.com>; Mahlet Hiruy <mhiruy@bredhoff.com>
Subject: U.S. v. Elizabeth Lagesse (2017-CF2-1356)

Jen—please see the attached correspondence in this matter.

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^[1] There is no MVI_1575.MOV video.

^[2] There are no videos for the following numbers within the designated range: IMG_0950.MOV; IMG_0951.MOV; IMG_0955.MOV; IMG_0956.MOV; IMG_0957.MOV; IMG_0958.MOV; IMG_0961.MOV; and IMG_0962.MOV.