

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

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>21-mj-71 (BAH)</b>
	)	
<b>ERIC MUNCHEL</b>	)	

**DEFENDANT’S OPPOSITION TO THE GOVERNMENT’S REQUEST  
TO OVERTURN THE LOWER COURT’S RELEASE ORDER**

Defendant Eric Munchel, by and through counsel, respectfully opposes the government’s request to overturn the release order issued by the Magistrate Judge on January 22, 2021 pursuant to the Bail Reform Act, 18 U.S.C. § 3142.

Mr. Munchel is charged by complaint with committing civil disorders, in violation of 18 U.S.C. § 231(a)(3); entering a restricted building, in violation of 18 U.S.C § 1752(a); violent entry and disorderly conduct in Congress, in violation of 40 U.S.C. § 5104(e)(2); and conspiring to commit these offenses with his mother, Lisa Eisenhart. Each of these alleged offenses stem from the events at the U.S. Capitol on January 6, 2021.

Mr. Munchel has no history of violence and no felony convictions; he is not a member of any anti-government group, or hate group, or militia-style group; the government presented no evidence that he planned in advance to enter the Capitol building, or that he used violence or threatened any person in the Capitol or on the Capitol grounds on January 6, 2021; he did not vandalize anything in the Capitol, or engage in any destruction of property, and he encouraged others not to vandalize; he did not use force or violence at the Capitol; he did not chant or shout in the building, except to exhort others not to vandalize anything; he did not search for Members of Congress; he did not harass any police officer; he did not bring zip ties to the Capitol, and he did

not use zip ties at the Capitol; he reached out to the FBI when he learned he was sought, and then turned himself in;<sup>1</sup> he voluntarily gave the FBI his cell phone for the purpose of providing his video of the events on January 6, 2021; and he did not intend to return to Washington, D.C. for the inauguration, or for any rallies.

At a detention hearing held on January 22, 2021, Magistrate Judge Jeffrey S. Frensley, Middle District of Tennessee, Nashville Division, heard testimony from FBI Special Agent Angelo Defeo and defense witnesses, and received documentary and video evidence. At the conclusion of the hearing, the Judge found that the government had failed to provide a preponderance of evidence that Mr. Munchel posed a flight risk, and had failed to provide clear and convincing evidence that no combination of conditions could assure the safety of a person or the community. Therefore, the law required Mr. Munchel's release with conditions: "Based upon the totality of the circumstances, giving due consideration to all the factors that the Court must consider in this case, . . . there are conditions that I can impose that will reasonably assure the safety of the community:"<sup>2</sup>

- 1) home detention;
- 2) at the home of and in the third-party custody of Ms. Miller, a Nashville resident who testified at the hearing about her understanding of the role of a third-party custodian and her willingness to undertake that role;
- 3) electronic GPS location monitoring;
- 4) not possess a firearm, destructive device, or other dangerous weapon;

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<sup>1</sup> Mr. Munchel learned that he was sought by the FBI at 11:00 a.m. on Sunday, January 10, 2021. Even before he turned himself in two-and-a-half hours later at 1:30 p.m., he had called the FBI agent.

<sup>2</sup> The government requested specific conditions if the Magistrate Judge did not detain Mr. Munchel: a GPS tracking device, stay away from Washington, DC except with regard to this case, advise Pretrial Services of any travel outside the Middle District of Tennessee, not travel outside the United States, and participate in all future proceedings. Government's Memorandum in Support of Pretrial Detention at 23. The Magistrate Judge's release order was far more restrictive than the government's proposed conditions.

- 5) refrain from traveling to the District of Columbia, except regarding this case;
- 6) remain within the Middle District of Tennessee, and not travel outside the United States;
- 7) avoid all contact, directly or indirectly with any person who may be a victim or witness in this case, including his co-defendant mother;
- 8) submit to the supervision by and report for supervision of the Pretrial Services office, and call Pretrial Services at least weekly;
- 9) submit to home visits by Pretrial Services;
- 10) continue or actively seek employment;
- 11) not use alcohol excessively, and not use or possess any controlled substance;
- 12) submit to drug testing if required by Pretrial Services; and
- 13) participate in substance abuse therapy if directed by Pretrial Services.

Tr. at 185-189.<sup>3</sup>

The government now asks this Court to reverse the Magistrate Judge's release order, and to detain Mr. Munchel until this case is resolved. Notably, the government's motion before this Court is nearly identical to its motion before the Magistrate Judge; it fails to include much of the testimony, documentary and video evidence on which the Magistrate Judge relied, and fails to address the Judge's findings or argue that his findings were clearly erroneous.

### **STATEMENT OF FACTS**

#### **a. The Prologue**

Beginning in 2020, parts of the United States government—first and foremost the President of the United States of America—told the public that the only way President Donald Trump could

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<sup>3</sup> Citations to "Tr." followed by a number, e.g., "Tr. at 93," refer to the transcript of the detention hearing held on January 22, 2021, which is attached to this motion as Exhibit 1.

lose the presidential election was if the election was rigged. Trial Memorandum of the United States House of Representatives in the Impeachment Trial of President Donald J. Trump at 6.<sup>4</sup> After President Trump lost the election, he and other government officials said that the presidency had been stolen from him by widespread election fraud.<sup>5</sup> President Trump invited Americans to come to Washington, D.C. on January 6, 2021, for his “Save America” rally. On the day of his rally, he invited the citizens who had gathered to go to the Capitol: “We’re going to walk down to the Capitol, and we’re going to cheer on our brave senators, and congressmen and women” and “We’re probably not going to be cheering so much for some of them because you’ll never take back our country with weakness. You have to show strength, and you have to be strong.” *Id.* at 14. The next day, President Trump changed course; he conceded that Joe Biden would be the next U.S. President, denounced the entry into the Capitol building and violence, and urged a peaceful transition.

The evidence at the detention hearing demonstrated the following:

**b. Mr. Eric Munchel’s Personal History**

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<sup>4</sup> The Trial Brief can be found at [https://judiciary.house.gov/uploadedfiles/house\\_trial\\_brief\\_final.pdf](https://judiciary.house.gov/uploadedfiles/house_trial_brief_final.pdf).

<sup>5</sup> See *id.*, Donald J. Trump (@realDonaldTrump), Twitter (Nov. 21, 2020 3:34 PM) (Watch: Hundreds of Activists Gather for ‘Stop the Steal’ Rally in Georgia <https://t.co/vUG1bqG9yg> via Breitbart News Big Rallies all over the Country. The proof pouring in is undeniable. Many more votes than needed. This was a LANDSLIDE!”); Donald J. Trump (@realDonaldTrump), Twitter (Nov. 24, 2020 10:45 PM) (“Poll: 79 Percent of Trump Voters Believe ‘Election Was Stolen’ <https://t.co/PmMBmt05AI> via @BreitbartNews They are 100% correct, but we are fighting hard. Our big lawsuit, which spells out in great detail all of the ballot fraud and more, will soon be filled. RIGGED ELECTION!”); Donald Trump Speech on Election Fraud Claims Transcript, December 2, Rev (Dec. 2, 2020) (But no matter when it happens, when they see fraud, when they see false votes and when those votes number far more than is necessary, you can’t let another person steal that election from you. All over the country, people are together in holding up signs, “Stop the steal.”); Donald J. Trump (@realDonaldTrump), Twitter (Dec. 19, 2020 9:41 AM) ([Joe Biden] didn’t win the Election. He lost all 6 Swing States, by a lot. They then dumped hundreds of thousands of votes in each one, and got caught. Now Republican politicians have to fight so that their great victory is not stolen. Don’t be weak fools!).

Mr. Munchel is a 30-year-old man who has lived in Nashville, Tennessee for the past two years. He grew up in Georgia, and lived in Florida immediately before moving to Tennessee. At the time of his arrest, he was employed as a server in a bar/restaurant where he was considered a reliable and good employee, a hard worker, helpful, and a team leader. Tr. at 80, 99-100. A person who has known him for several years described him as a person who is protective of others and kind. Tr. at 80. He appreciates law enforcement and supports former President Trump. Tr. at 69, 80. As a young person, he hoped to join the Marines, but that dream was thwarted by a serious childhood injury. Tr. at 81. He was active in the Boy Scouts of America, just a few requirements short of the Eagle Scout rank. He played sports in high school and enjoys camping. Tr. at 83. He is a gun collector, as are millions of Americans for whom magazines are published, conventions organized, and clubs formed. *See e.g.* <https://www.nrablog.com/articles/2017/11/gun-collecting-introduction-and-types-of-collecting>; Garden and Gun ([www.gardenandgun.com](http://www.gardenandgun.com)); Gun Digest ([www.gundigest.com](http://www.gundigest.com)); Shooting Times ([www.shootingtimes.com](http://www.shootingtimes.com)); [www.gunshows-usa.com](http://www.gunshows-usa.com); <https://clubs.nra.org/clubsonline/Home/Index/1>. He is a reliable friend. Tr. at 84.

Mr. Munchel has two misdemeanor convictions for possession of marijuana that are seven and eight years old. In one, he was briefly charged with failure to appear but the charge was dismissed because Mr. Munchel had not received the notice and appeared within the month. Tr. at 83.

**c. January 4, 2021**

Mr. Munchel agreed to accompany his mother, Lisa Eisenhart, to President Trump's "Save America" rally to be held on January 6, 2021. Tr. at 20. The day they left, on January 4<sup>th</sup>, Ms. Eisenhart made a reservation at the Grand Hyatt Hotel in Washington, D.C. The government presented no evidence that Mr. Munchel and his mother planned any further in advance than

January 4<sup>th</sup> to attend the rally, or that they planned to enter the Capitol building. Tr. at 35, 64. The government presented no evidence that Mr. Munchel is affiliated with any militant groups or hate groups or anti-government groups, or any groups who planned to do anything on January 6<sup>th</sup> beyond attending a rally to protest what they perceived as “the steal.” Tr. at 58-59, 68.

**d. January 5, 2021**

Mr. Munchel and his mother arrived in Washington, D.C. in the early morning hours of January 5, 2021. On the evening of January 5<sup>th</sup>, Mr. Munchel walked on a crowded street near his hotel. Passing a group of officers from the Metropolitan Police Department, he said to them, “Thanks for what you do.” Exhibit 2 at 1:10-15.<sup>6</sup> Moments later, a group of officers approached him, inquiring whether the taser in a holster on his hip was a gun. Tr. at 36; Exhibit 2 at 2:03-09. Mr. Munchel politely explained that it was a taser, not a gun. Tr. at 36. He did not attempt to evade the police in any manner. Tr. at 37. When bystanders approached in a hostile manner, Mr. Munchel diffused the situation by telling them, “It’s okay, I’m okay, they’re doing their job, it’s okay, it’s okay.” Tr. at 38; Exhibit 2 at 3:33-42. The officers did not seize Mr. Munchel’s taser, which was legal to possess in Washington, D.C. *See* D.C. Code § 7-2502.15.<sup>7</sup> Tr. at 38.

**e. January 6, 2021**

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<sup>6</sup> The Magistrate Judge placed Exhibit 2 (a video from January 5, 2021), Exhibit 3 (a 12-minute excerpt from Mr. Munchel’s 50-minute video from January 6, 2021), and Exhibit 4 (a screenshot of the social media page of a person who placed Mr. Munchel’s personal information on social media) under seal. They will be provided to the Court’s chambers, and to the government.

<sup>7</sup> Tasers are considered a defensive device that can be used only “in the exercise of reasonable force in defense of person or property.” D.C. Code § 7-2502.15. The law permits possession of a taser in Washington, D.C. except in D.C. government buildings, penal institutions, schools, or buildings clearly posted to prohibit them. *Id.*

On January 6<sup>th</sup>, Mr. Munchel and his mother left the Grand Hyatt Hotel at midday to walk to the rally. Tr. at 39-40. Mr. Munchel again wore his taser in a holster on his hip, and he wore what has been described as a “tactical vest” with USA and Tennessee “thin blue line” patches,<sup>8</sup> black and brown fatigue pants and shirt, a cap, and a gaiter. Tr. at 26. He wore his cell phone in a pocket of the vest, and recorded the events. Tr. at 41. He preserved the video and later voluntarily provided it to the FBI. Tr. at 41.

During much of the video, Mr. Munchel is seen following his mother, and holding on to her by a strap on the back of her vest. Tr. at 42. As Agent Defeo testified, it appeared that he was “trying not to let her get lost in the crowd or too far ahead of him.” Tr. at 43. On the Capitol grounds, his mother spoke briefly to a few men in the crowd identified as “Oathkeepers” an anti-government, militia-style organization, and Mr. Munchel fist bumped one individual before moving on. Tr. at 24-26, 44. Bystanders can be heard to say that Congress had closed, or “shut down.” Tr. at 43. Ms. Eisenhart talked about going inside the Capitol building, but commented that, “We’re going straight to federal prison if we go in there with weapons,” to which Mr. Munchel replied, “Yeah, that’s why I’m not going in there.” Tr. at 43, 64. His mother suggested that they “put ‘em in the backpacks” they had stored nearby. Tr. at 43. Mr. Munchel said “take my weapons off before I go in there.” Tr. at 43. Mr. Munchel had a pocket knife that he put in the backpack, but the video does not depict what else, if anything, was put in the backpack. Tr. at 43, 109. Later, still on the Capitol grounds, Mr. Munchel can be heard to say “We ain’t playing f-----g nice no g-d---n more,” and that they were “f----king ready to f---k s--t up,” and “I guess they thought we

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<sup>8</sup> “A tactical vest is a heavy duty vest that can be worn over regular clothing in order to provide both protection and a way to carry gear.” <https://www.blauer.com/dispatch/the-many-uses-of-military-tactical-vests/>.

were playing.” Tr. at 73. Mr. Munchel is heard to say that this would be the last time he would be able to enter the Capitol with armor and weapons. Tr. at 73.

Mr. Munchel and his mother entered the Capitol building with Mr. Munchel holding tight to the strap on her back, and remained there for 11-12 minutes. Tr. at 46; Exhibit 3.<sup>9</sup> They walked into the Capitol through an open door. Tr. at 46; Exhibit 3 at 00:03-06. Law enforcement officers stood to the right of the door, allowing people to enter. Tr. at 46; Exhibit 3 at 00:03-06. The officers did not tell Mr. Munchel or anyone else not to enter or to leave, or suggest that the building was restricted at that time. Tr. at 46; Exhibit 3 at 00:03-06.

Inside the Capitol, Mr. Munchel attempted to limit his mother’s movements, and to keep tabs on her. Tr. at 47, 55. He followed her up a flight of stairs to the Rotunda, Exhibit 3 at 00:12-39, then out of the Rotunda, following a crowd. Exhibit 3 at 1:27-38. At that point, after one and a half minutes inside the building, Mr. Munchel asked his mother, twice, “What’s your goal here, Mom?” Tr. at 47; Exhibit 3 at 1:38-48. Half a minute later, Ms. Eisenhart turned away from a rowdy crowd, saying to Mr. Munchel, “Okay, let’s go upstairs,” and Mr. Munchel followed her up another flight of stairs. Exhibit 3 at 2:22; 22:28-52. Others were yelling and chanting, but Mr. Munchel was quiet. Exhibit 3 at 1:49-2:01. When Ms. Eisenhart wandered down a hallway, Mr. Munchel told her, “We don’t want to get too split off. We don’t want to get stuck in here, so this is not a place for us,” which caused Ms. Eisenhart to turn around. Tr. at 47; Exhibit 3 at 3:13-32. They followed another crowd down a different hallway. Exhibit 3 at 3:40-4:03. When Mr. Munchel saw others knock on doors, he loudly said, “Don’t vandalize anything. We aren’t Antifa.” Tr. at 48; Exhibit 3 at 4:03-08. Half a minute later, Mr. Munchel again told those around him, “Don’t

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<sup>9</sup> Exhibit 3 is a 12-minute excerpt from the 50 minute video created by Mr. Munchel, beginning at their entry into the Capitol building.



break shit.” Tr. at 48; Exhibit 3 at 4:37-39. A few seconds later he shouted, “Hey, easy, easy, easy, no vandalizing shit. We ain’t no g-d---n Antifa, motherf---kers,” then shouted, “You break shit, I break you.” Exhibit 3 at 4:45-58. The crowd came upon a person who had opened a cabinet in which were stored zip ties (flexicuffs), and was distributing them. Tr. at 56; Exhibit 3 at 4:59-5:07. Ms. Eisenhart took one, and Mr. Munchel took several, saying “Zip ties! I need to get me some of them motherf----kers.” Tr. at 56, 74; Exhibit 3 at 5:00-05. Others also took the zip ties. Exhibit 3 at 5:05-15. Munchel briefly lost contact with his mother when she went off in a different direction, and called out to her, saying, “Wait, Mom. Mom!” Exhibit 3 at 5:11-13. Others screamed their messages off a balcony, but Mr. Munchel was quiet. Exhibit 3 at 5:20-27. When Ms. Eisenhart wandered off again, Mr. Munchel went after her, saying “Mom, where are you going, Mom, focus, don’t lose me.” Tr. at 49-50; Exhibit 3 at 5:35-40.

Ms. Eisenhart walked through the open doors leading to the visitors’ gallery of the Senate chamber, one floor above the floor of the Senate chamber, and Mr. Munchel followed. Tr. at 50; Exhibit 3 at 5:49-6:13. The floor of the Senate chamber was empty. Exhibit 3 at 6:25-32; 7:55-57. Again, Mr. Munchel did not join the chanting and screaming. Exhibit 6:25-48. Mr. Munchel lost his grasp on Ms. Eisenhart, again. She and others stepped over the railings that separate one section of the visitors’ gallery from other, and Mr. Munchel followed, asking, “Mom, where are you going, what are you doing?” Tr. at 50, 52; Exhibit 3 at 6:54-7:19. They tried to exit the gallery, but the door did not open. Exhibit 3 at 7:20-27. Mr. Munchel yelled at the others in the visitors’ gallery, “Hey, be careful!” Exhibit 3 at 7:58-8:01. They tried another exit, but it was also locked. Exhibit 3 at 8:30-36. Mr. Munchel said to his mother, “I want that f-----g gavel,” which would have been on the floor below, but took no action toward that end. Exhibit 3 at 8:39-41. They found an open door and left the gallery. Exhibit 3 at 8:48-51. Mr. Munchel followed his mother down and then

up another flight of stairs, down a hallway to a non-functioning elevator, at which point Mr. Munchel said, “Alright, we need to find the exit.” Tr. at 53; Exhibit 3 at 9:13-10:11. On their way out, Mr. Munchel said to police officers they passed, “Sorry, guys, I still love you.” Tr. at 53, 74, 78; Exhibit 3 at 10:43-46. Back on the Capitol grounds, Mr. Munchel made statements to the media expressing his distrust of the election process and the need to “fight” the steal.

Mr. Munchel did not engage in any violence or force at the Capitol grounds or in the Capitol. Tr. at 45, 54. He did not vandalize anything, or engage in any destruction of property. Tr. at 49. There is incontrovertible evidence that he did not bring the zip ties to the Capitol, there is no evidence that he intended to use the zip ties that he was given, and in fact he did not use them. Tr. at 56-57. He was polite to the police officers he encountered, and did not yell at or harass them. Tr. at 54. He never chanted or shouted in the Capitol, except to admonish others not to vandalize. There is no evidence whatsoever to support the government’s claim that Mr. Munchel “marched throughout the Capitol searching for Members of Congress who he believed had committed ‘treason.’” There was no evidence that Mr. Munchel intended to return to Washington, D.C. for the inauguration or for any other rallies. Tr. at 66.

On the evening of January 6<sup>th</sup>, MPD officers at the Grand Hyatt hotel again saw Mr. Munchel’s taser on his hip, and again wondered if it was a gun. Tr. at 27. Given the events earlier that day, the officers asked for the taser, and Mr. Munchel gave it to them.<sup>10</sup>

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<sup>10</sup> Based on Twitter, the government now asserts that Mr. Munchel “assaulted” a reporter at the hotel when Mr. Munchel asked the reporter to delete the unauthorized video he had taken of a Grand Hyatt guest. Mr. Munchel was polite in his request, and when he put his hand out, the reporter bulldozed ahead, hitting Mr. Munchel’s hand. Neither Mr. Munchel nor the reporter filed charges, or even alerted the police officers standing in the lobby. The Magistrate Judge had no opportunity to make factual findings regarding this alleged encounter because the government produced no evidence or proffer. Therefore, this allegation is not part of this Court’s review.

**f. January 7, 8 and 9, 2021**

Mr. Munchel returned to Nashville on Thursday, January 7<sup>th</sup>, and went to work on Friday, January 8<sup>th</sup>. When he got off work at approximately 1:00 a.m. on January 9<sup>th</sup>, he learned that internet sleuths had published his personal information, including his phone number and address, on social media. Tr. at 60, 103; Exhibit 4. His cell phone was “blowing up,” mostly from strangers who were harassing him and people who “wanted him dead.” Tr. at 61, 91, 94, 103. News media constantly called his phone, texts were streaming in, and people were posting on his Facebook account. Tr. at 104. News media vehicles were at his apartment building. Tr. at 62. For those reasons, instead of going home, he went to the home of his friends, Ms. Miller and her two adult daughters.<sup>11</sup> Tr. at 22, 69, 90. They advised him to turn off his cell phone, which he did, and he deleted his Facebook account. Tr. at 104. He gave his phone to Ms. Miller’s daughter for safekeeping, telling her that he wanted to ensure that the video of his activities at the Capitol on January 6<sup>th</sup> was preserved, and not destroyed or manipulated. Tr. at 22, 61. Mr. Munchel returned home briefly on the morning of January 9<sup>th</sup>, and told the Millers he was going to work. Tr. at 105. They advised him that he should not go to work and should try to find a lawyer. Tr. at 96, 105. He heeded their advice. Tr. at 105.

**g. January 10, 2021**

The next morning, on Sunday, January 10, 2021, FBI agents executed a search warrant at Mr. Munchel’s apartment. Tr. at 14-15. Mr. Munchel’s brother was present, and advised the agents that his brother and mother had not planned to cause trouble at the DC rally. Tr. at 15, 59. He advised that Ms. Eisenhart was upset by the perceived election fraud, and that Mr. Munchel

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<sup>11</sup> The Millers’ full names were not used at the hearing to protect them from harassment. Tr. at 79-80.

accompanied her to Washington, D.C. to protect her. Tr. at 15, 59-60. The agents seized a “tactical vest” with patches, a cap, a shirt, pants, boots, and packaging for a taser, all of which Mr. Munchel’s brother identified as belonging to Mr. Munchel. Tr. at 17-27. The agents collected four or five white zip ties (flexicuffs), which Mr. Munchel’s brother told the agents Mr. Munchel had brought home from Washington, D.C. Tr. at 16-17. The agents found a safe in which was locked Mr. Munchel’s gun collection—approximately 15 firearms of all types (pistols, AR-style, a long rifle used for long distance targets with a tripod that the agent termed a sniper rifle), many rounds of ammunition, a drum magazine, and 20-30 other magazines. Tr. at 17-19. All of the weapons were legal, and Mr. Munchel was licensed in Tennessee to possess them. Tr. at 19, 65. The agents took the guns and ammunition.

At the conclusion of the search, an agent left his phone number for Mr. Munchel’s brother to provide to Mr. Munchel, which he did. Tr. at 60, 95. At about 11:00 a.m., Mr. Munchel and the Miller family learned of the search for the first time, and learned that the FBI was looking for Mr. Munchel (although an arrest warrant had not yet issued). Tr. at 106, 115. With the blessing and encouragement of the Miller family, Mr. Munchel called the FBI agent and made arrangements to go to the FBI office at 1:30 p.m., just a few hours later. Tr. at 60, 63, 69, 106. He tried to find a lawyer to accompany him, but was unable to do so; he turned himself in without an attorney. Tr. at 70, 107-108. He instructed Ms. Miller’s daughter to give his cell phone to an attorney, Mr. Bean, and for Mr. Bean to give the phone to the FBI, which he did that day. Tr. at 63, 92, 94-95, 108-109.

**h. Defense Witness Testimony Regarding Third Party Custody**

Ms. Miller testified at the detention hearing. She met Mr. Munchel when they worked together in Florida, and has known him for approximately four years. Tr. at 86. Their relationship was close; he called her “mom” and she called him “son.” Tr. at 86.

Ms. Miller executed a Declaration Under Penalty of Perjury stating her willingness to serve as a third party custodian for Mr. Munchel in her home, and stating her understanding of the obligations of a third party custodian. Tr. at 79. She was “absolutely” willing to do so. Tr. at 87. She understood that she would need to make sure that Mr. Munchel follows all the “protocols,” does everything he is ordered to do, and appears in court. Tr. at 87. She understood that if Mr. Munchel failed to follow the rules she would “need to report at any time should I feel that he is not or that I know that he’s not truthful or done anything [indiscernible] probation officers or law enforcement . . . .” Tr. at 87-88. Asked whether she would report Mr. Munchel if he did not follow the rules established by the court, Ms. Miller answered, “Yes, absolutely I would. Without a shadow of a doubt, I would.” Tr. at 88. Ms. Miller’s two adult daughters live with her, and there is room for Mr. Munchel as well. Tr. at 89. She is willing to install a landline phone to facilitate electronic monitoring. Tr. at 89. Ms. Miller does not have any guns in her home. Tr. at 94.

Ms. Miller’s adult daughter, who has also known Mr. Munchel for approximately four years and worked with him in Florida and in Nashville, testified about her willingness to keep an eye on Mr. Munchel, and to ensure that he follows the Court’s rules. Tr. at 98-101.

**i. The Tension Between the Emotional Reaction to the Events at the Capitol on January 6<sup>th</sup> and Application of the Law**

At the conclusion of the evidence, the Magistrate Judge acknowledged the tension between his “emotional” response to the events on January 6<sup>th</sup> and the law as it applied to Mr. Munchel’s release or detention:

I have to say that from an emotional standpoint, [the government's] arguments have a lot of appeal. Seeing the conduct of fellow citizens on January the 6<sup>th</sup> and what happened at the Capitol is – is difficult to watch. It's something that I'm not sure that there are many of us who ever thought we would see in this country.

And there's an obvious visceral reaction to it that I think is natural and reasonable for individuals to have, and the Court has to give that the appropriate consideration but also has to be guided by the law in this case and has to consider the factors that the law requires to be considered in this case.

Tr. at 173-74. Likewise, at the detention hearing for Ms. Eisenhart, the Magistrate Judge noted that,

[p]rotecting the rights of the accused is often difficult and unpopular. But when we disregard those rights based on anger and fear, we damage the very constitution and democracy that we seek to protect....

Even as I talk about the events on January the 6<sup>th</sup> and what happened at the Capitol, I feel my own emotion in dealing with this issue. But that's why it's so important to make decisions based only on the law and the evidence....

January 25, 2021 Detention Hearing Transcript at 162-63.

### **ARGUMENT**

## **THE COURT SHOULD DENY THE GOVERNMENT'S MOTION TO OVERTURN THE LOWER COURT'S RELEASE ORDER**

### **A. The Applicable Legal Standard**

The Bail Reform Act requires courts to release defendants who are pending trial on personal recognizance or on an unsecured appearance bond unless the government has presented clear and convincing evidence that there are no conditions that will “reasonably assure the appearance of the person as required or . . . the safety of any other person or the community.” 18 U.S.C. §§ 3142(b), 3142(f)(2)(B). In other words, “the default position of the law . . . is that a defendant should be release pending trial.” *United States v. Taylor*, 289 F. Supp. 3d 55, 62 (D.D.C. 2018) (quoting *United States v. Stone*, 608 F.3d 939, 945 (6<sup>th</sup> Cir. 2010)).

If the case involves a felony that is *not* a crime of violence but that involves the alleged possession of a dangerous weapon, upon motion by the government, the Bail Reform Act requires the court to hold a hearing to determine whether any condition or combination of conditions will reasonably assure the defendant's appearance in court and the safety of persons and the community, 18 U.S.C. § 3142(f)(1)(E); 18 U.S.C. § 3142(f)(2)(A). When imposing a condition, or combination of conditions, the court must select the "least restrictive" conditions. 18 U.S.C. § 3142(c)(1)(B).

Defendants who are charged with certain specified offenses are subject to a rebuttable presumption that no condition, or combination of conditions, can assure the defendant's appearance or ensure the safety of the community, *see* 18 U.S.C. § 3142(e), *but no such presumption exists here*. Rather, the presumption here is that the defendant will be released pending trial unless the government can prove by clear and convincing evidence that pretrial detention is the *only* means by which the community's safety can be assured, 18 U.S.C. § 3142(f)(2)(B); *United States v. Smith*, 79 F.3d 1208, 1209 (D.C. Cir. 1996), or can prove by a preponderance of the evidence that no conditions of release can assure the defendant's appearance at future court hearings. *United States v. Peralta*, 849 F.2d 625, 626 (D.C. Cir. 1988); *United States v. Hassanshahi*, 989 F. Supp. 2d 110 (D.D.C. 2013).

In determining whether the government has defeated the presumption for release by clear and convincing evidence proving that no combination of conditions can protect a person or the community, or by a preponderance of evidence that no combination of conditions can assure the defendant's appearance, courts consider four factors: (1) the nature and seriousness of the offense charged; (2) the weight of the evidence; (3) the defendant's character, including his physical and mental condition, family and community ties, past conduct, drug and alcohol abuse, and criminal

history; and (4) the nature and seriousness of the danger posed to any person by release. 18 U.S.C. § 3142(g). Here, the Magistrate Judge also considered the COVID-19 pandemic, and “its impact, particularly in custodial situations.” Tr. at 172.

The defendant agrees that this Court has the authority to review the Magistrate Judge’s release order pursuant to 18 U.S.C. § 3145(a)(1). The Court interprets the Bail Reform Act and any terms therein *de novo*. *United States v. Hanson*, 613 F. Supp. 2d 85, 88 (D.D.C. 2009). The lower court’s factual findings, including the findings that the government failed to prove that no combination of conditions can assure a defendant’s appearance in court or the safety of the community, are reviewed for clear error. *United States v. Smith*, 79 F.3d 1208 (D.C. Cir. 1996); *United States v. Simpkins*, 826 F.2d 94, 96 (D.C. Cir. 1987) (court “satisfied that [lower court’s] finding that no condition or combination of conditions will assure the safety of the community is supported by clear and convincing evidence and is not clearly erroneous”; “Whether the release of a particular individual will pose a danger to the community is a question of fact to be determined by the judicial officer following the detention hearing . . . ; we will sustain that determination unless clearly erroneous.”); *United States v. LaFontaine*, 210 F.3d 125, 130 (2d Cir. 2000) (whether a package of bail conditions will prevent danger to the community is reviewed for clear error). In other words, this Court’s “task is to determine” whether the Magistrate Judge clearly erred when it found that the government failed to present clear and convincing evidence that no combination of conditions of release can protect the safety of a person or the community, and found that the government failed to present a preponderance of evidence that no combination of conditions of release could assure Mr. Munchel’s return to court. *Simpkins*, 826 F.2d at 96.<sup>12</sup>

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<sup>12</sup> In *United States v. Manafort*, 897 F.3d 340, 345 n.2 (D.C. Cir. 2018), the D.C. Circuit observed that:



**B. The Lower Court’s Factual Finding that the Government Failed to Provide a Preponderance of Evidence that No Combination of Conditions Can Reasonably Assure the Defendant’s Appearance in Court Was Not Clearly Erroneous**

In support of his finding that the government had failed to provide sufficient evidence that no combination of conditions can reasonably assure Mr. Munchel’s appearance in court, the Magistrate Judge made the underlying factual findings that, contrary to the government’s assumption, the fact that Mr. Munchel deactivated his facebook account on January 9<sup>th</sup>, gave his cell phone to his friend, did not return home after work on the evening/early morning of January 8-9, did not go to work on January 9<sup>th</sup>, and did not tell his brother where he was on January 9<sup>th</sup>, did not indicate a risk of flight. Tr. at 175.

---

[a]lthough we have previously characterized a finding of dangerousness in a detention determination as a finding of fact to be reviewed for clear error, *United States v. Smith*, 79 F.3d 1208, 1209 (D.C. Cir. 1996) (per curiam) (citing *Simpkins*, 826 F.2d at 96), we have never addressed detention based upon a finding that the defendant was unlikely to abide by conditions of release. Other circuits have taken varying approaches to review of detention orders. Some treat the ultimate determinations of dangerousness, risk of flight, or likelihood of abiding by conditions of release as factual findings to which a clear error standard of review applies. See *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011); *United States v. Clark*, 865 F.2d 1433, 1437 (4th Cir. 1989) (en banc); *United States v. Gotti*, 794 F.2d 773, 779 (2d Cir. 1986). Others have applied what has been described as “independent review” with some deference to the district court. *United States v. O’Brien*, 895 F.2d 810, 814 (1st Cir. 1990); *United States v. Portes*, 786 F.2d 758, 762 (7th Cir. 1985). Still other courts defer to the district-court factual findings, but treat “conclusions based on such factual findings,” including the necessity of detention, as mixed questions of fact and law, reviewed de novo. See *United States v. Howard*, 793 F.3d 1113, 1113 (9th Cir. 2015) (citing *United States v. Hir*, 517 F.3d 1081, 1086-87 (9th Cir. 2008) ); accord *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010) (reviewing “the ultimate question whether detention is warranted” de novo). We leave resolution of these thorny questions for another day when they are fully presented and briefed.

The Magistrate Judge found that Mr. Munchel “was receiving threatening communications, harassing communications, . . . a lot of media interest in him,” and “there was a large contingent of individuals after this event on the 6<sup>th</sup> who were engaged in detective activity . . . on social media platforms, attempting to identify individuals, attempting to locate them,” and that “those are legitimate and reasonable considerations for why an individual might take actions of deactivating social media and passing off their cell phone to another individual.” Tr. at 175-76. The Magistrate Judge found as a factual matter that Mr. Munchel gave his cell phone to his friend for the purpose of “preserv[ing] the information contained on it and to assure that it could be utilized and . . . provided to the authorities . . . ,” which he did. Tr. at 176.

Most importantly, according to the Magistrate Judge, when Mr. Munchel became aware that the FBI was searching for him “by way of the search warrant executed at his house . . . he voluntarily turned himself in. He communicated, reached out to the FBI, made arrangements to surrender and did, in fact, surrender.” Tr. at 176. The Magistrate Judge found that “until there was the existence of a warrant, there really wasn’t anything for Mr. Munchel to turn himself in on. Once he knew for certain that there was law enforcement interest in him by way of the search and indication that there would be a warrant forthcoming, he turned himself in.” Tr. at 177. The court found that “[c]ertainly in the time period between that Friday evening [of January 8, 2021] and the Sunday [of January 10, 2021] when he surrendered, if Mr. Munchel were inclined to flee, he had ample opportunity to do so, and he didn’t.” Tr. at 177. The Magistrate Judge “accept[ed] and credit[ed]” the testimony from Ms. Miller and her daughter, and found that “there is no risk of flight by Mr. Munchel.” Tr. at 177. Finally, the court found that Mr. Munchel’s “prior experience with the criminal justice system” in the two misdemeanor cases “suggest that he’ll stand up and

answer to his charges, and there's no reason to believe that imposing conditions of release would not also reasonably assure his appearance at future court proceedings." Tr. at 177.

The Magistrate Judge's findings were not clearly erroneous, and the government makes no attempt to argue that they were.

**C. The Lower Court's Factual Finding that the Government Failed to Provide Clear and Convincing Evidence that No Condition or Combination of Conditions Can Reasonably Assure the Safety of Persons and the Community Was Not Clearly Erroneous**

The Magistrate Judge properly considered the § 3142 factors and his factual findings were not clearly erroneous.

**i. The Nature and Circumstances of the Offenses Charged, Including Whether the Offenses Are Crimes of Violence**

The offenses charged are not crimes of violence. The Magistrate Judge found, however, that being part of a mob was dangerous conduct:

. . . [M]obs are dangerous. They're inherently dangerous. Whether it's a mob at a sporting event or a mob at a concert or a mob at a political protest or a mob intendant upon doing damage, anytime you choose to be part of a mob, there is a mob mentality and you automatically connect yourself to that dangerousness.

In this case it appears . . . that Mr. Munchel chose to be a part of that mob. He chose to be a part of this group that engaged in the conduct that's outlined in the criminal complaint and that is captured by numerous videos and photographs and the like. It's conduct that bore out itself to be dangerous in this incident.

Tr. at 178. The court condemned the actions on January 6<sup>th</sup>, but affirmed that "the consequences of those actions is for another day. What's for today is whether or not there are conditions that can reasonably assure the safety of the community between now and the time those consequences happen with regard to the underlying charge." Tr. at 185.

Based on the evidence (and lack of evidence) the court rejected the contention that Mr. Munchel arrived in Washington, DC to enter the Capitol building or to harm anyone: He "didn't

go to Washington, DC with an intention of storming the Capitol and causing harm to any individuals there.” Tr. at 180. The Judge found that Mr. Munchel had a taser, he “picked up the zip ties once he – once he arrived in the Capitol,” and while “the government also argues that they believe he had other weapons, perhaps more dangerous weapons than the stun gun, [] he didn’t take those weapons into the Capitol. Presumably, that means he had a choice to take lethal weapons into the Capitol and he made a choice not to do that.” Tr. at 179.

Regarding advance planning, the Magistrate Judge found that there is no evidence that Mr. Munchel “was engaged in any advance planning for these activities,” and “when one looks at the videotapes and listens to the audio of those tapes, [it] seems pretty clear that there isn’t much of a plan.” Tr. 180, 184. “In fact, Mr. Munchel repeatedly asks his mother what her plan is, what’s her goal, what’s she going to do.” Tr. at 180. The court credited the proffer that “the trip was planned just days before the event, that he went to that event and then fell into the mob.” Tr. at 184.

The Magistrate Judge found that Mr. Munchel did not use the taser that he openly wore on his belt, did not use the zip ties he found at the Capitol, and that there was “no evidence that he even knew he was going to be in possession of zip ties unless and until he happened upon them during the course of being in the building.” Tr. at 180.

**ii. The Weight of the Evidence Against the Defendant**

The evidence that Mr. Munchel was present on the grounds of the Capitol and inside the Capitol building is incontrovertible. Whether the government can succeed in proving the elements of each of the specific offenses charged, however, is debatable. For example, the most serious charge here is an alleged violation of 18 U.S.C. § 1752(a), entering and remaining in a restricted building. A restricted building is one that is “posted, cordoned off, or otherwise restricted.” As Mr. Munchel’s video demonstrates, he entered an open door that was neither posted nor cordoned off.

Neither the police officers standing at the door nor the officers Mr. Munchel later passed suggested that the building was restricted or that Mr. Munchel was required to leave. In any event, in determining whether conditions of release can ensure the safety of others, “[t]he weight of the evidence is the least important of the factors and the bail statute neither requires nor permits a pretrial determination of guilt.” *United States v. Gebro*, 948 F.2d 1118, 1121-22 (9<sup>th</sup> Cir. 1991) (citing *United States v. Winsor*, 785 F.2d 755, 757 (9<sup>th</sup> Cir. 1986)); accord *United States v. Jones*, 566 F. Supp. 2d 288, 292 (D.NY 2008).

**iii. The History and Characteristics of the Defendant and Whether the Defendant Was on Court Supervision at the Time of the Alleged Offense**

“[A] defendant's past conduct is important evidence—perhaps the most important—in predicting his probable future conduct.” *Pope v. United States*, 739 A.2d 819, 827 (D.C.App. 1999) (quoting *Cruz-Foster v. Foster*, 597 A.2d 927, 930 (D.C.1991)). As the Magistrate Judge found, Mr. Munchel’s only criminal convictions were two misdemeanor possession of marijuana offenses that were seven and eight years old. Mr. Munchel is not under the supervision of any court. Tr. at 174-75.

The Magistrate Judge also found that Mr. Munchel is a high school graduate with some trade schooling, grew up in Georgia and moved to Nashville two years ago, has maintained employment until the date of his arrest, is in good health, enjoys the privileges of citizenship including having and expressing opinions, has a permit to carry firearms, and an interest in collecting firearms. Tr. at 174-75. The court found that Mr. Munchel legally possessed the weapons found in his home, and noted that after January 6<sup>th</sup>, Mr. Munchel did not try to hide or remove the weapons. Tr. 181-183. Any danger concerning the weapons, the Court found, could be and had been mitigated—“those weapons have been seized,” and “[a] condition of release will be that Mr. Munchel not possess any firearms or other dangerous weapons.” Tr. at 181-82.

iv. **The Nature and Seriousness of the Danger that Would be Posed by the Defendant's Release**

The Magistrate Judge found that Mr. Munchel “has no prior history of violence,” there was no evidence that he is a member of any organized collective action against the government, there was no evidence that he had ever previously taken action on his beliefs, and that he has respect for law enforcement. Tr. at 181, 184. In fact, the court found that

[o]ne thread that seems to run through, notwithstanding Mr. Munchel's conduct here, is his apparent respect for law enforcement. And that's – it's a little bit counterintuitive because on the one hand his actions are an absolute disrespect of law enforcement, but on the other hand, the videos show him speaking with law enforcement in respectful ways, indicating his support of law enforcement. That's consistent with his prior actions and prior statements.

And so the Court believes that when told to do something, that Mr. Munchel is capable of following those instructions and will comply with those orders.

Tr. at 182.

**D. CONCLUSION: THE GOVERNMENT HAS PROVIDED NO EVIDENCE THAT THE MAGISTRATE JUDGE'S FINDINGS WERE CLEARLY ERRONEOUS**

The Magistrate Judge thoughtfully and correctly applied the Bail Reform Act and concluded that “[b]ased upon the totality of the circumstances, giving due consideration to all the factors that the Court must consider in this case, . . . there are conditions that I can impose that will reasonably assure the safety of the community.” Tr. at 175. The bail conditions set by the Magistrate Judge, in particular home confinement, electronic GPS monitoring, and third party custody, are sufficient to mitigate any risk to the community and to secure Mr. Munchel's appearance in court. For all of the reasons stated above, the government has not proved that the Magistrate Judge's factual findings were clearly erroneous. The Magistrate Judge's Order setting forth a combination of conditions of release should be allowed to take effect; the Court should reject the government's request to overturn it.

Respectfully submitted,

A. J. KRAMER  
FEDERAL PUBLIC DEFENDER

/s/

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# Exhibit 1



1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF TENNESSEE  
3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA )  
5 VS ) No. 3:21-mj-2668  
6 ERIC MUNCHEL )

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8  
9 BEFORE THE HONORABLE JEFFERY S. FRENSLEY,  
10 MAGISTRATE JUDGE

11 **TRANSCRIPT OF ELECTRONIC RECORDING**

12 (via video conference)

13 January 22, 2021

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16  
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19  
20  
21 PREPARED FROM **ELECTRONIC RECORDING** BY:

22 **Roxann Harkins, RPR, CRR**  
23 Official Court Reporter  
24 801 Broadway, Suite A837  
25 Nashville, TN 37203  
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3 JOSHUA KURTZMAN  
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5 AHMED BASET  
6 US Attorney's Office  
Washington, DC

7  
8 For the Defendant: CARYLL S. ALPERT  
9 HENRY MARTIN  
Federal Public Defender's  
10 Office  
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1  
2 The above-styled cause came to be heard  
3 on January 22, 2021, before the Hon. Jeffery S.  
4 Frensley, Magistrate Judge, when the following  
5 proceedings were had to-wit:

6 **TRANSCRIPT OF ELECTRONIC RECORDING**

7 \*\*\*

8  
9 THE COURT: The number in this district  
10 is 3:21-mj-2668. We're conducting this proceeding by  
11 video conference. And there are a number of folks on  
12 the conference. Before we begin in earnest, I'm going  
13 to open up the public access line. I'll be calling my  
14 conference line and we have a number of folks who will  
15 be on that line.

16 I'm going to make an announcement to  
17 them, reminding them to mute their phone and that  
18 there is no recordings allowed of the proceedings.  
19 And then we'll get started. So if you-all can just  
20 bear with me for a moment, we'll take it from there.

21 (Pause in proceedings.)

22 THE COURT: Good afternoon, everyone.  
23 This is Judge Frensley. It is 2:09 in the afternoon  
24 Central time here, and we are about to begin the  
25 hearing in the matter of the *United States of America*

1       *versus Eric Munchel.*

2               A number of folks are participating on  
3 this conference line, and before we begin the hearing,  
4 I just want to remind you of a couple of things.  
5 First of all, in order for us to efficiently conduct  
6 this hearing and without interruption, I would ask  
7 everyone on the conference line, please keep your  
8 phone on mute.

9               And secondly, I want to remind you-all of  
10 the Court's requirements that there are no recordings  
11 allowed of any of the proceedings. I'm going to place  
12 the call on hold while I bring the parties on. I will  
13 announce the case, and we will begin from there.  
14 Thank you all for being here today.

15               (Pause in proceedings.)

16               THE COURT: All right, good afternoon.  
17 We're here this in the afternoon in the *United States*  
18 *of America versus Eric Munchel*, it's Case  
19 No. 3:21-mj-2668. This is a case that arises out of  
20 the District of Columbia, that the case number in that  
21 district is 1:21-mj-71.

22               We have we are here today, Mr. Munchel is  
23 appearing by video conference and we have scheduled  
24 this matter for a preliminary hearing and detention  
25 hearing. Ms. Alpert is here on behalf of Mr. Munchel.

1 And Ms. Alpert, if you could announce who else is  
2 present for you and your client today. Or with you  
3 for your client.

4 MS. ALPERT: Yes, Your Honor. The  
5 Federal Public Defender, Henry Martin is present. And  
6 I believe also my investigator, Brian Carter, has  
7 telephoned in to this hearing as well.

8 THE COURT: All right, very good. Thank  
9 you, Ms. Alpert.

10 And Mr. Schrader is here for the  
11 United States. Mr. Schrader, if you could announce as  
12 well who else is present on the proceedings for the  
13 government today.

14 MR. SCHRADER: Yes, Your Honor. Ben  
15 Schrader from the United States. We also have here  
16 Ahmed Baset from the US Attorney's Office, and then a  
17 colleague of mine here with the US Attorney's Office  
18 in Nashville, Josh Kurtzman, who is handling  
19 Ms. Eisenhart's matter, has always called in to  
20 listen.

21 THE COURT: Thank you, Mr. Schrader. I  
22 see on the screen we also have Ms. Putman here from  
23 the US Probation Office. Ms. Putman, if you could let  
24 me know if anybody else from your office is  
25 participating today as well for the record.

1                   PROBATION: Your Honor, this is Andrea  
2                   Testa from the probation office. I'm here.

3                   THE COURT: Okay. I think Ms. Putman's  
4                   screen might have frozen on her. You might tell her  
5                   to refresh. And anybody else from your office,  
6                   Ms. Testa?

7                   PROBATION: Officer Kim Haney.

8                   THE COURT: All right, very good. Thank  
9                   you all very much.

10                  Before we go any further, Ms. Alpert, did  
11                  you have a chance to speak with Mr. Munchel in advance  
12                  of today's proceedings? And specifically, did you-all  
13                  discuss proceeding by video conference and does he  
14                  consent to do so?

15                  MS. ALPERT: Your Honor, we did have a  
16                  chance to speak. He does consent to proceed by video  
17                  conference. I also wanted to let the Court know just  
18                  on the screen is appearing one of our witnesses, which  
19                  will -- if the Court's okay, we will announce at the  
20                  time we call her rather than now.

21                  Yes. Mr. -- Mr. Munchel is prepared to  
22                  proceed by video.

23                  And lastly, Your Honor, I wanted to  
24                  mention that we have advised the government and would  
25                  advise the Court now that we would waive an identity

1 hearing.

2 THE COURT: Okay, very good. Thank you,  
3 Ms. Alpert. The Court is in receipt of the Pretrial  
4 Services Report, which I've reviewed. I assume that,  
5 Ms. Albert, you and the government have also received  
6 a copy of that document and you can keep that document  
7 at the completion of today's proceedings.

8 Pursuant to the Due Process Protections  
9 Act, the Court reminds the government of its  
10 obligations under *Brady vs Maryland* to disclose  
11 evidence favorable to the defendant and material to  
12 the defendant's guilt or punishment.

13 The government's ordered to comply with  
14 *Brady* and its progeny. And failure to do so in a  
15 timely manner may result in consequences, including  
16 dismissal of the indictment or information, exclusion  
17 of government witnesses or evidence, adverse jury  
18 instructions, dismissal of evidence -- or dismissal of  
19 charges, rather, contempt proceedings, sanctions by  
20 the Court or any other remedy that's just under the  
21 circumstances.

22 Mr. Schrader, is the government prepared  
23 to go forward at this time?

24 MR. SCHRADER: We are, Your Honor, yes.

25 THE COURT: All right. Ms. Alpert, are



1     you ready?

2                   MS. ALPERT:   Yes, Your Honor.

3                   THE COURT:   Okay.   I don't know if you  
4     all have discussed this.   My -- my intention, absent  
5     any other recommendation, that we would simply combine  
6     the proof for purposes of the preliminary and  
7     detention hearing in order for efficiency purposes.  
8     And I'll certainly allow you the opportunity to argue  
9     individually on each of those issues if you wish to do  
10    so.

11                   Is that acceptable to the government?

12                   MR. SCHRADER:   Yes, Your Honor.

13                   THE COURT:   Ms. Alpert?

14                   MS. ALPERT:   It is.

15                   THE COURT:   All right, very good.

16                   Mr. Schrader, do you have any proof you'd  
17    like to put on?

18                   MR. SCHRADER:   I do, Your Honor.   The  
19    government calls FBI Special Agent Angelo Defeo.   He's  
20    here with me, and I'm just going to trade places and  
21    try to speak up so the Court can hear me.

22                   THE COURT:   Okay.

23                   Good afternoon, Special Agent Defeo.   If  
24    you could raise your right hand so I can swear you.

25

1                                   **ANGELO DEFEO**

2       called as a witness, after having been first duly  
3       sworn, testified as follows:

4                   THE COURT: All right, very good. If you  
5       could please state your name and spell your name for  
6       the record, please.

7                   THE WITNESS: Angelo Defeo, D-e-f-e-o.

8                   THE COURT: All right, very good.  
9       Mr. Schrader.

10                  MR. SCHRADER: Thank you, Your Honor.

11                               **DIRECT EXAMINATION**

12       BY MR. SCHRADER:

13                  Q.     Agent Defeo, good afternoon.

14                  A.     Good afternoon.

15                  Q.     Agent Defeo, where do you work?

16                  A.     Federal Bureau of Investigation.

17                  Q.     What's your title with the Federal Bureau  
18       of Investigation?

19                  A.     Special agent.

20                  Q.     How long have you been a special agent  
21       with the FBI?

22                  A.     Approximately five years.

23                  Q.     Where do you currently work, in other  
24       words, the location?

25                  A.     The Nashville residence agency.

1 Q. Did you work at an FBI office prior to  
2 coming to Nashville?

3 A. Yes. Prior to coming to Nashville, I  
4 worked at the Chicago field office.

5 Q. What kind of cases did you investigate in  
6 the Chicago field office?

7 A. Primarily domestic terrorism, as well as  
8 other violent crime.

9 Q. (indiscernible) investigate here?

10 A. Domestic terrorism and various violent  
11 crime.

12 Q. What are your duties as a special agent  
13 with the FBI?

14 A. Conducting investigations related to  
15 domestic terrorism, other acts of firearm violations.

16 Q. Does that include things like executing  
17 federal search warrants?

18 A. Yes.

19 Q. Agent Defeo, prior to becoming an FBI  
20 special agent, what was your job?

21 A. It was a senior United States Probation  
22 Officer for the Southern District of Iowa.

23 Q. How long did you have that job for?

24 A. Approximately four and a half years.

25 Q. Agent Defeo, did you have an opportunity

1 to investigate the storming of the United States  
2 Capitol on January 6, 2021?

3 A. (indiscernible).

4 Q. And are you familiar with the complaint  
5 and an affidavit in support of a complaint prepared in  
6 connection with the arrest of a person named Eric  
7 Munchel?

8 A. Yes.

9 Q. As part of that investigation related to  
10 that complaint, did you conduct surveillance at  
11 Mr. Munchel's residence here in Nashville?

12 A. (indiscernible).

13 Q. Did you also participate in the execution  
14 of a federal search warrant at Mr. Munchel's residence  
15 on January 10, 2021?

16 A. Yes.

17 THE COURT: Hang on just a minute.  
18 Special Agent Defeo, maybe if you could speak up a  
19 little bit, we're having trouble hearing you.  
20 Ms. Alpert, you had your hand up. Did you have the  
21 same issue? Okay, yeah. If you could try to get a  
22 little closer to the microphone and speak up. You're  
23 break up a little bit and we're having trouble hearing  
24 you.

25 Go ahead, Mr. Schrader.

1 MR. SCHRADER: (indiscernible).

2 THE COURT: No worries. Go ahead,  
3 Mr. Schrader.

4 BY MR. SCHRADER:

5 Q. Agent Defeo, did you also have an  
6 opportunity to participate in Mr. Munchel's arrest on  
7 January 10, 2021?

8 A. Yes, I did.

9 Q. I mentioned just a moment ago a complaint  
10 and an affidavit in support of a complaint prepared in  
11 connection with Mr. Munchel's arrest. I'm showing you  
12 what has been marked as Government's Exhibit 1, which  
13 has previously been provided to the Court and to  
14 counsel. Do you recognize Government's Exhibit 1?

15 What is Government's Exhibit 1?

16 A. Criminal complaint and support affidavit  
17 for the complaint.

18 Q. Is that a joint complaint that identifies  
19 both Eric Munchel and Lisa Eisenhart as defendants?

20 A. Yes, it does.

21 Q. Was it issued out of the District Court  
22 for the District of Columbia?

23 A. Yeah.

24 Q. Now, Agent Defeo, if permitted by the  
25 Court, would you like to adopt the representations

1 underlying that affidavit as part of your  
2 (indiscernible) today?

3 A. Yes.

4 MR. SCHRADER: Your Honor, at this time  
5 I'd ask to move into evidence Government's  
6 Exhibit No. 1.

7 THE COURT: It will be admitted.

8 (Government Exhibit No. 1 was admitted.)

9 BY MR. SCHRADER:

10 Q. Agent Defeo, do you see Mr. Munchel here  
11 at the hearing today?

12 A. Yes, I do.

13 Q. Please identify Mr. Munchel for the  
14 record.

15 A. On the video screen he's to my top left  
16 wearing an orange or yellow shirt behind bars.

17 MR. SCHRADER: May the record reflect an  
18 in-hearing identification of Mr. Munchel.

19 THE COURT: It will be reflected.

20 BY MR. SCHRADER:

21 Q. Agent Defeo, let me ask you first some  
22 follow-up questions about the search warrant that you  
23 mentioned at a residence. Again, did you have an  
24 opportunity to participate in the execution of a  
25 federal search warrant specifically at 731 Shadowood

1 Drive at approximately 6 o'clock in the morning on  
2 January 10, 2021?

3 A. Yes, I did.

4 Q. Can you just provide a summary of the  
5 execution of that search warrant?

6 A. Yes. At approximately 6 o'clock in the  
7 morning, agents from the Federal Bureau of  
8 Investigation knocked and announced their presence at  
9 the residence of 371 Shadowood Drive. An individual  
10 later identified as Witness No. 1 came to the door.  
11 He was temporarily detained while the residence was  
12 made safe by the agents. After the agents made the  
13 residence safe, the execution of the warrant -- search  
14 warrant had taken place.

15 Q. Agent Defeo, what relationship, if any,  
16 did Witness 1 have to Mr. Munchel, Eric Munchel?

17 A. Witness 1 identified himself as Eric  
18 Munchel's brother.

19 Q. Agent Defeo, are you familiar, first of  
20 all, with the memorandum in support of pretrial  
21 detention that the government filed in this case?

22 A. (indiscernible).

23 Q. In particular, are you familiar with a  
24 photograph of a person alleged to be Eric Munchel  
25 leaping over a railing in the chamber of the

1 United States Senate on page 9 of that memorandum?

2 A. I am.

3 Q. Agent Defeo, did you recover any items of  
4 evidence during the execution of the search warrant at  
5 731 Shadowood Drive that appeared to be similar to the  
6 items that the person jumping over that railing was  
7 bearing?

8 A. (indiscernible).

9 Q. What items?

10 A. We recovered a tactical vest, a black  
11 tactical vest with a patch on the front, one patch  
12 being a United States of America flag with a skull on  
13 top of it, as well as a -- what appeared to be a state  
14 of Tennessee patch with a thin blue line on it.

15 Additionally we recovered a cap, a shirt,  
16 pants, boots and zip ties or flexicuffs at the  
17 residence.

18 Q. (indiscernible)?

19 A. Flexicuffs are typically used by law  
20 enforcement officers to detain individuals.

21 Q. What color were they?

22 A. White.

23 Q. And how many pairs of those did you find  
24 in the residence?

25 A. Approximately four or five, maybe.



1           Q.     Did you ask Witness 1 if he knew anything  
2     about where those zip ties or flex cuffs had came  
3     from?

4           A.     Witness 1 admitted that the zip ties came  
5     back from Washington, DC with Eric Munchel.

6           Q.     And you also mentioned some clothing, a  
7     cap, tactical vest. Did Witness 1 have anything to  
8     say about who those items belonged to?

9           A.     Yes, he confirmed that they belonged to  
10    Eric Munchel.

11          Q.     In addition to those items of evidence,  
12    Agent Defeo, did agents recover any firearms or  
13    ammunition evidence inside the residence?

14          A.     Yes.

15          Q.     And what did they recover?

16          A.     Approximately 15 firearms ranging from  
17    AR-style weapons, a sniper rifle with a tripod,  
18    multiple pistols, and I would say hundreds of rounds  
19    of ammunition.

20          Q.     Agent Defeo, are you familiar with what's  
21    known as a sniper rifle?

22          A.     Yes.

23          Q.     What's a sniper rifle?

24          A.     Long rifle that is meant primarily for  
25    long distance targets or shooting.

1 Q. (indiscernible) tripods at the end of a  
2 barrel as well?

3 A. They can.

4 Q. Did you recover any items like that  
5 inside the residence?

6 A. Yes.

7 Q. How many of those items?

8 A. I believe one.

9 Q. Did you recover -- did you say you  
10 recovered multiple assault-style rifles?

11 A. Correct.

12 Q. Agent Defeo, are you familiar with what's  
13 known as a drum magazine?

14 A. Yes.

15 Q. What's a drum magazine?

16 A. It's a magazine that's intended to have a  
17 high capacity, high number of rounds allowing the user  
18 to fire more rounds than what is typically allowed for  
19 the weapon.

20 Q. Did you recover any drum-style magazines  
21 inside the residence?

22 A. Yes, we did.

23 Q. How many?

24 A. One.

25 Q. Agent Defeo, did you recover any duffle

1 bags that contained ammunition?

2 A. We took one duffle bag that had a large  
3 number of filled magazines for a -- what appeared to  
4 be an assault-style rifle.

5 Q. In other words, a duffle bag containing  
6 loaded magazines?

7 A. (indiscernible).

8 Q. Could you estimate the number of  
9 magazines?

10 A. A guess would be maybe 20 or 30.

11 Q. Agent Defeo, as you sit here today, do  
12 you have any evidence that any of these items,  
13 firearms or ammunition evidence (indiscernible)?

14 THE COURT: I'm sorry, you broke up. The  
15 answer to that question?

16 THE WITNESS: No, Your Honor.

17 THE COURT: Okay.

18 BY MR. SCHRADER:

19 Q. Agent Defeo, when you-all were at the  
20 residence, did you have an opportunity to interview  
21 Witness 1 about the whereabouts of the defendant and  
22 his mother, Ms. Eisenhart, on or about January 6,  
23 2021?

24 A. Yes.

25 Q. And what is it that Witness 1 told you

1 about Mr. Munchel and Ms. Eisenhart's whereabouts?

2 A. He indicated that Mr. Munchel and his  
3 mother drove to Washington, DC for the Stop the Steal  
4 rally that was to occur in Washington, DC on  
5 January 6, 2021.

6 Q. Did Witness 1 tell you anything about  
7 Mr. Munchel and Ms. Eisenhart's state of mind,  
8 specifically with respect to the outcome of the  
9 presidential election in 2010?

10 A. Witness 1 did indicate that Mr. Munchel  
11 and his mother were upset about the outcome of the  
12 election in 2020.

13 Q. Did Witness 1 travel with them to DC or  
14 remain in Nashville?

15 A. Witness 1 remained in Nashville.

16 Q. Did Witness 1 provide you any information  
17 about when Mr. Munchel, meaning the defendant, and  
18 Ms. Eisenhart returned from DC to Nashville?

19 A. Witness 1 indicated that Mr. Munchel and  
20 Ms. Eisenhart returned after the rally in  
21 Washington, DC.

22 Q. Did Witness 1 provide you any information  
23 about where Ms. Eisenhart went at that time after  
24 returning from DC to Nashville?

25 A. Witness 1 indicated that Ms. Eisenhart

1 spent the night in Nashville and then returned to  
2 Georgia the next day.

3 Q. Agent Defeo, when you executed the search  
4 warrant at the residence that morning, was the  
5 defendant present?

6 A. He was not.

7 Q. Was Witness 1 able to provide you with  
8 any information about where the defendant was at that  
9 time?

10 A. He was not.

11 Q. When was the last time, according to  
12 Witness 1, he had seen the defendant?

13 A. Talking to Witness 1, he had seen the  
14 defendant approximately one to two days prior when he  
15 was reportedly going to work.

16 Q. Did Witness 1 receive a call from anyone  
17 at the defendant's place of work?

18 A. Witness 1 indicated that Mr. Munchel's  
19 employer had called Witness 1 to inquire as to where  
20 he might be.

21 Q. Was there any communication you're aware  
22 of between the defendant and Witness 1 after the  
23 defendant left that day to go to work but never showed  
24 up?

25 A. Witness 1 indicated there may have been

1 one text message in which the defendant stated that he  
2 was okay but did not give any indication as to his  
3 whereabouts or any other information.

4 Q. Agent Defeo, was Witness 1 able to  
5 provide you with any information about (indiscernible)  
6 at that time?

7 A. No, he was not.

8 Q. Did he know where his brother was?

9 A. (indiscernible).

10 Q. Agent Defeo, did you also learn at some  
11 point that the defendant had been staying for those  
12 few days with a female I'll refer to as Witness 2?

13 A. Yes.

14 Q. Did you have an interview to interview  
15 Witness 2?

16 A. Yes, we did.

17 Q. Do you know whether Witness 2 has  
18 obtained any electronic devices from the defendant?

19 A. She did obtain a cell phone from the  
20 defendant.

21 Q. Was that a red iPhone?

22 A. Yes.

23 Q. Did Witness 2 tell you -- well, did  
24 Witness 2 have any communications or conversations  
25 with the defendant while she was staying with him?

1 A. Yes, she did.

2 Q. Did the defendant say anything to  
3 Witness 2 about why he was giving her the phone?

4 A. Stated that there was a video from  
5 January 6, 2021, and he wanted Witness 2 to have the  
6 cell phone so as the video on the cell phone could not  
7 be manipulated or (indiscernible) by law enforcement.

8 Q. Agent Defeo, are you familiar with a --  
9 you mentioned this already, but the photograph of the  
10 person alleged to be Mr. Munchel jumping over a  
11 railing in the Senate chamber. Do you recall that  
12 photograph?

13 A. Yes.

14 Q. Did the defendant say anything to  
15 Witness 2 about who was depicted in that photograph?

16 A. Witness 2 indicated that the defendant  
17 confirmed that was him in the photograph.

18 Q. Going back now to the memorandum in  
19 support of pretrial detention that the government  
20 filed in this case, are you familiar with a portion of  
21 that memo, Agent Defeo, that includes a description of  
22 the substance of a video purportedly captured by a  
23 cell phone that the defendant had mounted to his chest  
24 on January 6, 2021, at pages 17 through 20 of that  
25 memo?

1 A. I am.

2 Q. Did you review that portion of the memo?

3 A. I have.

4 Q. And you've reviewed that video as well?

5 A. Yes, I have.

6 Q. And is the description that's captured  
7 there on pages 17 through 20 of the government's  
8 detention memo a fair and accurate description of the  
9 substance of the video?

10 A. Yes, it is.

11 Q. Does that include the -- there were  
12 certain statements that were quoted in there  
13 (indiscernible) to the defendant and Ms. Eisenhart.  
14 Were those accurate quotations?

15 A. Yes.

16 Q. Let me ask you about just one portion of  
17 that video. There's a portion of the video where the  
18 defendant appears to come into contact with a couple  
19 of people who are referred to as Oathkeepers. Do you  
20 recall that portion of the video?

21 A. Yes, I do.

22 Q. Could you just summarize that portion of  
23 the video for the Court?

24 A. The defendant comes in contact with  
25 individuals who are dressed in what appears to be



1 tactical gear. He says something about them being --  
2 or identifies them as being Oathkeepers. One of the  
3 individuals states that at least 65 more of them are  
4 coming. And at the end of the interaction, the  
5 defendant fist bumps the individual (indiscernible).

6 Q. Are you familiar with the Oathkeeper  
7 organization?

8 A. Yes, I am.

9 Q. How are you familiar with the  
10 Oathkeepers?

11 A. I work primarily domestic terrorism  
12 violations. The Oathkeepers are considered to be  
13 antiauthority or antigovernment militia-style group.

14 Q. Do they (indiscernible) with firearms?

15 A. They do.

16 Q. They appear to have military-style  
17 training?

18 A. Yes, they do.

19 Q. Is it fair to describe them as a militia?

20 A. (indiscernible).

21 Q. And how would you describe Mr. Munchel's  
22 interaction with the Oathkeepers?

23 A. I would describe the interaction as  
24 positive. He identified them pretty quickly and  
25 obviously was in support of them, giving them a fist

1 bump before moving on.

2 Q. And Agent Defeo, one last set of  
3 questions. In the photograph of the person alleged to  
4 be Mr. Munchel and the banister of the Senate chamber  
5 and another photograph that depicts a person  
6 (indiscernible) Mr. Munchel and his mother walking  
7 outside the Capitol -- well, first of all, are you  
8 familiar with those photographs?

9 A. Yes, I am.

10 Q. You understand they appear in the  
11 government's detention memo as well?

12 A. Yes.

13 Q. Does Mr. Munchel in those photographs  
14 appear to have a Taser -- well, an item on his hip and  
15 a holster?

16 A. Yes, it appears that there's something on  
17 his right hip.

18 Q. Is there evidence you're aware of that  
19 that item is, in fact, a Taser?

20 A. Yes.

21 Q. And there is some reference to that in  
22 the affidavit in the support of complaint, but can you  
23 just summarize the evidence that that item is, in  
24 fact, a Taser?

25 A. Later on on the evening of the 6th

1 Mr. Munchel was approached by Metro police officers on  
2 the street of Washington, DC because he had something  
3 on his hip that might have been construed as a pistol  
4 of some sort. Metro police officers made contact with  
5 Mr. Munchel, detained him temporarily to determine  
6 that, indeed, it was a Taser that was on his hip.

7 Q. Are you aware of interaction with the  
8 Metropolitan police where they actually seized a Taser  
9 from his person?

10 A. Yes, they take the Taser from him.

11 Q. Do you understand from another incident  
12 outside of a Grand Hyatt hotel where police  
13 (indiscernible) may be armed with a firearm but, in  
14 fact, it was a Taser; is that right?

15 A. (indiscernible).

16 Q. And then did you recover any items of  
17 evidence from the execution of the search warrant at  
18 731 Shadowood Drive lending further credence to the  
19 evidence here that that item was a Taser?

20 A. Yes, during the execution of the search  
21 warrant, we recovered what appeared to be the  
22 packaging for a Pulse Taser.

23 Q. Agent Defeo, what is a Taser?

24 A. It is a less-than-lethal use of force  
25 method that emits an electrical force to temporarily

1       incapacitate a subject.

2               MR. SCHRADER: One moment, Your Honor.

3               THE COURT: Take your time.

4               MR. SCHRADER: No further questions,  
5       Your Honor.

6               THE COURT: All right. Very good.

7               Ms. Alpert, you may ask.

8               MS. ALPERT: Thank you, Your Honor.

9                               **CROSS-EXAMINATION**

10       BY MS. ALPERT:

11               Q. All right. Agent Defeo, how many reports  
12       did you prepare so far in connection with this case?

13               A. (indiscernible) any reports in connection  
14       with this case.

15               Q. Okay. Have you written up any reports or  
16       memoranda connected to Mr. Munchel?

17               A. No.

18               THE COURT: Ms. Alpert, before you begin,  
19       I need to pause for just a minute, if everybody could  
20       just sort of hold tight for me for a minute, please.  
21       Thank you.

22                               (Pause in proceedings.)

23               MS. ALPERT: Your Honor, I'm going to  
24       step away for one second. I'll be right back.

25               THE COURT: Okay, we're back on. Thank

1 you. Appreciate your patience. We were having some  
2 issues with our conference line, and I think I've got  
3 those resolved now. So thank you all, and thank you  
4 to everyone who's on the conference line. Again, just  
5 remind you-all on the conference line to please keep  
6 your phones on mute and not to disrupt the  
7 proceedings. Thank you.

8 You can continue, Ms. Alpert.

9 BY MS. ALPERT:

10 Q. Agent Defeo, I think I had just asked you  
11 if you had written any reports at all related to  
12 Mr. Munchel.

13 A. Correct. To my recollection I have not.  
14 We do coauthor all of our interview reports, so I may  
15 have coauthored (indiscernible).

16 Q. You co- -- oh, I'm sorry, go ahead.

17 A. (indiscernible).

18 Q. Okay. When you say you coauthored  
19 something, do you review it before signing off on it?

20 A. Yes.

21 Q. And so you think you may have coauthored  
22 some memos in connection with the interviews done in  
23 connection with Mr. Munchel?

24 A. Yes.

25 Q. Are those the subsequent interviews that

1     you've referenced today in your court testimony?

2             A.     I do not remember off the top of my head  
3     which ones I coauthored and I did not.

4             Q.     If you coauthored them -- if you  
5     coauthored something in connection with Witness 1,  
6     would you be -- is the statement that you made  
7     something that you would have quoted exact statements  
8     or summarized exact statements made by Witness 1?

9             A.     So ask the question again, I apologize.

10            Q.     Okay. Explain what types of statements  
11     you may have coauthored related to Witness 1 and  
12     Witness 2.

13            A.     So typically when someone -- when another  
14     agent writes a report, a coauthor simply reviews that  
15     report, provides any feedback, the report is then  
16     signed off by a supervisor. We write reports all day,  
17     so I cannot (indiscernible) which reports I coauthored  
18     and which ones I did not.

19            Q.     Okay. And is it fair to say that by  
20     coauthoring it and reviewing it, you're adopting the  
21     information that's in that report?

22            A.     That's fair.

23            MS. ALPERT: Your Honor, I move for the  
24     government to disclose any Jencks material related to  
25     any reports prepared by agent -- or coauthored by

1 Agent Defeo in connection with Witness 1 and  
2 Witness 2.

3 THE COURT: Mr. Schrader, what do you  
4 say?

5 MR. SCHRADER: Your Honor, so if I can  
6 address that. So it was my understanding before the  
7 hearing today that Agent Defeo had not, in fact,  
8 authored either a report of the interview with  
9 Witness 1 or Witness 2.

10 I have both of these items, and we  
11 actually disclosed to the defense some of the  
12 substance of those two interviews. Specifically  
13 substance that, in the government's view, mitigated  
14 any detention arguments that we might have or  
15 information that might arguably be exculpatory.

16 So we've already provided much of the  
17 information that I think would be helpful to the  
18 defense from those. I don't have an issue with  
19 providing them to the defense, but I can't do it as we  
20 sit here right now. And I also --

21 MS. ALPERT: Your Honor --

22 MR. SCHRADER: -- don't know exactly  
23 whether it's -- Your Honor, I don't know whether  
24 it's --

25 THE COURT: Jencks or not?

1 MR. SCHRADER: Exactly, right.

2 THE COURT: Yeah, okay. Ms. Alpert?

3 MS. ALPERT: Well, Your Honor, I think  
4 these are disclosable both for purposes of preliminary  
5 hearing and detention hearing. And I appreciate  
6 Mr. -- Mr. Schrader did disclose some information,  
7 which I understand he thinks is mitigating, but  
8 certainly, as defense counsel, there may be other  
9 materials in there that are not only *Brady*, but also  
10 Jencks. And regardless, at this stage I'm entitled to  
11 both, if they are Jencks material, and I would submit  
12 that they are, as pertains to Agent Defeo.

13 And, you know, the penalty for not  
14 disclosing that information is it can be to strike the  
15 witness's testimony (indiscernible). If Mr. Schrader  
16 could provide those to us now, we could at least have  
17 time to review them in a short recess and come back  
18 and ask any other questions.

19 I do want to proceed with the hearing  
20 now. If he could forward those to myself or  
21 co-counsel, that would give us a chance to read them  
22 and maybe take a short recess later and determine if  
23 there's anything else we need to ask about.

24 MR. SCHRADER: Your Honor, I don't have  
25 an issue with providing it now.



1 THE COURT: Okay.

2 MR. SCHRADER: That's fine.

3 THE COURT: Why don't you do that. Go  
4 ahead and if you'll forward an email to Ms. Alpert and  
5 Mr. Martin. And then let's go on with the  
6 examination, and then we'll deal with that at the  
7 completion of the examination.

8 Are you able to do that or have someone  
9 do it, Mr. Schrader, while we're continuing?

10 MR. SCHRADER: I'll need to -- because  
11 this is my computer. I need to pull it up here. If  
12 you give me just a moment, I can probably pull them up  
13 and email them to counsel.

14 THE COURT: That's fine, let's do that.  
15 Just hang on for a minute, Ms. Alpert. Mr. Schrader,  
16 just let us know when you're ready.

17 MR. SCHRADER: Thank you, Your Honor.  
18 I've provided those reports to defense counsel.

19 THE COURT: Thank you, Mr. Schrader.  
20 Ms. Alpert, you can continue.

21 MS. ALPERT: Thank you.

22 BY MS. ALPERT:

23 Q. Agent Defeo, Mr. Munchel and  
24 Ms. Eisenhart, his mother, drove to DC, just the two  
25 of them; correct?

1 A. Correct.

2 Q. And the government's investigation in  
3 this case reflected that Ms. Eisenhart made --  
4 actually made her hotel reservation on January 4 at  
5 the Grant Hyatt; correct?

6 A. I'm unaware of that.

7 Q. Now, so you -- what you've been doing so  
8 far on this case, have you participated in the  
9 investigation of Mr. Munchel and Ms. Eisenhart since  
10 the beginning?

11 A. Yes.

12 Q. Okay. And you've reviewed, I assume,  
13 items that were on Mr. Munchel's phone?

14 A. I have reviewed just one video, maybe two  
15 videos on the phone. I've not reviewed anything else  
16 on the phone.

17 Q. Okay. You've also reviewed newspaper  
18 articles and other information related to Mr. Munchel  
19 from the Internet?

20 A. I've seen news coverings of the arrests,  
21 yes.

22 Q. Are you the case agent for this case?

23 A. I would consider myself a cocase agent.

24 Q. Okay. And who is the case agent?

25 A. Special Agent Christopher Potts.

1 Q. Sorry, cocase agent, okay.

2 All right. Do you have any reason to  
3 believe that Ms. Eisenhart did not make her hotel  
4 (indiscernible)?

5 A. I'm so sorry. Could you ask that one  
6 more time?

7 Q. Yes. If other records reflect that  
8 Ms. Eisenhart made her hotel reservation on January 4,  
9 do you have any reason to dispute that at this point?

10 A. No, I've not reviewed any hotel records  
11 whatsoever.

12 Q. There's no indication that Ms. Eisenhart  
13 planned -- or Mr. Munchel planned in advance to go to  
14 DC; correct?

15 A. Correct, I have no information about  
16 that.

17 Q. And your investigation also showed that  
18 they arrived in DC very early in the morning on  
19 January 5, like after midnight on the 4th, early  
20 morning January 4; correct?

21 A. (indiscernible).

22 Q. Mr. -- Mr. Schrader mentioned on direct  
23 an incident on January 5, on the evening of January 5,  
24 a video taken outside -- somewhere outside in  
25 Washington, DC; correct?

1           A.     I don't recall if that was January 5 or  
2     January 6.

3           Q.     Okay. There's a video that -- where  
4     Mr. Munchel interacts with local DC police officers;  
5     correct?

6           A.     Correct.

7           Q.     And if -- it was an evening; correct?

8           A.     Correct, it was dark.

9           Q.     Do you have any reason to dispute that  
10    that happened on January 5 as opposed to January 6?

11          A.     No.

12          Q.     Okay. And that evening what the video --  
13    is it fair to say that the video shows Mr. Munchel was  
14    stopped by some DC police officers as he was walking  
15    down the street?

16          A.     Correct.

17          Q.     And the officers (indiscernible) that  
18    they thought he had a gun because he had a holster of  
19    some sort that he was wearing visibly; correct?

20          A.     Correct.

21          Q.     And he explained to them that it was a  
22    Taser, not a gun; correct?

23          A.     That's correct.

24          Q.     And in the video, you know, the -- it's  
25    about a three or four-minute interaction with the

1 police or reflects at least three or four minutes of  
2 the interaction?

3 A. Possibly, yes.

4 Q. Okay. Just backing up for a minute, this  
5 video came from Mr. Munchel's cell phone; correct?

6 A. I believe so.

7 Q. The video that -- it appears that it's a  
8 video that he recorded on his cell phone --

9 A. Yes.

10 Q. -- as he was walking around?

11 Okay. And so in the interaction Mr.  
12 Munchel is polite with the police officers; correct?

13 A. That is correct.

14 Q. He doesn't try to flee; is that correct?

15 A. No, ma'am.

16 Q. And he truthfully answered the officer's  
17 questions for him about his identity and what he was  
18 doing and that type of thing; correct?

19 A. Yes.

20 Q. And there was some onlookers, some other  
21 people in the area who started to approach the  
22 interaction between Mr. Munchel and the police  
23 officers; correct?

24 A. That's correct.

25 Q. And is it fair to say that some of the

1 people approaching expressed concerns about what was  
2 going on?

3 A. Yes, that's fair.

4 Q. And some of the people appeared to be  
5 hostile toward the police officers?

6 A. It did appear that way.

7 Q. And Mr. Munchel actually said, don't  
8 worry about this -- he didn't know those people;  
9 correct? There's not any indication he knew those  
10 people?

11 A. There's no indication of that.

12 Q. And in the video Mr. Munchel is telling  
13 these people, who are kind of getting hostile to the  
14 police, don't worry about this, the police are just  
15 doing their jobs, no problem, something along those  
16 lines; correct?

17 A. Yes.

18 Q. And then the police allowed him to leave  
19 with his Taser?

20 A. I believe so.

21 Q. It's fair to say he still had the Taser  
22 after that interaction with the police; correct?

23 A. Yes, that's fair to say.

24 Q. And it's actually legal to have a Taser  
25 in DC, which is why the police let him leave; correct?

1           A.     I'm unaware of the laws in DC, but I  
2     assume if the police let him leave with it, than it  
3     wasn't in violation of any law.

4           Q.     Okay. So I want to turn now to  
5     January 6, the day of the rally. You talked about  
6     this a little bit on direct with Mr. Schrader. Your  
7     investigation revealed that Mr. Munchel and his mother  
8     left their hotel, the Grant Hyatt, around midday that  
9     day; correct?

10          A.     Yes.

11          Q.     And they're -- I think Mr. Schrader may  
12     have referenced, they were carrying coffee, walking  
13     down the street; correct?

14          A.     I'm sorry, your video feed broke up  
15     again, I apologize.

16          Q.     Oh, okay, I'm sorry.

17                 MS. ALPERT: Your Honor, has my video  
18     feed been breaking up frequently, because I will  
19     refresh, if necessary.

20                 THE COURT: Not for me.

21                 MS. ALPERT: I'm not having any issues --

22                 THE COURT: I haven't had any problem  
23     with you. The only issues I've had with this hearing  
24     is just the US Attorney's Office, their volume has cut  
25     in and out a little bit, but I've been able to

1 understand the testimony. And that's why I haven't  
2 said anything other than the times I have, so.

3 MS. ALPERT: Okay.

4 BY MS. ALPERT:

5 Q. Agent, just let me know if you don't hear  
6 a question again, thank you.

7 A. Absolutely.

8 Q. So he and his mother were walking down  
9 the street in Washington, DC carrying coffee; correct?

10 A. Correct.

11 Q. And they were headed -- they were walking  
12 toward the Capitol; correct?

13 A. Yes, ma'am.

14 Q. And they were -- is it fair to say there  
15 were hundreds, if not thousands, of other people there  
16 doing the same thing, walking in the streets toward  
17 the Capitol that day?

18 A. Yes.

19 Q. Now, you indicated, I believe, that you  
20 saw the video -- the video that Mr. Munchel took on  
21 January 6 that day once he and his mother got to the  
22 rally area of the Capitol; correct?

23 A. Yes.

24 Q. And that's a total of -- that's a total  
25 of about 50 minutes on the video?



1           A.     Yeah, I believe it's approximately 50  
2 minutes, yes.

3           Q.     Okay. And --

4           THE COURT: I'm sorry, did you say -- I  
5 apologize. Is that 50, five zero or 15, one five?

6           MS. ALPERT: 50, five zero.

7           THE COURT: Thank you. Go ahead.

8 BY MS. ALPERT:

9           Q.     And from other footage that -- or  
10 investigation that you've done, that -- it appears  
11 that that footage is from a cell phone, again, that  
12 Mr. Munchel has mounted on his chest, on his vest;  
13 correct?

14          A.     Correct.

15          Q.     Now, you indicated on direct that -- that  
16 the summary that Mr. Schrader put in his memorandum to  
17 the Court on pages I think 17 to 20, accurately  
18 summarized that video; correct?

19          A.     Yes.

20          Q.     Is it fair to say, though, that  
21 Mr. Schrader did not include each and every fact from  
22 that video?

23          A.     I believe it was intended to be a summary  
24 from that video.

25          Q.     And is it fair to say it was intended to

1 be a summary in support of the government's desire to  
2 detain Mr. Munchel?

3 A. It was just in a detention memorandum.

4 Q. And that memorandum was in support of the  
5 government's desire to detain Mr. Munchel?

6 A. Yes.

7 Q. And this -- you obtained -- I'll come  
8 back to that in a minute.

9 From your investigation, does it appear  
10 that this video starts just maybe a few minutes before  
11 2:00 p.m.?

12 A. I'm not entirely sure what time the video  
13 actually starts in the time stamp.

14 Q. Okay. And in -- throughout this video, I  
15 want to talk about a few other things that aren't as  
16 clear from the government's memorandum. Or that might  
17 not be as clear.

18 In the video, much of what Mr. Munchel is  
19 doing is following his mother; correct?

20 A. Yes.

21 Q. And not only following her, but keeping a  
22 firm grasp on a handle that's on the back of her vest;  
23 correct?

24 A. Yes.

25 Q. Because he's trying -- it's pretty clear

1 from the video he's trying not to let her get lost in  
2 the crowd or too far ahead of him or anything like  
3 that; correct?

4 A. Yes.

5 Q. And in the video, while he and his mother  
6 are outside -- outside the Capitol on the grounds, at  
7 some point he says that he is not going to go into the  
8 Capitol with weapons; correct?

9 A. That's correct.

10 Q. And at that point his mother says, well,  
11 let's go put our stuff down in our backpacks; correct?

12 A. That's correct.

13 Q. And then they get to the backpacks and  
14 Mr. Munchel says, take my stuff off, take my weapons  
15 off before I go in there; correct?

16 A. Something to that effect, yes.

17 Q. Okay. And they actually do leave a  
18 backpack behind with some other people; correct?

19 A. Yes. It's unclear as to what was being  
20 put in or taken out of the backpack in the video.

21 Q. Okay. On this video you can also hear  
22 people talking and saying that Congress has been shut  
23 down; correct? While they're still outside, you can  
24 hear people talking indicating that Congress has been  
25 shut down?

1           A.     I don't recall that specific statement  
2     being made on the video.

3           Q.     Okay. When you -- Mr. Schrader mentioned  
4     an encounter with Oathkeepers in the crowd outside. I  
5     know you already mentioned -- it was very crowded  
6     outside on the grounds of the Capitol throughout this  
7     video; correct?

8           A.     Yes.

9           Q.     People are kind of walking all over the  
10    place, passing each other, helping each other get up  
11    and down from walls and such like that; correct?

12          A.     Yes, there was lots of people, quite  
13    chaotic.

14          Q.     Okay. And the -- when you're referring  
15    to (indiscernible), Mr. Munchel's mother actually came  
16    upon this person that you're indicating was an  
17    Oathkeeper first; correct?

18          A.     It's unclear who came upon them first  
19    from just the statement that Mr. Munchel made  
20    (indiscernible) Oathkeeper.

21          Q.     But she engages in conversation with the  
22    person; correct?

23          A.     Yes.

24          Q.     And you indicated that Mr. Munchel was  
25    friendly to this person, whoever the Oathkeeper person

1 was; correct?

2 A. Yes.

3 Q. He was also friendly to pretty much  
4 everyone else he encountered outside in the crowd;  
5 correct?

6 A. I didn't see him engage in any type of  
7 violence or anything of that sort, if that's what  
8 you're asking.

9 Q. And he wasn't rude to anybody?

10 A. No.

11 Q. He was assisting people. For example, he  
12 assisted some people who appeared to have been tear  
13 gassed. He was helping them climb over a step or  
14 something; correct?

15 A. Correct.

16 Q. And he gave a hand to some people who  
17 seemed to be maybe not super fit and needed a hand  
18 getting up a step or something like that. He did that  
19 as well several times?

20 A. It appeared that he was being overly  
21 positive towards other people, yes.

22 Q. Okay. Just like -- and that's the same  
23 type of thing he was saying to the Oathkeeper person,  
24 whoever that was?

25 A. Yes, he (indiscernible).

1 Q. You have no indication or information  
2 that Mr. Munchel is affiliated with the Oathkeepers;  
3 correct?

4 A. Correct.

5 Q. All right. So I want to turn now to when  
6 they get in (indiscernible), when Mr. Munchel and his  
7 mother approach the Capitol. And the whole time  
8 they're heading up toward the Capitol, again,  
9 (indiscernible) following his mother; correct?

10 A. Yes, correct.

11 Q. And then they go into the Capitol and  
12 they're inside the Capitol for probably about 11 or  
13 maybe 12 minutes; correct?

14 A. I do not recall the specific time, but it  
15 was about I would say 10 or 15 minutes or so.

16 Q. Okay. And then when he goes into the  
17 Capitol with his mother -- well, first of all, when  
18 they walk into the Capitol, they walk in through an  
19 open door; correct? An unlocked door?

20 A. Yes.

21 Q. And as they walk in, there's law -- a  
22 couple of law enforcement officers to their right that  
23 are standing inside the doorway allow people to pass.  
24 The officers are not, like, telling people to leave --  
25 or they're standing there, they're not actively

1 telling people to leave or anything like that;  
2 correct?

3 A. That's what it appears in the video, yes.

4 Q. And when they -- when Mr. Munchel goes  
5 inside, he's attempting to limit his mother's actions  
6 inside the Capitol?

7 A. I wouldn't understand -- or I wouldn't  
8 know what his intentions were with his mother.

9 Q. Okay.

10 A. (indiscernible).

11 Q. Let me -- let me go through this a little  
12 bit more. Well, first of all, when they walk up, they  
13 walk a set of stairs and he is still holding on to his  
14 mother tightly by the strap on the back of her back;  
15 correct?

16 A. Yes.

17 Q. And then about two minutes after they get  
18 inside, Mr. Munchel asks his mother, what's your goal  
19 here, Mom; correct?

20 A. Yeah, something to that effect, yes.

21 Q. Okay. And then a couple minutes after  
22 that, Mr. Munchel says to his mother, when she starts  
23 going down some hallway, he says, we don't want to get  
24 too split up. We don't want to get stuck in here  
25 because this is not a place for us, something like

1       that; correct?

2               A.       Correct.

3               Q.       While they're in there for that short 10  
4       to 12, 15-minute period, Mr. Munchel is also telling  
5       other people inside not to vandalize; correct?

6               A.       That's correct.

7               Q.       He said, so about four minutes after he's  
8       been in the building he's telling people, don't  
9       vandalize anything, we aren't Antifa; correct?

10              A.       With a little bit more colorful language,  
11       but, yes, that is the effect.

12              Q.       Okay. And then, you know, a few -- less  
13       than a minute later he's saying "don't break shit" to  
14       people?

15              A.       Correct.

16              Q.       And then he makes another comment about,  
17       hey, easy, easy, easy, no vandalizing shit; correct?

18              A.       Yes.

19              Q.       And then after -- again, he repeats "no  
20       vandalizing shit" again some time after that. He says  
21       it a number of times to people; correct?

22              A.       Yes, he says it multiple times.

23              Q.       And he also says something about "you  
24       break shit, I break you;" correct?

25              A.       That's correct.



1           Q.     But, in fact, Mr. Munchel himself does  
2     not engage in any vandalism inside the Capitol;  
3     correct?

4           A.     Not that is recorded on the video.

5           Q.     Okay. And not that you have determined  
6     from any other investigation that's not on the video;  
7     correct? I didn't hear you, I'm sorry.

8           A.     That's correct.

9           Q.     Okay. And he doesn't -- he doesn't  
10    engage in destruction of property inside the Capitol?

11          A.     Not as indicated on the video or during  
12    the course of our investigation, no.

13          Q.     And just to be clear, he hasn't engaged  
14    in any vandalism or destruction of property outside of  
15    the Capitol either, correct, to your knowledge?

16          A.     Again, just to my knowledge, no, I'm not  
17    aware of that.

18          Q.     And he doesn't -- he didn't -- one  
19    moment, please.

20          A.     Sure.

21          Q.     Just going back to what he was talking  
22    about with his mother and -- as they walked by people,  
23    he told people not to vandalize. He then at some  
24    point loses contact with his mother; correct?

25          A.     Yes, momentarily she goes off a different

1 hallway or something of that sort.

2 Q. Okay. And he's trying -- he's trying to  
3 keep a reign on her. At some point he says, about  
4 five minutes in, Mom, where are you going, Mom, focus,  
5 don't lose me; correct?

6 A. That's correct.

7 Q. A minute or two after that his mother is  
8 walking onto the Senate balcony area, and he tells her  
9 to be careful; correct?

10 A. That's correct.

11 Q. He asks her, Mom, where are you going,  
12 what are you doing; correct?

13 A. Yes, I believe so.

14 Q. And says, Mom, be careful?

15 A. Correct.

16 Q. And this is -- this is while they're  
17 all -- while the two of them are in that Senate  
18 balcony area?

19 A. Yes, the upper area of the Senate floor.  
20 Correct.

21 Q. Okay. And while still -- and so -- at  
22 this point he has lost his grasp on her vest. He  
23 doesn't have his grasp on her vest when he's asking  
24 her, where are you going, what are you doing, be  
25 careful; correct?

1 A. That's correct.

2 Q. And this is the same area where -- this  
3 upstairs area of the Senate is the same area where the  
4 photos that are on page 5 of the government's  
5 complaint are; correct? The two photos of -- that  
6 you've identified as Mr. Munchel?

7 A. Yes.

8 Q. Okay. And those photos are shrunk down  
9 so it's focused just on the one individual; correct?

10 A. I don't know how the -- if the  
11 photographs were shrunk down or how they were  
12 originally.

13 Q. Okay. Were you involved in preparing  
14 these as exhibits to be included in the complaint?

15 A. I did not have any (indiscernible).

16 Q. Okay.

17 A. (indiscernible).

18 Q. So, first of all, let me ask you this.  
19 Are you on page 5 of the complaint?

20 A. I can be.

21 Q. Okay.

22 A. Yes, ma'am.

23 Q. And I guess this is the affidavit in  
24 support of the complaint, if we're being technical.  
25 So the person behind the person that's -- behind the

1 person with the zip ties going over the railing, that  
2 is not the -- the person behind that individual is not  
3 Mr. Munchel's mother; correct? It's someone else?

4 A. Yes, we believe that's somebody else.

5 Q. Okay. And Mr. Munchel's mother, from  
6 your investigation, appears to be ahead of him, not  
7 behind him; correct?

8 A. Yes, based on the video, the fact that  
9 you can see her from his cell phone (indiscernible)  
10 leads me to believe she was in front of him at that  
11 point.

12 Q. Okay. In these two photos on page 5, you  
13 see the individual going over the railing, has a hand  
14 on -- has the right hand on the railing; correct?

15 A. Correct.

16 Q. I'm talking about the photo on the left.  
17 And has the right foot resting on a chair; correct?

18 A. Correct.

19 Q. And then in the second photo, the person  
20 is -- has their foot also -- has the left foot now on  
21 a chair and is still holding onto the railing;  
22 correct?

23 A. Yes. The left foot -- the right foot may  
24 be in midair at that point, but it's pretty close.  
25 It's hard to tell from this photograph, but...

1 Q. And have you seen -- I know you don't  
2 know if these photos were truncated, but have you seen  
3 other photos of this railing area of the Senate  
4 building?

5 A. I'm sure at some point in our  
6 investigation I've seen that.

7 Q. And is it a fair statement to say that  
8 the only way to get over that railing if you're in  
9 that area is to climb over it or climb through it  
10 somehow?

11 A. I do not know.

12 Q. So shortly -- a minute -- a couple  
13 minutes after -- I'm going back to their time in the  
14 Capitol. A couple minutes after Mr. Munchel or the  
15 person you guys have identified as Mr. Munchel is  
16 stepping over the railing, Mr. Munchel says to his  
17 mother, we need to find the exit; correct?

18 A. Yes, he does state that at some point  
19 during the video.

20 Q. And then about 30 seconds or so after  
21 that, on their way out he sees an officer -- or a  
22 couple officers again standing on the side, not -- not  
23 directing people or anything, just standing on the  
24 side. And he tells the officers, sorry, guys, I still  
25 love you, something like that?

1 A. Correct.

2 Q. And then about another 30 seconds or so  
3 later, Mr. Munchel passes additional law enforcement  
4 officers, again standing there and this is, again, as  
5 he and his mother are trying to find their way out of  
6 the building; correct?

7 A. Correct.

8 Q. And then they leave the building shortly  
9 after that?

10 A. I believe the video cuts out about that  
11 time.

12 Q. You've no reason to believe that he  
13 stayed in the building much longer than that; correct?

14 A. (indiscernible).

15 Q. With all of the police officers that  
16 Mr. Munchel encountered, he wasn't yelling at them or  
17 screaming at them; correct?

18 A. That's correct.

19 Q. He was polite to the officers when he  
20 spoke with them at all?

21 A. Correct.

22 Q. He didn't harass them?

23 A. No.

24 Q. Okay. He did not use force or violence  
25 in any way on that day; correct?

1           A.     I can't say as far as the entire day, but  
2     as far as the video evidence that we've uncovered, he  
3     did not commit any acts of violence against law  
4     enforcement that we saw.

5           Q.     Okay. I mean, you said video evidence,  
6     but really, of all the evidence you have in this case,  
7     there's no evidence indicating he engaged in any sort  
8     of physical violence at all; correct?

9           A.     That's correct.

10          Q.     So just -- so going back through what  
11     happened inside the Capitol, he also had told his  
12     mother not to touch anything; correct?

13          A.     I don't recall that specific statement.

14          Q.     Let me ask, is it fair to say that when  
15     his mother was interviewed, she advised that  
16     Mr. Munchel had said, don't touch anything?

17          A.     That's fair.

18          Q.     Okay. He doesn't -- he tries to  
19     discourage other people from breaking or vandalizing  
20     anything?

21          A.     Correct.

22          Q.     And he basically is trying to keep tabs  
23     on his mom throughout their time there?

24          A.     Yes.

25          Q.     Now, you talk about these zip ties that

1 are shown in the photos in the complaint. At least  
2 one of your witnesses told you that Mr. Munchel  
3 brought the zip ties back from DC; correct?

4 A. Yes.

5 Q. And the video in this case reflects that  
6 Mr. Munchel and his mother picked up these zip ties  
7 from an open cabinet with zip ties on top of it;  
8 correct?

9 A. Yes, it appears that the zip ties were  
10 either inside or on top of a cabinet inside the  
11 Capitol.

12 Q. And somebody was, like, handing them out  
13 or something it looked -- it appears to be the case;  
14 correct?

15 A. It appeared that they were at least near  
16 that cabinet. I don't know if someone was handing  
17 them out or what was happening there, but yes, you can  
18 see where they originated from the cabinet.

19 Q. Okay. So there's no evidence that  
20 Mr. Munchel planned to do anything with those zip  
21 ties; correct?

22 A. From the evidence we've determined, we  
23 can't say (indiscernible) with them.

24 Q. You have no -- nothing to indicate that  
25 Mr. Munchel -- I'm not talking about other people, but



1 Mr. Munchel in particular, you have no evidence  
2 indicating he has some plan to use those zip ties for  
3 any purpose?

4 A. (indiscernible).

5 Q. I couldn't hear you, I'm sorry.

6 A. Not at this time.

7 Q. And did you read the *Sunday Times* article  
8 that Mr. Schrader had attached to his memorandum for  
9 the Court?

10 A. I did not.

11 Q. Okay. Are you aware that Ms. Eisenhart  
12 explained to that reporter that she had -- she and her  
13 son picked up the zip ties to prevent them from  
14 falling in the hands of bad actors?

15 A. I'm unaware of that.

16 Q. Are you aware that Ms. Eisenhart advised  
17 in an interview that she had -- she and her son had no  
18 violent intentions when they entered the Capitol  
19 building?

20 A. I'm not aware of the interview that  
21 Ms. Eisenhart (indiscernible).

22 Q. You have no evidence that Mr. Munchel did  
23 anything but a spontaneous visit to DC with his mother  
24 to attend the rally; correct?

25 A. No evidence at this time.

1           Q.     Okay. And you've no evidence --  
2 obviously at this time, you've no evidence that  
3 Mr. Munchel is affiliated in any way with any militant  
4 groups; correct?

5           A.     That's correct.

6           Q.     Or militias; correct?

7           A.     Correct.

8           Q.     Or hate groups or any organized groups  
9 that have any plans to do anything in DC; correct?

10          A.     Not at this time we do not.

11          Q.     And how many federal agents are currently  
12 investigating this -- the Capitol rally?

13          A.     I have no idea.

14          Q.     Okay. But if you -- if there was  
15 information related to Mr. Munchel, that information  
16 is being shared among the entire agency and other law  
17 enforcement; correct?

18          A.     Information related to Mr. Munchel would  
19 be on a need-to-know basis, which would be the case  
20 agent here and the agents in the Washington field  
21 office.

22          Q.     Okay. So if negative information or  
23 information that you guys you thought was important to  
24 your prosecution came up about Mr. Munchel, you would  
25 be made aware of it?

1 A. That's correct.

2 Q. And you haven't been made aware of any of  
3 that information --

4 A. Not at this time.

5 Q. -- or information of that nature? Okay.

6 So you mentioned that you took part in  
7 the execution of the warrant, the search warrant at  
8 Mr. Munchel's home that he shared with his brother.  
9 And this warrant was executed -- this was on Sunday  
10 morning, January 10; correct?

11 A. Correct.

12 Q. And in your interview with Witness 1,  
13 Witness 1 advised that his brother and mother did not  
14 plan to cause trouble at the rally; correct?

15 A. That's correct.

16 Q. And he actually said that Ms. Eisenhart  
17 was unhappy with the political climate (indiscernible)  
18 the election; correct?

19 A. I'm sorry, you broke up. One more time.

20 Q. He said -- you indicated that he said  
21 they were both unhappy with -- with the current  
22 political climate and the 2020 election. That's what  
23 you said on direct; correct?

24 A. Correct.

25 Q. But, in fact, he indicated that

1 Ms. Eisenhart was the person who was very upset;  
2 correct?

3 A. That may be true that Ms. Eisenhart was  
4 more upset than Mr. Munchel.

5 Q. Okay. And he also -- Witness 1 also told  
6 you that Mr. Munchel traveled with his mother to DC to  
7 protect her; correct?

8 A. That's correct.

9 Q. So Mr. Munchel wasn't home Sunday morning  
10 when the FBI searched his house, so am I correct that  
11 Agent Potts left his -- Special Agent Potts left his  
12 number with someone for Mr. Munchel to call when he  
13 could?

14 A. That's correct.

15 Q. And Mr. Munchel did call Agent Potts  
16 later that morning; correct?

17 A. That's correct.

18 Q. And he explained to Agent Potts that he  
19 had stayed the previous night with friends because of  
20 all of the news media and exposure and wide exposure  
21 of his personal information; correct?

22 A. That's correct.

23 Q. And that included his -- among other  
24 things, his phone number and his address that had been  
25 exposed on national social media; correct?

1           A.     That is what he described was happening  
2     (indiscernible).

3           Q.     And did he explain that he had turned off  
4     his own cell phone because of that because it was  
5     blowing up with all of this -- people trying to  
6     contact him?

7           A.     Yes, he did.

8           Q.     And the contacts that he was receiving  
9     was, in large part, harassment from people where his  
10    personal information had been disclosed on social  
11    media; correct? Is that correct?

12          A.     Yes, correct.

13          Q.     Oh, sorry, couldn't hear you. Did --  
14    have you had a chance to examine the phone to see,  
15    like, the numbers of -- the amounts of calls that were  
16    coming in and that type of thing yet?

17               MR. SCHRADER: Objection, discovery  
18    (indiscernible).

19               THE COURT: I'm sorry, Mr. Schrader, I  
20    think you said something, I couldn't hear you, though.

21               MR. SCHRADER: I said objection, seeks  
22    discovery. (indiscernible) towards the ongoing  
23    government investigation (indiscernible).

24               THE COURT: Sustained. Why don't you  
25    reask the question. I think you can ask him if he has

1     been able to determine whether there's any validity or  
2     veracity, either way, articulated. But let's don't  
3     get into the further investigative efforts.

4     BY MS. ALPERT:

5             Q.     Were you able to verify that there had  
6     been an extreme number of phone calls and messaging to  
7     Mr. Munchel's phone?

8             A.     I've not reviewed Mr. Munchel's phone in  
9     any capacity outside the one video that was provided  
10    to me -- or the two videos that were provided to me.

11            Q.     Okay. So you don't know yes or no what  
12    that was about yet, okay.

13            A.     No.

14            Q.     So did Mr. Munchel also explain that he  
15    had seen some news media vehicles at his house and  
16    that was another reason he did not want to stay at his  
17    home?

18            A.     I did not speak with Mr. Munchel.  
19    Special Agent Potts did, so there may be some details  
20    he provided to Special Agent Potts that I'm not aware  
21    of.

22            Q.     Okay.

23            A.     (indiscernible).

24            Q.     And when he spoke with Agent Potts, he  
25    then made arrangements to come meet Agent Potts at the

1 FBI field office; correct?

2 A. That's correct.

3 Q. And he arrived -- he did actually go to  
4 the FBI and arrived there around 1:30 p.m.; correct?

5 A. Correct.

6 Q. And as he testified about earlier, he  
7 wanted to make sure his phone that he had turned off  
8 was properly preserved. And he had actually gotten a  
9 different phone after that to use to keep in touch  
10 with family members because he couldn't use the other  
11 phone without all the media attention, social media  
12 attention; correct?

13 A. I don't know why he got the other phone,  
14 but he did have a separate phone and admitted to  
15 (indiscernible) when he arrived at the FBI office.

16 Q. Okay. And then he had left the other  
17 phone for safekeeping with Witness 2?

18 A. Correct.

19 Q. And I'm talking about his iPhone. That's  
20 what he left with Witness 2?

21 A. Yes.

22 Q. Okay. And then he made arrangements so  
23 that Witness 2 and an attorney provided that phone to  
24 you and Agent Potts at a later time?

25 A. I'm unaware how the arrangements were

1 made. Again, that was Special Agent Potts that made  
2 the arrangements. Yes, Witness 2 and a attorney  
3 provided that cell phone to the FBI.

4 Q. You're not aware of any -- any refusal or  
5 interference from Mr. Munchel in getting that phone  
6 turned over to you; correct?

7 A. Correct.

8 Q. Okay. I'd like to talk about your  
9 interview with Witness 2 for a few minutes. She told  
10 you and Agent Potts that she had talked some with  
11 Mr. Munchel about the events that took place at the  
12 Capitol; correct?

13 A. That's correct.

14 Q. And she said that he had told her that  
15 they had not planned to go to the Capitol or inside  
16 the Capitol when they went to DC; correct?

17 A. That's correct.

18 Q. And he said it was his mother's idea to  
19 enter the Capitol?

20 A. Correct.

21 Q. And he went in the building with her to  
22 keep an eye on her?

23 A. That is what he reported to Witness  
24 No. 2, yes.

25 Q. Okay. And that's really corroborated by



1 the videotape as well; correct?

2 A. Yes, he does obviously make an attempt to  
3 keep her close, so.

4 Q. Okay. So I want to talk about some of  
5 the items found with the search warrant. You talked  
6 about some guns that he had. To your knowledge, all  
7 of those guns are legally owned firearms; correct?

8 A. Correct.

9 Q. And they're all -- all of those items  
10 are -- Mr. Munchel properly possessed all of those  
11 items?

12 A. To our knowledge, that is correct.

13 Q. Okay. Your investigation showed that  
14 Mr. Munchel has a Tennessee firearms permit; correct?

15 A. Yes, I believe it's a conceal carry  
16 permit.

17 Q. Okay. Are you aware that it's an  
18 advanced carry permit?

19 A. I was not aware of that.

20 Q. Okay. And the -- am I correct that  
21 advanced carry permits allow people to carry both  
22 concealed and unconcealed weapons?

23 A. Yes.

24 Q. And all of the firearms were seized from  
25 Mr. Munchel's house, they are no longer there?

1 A. Correct.

2 Q. And the ammunition as well?

3 A. That's correct.

4 Q. And your investigation so far has not --  
5 has not revealed anything to suggest that Mr. Munchel  
6 had planned to go back to DC for Inauguration Day or  
7 for any other rallies; correct?

8 A. That's correct, we have no evidence of  
9 any (indiscernible).

10 MS. ALPERT: Could I have just a moment,  
11 Your Honor?

12 THE COURT: You may. And while you're  
13 waiting, Ms. Alpert, also, if you could have the  
14 opportunity to check and see if you received the  
15 documents from Mr. Schrader and let me know once  
16 you've had a chance to review those as well.

17 MS. ALPERT: Okay. Could I ask the Court  
18 if we could take maybe a five or 10-minute recess,  
19 then, to look at those documents?

20 THE COURT: Do you have them?

21 MS. ALPERT: Oh, let me check. Yes.  
22 Looks like they've arrived.

23 THE COURT: Very good. Did you have any  
24 other questions before you look at that that you  
25 wanted to ask?

1 MS. ALPERT: No, sir. I might have some  
2 questions after, but not before.

3 THE COURT: Very good. Let's take about  
4 five minutes. And I'll just -- I'll get back on here  
5 in just a minute. Thank you.

6 MS. ALPERT: Thank you.

7 (Whereupon, a break was taken.)

8 THE COURT: Ms. Alpert, I see that you're  
9 back. Have you had a chance to review what you needed  
10 to?

11 MS. ALPERT: I have, Your Honor. And I  
12 am ready to get started if the Court and everyone else  
13 is ready.

14 THE COURT: Mr. Schrader, are you back,  
15 are you ready? All right, very good. Thank you.

16 Go ahead, Ms. Alpert. You can continue.

17 MS. ALPERT: Thank you. Just a few  
18 questions -- few more questions for Agent Defeo.

19 BY MS. ALPERT:

20 Q. Agent Defeo, have you had a chance during  
21 this break also to review the interviews, the FBI 302s  
22 of Witnesses 1 and 2?

23 A. Not during this break, no.

24 Q. Okay. But you're familiar with both of  
25 those; correct?

1 A. Correct.

2 Q. So in the interview with Witness 1, he --  
3 he did state that Ms. Eisenhart was not happy with the  
4 current political climate or the results of the  
5 election and wanted to voice her opinion. He just  
6 said Ms. Eisenhart; correct?

7 A. Correct.

8 Q. He also advised that he talked with his  
9 brother and his brother had advised that he -- didn't  
10 have any plans and the family is nonviolent and he  
11 advised that Mr. Munchel has a nonviolent ideology.  
12 Excuse me, let me ask that again. That was very  
13 confusing, sorry.

14 Witness 1 said that Mr. Munchel had told  
15 him that he had no plans to do anything -- to do harm  
16 to anyone as was being portrayed in the social media;  
17 correct?

18 A. That's correct.

19 Q. And Mr. -- and Witness 1 also indicated  
20 that Mr. Munchel is a nonviolent person; correct?

21 A. Correct.

22 Q. And that he doesn't have any  
23 antigovernment ideology?

24 A. That is what Witness 1 indicated, yes.

25 Q. And that -- he also indicated that

1 Mr. Munchel is prolaw enforcement?

2 A. Yes, he did.

3 Q. And then in your interview with  
4 Witness 2, she described Mr. Munchel as patriotic,  
5 prolaw enforcement and respectful; correct?

6 A. That's correct.

7 Q. And she did tell you that Mr. Munchel had  
8 asked to go over to her home because he had been doxed  
9 and didn't feel safe being at his own residence;  
10 correct?

11 A. That's correct.

12 Q. What does doxed mean?

13 A. From what I understand, that is when  
14 people's personal information is put out on the  
15 Internet without their approval, you know, permission  
16 to do so.

17 Q. And through your interview -- in your  
18 interview with Witness 2, she also indicated that  
19 after Mr. Miller learned that the FBI was looking for  
20 him, her family -- she and her family urged him to  
21 turn himself in, which he did; correct?

22 A. Yes. I believe it was to obtain counsel  
23 and turn himself in, yes.

24 Q. Okay. And lastly, Ms. Miller told you  
25 and Agent Potts that Mr. Munchel might have been upset

1 at the presidential outcome and felt the election was  
2 unfair but that he would never resort to violence or  
3 other illegal activity because of politics; correct?

4 A. Yes, she did indicate that.

5 MS. ALPERT: Those are my questions. Oh,  
6 I'm sorry. Couple other.

7 THE COURT: Go ahead.

8 BY MS. ALPERT:

9 Q. Were you present at the FBI when  
10 Mr. Munchel turned himself in?

11 A. Yes, I was in the building.

12 Q. Okay. Are you aware that he had been  
13 talking with an attorney on his way to your office?

14 A. I was told later that when he was -- got  
15 out of the vehicle in front of our building that he  
16 was on the phone with an attorney. I was not aware of  
17 that at the time. We found that out later.

18 Q. Okay.

19 A. (indiscernible).

20 Q. Okay. And he proceeded anyway to turn  
21 himself in?

22 A. Yes.

23 Q. Okay.

24 MS. ALPERT: Those are my questions.

25 THE COURT: Mr. Schrader, any redirect?

1 MR. SCHRADER: Yes, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MR. SCHRADER:

4 Q. Agent Defeo, just for -- Ms. Alpert asked  
5 some questions about statements that Witness 2 gave  
6 you, including a statement that the defendant told her  
7 that -- or she didn't believe that the defendant would  
8 engage in any violent conduct in support of political  
9 activity. Do you recall that testimony?

10 A. (No audible response.)

11 Q. That was a statement that Witness 2 gave  
12 to you after Mr. Munchel had traveled to  
13 Washington, DC and then stormed the Capitol in  
14 tactical gear with his mother, who was also dressed in  
15 tactical gear, with a Taser on his hip; correct?

16 A. (No audible response.)

17 Q. You were asked some questions also about  
18 the government's recounting of the substance of the  
19 cell phone video captured on the cell phone that was  
20 attached to Mr. Munchel's chest. Do you recall that  
21 testimony?

22 A. Yes.

23 Q. That video, I think as you testified, is  
24 50 minutes long; correct?

25 A. Yes, approximately.

1           Q.     The recounting of that video does not  
2     include every single other (indiscernible) that anyone  
3     made over that 50-minute period; correct?

4           A.     Correct.

5           Q.     It doesn't describe every action that  
6     every person depicted on that video took; correct?

7           A.     (indiscernible).

8           Q.     In fact, it does include some things that  
9     Mr. Munchel said that could be viewed favorably;  
10    right?

11          A.     Yes.

12          Q.     And that includes things like  
13    Mr. Munchel's (indiscernible) to other people not to  
14    break items; right? Not to commit vandalism; right?

15          A.     Yes.

16          Q.     It also -- well, at no point in that  
17    video does the defendant say anything like, let's not  
18    go into the Capitol. Do you recall anything like that  
19    happening?

20          A.     No. He appeared to be a willful  
21    participant.

22          Q.     Do you recall him saying anything to his  
23    mother at any point, like, Mom, let's just go home,  
24    let's -- you know, let's get out of here, anything  
25    like that?



1 A. No.

2 Q. And in addition to some of the statements  
3 that Ms. Alpert asked you about, Mr. Munchel did say  
4 some things that were indicative of an intent to be  
5 (indiscernible) inside the Capitol; is that fair to  
6 say?

7 A. Yeah.

8 Q. And that includes statements like when he  
9 was outside the Capitol, we ain't playing fucking nice  
10 no Goddamn more. Do you recall that?

11 A. (indiscernible).

12 Q. That also includes the defendant saying,  
13 fucking ready to fuck shit up. This is when he was  
14 standing outside the Capitol. Do you recall that?

15 A. Yes.

16 Q. Also includes the defendant saying, tell  
17 me the last time I'll be able to enter the building  
18 with armor and fucking weapons, something to that  
19 effect. Do you recall that?

20 A. Yes.

21 Q. Also includes the defendant saying when  
22 he heard the sound of glass breaking, I guess they  
23 fucking (indiscernible). Do you recall that?

24 A. Yes.

25 Q. It includes the defendant, when he

1 observes people seizing zip ties saying, zip ties, I  
2 need to get me some of them motherfuckers. Do you  
3 recall that?

4 A. Yes.

5 Q. And it includes the defendant in the  
6 Senate gallery shouting, I want their fucking gavel.  
7 Do you recall that?

8 A. Yes.

9 Q. All right. You were also asked some  
10 questions about this photograph of the defendant  
11 jumping over the banister -- over a railing, rather,  
12 in the Senate gallery. That photo is not very large  
13 in either the complaint or the defense memo. Is that  
14 fair to say?

15 A. Yes.

16 Q. You've seen other versions of that  
17 photograph?

18 A. I have.

19 Q. And is it clear from the larger version  
20 of the photograph that Mr. Munchel has an item with a  
21 handle in a holster on his right hip?

22 A. (indiscernible).

23 Q. That's visible in that photograph?

24 A. Yes.

25 Q. You also testified that Mr. Munchel, I

1 think you said something about he appeared to be  
2 limiting actions of his mother, or at least that's  
3 what Ms. Alpert had asked you and you had confirmed  
4 that. Do you recall that testimony?

5 A. Yes.

6 Q. Would you describe the defendant and his  
7 mother during this whole episode as a team?

8 A. I would.

9 Q. Why?

10 A. Because they coordinate their actions  
11 together. He tries to hold onto her as much as  
12 humanly possible when they're walking through, kind of  
13 coordinating what they're going to do. Mr. Munchel,  
14 the defendant, grabs the zip ties, his mother also  
15 grabs the zip ties. A lot their actions are in  
16 tandem -- appear to be in tandem.

17 Q. At any point does the defendant really  
18 disapprove of anything that his mother was doing?

19 A. No.

20 Q. Was it fair to say that the defendant was  
21 an active participant in this episode?

22 A. Yes.

23 Q. You were also asking questions about  
24 Mr. Munchel's intent in going into the Capitol. Do  
25 you recall that?

1 A. (indiscernible).

2 Q. This investigation has only been going on  
3 since January the 6th; is that right?

4 A. Right.

5 Q. And, in fact, that's only -- it only  
6 started January 6, but really the investigation into  
7 investigation of Mr. Munchel started a couple of days  
8 later than that when you were able to start  
9 identifying him; is that fair?

10 A. That's fair.

11 Q. And I take it your investigation is not  
12 over? In fact, there are hundreds of people currently  
13 under investigation by the FBI in connection with the  
14 January 6 incident at the Capitol; is that fair to  
15 say?

16 A. Yes.

17 MS. ALPERT: Your Honor, I'm going to  
18 object to the relevance of this line of questioning.

19 THE COURT: Mr. Schrader?

20 MR. SCHRADER: Your Honor, Ms. Alpert  
21 asked the question about the defendant's intent here.  
22 My point is that this investigation is far from over,  
23 and there are things like electronic devices, other  
24 interviews, other videos that the government has not  
25 yet exploited (sic), and I don't want the Court to be

1 left with the impression that the government does not  
2 believe that Mr. Munchel's intent here was -- or  
3 believes that Mr. Munchel's intent here was simply to  
4 follow his mother around the Capitol. My point is  
5 just that this investigation is far from over.

6 THE COURT: I think you've made the  
7 point. And Mr. Defeo -- Agent Defeo qualified his  
8 answers I think in pretty much every single one of  
9 Ms. Alpert's questions on that topic with "at this  
10 time." So I think your position's clear. You can  
11 move on.

12 MR. SCHRADER: Very good. That is  
13 actually the end of my questions, Your Honor.

14 THE COURT: All right. Ms. Alpert,  
15 anything else based on that?

16 **RECROSS-EXAMINATION**

17 BY MS. ALPERT:

18 Q. Regardless of words stated by  
19 Mr. Munchel, he did not engage in any actual violence;  
20 correct?

21 A. (indiscernible).

22 Q. I understand that everything you're  
23 saying is based on the evidence you've uncovered so  
24 far.

25 Based on the evidence you've uncovered so

1 far, he didn't attempt to use those zip ties in any  
2 manner; correct?

3 A. Correct, based on the evidence.

4 Q. Based on the evidence you found so far,  
5 he did not attempt to retrieve the gavel he yelled  
6 about; correct?

7 A. Correct.

8 Q. Based on the evidence you've found so  
9 far, he didn't attempt to vandalize anything; correct?

10 A. That's correct.

11 Q. And based on the evidence you've  
12 uncovered so far, the main thing he was doing was  
13 following his mother around; correct?

14 A. Yes, among other things.

15 MS. ALPERT: Those are my questions.

16 THE COURT: All right. Mr. Schrader,  
17 anything else?

18 MR. SCHRADER: No, Your Honor.

19 THE COURT: All right. Thank you,  
20 Special Agent Defeo. Appreciate your testimony.

21 THE WITNESS: Thank you, Your Honor.

22 \*\*\*\*\*WITNESS EXCUSED\*\*\*\*\*

23 THE COURT: Do you have any other proof,  
24 Mr. Schrader?

25 MR. SCHRADER: No, Your Honor.

1 THE COURT: All right. Very good.

2 Ms. Alpert, any proof you want to put on?

3 MS. ALPERT: Yes, Your Honor.

4 THE COURT: All right.

5 MS. ALPERT: My proof relates to the  
6 detention issue and not to probable cause. We  
7 would -- we would stand on the proof as it is  
8 regarding probable cause.

9 THE COURT: All right, very good. Thank  
10 you. Do you want to call -- do you have any  
11 witnesses?

12 MS. ALPERT: Yes. Your Honor, I also  
13 have several exhibits that I want to introduce, if I  
14 could introduce those first.

15 THE COURT: Okay. I think -- you  
16 provided a copy to Mr. Schrader; is that correct?

17 MS. ALPERT: I have.

18 THE COURT: Okay, go ahead.

19 MS. ALPERT: Your Honor, Defendant's  
20 Exhibit No. 1 is a Declaration under Penalty of  
21 Perjury from Ms. Miller who we intend to offer as a  
22 third-party custodian. And I am going to ask the  
23 Court to place this and several other exhibits under  
24 seal because I think both the government and defense  
25 have concerns that the witnesses -- if the witnesses

1 in the case are identified, that they will be harassed  
2 through social media and other media.

3 THE COURT: Okay. Why don't you go ahead  
4 and identify the exhibits, and you can move their  
5 entry and we'll -- and then tell me what you want  
6 under seal and I'll hear from Mr. Schrader.

7 MS. ALPERT: Yes, sir. Defendant's  
8 Exhibit No. 2 is an email from my investigator, Brian  
9 Carter, who is confirming that he had spoken with  
10 Mr. Munchel's employer at his last place of  
11 employment. And they have advised that he was a  
12 reliably good employee but would not be able to return  
13 to work there.

14 THE COURT: Okay.

15 MS. ALPERT: Defendant's Exhibit No. 3 is  
16 an interview with another individual who knows  
17 Mr. Munchel, has known him for several years and  
18 speaks well of him, she has worked with him. She  
19 talks about several other aspects of -- of his  
20 mannerisms, including being protective of other  
21 people, helping make sure people get home safely,  
22 generally being a kind person, being a Trump  
23 supporter, but not someone who behaves  
24 inappropriately. And that he always thanks police  
25 officers for their service. It also talks about



1 his -- this memo also talks about his interests when  
2 he was younger in joining the Marines and how that had  
3 been thwarted by a childhood back injury. And so he  
4 tried to serve in other ways. And she also advises  
5 that she's never seen him encourage or participate in  
6 violence.

7 Defendant's Exhibit No. 4 is a larger  
8 photo -- or I guess the rest of the photograph was in  
9 the complaint on page 5. And the purpose of  
10 introducing this is just to show the Court that the  
11 rail extends all the way down to the bottom of that  
12 floor, and that both individuals are stepping over the  
13 railing or attempting to step over the railing.

14 Your Honor, Defendant's Exhibit No. 5,  
15 which we have provided both to the Court and the  
16 government, is a video from Mr. Munchel's video -- or  
17 from his -- the video on his camera from January 5 of  
18 his interaction that's been discussed with the local  
19 police officers in DC.

20 Exhibit No. 6 is a video of -- labeled as  
21 January 6, 2021, footage consisting of about 12  
22 minutes of video from the time that Mr. Munchel and  
23 his mother enter the Capitol building.

24 Exhibit No. 7 and Exhibit No. 8 are both  
25 excerpts from two security cameras that Mr. -- that

1 the government provided to defense counsel. And those  
2 would be all of our exhibits.

3           Regarding placing exhibits under seal, I  
4 would ask that exhibits -- all for the same reasons,  
5 that Exhibits 1 through 3 and 5 through 8 all be  
6 placed under seal.

7           THE COURT: Okay. Mr. Schrader, what do  
8 you have to say about that?

9           MR. SCHRADER: No objection to admission  
10 of these exhibits, Your Honor, or to placing those  
11 specific exhibits under seal.

12           THE COURT: Very good. They'll be  
13 admitted. Exhibits 1 through 3 and 5 through 8 will  
14 be placed under seal at this time subject to further  
15 orders by the Court.

16           (Defense Exhibits Nos. 1 through 8 were  
17 admitted; 1-3 and 5-8 under seal.)

18           THE COURT: Ms. Alpert.

19           MS. ALPERT: All right. I wanted to make  
20 two other proffers of evidence as well. First,  
21 regarding the Pretrial Services Report and -- if the  
22 Court can bear with me for one minute.

23           In the report and in Mr. Schrader's  
24 memoranda, there's mention of a failure to appear that  
25 was not prosecuted. And I think Mr. Schrader

1 acknowledged that that failure to appear was not  
2 prosecuted. I wanted to proffer to the Court that it  
3 would not -- that Mr. Munchel never received the  
4 notification that he was supposed to appear in court,  
5 the type of thing where they would send him a date to  
6 appear in court, never received that notification.  
7 And then, of course, he did appear in court about a  
8 month after that and answered to those charges.

9 So I just wanted to proffer that  
10 information to the Court, as well as make a proffer  
11 regarding another witness that my investigator, Brian  
12 Carter, interviewed. And I guess we can call this  
13 person Witness No. 4. This individual asked  
14 specifically because of privacy concerns, like others  
15 have had in this case, not to share his name at all  
16 with the Court, but he -- I wanted to share some  
17 information from him with the Court.

18 He is a childhood friend of  
19 Mr. Munchel's. He went to middle school and high  
20 school with Mr. Munchel. They played sports together.  
21 They went camping and explored woods and did other  
22 outdoor activities together. Both of them active in  
23 the Boy Scouts going into their high school years and  
24 they developed a close friendship through that. And  
25 both of them had participated in national Boy Scout

1 leadership programs, including (indiscernible).

2 Mr. -- Mr. Munchel did stop -- stop his  
3 work with the Boy Scouts a few, I guess, credits or  
4 badges shy of becoming an Eagle Scout, but when he was  
5 in high school he participated in other activities,  
6 according to this witness, such as cross country and  
7 theater.

8 And finally this witness described  
9 Mr. Munchel as a competitive athlete, reliable student  
10 and friend. He advised that he had never seen a mean  
11 side of Mr. Munchel, and that Mr. Munchel is someone  
12 that would stick up for others and was a law-abiding  
13 teenager when they were growing up together.

14 And that would be the proffer.

15 THE COURT: All right, very good.

16 MS. ALPERT: Your Honor, my first witness  
17 is [REDACTED] Miller. Excuse me, Your Honor. My first  
18 witness is Ms. Miller.

19 THE WITNESS: Hi there.

20 THE COURT: Hang on just a moment, ma'am.  
21 I'll go ahead and swear you, please. If you'd raise  
22 your right hand.

23 **MS. MILLER**

24 called as a witness, after having been first duly  
25 sworn, testified as follows:

1 THE COURT: All right, very good. Thank  
2 you. Ms. Alpert, you can go forward.

3 MS. ALPERT: Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 BY MS. ALPERT:

6 Q. Ms. Miller, you are -- you live in  
7 Nashville, Tennessee?

8 A. I do.

9 Q. With your two daughters. And your  
10 brother is currently staying with you as well?

11 A. Yes.

12 Q. And your daughters are age 26 and 32,  
13 approximately?

14 A. Yes.

15 Q. Okay. I'm having a little bit of trouble  
16 hearing you.

17 A. Okay, sorry about that. Can you hear me  
18 better?

19 Q. That's better where you are right now.  
20 You've worked with a lot of -- over the  
21 last ten years you've worked in the greeting card  
22 business as a merchandiser; correct?

23 A. Yes, that's correct.

24 Q. And am I correct that you also have a --  
25 you used to have a real estate license, but you no

1 longer do?

2 A. That's correct.

3 Q. And am I correct that you lived in  
4 Florida previously?

5 A. Yes.

6 Q. And you knew Mr. Munchel from when he was  
7 in Florida?

8 A. Yes.

9 Q. And that you moved to Nashville earlier  
10 this year; correct?

11 A. Correct.

12 Q. And are you not -- are you currently  
13 working?

14 A. Because of CO-VID (indiscernible).

15 Q. Okay. How long have you known  
16 Mr. Munchel?

17 A. Approximately four years.

18 Q. And how well do you know him?

19 A. I knew him pretty well. I would often  
20 call him son and he would call me mom.

21 Q. Okay. Do you consider him to be family?

22 A. Absolutely.

23 Q. And does he spend time with you and your  
24 family at your home?

25 A. He does. More in Florida. Not so much

1 in Nashville because of CO-VID.

2 Q. Okay. Have you ever known Mr. Munchel to  
3 engage in violence at all?

4 A. Absolutely not. Never.

5 Q. If Mr. Munchel is released, are you  
6 willing for him to come stay with you?

7 A. Absolutely, yes, I am.

8 Q. Okay. And did you fill out some  
9 paperwork that related to serving as what's called a  
10 third-party custodian?

11 A. Yes, I did.

12 Q. Okay. And what is -- first of all,  
13 what's your understanding of what it means to be a  
14 third-party custodian?

15 A. My understanding is to make sure that  
16 Mr. Munchel, Eric, follows all the protocol that has  
17 been given to him and to make sure that he is  
18 following everything and court dates and just to make  
19 sure that he does everything that he's supposed to do.

20 Q. Sorry.

21 A. I'm sorry. My understanding is also as  
22 the custodian, I need to report at any time should I  
23 feel that he is not or that I know that he's not  
24 truthful or done anything (indiscernible) probation  
25 officer or law enforcement, whoever I'm supposed to

1 report to first.

2 Q. And if he's not following rules that are  
3 established by the Court, are you willing to report  
4 him even if you know that he's going to be locked up?

5 A. Yes, absolutely I would. Without a  
6 shadow of a doubt, I would.

7 Q. Do you feel like Mr. Munchel would follow  
8 your advice in following the rules of the Court?

9 A. Yes, I do.

10 Q. And have you ever been asked to serve as  
11 a third-party custodian before?

12 A. No, I have not.

13 Q. So in the third-party custodian document  
14 that you filled out, I believe you checked at the time  
15 you thought that Mr. Munchel might be staying at his  
16 own home; correct?

17 A. That's correct. Yeah.

18 Q. Have you since learned that he may not be  
19 able to stay there due to the amount of attention that  
20 was being -- that he might -- the attention that was  
21 being called to the apartment complex?

22 A. I have learned that he has been evicted.

23 Q. Okay. And was that in connection with  
24 all of the people showing up at his apartment after  
25 January 8?



1 A. Yes, it was.

2 Q. Okay. And in -- I know he mentioned the  
3 third-party custodian document or declaration, but now  
4 that you know this for sure, are you willing for  
5 Mr. Munchel to stay with you?

6 A. Absolutely yes.

7 Q. And would you have room for him to stay  
8 at your house?

9 A. Yes, I do.

10 Q. And did Mr. Munchel actually stay at your  
11 house the weekend prior to turning himself in?

12 A. Yes, he did.

13 Q. And if the Court wants Mr. Munchel to  
14 participate in electronic monitoring, if the Court  
15 requires him to have a homeland line, telephone line,  
16 are you able to get one installed?

17 A. Yes, I am.

18 MS. ALPERT: Those are my questions for  
19 Ms. Miller.

20 THE COURT: Okay. Mr. Schrader, do you  
21 have any questions of this witness?

22 MR. SCHRADER: Just a few, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. SCHRADER:

25 Q. Ms. Miller, good afternoon.

1 A. Hi, there.

2 Q. Hi. Ms. Miller, so the defendant stayed  
3 with you the weekend before he was arrested; correct?

4 A. About a day and a half, yes.

5 Q. I'm sorry, you said for a day and a half;  
6 is that right?

7 A. Yes. Yeah.

8 Q. He -- so did he come to your house on  
9 that Friday night or that Saturday?

10 A. It was early Saturday morning after he  
11 got off work.

12 Q. Okay. And he came over, I guess in part  
13 to see one of your daughters; is that right?

14 A. Correct.

15 Q. Okay. You understood that he was coming  
16 off of work and he came to see you?

17 A. Yes.

18 Q. Did he tell you he was coming off of work  
19 that morning?

20 A. He told my daughter.

21 Q. All right. Do you know whether he  
22 actually reported to work that day?

23 A. I don't have -- he said he was at work,  
24 yes.

25 Q. And he came and he stayed with you, then,

1 for those -- I guess that day and a half until he  
2 turned himself in; right?

3 A. Right.

4 Q. Did he mention to you at some point that  
5 he thought he might be arrested? He must have; right?

6 A. He didn't, no. He never said he was  
7 being -- thought he would be arrested. He --

8 Q. (indiscernible)?

9 A. People on his social media blowing up  
10 everything (indiscernible) not true, some of the  
11 people on social media. And he was in fear of his --  
12 of his life because his information had been released  
13 to social media.

14 Q. I see. But you knew at some point that  
15 weekend that he was being identified as a person who  
16 had been involved in the incident at the Capitol; is  
17 that right?

18 A. On Sunday when we'd received a call from  
19 his brother, said that the FBI was there, that is  
20 exactly what we had -- you need to go and turn  
21 yourself in.

22 Q. And that point you told him to turn  
23 himself in to the police; is that right?

24 A. True, yes.

25 Q. Okay. You know that he gave your

1 daughter a cell phone; right?

2 A. Yes.

3 Q. All right. Do you know why he gave that  
4 to her?

5 A. Yes.

6 Q. Why?

7 A. For safekeeping. He had videos on there  
8 and he wanted to make sure that it was seen properly.

9 Q. Seen because he was worried those videos  
10 might not come out?

11 A. He -- he was worried that it may  
12 disappear or something. He wasn't sure. He wanted it  
13 to (indiscernible) attorney and for it to be handed  
14 over properly.

15 Q. I see. But he didn't want it -- want to  
16 provide it to the police because he was worried they  
17 would do something with it?

18 A. No. No, he didn't say that to me.

19 Q. Okay. You said that he provided it to --  
20 I guess you and your daughter for safekeeping; right?

21 A. Correct. Until -- he wanted my daughter  
22 to turn it over to his attorney.

23 Q. All right. You said that you call him  
24 your son?

25 A. I've called him my son. I call -- I've

1 called him my son, he calls me mom.

2 Q. He calls you mom, okay.

3 A. (indiscernible), you know, hey, mom, how  
4 are you, yeah.

5 Q. Do you have -- do you have a relationship  
6 with his mother?

7 A. No, I do not.

8 Q. Does she know that he refers to you as  
9 his mother?

10 A. He doesn't refer to me as his mother. He  
11 just -- a lot of my children's friends, I'm just very,  
12 very (inaudible) all their friends. And I've always  
13 introduced (indiscernible) mom. You can call me mom.

14 Q. Call you mom as just as sort of a  
15 friendly nickname?

16 A. Absolutely, yes.

17 Q. All right. You said you've known him for  
18 four years and you treat him like a son; right?

19 A. Absolutely, yes. I love him like a son,  
20 yes.

21 Q. But you've never met his mother?

22 A. I've never met his mother.

23 Q. All right.

24 A. I met his mom -- I'm sorry, I met his  
25 mother one time because she did not live in the same

1 place as he lived when I (indiscernible).

2 Q. I see. I see. And then, Ms. Miller, do  
3 you have any guns in your house?

4 A. No, I do not.

5 Q. All right.

6 MR. SCHRADER: All right. No further  
7 questions, Your Honor.

8 THE COURT: Any redirect?

9 **REDIRECT EXAMINATION**

10 BY MS. ALPERT:

11 Q. Ms. Miller, was Mr. -- first of all, why  
12 did Mr. Munchel turn -- did he turn his phone off at  
13 some point while he was with the family?

14 A. Yes, he did.

15 Q. Why did he turn it off?

16 A. He was getting so many horrible messages,  
17 how people wanted him dead and how (indiscernible).

18 Q. And did he believe the phone had  
19 information that was helpful to show what he really  
20 was involved in?

21 A. Absolutely, yes. Pretty much --

22 Q. Go ahead.

23 A. That he did not take the zip ties as they  
24 were saying. He wanted to make sure that it was known  
25 that what was being said through -- over social media

1 and the news.

2 Q. And he wanted to make sure that the phone  
3 was preserved as potential evidence, is that -- is  
4 that your understanding?

5 A. Yes. Yes.

6 Q. And I think I heard you say the first  
7 time he was aware of police were looking for him was  
8 Sunday morning; is that right?

9 A. Yes. He received a phone call from his  
10 brother.

11 Q. And Mr. -- Mr. -- you indicated  
12 Mr. Munchel stayed with you Saturday night as well?

13 A. He stayed -- yes, it was late Saturday  
14 after work that he got there. I said, it's late, just  
15 stay here.

16 Q. Okay. So -- wait, let's back up for a  
17 second. Initially you said he stayed for a day and a  
18 half; correct? About a day and a half?

19 A. Uh-huh (affirmative).

20 Q. So Friday was January 8; is that right?

21 A. Yes, he stayed -- it was early Saturday  
22 morning, late Friday night. It was like 1 o'clock in  
23 the morning when he came over.

24 Q. Okay. And then did he stay at your home  
25 on January 9, Saturday January 9?

1           A.     Yes.  Yes, he did.

2           Q.     And was he supposed to work that night?  
3     Do you know?

4           A.     He was supposed to work that day.

5           Q.     On Saturday, January 9?

6           A.     Yes.  And we -- I suggested that he not  
7     go to work, that he let work know that this thing was  
8     more prominent, you know, that he might need to get a  
9     lawyer on this.

10          Q.     Okay.

11          A.     Because I --

12          Q.     Okay.  And was he actively looking for a  
13     lawyer on Saturday, January 9?

14          A.     All day, yes.

15                 MS. ALPERT:  Those are my questions.

16                 THE COURT:  All right.  Thank you.

17                 Mr. Schrader, anything else?

18                 MR. SCHRADER:  No, Your Honor.

19                 THE COURT:  All right, very good.  Thank  
20     you.  Thank you, ma'am.  Appreciate your testimony.  
21     You can stay on the line if you'd like to.  You're  
22     free to leave if you need to do that as well.

23                         \*\*\*\*\*WITNESS EXCUSED\*\*\*\*\*

24                 THE COURT:  Ms. Alpert, do you have any  
25     other proof you want to put on?



1 MS. ALPERT: Your Honor, I do. I'd like  
2 to call a witness identified as Witness No. 2.

3 THE COURT: Okay. Is that person  
4 available by phone or video or what?

5 MS. ALPERT: They are available, yes, by  
6 video.

7 THE COURT: Okay. All right, very good.  
8 If you could please raise your hand.

9 **WITNESS NO. 2**

10 called as a witness, after having been first duly  
11 sworn, testified as follows:

12 THE COURT: Very good, thank you, ma'am.  
13 Go ahead, Ms. Alpert.

14 MS. ALPERT: Okay.

15 **DIRECT EXAMINATION**

16 BY MS. ALPERT:

17 Q. I guess I'm going to call this Witness  
18 No. 2. Could you just get a little bit closer to the  
19 screen, thank you. And we'll let you know if we can't  
20 hear you.

21 You are a personal friend of Mr. Munchel?

22 A. Yes.

23 Q. And you knew him from Florida?

24 A. Yes.

25 Q. And you've known him about four years?

1 A. (indiscernible).

2 Q. Okay. You have to speak up a little bit  
3 more.

4 A. Yes.

5 Q. Okay.

6 A. I'm sorry.

7 Q. And do you -- did you work with  
8 Mr. Munchel in Florida as well?

9 A. Yes.

10 Q. Okay. So at some point both you and  
11 Mr. Munchel moved back to Nashville?

12 A. Yes.

13 Q. To Nashville? How did that come about?

14 A. My sister moved to Nashville, and me and  
15 Eric had discussed when we worked together in Florida  
16 that he wanted something different. So I just  
17 suggested he should try Nashville. And he moved to  
18 Nashville a week before I ended up moving to Nashville  
19 as well.

20 Q. Okay. Did you work together with  
21 Mr. Munchel in Nashville too?

22 A. Yes.

23 Q. And am I correct that you worked at one  
24 of the bars downtown together?

25 A. Yes, you are correct.

1 Q. Okay. And what type of work did you do  
2 there and what type of work was he doing there?

3 A. I was a server, and he was a server as  
4 well.

5 Q. Okay. How long did the two of you work  
6 there together?

7 A. At Kid Rock's, three months because I  
8 switched over to (indiscernible).

9 Q. Okay. And have you worked for other --  
10 and how long did you work together in Florida?

11 A. Oh, (indiscernible).

12 Q. I'm having a little bit of trouble  
13 hearing you.

14 THE COURT: Yeah, I'm sorry.

15 THE WITNESS: Over two years.

16 THE COURT: Over two years, I think.

17 THE WITNESS: We worked together at a  
18 restaurant in Florida for two years together.

19 BY MS. ALPERT:

20 Q. Okay. How would you describe  
21 Mr. Munchel, his work ethic as an employee?

22 A. He was a very hard worker. He always got  
23 the job done, was never in trouble. He always was --  
24 I would say a team leader. Like, if I ever had a  
25 question, I would go to him and he would know what to

1 do, how to handle a situation. As far as working at  
2 both jobs with him, if anybody needed to walk to their  
3 car, he would be the first one to drop what he was  
4 doing and make sure we got to our car safely.

5 Q. And just explain to the Court why people  
6 might need someone to walk to their car with them.

7 A. The restaurant we worked at together was  
8 on Fort Myers Beach and it wasn't just -- we had to  
9 park a mile and a half away from work, so the walk  
10 itself wasn't safe. So there's that.

11 And working downtown Nashville, we -- we  
12 had to have clear bags on us, so -- anybody could see  
13 what we had on us. They would know that we had just  
14 gotten off work (indiscernible), so it was kind of  
15 like a safety thing for not getting mugged. Where we  
16 worked, they did away with security guards. So  
17 security guards could no longer walk us to our car  
18 safely, so that's when Eric stepped in and helped us  
19 out with that.

20 Q. Are you currently living in the same  
21 place with Ms. Miller?

22 A. (indiscernible).

23 Q. Okay. And are you -- are you currently  
24 employed?

25 A. No, ma'am.

1 Q. Okay. Are you seeking employment  
2 currently?

3 A. Yes.

4 Q. Okay. And I'm guessing that the industry  
5 that you're in has slowed down quite a bit, the  
6 restaurant industry slowed down quite a bit because of  
7 the CO-VID situation?

8 A. (indiscernible).

9 Q. Okay. If Mr. Munchel is released, are  
10 you willing to help keep an eye on him and make sure  
11 he does what he's supposed to while he's on release?

12 A. Yes.

13 Q. Have you ever seen Mr. Munchel engage in  
14 violence?

15 A. No.

16 Q. I wanted to ask you a few questions about  
17 what happened after Mr. Munchel got back to Nashville  
18 from DC. Do you know when he got back into town?

19 A. I do not.

20 Q. Okay. So you indicated -- let me back  
21 up. How did you find out that he had gone to DC?

22 A. He had posted a live video on Facebook of  
23 him talking with a bunch of people, like, with his  
24 mom, just in a big crowd. And I wrote on there, proud  
25 of you for going to the -- going there.

1                   And I found out on Friday because people  
2                   were messaging back onto my comment, saying things  
3                   like he's a terrorist (indiscernible). And I know  
4                   Eric and I know that wasn't true, so I called him  
5                   immediately. And he had told me that he was at work  
6                   and that he would come talk to me after he got off  
7                   work.

8                   Q.       Okay. So just to be clear  
9                   (indiscernible) on Facebook, is that what you're  
10                  saying?

11                  A.       Yes.

12                  Q.       And then you posted a comment. Did you  
13                  post -- then post a comment on his Facebook page?

14                  A.       Yes, on the video.

15                  Q.       And then after you posted your comment,  
16                  were you then receiving all of the other comments that  
17                  people were making on that same video or on your  
18                  comment?

19                  A.       It was replying back to my comment. So I  
20                  got the notifications because it was -- they were  
21                  replying back to what I had said.

22                  Q.       And were you able to reach Mr. Munchel --  
23                  so what time -- about what time was it when you called  
24                  Mr. Munchel?

25                  A.       I believe 10 -- like 10 o'clock, 9:00,

1 10 o'clock.

2 Q. And this is on Friday night?

3 A. Yes.

4 Q. Okay. And so what did he -- were you  
5 able to reach him or what happened?

6 A. I called him and he -- he didn't pick up  
7 and he called me back, and he had said that he was at  
8 work and that he would come talk to me after he got  
9 off work.

10 Q. Okay. And did he do that?

11 A. Yes.

12 Q. He came to your house after he left work?

13 A. Yes. It was like 1 o'clock in the  
14 morning.

15 Q. Were you (indiscernible) arrived at your  
16 house?

17 A. Yes.

18 Q. Did he appear to be in work clothes?

19 A. Yes.

20 Q. Did it appear that he had, in fact,  
21 worked Friday night?

22 A. Yes.

23 Q. Okay. Were you able to see on his phone  
24 that it was just overrun with calls and messages?

25 A. Yes.

1 Q. Could you see them coming in?

2 A. Yup.

3 Q. And did you guys all talk together about  
4 what he should do at that point?

5 A. Yes. We had said you probably need to  
6 turn your phone off because he couldn't even make a  
7 phone call out or he couldn't do anything without  
8 (indiscernible). What I got from the voicemails, it  
9 was news media people. I don't know who they were,  
10 but they constantly were calling and leaving him  
11 voicemails. He was just getting text messages after  
12 text messages and all different kinds of numbers.

13 Q. And at that point did you or -- do you  
14 know if Eric knew at that point that his personal  
15 identifying information had been released to the  
16 public?

17 A. Yes.

18 Q. Okay. And was that -- was that a concern  
19 for him?

20 A. Yes. Yes.

21 Q. And did you -- did you and your family  
22 have a discussion about whether he should just stay  
23 with your family that night?

24 A. Yes.

25 Q. And what -- how did that discussion end?



1           A.     We just said because of his address given  
2 out, it probably wasn't safe for him to go back home,  
3 so we offered him to stay here.

4           Q.     And is that what he did?

5           A.     Yes.

6           Q.     Okay. And then -- so that was late  
7 Friday night going into early Saturday morning  
8 (indiscernible) Saturday morning. What -- Saturday  
9 day, what happened?

10          A.     Eric had left, went home, took a shower  
11 and came back and said he was going to go to work.  
12 And we had said, well, you should probably not go to  
13 work and retain a lawyer because -- we didn't know how  
14 the situation was going to go. We didn't know  
15 anything. So the first thing you should do is  
16 probably get a lawyer.

17                   So he did text work saying that I'm not  
18 going to come in and that we were helping -- we were  
19 trying to get him a lawyer.

20          Q.     Okay. And did he -- did you also invite  
21 him to stay at your house that night?

22          A.     Yes.

23          Q.     And did he stay at your house that night?

24          A.     Yes.

25          Q.     And then what happened Sunday morning?

1           A.     He woke us up, said that he got a phone  
2     call that the FBI was at his apartment looking for  
3     him. And then he said that he was going to turn  
4     himself in. And we all agreed that he needed to do  
5     that and that is exactly what happened.

6           Q.     So what time did he wake you up?

7           A.     (indiscernible).

8           Q.     I couldn't hear you.

9           A.     It was around 11:00.

10          Q.     Okay, around 11:00. And had he -- how  
11     did he learn that the FBI was looking for him?

12          A.     From what I understand, a phone call. He  
13     had gotten a phone call.

14          Q.     Had he received a live call or do you  
15     know if it was a message that was left or you don't  
16     know?

17          A.     I do not know.

18          Q.     Okay. Did it appear to you that he came  
19     to tell you guys as soon as he heard anything?

20          A.     (indiscernible).

21          Q.     Okay. I think you're speaking out loud.  
22     It's kind of fading in and out, so just -- if you  
23     could repeat your answer.

24          A.     Yes.

25          Q.     Okay. Did you talk with -- hold on a

1 second.

2 Did you help him find an attorney on  
3 Sunday?

4 A. Yes.

5 Q. And is that Mr. Bean?

6 A. Yes.

7 Q. And so you guys -- he -- around 11:00 he  
8 told you he had just learned that he had a -- that the  
9 FBI was looking for him; is that right?

10 A. Yes.

11 Q. And then did you help make arrangements  
12 for him to go to the FBI?

13 A. Yes.

14 Q. And did you, in fact, take him to the  
15 FBI?

16 A. Yes.

17 Q. And while he was on his way to the FBI,  
18 did he attempt to reach other -- an attorney?

19 A. Yes.

20 Q. Another attorney?

21 A. Yes, yeah.

22 Q. Is it your understanding that Mr. Bean  
23 had referred him to the Federal Public Defender's  
24 Office?

25 A. Yes.

1           Q.     And then even while he was looking to  
2     speak to another attorney, did Mr. Munchel indicate  
3     that he was going to turn himself in?

4           A.     Can you repeat that, please?

5           Q.     Yeah. So even though he hadn't had a  
6     chance to talk to another attorney, did he -- did  
7     Mr. Munchel still indicate he wanted to go ahead to  
8     the FBI office to turn himself in?

9           A.     Yes.

10          Q.     At any time did it appear to you that  
11     Mr. Munchel was trying to avoid the FBI?

12          A.     No, not at all.

13          Q.     Did it appear to you that Mr. Munchel was  
14     trying to avoid letting the FBI have his phone?

15          A.     No.

16          Q.     Are you aware that Mr. Munchel had asked  
17     Attorney Bean to (indiscernible).

18                     Did Mr. Munchel ask you to give  
19     (indiscernible) to an attorney?

20          A.     Yes.

21          Q.     To Mr. Bean?

22          A.     Yes.

23          Q.     Okay. And then did Mr. Munchel indicate  
24     whether it was okay for you and Mr. Bean to give that  
25     phone to the FBI?

1 A. Yes.

2 Q. And did he indicate it was okay?

3 A. He did, yes.

4 Q. Do you know if Mr. Bean had told him to  
5 leave his phone off and not do anything to it to  
6 preserve it?

7 A. I do not recall.

8 Q. Okay. I think you indicated Mr. Munchel  
9 had talked a little bit with you about what happened  
10 while they were in DC; correct?

11 A. Correct.

12 Q. Did he tell you whether he had a pocket  
13 knife with him while he was in DC?

14 A. He said yes. He said he had a pocket  
15 knife.

16 Q. Did he tell you whether he left the  
17 pocket knife in a backpack before he entered the  
18 Capitol?

19 A. Yes.

20 Q. Did he indicate if he had any other types  
21 of weapons with him that day?

22 A. He just said he had a pocket knife.

23 MS. ALPERT: One moment, please,  
24 Your Honor.

25 THE COURT: Okay.

1 MS. ALPERT: Those are my questions.

2 THE COURT: Mr. Schrader?

3 MR. SCHRADER: Yes, Your Honor. I may  
4 have missed this. Did we swear this witness in at the  
5 beginning of her testimony?

6 THE COURT: I did, yes.

7 MR. SCHRADER: You did. Okay.

8 THE COURT: That's okay. Thank you.

9 **CROSS-EXAMINATION**

10 BY MR. SCHRADER:

11 Q. Ma'am, I'll just refer to you as ma'am  
12 because we don't want to say your name at this  
13 hearing, all right. As I understand it, the defendant  
14 came to your house, was it early morning on Saturday;  
15 is that right? Is that yes?

16 A. Yes.

17 Q. Okay. And at that point it was clear  
18 that he knew -- all this was happening on social  
19 media; right?

20 A. Yes.

21 Q. He was getting texts; right?

22 A. Yes.

23 Q. And people were identifying him as this  
24 zip tie guy; right?

25 A. From what I knew, I didn't know.

1 Q. I'm sorry, you didn't know?

2 A. No, I didn't (indiscernible).

3 Q. I'm sorry, I'm having trouble hearing  
4 you.

5 A. I'm saying no to the question.

6 THE COURT: Her response is no.

7 MR. SCHRADER: I'm sorry, Your Honor?

8 THE COURT: I just was repeating, her  
9 response was no.

10 MR. SCHRADER: Okay.

11 BY MR. SCHRADER:

12 Q. He confirmed to you at some point that he  
13 was the guy in this photograph that everyone was  
14 talking about; right?

15 A. Yes.

16 Q. That was me. And wearing the tactical  
17 gear inside the Senate chamber; right?

18 A. Yes.

19 Q. And you said that he had posted a video  
20 of him and his mom outside the rally; right? Or  
21 outside the Capitol, I guess?

22 A. Yes. It was not -- the video was not  
23 outside the Capitol. It was just somewhere around  
24 the -- I don't know where it was, but I did not see  
25 the Capitol at all in this video.

1 Q. Okay. And you supported that he had gone  
2 to attend the rally; right?

3 A. Yes.

4 Q. I take it that means you align with those  
5 views, you support the view that the rally was about;  
6 right?

7 A. Yes.

8 Q. Do you recall when you posted that  
9 supportive comment?

10 A. I do not recall.

11 Q. Okay. And I take it you saw the events  
12 of that day, correct, at the Capitol?

13 A. To be honest, I was not aware. I just  
14 saw one video (indiscernible) oh, Eric went, I didn't  
15 know. And I didn't see anything else. I wasn't  
16 watching the news. I was unaware of what actually --  
17 what went down, (indiscernible) being portrayed on the  
18 news.

19 Q. You were not aware until Eric came to  
20 your house in the early morning hours on Saturday that  
21 the United States Capitol had been taken over by  
22 people during the counting of the electoral college  
23 vote; is that right?

24 A. Yes, I was -- I had gotten aware of this  
25 situation Eric was in on that Friday because people



1 were commenting back on my -- and I at that point had  
2 no idea what was going on. So it was that Friday when  
3 I had found out everything -- everything had happened.

4 Q. You didn't know that an incident had  
5 happened at the Capitol until Friday; is that right?

6 A. Yes, well, I had known that there was  
7 stuff that had happened, but I wasn't -- again, I  
8 didn't watch the news, I didn't -- I wasn't listening,  
9 really, what had gone down.

10 Q. Okay. Have you seen videos since then  
11 about what happened at the Capitol?

12 A. Yes.

13 Q. Okay. I take it you don't support what  
14 happened at the Capitol that day; is that fair to say?

15 A. That's fair.

16 Q. And I take it you saw the video that  
17 Mr. Munchel captured on his camera of him going into  
18 the Capitol; right?

19 A. Yes.

20 Q. I take it you don't support that either;  
21 correct?

22 A. I would say correct.

23 Q. Correct you do support it or you don't  
24 support it?

25 A. I do -- I do not support it.

1 Q. Okay. And you hesitated a bit. Is there  
2 a reason why you hesitated?

3 A. It's just something that I would not have  
4 done. I personally would have not have gone in there.  
5 But if there was just a bunch of people being let in  
6 and if -- from my understanding, he went in there to  
7 make sure his mom was okay. So if roles were  
8 reversed, if my mom wanted to go into, I would have  
9 her back fully 100 percent. But I myself would not  
10 have entered the Capitol building by myself.

11 Q. Okay. But you've seen the video --  
12 you've seen the video on his -- that was mounted --  
13 from a camera that was mounted on his chest; right?

14 A. Yes.

15 Q. And it's fair to say from that video that  
16 he wasn't just -- just going to support his mom;  
17 right?

18 A. No, that -- no.

19 Q. No, it's not fair to say? It's fair to  
20 say that Mr. Munchel (indiscernible); right?

21 A. Can you repeat that?

22 Q. It's not fair to say that he was going in  
23 just to protect his mom? In other words, he had his  
24 own reasons for going in; right?

25 A. No.

1 Q. He had his own reasons for going in;  
2 right?

3 A. No.

4 Q. You don't think he had any -- okay. You  
5 don't think he was interested in going in at all?

6 A. No.

7 Q. He just went because his mom went in?

8 A. Yes.

9 Q. Okay. What's your relationship to  
10 Mr. Munchel?

11 A. He is a close friend of mine.

12 Q. Do you have a romantic relationship with  
13 Mr. Munchel?

14 A. Never. Nope.

15 Q. And I believe he was with you for, sounds  
16 like, about a day and a half before he finally turned  
17 himself in to the police; right?

18 A. Yes.

19 Q. He could have gone to the police at any  
20 point that Saturday; right?

21 A. He was not -- he was -- we were -- none  
22 of us were aware he was even wanted or -- there was no  
23 contact of him wanting to be -- there was no phone  
24 calls, there was nothing. So we had no idea he was  
25 even wanted until Sunday morning when they said that

1 the FBI was at his house looking for him.

2 Q. Fair enough. He could have called the  
3 police and said it's me in that photograph; right?

4 A. No, because the way the media is  
5 saying -- what the media is saying about him is not  
6 true. The person --

7 Q. Okay. My question is different, though.  
8 He could have called the police and said, that's me in  
9 that photograph, the guy with the zip ties jumping the  
10 banister. He could have said that; right?

11 A. No.

12 Q. All right. The next day he did turn  
13 himself in; right? The next afternoon?

14 A. Yes.

15 Q. That was Sunday afternoon; right?

16 A. Yes.

17 Q. And that was after the FBI had executed a  
18 search warrant at his house that morning; right?

19 A. Yes.

20 Q. He learned that the FBI had searched his  
21 house at some point and then turned himself in; right?

22 A. Yes.

23 MR. SCHRADER: No further questions,  
24 Your Honor.

25 THE COURT: Any redirect?

1 MS. ALPERT: No, Your Honor. Thank you.  
2 And those are my witnesses.

3 THE COURT: All right, very good. Ma'am,  
4 thank you very much. I appreciate your testimony  
5 today. Thank you for being here by video. You're  
6 welcome to stay on if you'd like to, but you're free  
7 to leave as well. So thank you.

8 THE WITNESS: Thank you.

9 \*\*\*\*\*WITNESS EXCUSED\*\*\*\*\*

10 THE COURT: Does the government have any  
11 rebuttal proof they want to put on?

12 MR. SCHRADER: No, Your Honor.

13 THE COURT: Okay, very good. Ms. Alpert,  
14 you introduced the videos as evidence. Tell me what  
15 you think I ought to do with that. You introduced it,  
16 but you didn't really refer to it about anything, so I  
17 just want to know what -- what your -- what you want.

18 MS. ALPERT: Yes, sir. I did introduce  
19 them. I did in my cross-examination -- particularly I  
20 think my cross-examination of the agent alluded to  
21 much of the information in the videos. And I do think  
22 it would be helpful for the Court to view those  
23 videos. I think it's a total -- I think there's less  
24 than a half hour of total viewing time on those  
25 videos.

1 THE COURT: Okay.

2 MS. ALPERT: I -- I would have considered  
3 playing it during the hearing, but there's some  
4 logistical challenges right now.

5 THE COURT: Sure, I understand.

6 Mr. Schrader, you've received a copy of  
7 each of these videos; that's correct?

8 MR. SCHRADER: I have.

9 THE COURT: Okay. And apart from the  
10 questions you've already asked of the witnesses, you  
11 don't intend, Ms. Alpert, to illuminate further other  
12 than by argument, I assume; correct? You don't  
13 need -- you don't need to provide any other  
14 information other than my viewing the videos; right?

15 MS. ALPERT: Are you asking me or  
16 Mr. Schrader?

17 THE COURT: I was asking you, Ms. Alpert.

18 MS. ALPERT: Oh, okay. No. Yeah, I only  
19 have argument.

20 THE COURT: Very good. Here's what I --  
21 well, let me ask you this. Do you think I should --  
22 would you like for me to view the videos before  
23 argument or do you want to go ahead and argue and we  
24 can take a recess and I'll look at them? Do you have  
25 any preference or thoughts one way or the other about

1 how I should look at them?

2 MS. ALPERT: I think it might make sense  
3 to argue first, Your Honor.

4 THE COURT: Okay, all right. Very good.  
5 Okay. Does anybody want to be heard on the probable  
6 cause issue?

7 MS. ALPERT: No, sir.

8 MR. SCHRADER: And, Your Honor,  
9 (indiscernible) if the Court needs sort of  
10 illumination on certain aspects of it, but the  
11 statutes -- it might take me a little bit to do that,  
12 and it might save more time if I don't argue. Thank  
13 you.

14 THE COURT: Let me ask you this. I did  
15 have a question I wanted to ask you-all about -- and I  
16 apologize, maybe I should have asked it at the outset.  
17 But I was just noting to myself that, you know, we've  
18 delayed this hearing a little bit from Mr. Munchel's  
19 initial appearance. And in the interim it appears  
20 that there's been a superseding complaint in this case  
21 that's added two new charges, I believe.

22 First of all, I want to make sure that my  
23 understanding is correct in that regard. And  
24 secondly, do you think it would be appropriate for me  
25 to go ahead and advise Mr. Munchel with regard to the

1 new charges that have been added as far as the charges  
2 and maximum penalties?

3 MR. SCHRADER: That is correct. And I  
4 think it would make sense to advise him of those  
5 maximum penalties. It occurs to me I don't know that  
6 I provided the Court with a criminal cover sheet, but  
7 I think that we did for his mother.

8 THE COURT: That's right.

9 MR. SCHRADER: (indiscernible).

10 THE COURT: That's right. I -- I had --  
11 I was able to get that. First let me just ask,  
12 Ms. Alpert, I gather from the tenor and course of the  
13 examination here today that you're aware of the  
14 superseding complaint. You've received a copy it; is  
15 that correct? I'm not -- I can't hear you.

16 MS. ALPERT: Yes, Your Honor.

17 THE COURT: Okay.

18 MS. ALPERT: I have received the  
19 superseding complaint. I believe a copy has gone out  
20 in the mail to Mr. Munchel, but I do not believe he's  
21 actually received a copy of that complaint yet.

22 THE COURT: All right. But I assume  
23 you've had a chance to review the complaint with him  
24 as well, however that --

25 MS. ALPERT: Yeah.



1 THE COURT: Okay, very good.

2 MS. ALPERT: Yes, and discussed the new  
3 charges.

4 THE COURT: All right, very good. Okay.

5 Mr. Munchel, just to sort of clean things  
6 up a little bit, I know that you're aware, as  
7 Ms. Alpert has indicated, that there's been a  
8 superseding complaint from the District of Columbia.  
9 Again, that case number, is 1:21-71. And that -- that  
10 superseding complaint adds two additional charges  
11 against you.

12 I'd like to advise you of those charges  
13 and the possible maximum penalties. Count One of the  
14 superseding complaint alleges a violation of  
15 18 United States Code Section 371, conspiracy, that  
16 carries a possible maximum term of imprisonment of up  
17 to five years and a maximum fine of \$250,000.

18 And Count Two charges you with an alleged  
19 violation of 18 United States Code Section 231(a)(3),  
20 civil disorder, which carries a maximum term of  
21 imprisonment of up to five years and a maximum fine of  
22 \$250,000.

23 As I advised you at the initial  
24 appearance, you have certain rights with regard to  
25 these proceedings, including the right to a

1 preliminary hearing and detention hearing. To the  
2 extent that you -- your counsel is aware of the  
3 complaint, I think that it's understood that everyone  
4 was proceeding today with respect to all counts in the  
5 superseding complaint, and so the Court's considered  
6 the evidence as such. Thank you.

7 I'll go ahead and address the probable  
8 cause issue. The Court's heard the arguments and the  
9 evidence with regard to the probable cause issue in  
10 this case, as well as reviewed the pleadings filed by  
11 the government in support of their position in this  
12 matter.

13 The Court's aware of the elements of the  
14 charges alleged in the superseding complaint and has  
15 considered that. Given the relatively low threshold  
16 for the government's burden in this case, the Court's  
17 satisfied with respect to each of the counts in the  
18 complaint that the government's met its burden with  
19 respect to establishing probable cause and will find  
20 as such.

21 I'll hear from you on detention at this  
22 time, Mr. Schrader, if you want to go ahead with your  
23 argument.

24 MR. SCHRADER: I do, thank you,  
25 Your Honor. If you'll indulge me for a moment, I want

1 to make sure I kind of cover the territory here.

2 THE COURT: No problem.

3 MR. SCHRADER: So there are four factors  
4 that you must consider here when determining whether  
5 to detain Mr. Munchel pending trial. The first part  
6 of this goes to the nature and circumstances of the  
7 offense and the evidence of the defendant's  
8 dangerousness. And I think that viewing the video or  
9 at least the portion of the video that the defendant  
10 submitted here will help inform the Court's decision.

11 The discussion today has been sort of  
12 antiseptic about what happened here, but it's  
13 important not to lose sight of the nature of the  
14 conduct here. This was not a momentary lapse in  
15 judgment on the defendant's part. He was not simply,  
16 solely going in there to protect his mother. This was  
17 sort of the natural culmination of a plan to go and  
18 rise up in Washington, DC as part of this rally.

19 We know a lot (indiscernible) through  
20 evidence that we've gotten from witness testimony that  
21 the Court has heard and also from the cell phone  
22 video. So you can basically see the crime happen on  
23 that video. But the defendant here and his mother  
24 packed up their belongings, which included tactical  
25 vests and a Taser and drove from Nashville all the way

1 to Washington, DC where they planned to stay for  
2 several days when this rally was occurring. They told  
3 a *Sunday Times* reporter they wanted to show that they  
4 were willing to rise up, band together and fight, if  
5 necessary. And they were dressed to fight, if  
6 necessary.

7 After the rally itself, they and many,  
8 many others gathered outside the Capitol in a crowd.  
9 They wandered through that crowd, folks were chanting  
10 all sorts of things as they wandered through. They  
11 encountered several Oathkeepers. The Court heard a  
12 little bit of mention of that today. That is a  
13 militia group that trains for events like this.

14 Mr. Munchel affirmed his support for that  
15 group with a fist bump. And then at that point the  
16 defendant's mother says, we're going straight to  
17 federal prison if we go in there with weapons. The  
18 defendant replies, yes, that's why I'm not going in  
19 there. And Ms. Eisenhart says, let's go, we can put  
20 them in the backpacks. And then they -- so she says,  
21 drop your shit and let's go.

22 And they retreat back through the crowd  
23 to a location where they have a backpack stored. It  
24 is not possible from the video to see exactly what it  
25 is they (indiscernible). But Mr. Munchel says he

1 needs to take my weapons off before I go in there.  
2 And it is apparent from the photograph inside the  
3 Senate chamber that he is equipped at that time with  
4 what appears to be a Taser and a holster on his right  
5 hip.

6 Stands to reason that whatever he put  
7 outside the Capitol was something more serious than a  
8 Taser, something he thought he could not bring with  
9 him inside the Capitol.

10 Defendant and his mother then make their  
11 way back to the Capitol. They actually encounter a  
12 couple fellow rioters who are sort of leaving the  
13 scene, clearly been involved in some kind of scuffle  
14 with the police or others. And she says, while  
15 everyone else is on their couch, you guys are training  
16 and getting ready for it. Again, approving of the  
17 conduct at issue here.

18 The defendant then makes a couple of  
19 statements which reflect his intent in going in there.  
20 He says, we ain't playing fucking nice no Goddamn  
21 more. Fucking ready to fuck shit up. Clearly --  
22 clearly ready for confrontation, sort of carry out  
23 whatever plans they've made in coming to DC.

24 His mother, as they get closer,  
25 celebrates that members of Congress had been tear

1 gassed when she hears that people inside have been  
2 tear gassed. Then as they get closer to the Capitol,  
3 just outside, the defendant says, probably the last  
4 time I'll be able to enter the building with armor and  
5 fucking weapons, an example, really, of one of many  
6 moments when Mr. Munchel and his mother could have  
7 turned around, could have walked away, could have not  
8 gone inside the Capitol dressed in tactical gear, and  
9 instead decided to -- they actually enter the  
10 building.

11 The defendant heard the sound of broken  
12 glass, he says, I guess they thought we're playing,  
13 celebrating the disruption of the Capitol. As they  
14 made their way into the Capitol and go into a  
15 corridor, they encounter some folks who have  
16 discovered what appears to be a set of -- several sets  
17 of plastic flexicuffs in a plastic bag.

18 The defendant is clearly excited by this  
19 discovery. He says, zip ties, I need to get me some  
20 of them motherfuckers. There is some suggestion that  
21 he was going to give them back to the police or turn  
22 them in at some point. Mr. Munchel didn't do any of  
23 those things. He took a handful of them. He carried  
24 four, his mother carried one. And he carried them  
25 around as they continued marauding their way through

1 the US Capitol.

2 He never at any point, it appears, gave  
3 them to any police officers in the Capitol or outside  
4 or anywhere between DC and Nashville, for that matter,  
5 because the police found them. The FBI found them  
6 when they executed the search warrant at his  
7 residence.

8 After they had obtained those flexicuffs,  
9 the defendant and his mother, then observed a  
10 confrontation or sort of back and forth between a  
11 couple of Capitol police officers and the crowd  
12 inside. Mr. Munchel -- I'm sorry, Ms. Eisenhart sort  
13 of pursues after them, and it appears from the video,  
14 as we have seen, shouts over a stair -- down to a  
15 stairwell over a banister, traitors. Traitors. And  
16 it appears at the Capitol police while accompanied by  
17 the defendant.

18 And then while what I think is sort of  
19 the haunting, frankly disturbing, part of this video  
20 is when Mr. Munchel and Ms. Eisenhart enter the Senate  
21 gallery. This was -- this was the place where the  
22 vice-president was moments earlier counting the votes,  
23 counting the electoral college votes for the 2020 US  
24 presidential election. Lawmakers were evacuated from  
25 that room because it was, boohoo, run, from people

1 like Mr. Munchel and his mother, carrying flexicuffs  
2 and dressed in tactical gear.

3 As they entered they are surrounded by a  
4 crowd of people chanting things like, anybody home?  
5 They went into the tunnels, where do you go. They're  
6 cowards, are you afraid? People with bullhorns  
7 shouting these things and lawmakers who have fled,  
8 fearing for their lives.

9 Ms. Eisenhart shouts treason. God only  
10 knows what would have happened in that room had  
11 (indiscernible), in fact, been present. Thankfully,  
12 they were evacuated and made good their escape. But  
13 there is every reason to think that the defendant and  
14 his mother would have actually put those flexicuffs to  
15 use if they had found lawmakers in that room.

16 And as they leave that room, the  
17 defendant says, I want that fucking gavel. I want  
18 that fucking gavel is what he says. It is stunning to  
19 see that conduct inside the Senate chamber of the  
20 US Capitol.

21 The defendant here (indiscernible)  
22 insurrection-type defense, but his actions and his  
23 words are the actions and the words of insurrection.  
24 The point of going in that Capitol that day was to  
25 prevent Joe Biden from becoming the next president of



1 the United States, to overthrow a lawfully elected  
2 president. That's what happened, and I think it's  
3 important not to lose sight of that.

4 The other factors the Court has to  
5 consider here are the history and characteristics of  
6 the defendant. They include -- I'll say this,  
7 Mr. Munchel does not have an extensive criminal  
8 history. We represented that in our papers. He does  
9 have a couple of marijuana charges from 2013 and 2014.

10 I don't have any additional information  
11 to offer about the contempt of court charge, but I  
12 accept Ms. Alpert's representations. But -- but  
13 that's something the Court, of course, has to weigh  
14 against the conduct in this case. Again, not conduct  
15 the Court has to speculate about, but conduct that the  
16 defendant captured on a recording from his phone, cell  
17 phone camera.

18 The Court also has to assess the danger  
19 to the community here. Where this -- I think what  
20 should be concerning to the Court, certainly most  
21 concerning to the government is that there is  
22 (indiscernible) of radicalization here. This was a  
23 person who rejects the results of a 2020 presidential  
24 election. Fair enough. People are entitled to do  
25 that. And people can protest that as much as they

1 want. That is, you know, a First Amendment right that  
2 we all cherish. But this is someone who's  
3 demonstrated that he is willing to suit up in body  
4 armor and carry a weapon into the halls of Congress in  
5 order to prevent President Biden from taking office.

6 Remarkable to say that, but that's what  
7 happened in this case. And there's no getting around  
8 it. I recognize that Mr. Munchel has -- does not  
9 appear, those weapons that were found in his house, it  
10 doesn't appear that he possessed them illegally.

11 But he had some 15 firearms, including  
12 some very serious firearms, assault rifles, a sniper  
13 rifle with a tripod, hundreds of rounds of ammunition,  
14 20 or 30 magazines full of ammunition.

15 But I think certainly from the  
16 government's perspective, we feel Mr. Munchel has  
17 essentially a lit fuse, who is willing to and capable  
18 of attempting to engage in really serious conduct,  
19 including the attempted overthrow of a lawfully  
20 elected president.

21 And there's absolutely no reason,  
22 Your Honor, to think that that's going to abate over  
23 time. It is something that appears to be a belief  
24 that Mr. Munchel has held deeply based on his conduct  
25 in this case. So we think all those factors weigh in

1 favor of Mr. Munchel's detention.

2 Like I say, lastly, just a few words  
3 about risk of flight. We heard some evidence about  
4 that today, but I do think it is fair to say that the  
5 defendant did take some steps here to evade detection  
6 by law enforcement. He learned very quickly that he  
7 was (indiscernible) my understanding he wants to get a  
8 lawyer. Who wouldn't.

9 But he didn't reach out to law  
10 enforcement after learning that he was a suspect. He  
11 waited, really, until the FBI comes to his house and  
12 seized all of his belongings and interviewed his  
13 brother. And at that point he decided it was  
14 important that he finally needed to come forward after  
15 giving his phone to an associate and buying -- and  
16 buying a burner.

17 So I think there's also a concern here  
18 about there's no real evidence in his background, I  
19 don't think, about risk of flight, but I think there  
20 is some concern from the government's perspective  
21 about a potential failure to abide by Court orders and  
22 also just a -- an effort, even if it was short-lived,  
23 to evade law enforcement detection. So for all those  
24 reasons, Your Honor, we'd ask that this Court detain  
25 Mr. Munchel pending trial.

1                   THE COURT: Mr. Schrader, you've  
2 recounted some of the statements that Mr. Munchel made  
3 that you think are significant in support of your  
4 position for detention. How do you reconcile those  
5 statements with all of the statements that Ms. Alpert  
6 has mentioned, and I suspect will highlight in her  
7 argument, that seem inconsistent or counter to the  
8 statements that you've identified for the Court?

9                   MR. SCHRADER: Well, I think actions  
10 speak louder than words, in a sense. I mean, this is  
11 a defendant who -- not just someone that has said  
12 things that might -- most of the statements that  
13 Ms. Alpert, I think, has highlighted are ones that  
14 suggest that he's not violent or inclined to engage in  
15 violent behavior.

16                   But that -- I don't think you can  
17 reconcile that with what he did, which was travel to  
18 Washington dressed for combat. I mean, this is not  
19 somebody who was there just to stand at a rally and  
20 protest. This is someone who came with tactical  
21 vests, a Taser, potentially additional weapons. His  
22 mother had a tactical vest as well. And then when --  
23 they could have just left after the rally, they could  
24 have left after the Stop the Steal rally and that was  
25 it. Or they could have stood outside the US Capitol.

1 But they -- they encouraged folks who were heading  
2 inside. They assisted some folks that were heading  
3 inside, as we laid out in our memo. They celebrated  
4 things like the Capitol being destroyed. They entered  
5 the Capitol.

6 When they found these zip  
7 ties (indiscernible) try to prevent anyone else from  
8 getting them. They kept them for themselves. And in  
9 a middle of the crowd of people chanting things like  
10 "treason" and "where are you, cowards."

11 So it's -- I understand that Mr. Munchel  
12 may have an interest now in telling folks that he  
13 didn't have any plans up there to engage in any harm  
14 or hurt anybody or do anything violent. This was a  
15 violent act. It was a violent act what Mr. Munchel  
16 did, and I think it's -- I don't think it's difficult  
17 to recognize it as such, at least from the  
18 government's perspective.

19 THE COURT: Some of the statements that  
20 you mentioned, you specifically referred to that  
21 Mr. Munchel replies -- and these are recounted in your  
22 memorandum at page 18 -- "fucking ready to fuck shit  
23 up." Any evidence that he fucked any shit up?

24 MR. SCHRADER: There's no evidence on  
25 these videos that we have that he caused any physical

1 damage inside the US Capitol. I will say there was --  
2 part of the video when he is viewing the Senate  
3 chamber he is attempting to open one of the doors to  
4 the Senate chamber that appears to be stuck. And so  
5 he is trying to do that. I don't know if it's in an  
6 aggressive manner or what, but he's trying to get the  
7 door open. But other than that, there's no evidence  
8 that he destroyed property, no.

9 THE COURT: You alluded to statements he  
10 made to the -- to the extent or similar to statements  
11 such as that he was ready to fight. Any evidence of  
12 him fighting anyone?

13 MR. SCHRADER: There's no evidence that  
14 he engaged in any physical -- acts of physical  
15 aggression I guess I would say. There's no evidence  
16 that he fought anybody in the Capitol, no.

17 THE COURT: Okay. And there's been some  
18 discussion about some of the videotape evidence, which  
19 I'll be looking at. But some conversations about --  
20 or discussion about him passing law enforcement  
21 officers in the Capitol.

22 Did you take any issue with Ms. Alpert's  
23 characterization about those interactions or have any  
24 evidence that he made any physical gestures or  
25 statements toward any law enforcement agents themselves?

1 MR. SCHRADER: You mean aggressive acts?

2 THE COURT: Yeah.

3 MR. SCHRADER: No, other than, really,  
4 than there's a bit of video where, as I mentioned, his  
5 mother appears to be yelling at a police officer and  
6 Mr. Munchel is with her there. They're together the  
7 whole time. They're both holding these flexicuffs.  
8 But I don't recall any specific evidence of  
9 Mr. Munchel shouting at police officers or anything  
10 like that himself.

11 THE COURT: And the inference that you  
12 draw from the -- the statements and actions about  
13 putting some -- some items or item into the bag before  
14 entering the Capitol is that that must have been  
15 something more dangerous or more serious than the stun  
16 gun, based upon his statement that he didn't intend to  
17 take any weapons into the Capitol. Is that my  
18 understanding of your inference?

19 MR. SCHRADER: Correct.

20 THE COURT: Okay. And just to be clear,  
21 there was a little bit of testimony about  
22 Mr. Munchel's interaction with Metropolitan Police  
23 Department officers the evening before on the 5th and  
24 then after the events at the Capitol regarding the  
25 stun gun.

1                   Do I understand correctly that there was  
2                   a contact with law enforcement on the night of the 5th  
3                   where they approached Mr. Munchel about the -- about  
4                   the stun gun, allowed him to keep the stun gun, and  
5                   then there was an interaction between law enforcement  
6                   after the Capitol event at the hotel where they  
7                   again -- law enforcement again approached him about  
8                   the stun gun and took the gun from him at that time?  
9                   Is that right?

10                  MR. SCHRADER: So I'm aware of sort of  
11                  two different episodes. One, there is some videotape  
12                  from the night before, so the night of the 5th, where  
13                  officers encounter him. They actually run down the  
14                  street because they think he's got a gun on his hip.  
15                  They detain him. I don't know if they seized the stun  
16                  gun from him at that time or not. I don't know  
17                  whether they did or didn't.

18                  But I do know that the next day, staying  
19                  at the Grant Hyatt hotel there is a Metropolitan  
20                  Police Department report that details an encounter  
21                  where police at that time interacted with him and did  
22                  seize a Taser from him at that time. I believe that  
23                  that incident occurred subsequent to the storming of  
24                  the Capitol.

25                  THE COURT: Okay. Thank you.



1           Now, with respect to the firearms and  
2           ammunition recovered at his home incident to the  
3           search warrant, you say that he was aware that he was  
4           a potential suspect in this episode at least by  
5           Saturday, the day before the execution of the search  
6           warrant. Is that government's position?

7           MR. SCHRADER: I think that's a fair  
8           inference (indiscernible).

9           THE COURT: And that's based upon the  
10          efforts of various media and private citizens engaged  
11          in activities on social media, rather than any actions  
12          taken by law enforcement; is that correct?

13          MR. SCHRADER: Correct.

14          THE COURT: Okay. And if Mr. Munchel  
15          had, say, on Saturday gone to the police department  
16          and said, I'm the guy in the video, there was no  
17          active arrest warrant for him at that time, was there?

18          MR. SCHRADER: I don't believe we got it  
19          until that evening or possibly the following morning.

20          THE COURT: Okay. In the absence of an  
21          arrest warrant, if he had gone to a police station to  
22          turn himself in, he would have been turned away;  
23          right? There would be no basis to detain him; right?

24          MR. SCHRADER: That's correct.

25          THE COURT: Okay. And --

1 MR. SCHRADER: I think there may have  
2 been an effort -- I mean, if he had shown up and said,  
3 I'd like to turn myself in, then there may have been  
4 action we could have taken at that point to effectuate  
5 that.

6 THE COURT: All right. But --

7 MR. SCHRADER: I take the Court's point.

8 THE COURT: But in any event, no one from  
9 law enforcement had either -- well, first, let me ask  
10 it this way. Nobody from law enforcement had reached  
11 out to Mr. Munchel prior to the execution of the  
12 warrant on the 9th; right?

13 MR. SCHRADER: Correct.

14 THE COURT: And had anybody from law  
15 enforcement made any general statement to the public  
16 asking for Mr. Munchel to be identified that you're  
17 aware of?

18 MR. SCHRADER: I'm sorry, I don't think I  
19 follow the Court's question.

20 THE COURT: Yeah, it's not a very good  
21 one. I'll just leave it alone. I don't think there's  
22 any need to go there.

23 Now, with respect to the detention  
24 determination, my decision has to be whether or not  
25 there are any conditions or combination of conditions

1 that I could impose that would reasonably assure  
2 Mr. Munchel's presence at court appearances and  
3 protect the safety of the community. Tell me what the  
4 government perceives the danger to the community to be  
5 by Mr. Munchel specifically between now and the time  
6 these charges are resolved.

7 MR. SCHRADER: So I don't -- I think I  
8 mentioned at the end of my argument, but I don't see  
9 any reason why Mr. Munchel's views here would abate.  
10 Part of the reason he went to Washington, DC, right,  
11 was to join this Stop the Steal rally. He followed  
12 the crowd into the United States Capitol dressed as he  
13 was and, as I mentioned, to disrupt the recounting of  
14 the electoral college vote.

15 I don't see any reason why that view  
16 would not -- in other words, his aggrievement at the  
17 2020 presidential election, the way that turned out,  
18 would abate. He clearly possesses views that are  
19 extreme, in a sense, if he's willing to engage in that  
20 sort of conduct.

21 So there's no reason to think that those  
22 views are going to diminish over time. In fact, they  
23 may just get worse if he becomes further aggrieved by  
24 the fact that we now actually do have a different  
25 president.

1                   THE COURT: Well, I think you alluded to  
2                   it earlier, but you're not suggesting that we detain  
3                   him just because he has views; correct?

4                   MR. SCHRADER: Of course not. Of course  
5                   not, of course not. It's because he has proven  
6                   himself willing, able and interested in acting in  
7                   those views in one of the most extraordinary ways I  
8                   could conceive, entering the US Capitol in the middle  
9                   of this ceremony dressed for combat.

10                  THE COURT: Yeah.

11                  MR. SCHRADER: And carrying around his  
12                  flexicuffs, chanting, you know -- standing in a crowd  
13                  of people chanting for lawmakers who are running for  
14                  their safety. He's willing to do that. He's shown  
15                  he's willing to do that. That's the danger,  
16                  Your Honor.

17                  THE COURT: Fair enough. So what -- what  
18                  is the government's argument in terms of what the  
19                  future danger -- are you saying that you think he's  
20                  going to go back to DC, get in a mob, attack the  
21                  Capitol again and try to overthrow the government? Is  
22                  that the danger, based on those views?

23                  MR. SCHRADER: I think there's a risk of  
24                  that.

25                  THE COURT: Okay.

1 MR. SCHRADER: There's a risk of that  
2 happening, there's a risk of that happening here, at  
3 events here. He has attended rallies here in the past  
4 in Franklin, Tennessee. So there's no reason to think  
5 that he wouldn't engage in this conduct in the future.  
6 I have no idea what form that would take, but he has  
7 shown the Court what he's willing to do. And  
8 (indiscernible).

9 THE COURT: Okay. And you don't believe  
10 there are any conditions that I could impose that  
11 would reasonably assure that he would not carry out  
12 those types of actions in the future?

13 MR. SCHRADER: I do not.

14 THE COURT: Okay. Thank you,  
15 Mr. Schrader.

16 Ms. Alpert, I'll hear from you.

17 MS. ALPERT: First I wanted to add my --  
18 the information we have regarding the Tasers. Sorry,  
19 the two incidents with Metro police. My  
20 understanding, and the Court will have the video, I  
21 believe it's Defendant's Exhibit 5. That incident  
22 happened on January -- evening of January 5, and that  
23 Mr. Munchel, you know, that incident ended amicably  
24 with Mr. Munchel leaving in possession of the Taser.  
25 And, you know, the government certainly has not

1 presented any evidence indicating that Tasers are  
2 illegal to possess in DC.

3 The second encounter, my understanding,  
4 is that Mr. Munchel went back to his hotel,  
5 encountered Metro police -- or police officers eating  
6 dinner, I believe, at the hotel. Mr. Munchel greeted  
7 them.

8 The officers finished their dinner, they  
9 then came over to Mr. Munchel and asked him about the  
10 Taser and what it was. And then said that they wanted  
11 to keep it because -- because of the incidents that  
12 had happened at the Capitol that day. And so that's  
13 what happened.

14 THE COURT: Okay.

15 MS. ALPERT: Your Honor, I -- you know, I  
16 certainly believe Mr. Munchel should be released, and  
17 there are certainly conditions on which he can be  
18 released to alleviate any of the concerns that  
19 Mr. Schrader has.

20 Mr. Schrader, I think in a lot of ways,  
21 is imputing the facts and feelings and sentiments of  
22 the entire group of people who went to DC and also  
23 Mr. Munchel's mother onto Mr. Munchel. Of course, he  
24 does not -- not everyone has the same views, not  
25 everyone was in DC for the very same purpose. There

1 were lots of people there for different reasons, and a  
2 lot of people with different beliefs.

3 THE COURT: Isn't that the risk that you  
4 take when you make yourself a part of that mob?

5 MS. ALPERT: Well, no. I mean, I guess  
6 what I'm saying here, Your Honor, is Mr. Schrader is  
7 saying a crowd was yelling treason. Well, that  
8 doesn't mean that Mr. Munchel was yelling treason. He  
9 says Mr. Munchel's mother yelled things at the police  
10 officer. That wasn't Mr. Munchel.

11 And I think when the Court looks at the  
12 video, the Court will see that there are many  
13 different people at the videos, there are many  
14 different people there behaving differently and acting  
15 in different ways. All of them obviously went for  
16 some reason.

17 There's no -- we are aware that  
18 Mr. Munchel was a supporter of Mr. Trump and felt  
19 badly about the election, but there's also plenty of  
20 evidence that he would not act in a violent manner.  
21 That doesn't mean that you can't go and march and  
22 exercise your right to protest. I understand also  
23 that entering the Capitol was a further act of  
24 civil -- or can be viewed, certainly, as an act of  
25 civil disobedience.

1                   But, again, we need to bring the focus  
2 back to whether Mr. Munchel poses a flight risk or  
3 danger to the community as an individual and not  
4 certainly -- certainly not the entire amount of people  
5 who were there. He can't be held in custody because  
6 of their views. And certainly not all the people in  
7 the Capitol have been held in custody. And I'll come  
8 back to that in just a moment.

9                   First of all, there's a presumption of  
10 release under the Bail Reform Act, and the government  
11 bears the burden of proof here, which we've  
12 acknowledged. And for Mr. Munchel to be detained, the  
13 government has to prove that there are no conditions  
14 or combinations of conditions that could reasonably  
15 assure his appearance in Court or reasonably ensure  
16 the safety of the community.

17                   I think, you know, the government really  
18 had very little to say about any indication that  
19 Mr. Munchel failed to appear in court. I will address  
20 their arguments regarding dangerousness, but I do want  
21 to say numerous courts across the country, numerous  
22 federal courts have released people under similar or  
23 even more egregious circumstances than what's before  
24 the Court today. It is unfortunate for Mr. Munchel  
25 that he has become -- this photograph of him that the



1 government included in its complaint has made him this  
2 poster child in this moment. But it's in the -- that  
3 is one snapshot in time. And it doesn't represent who  
4 Mr. Munchel is or whether he's a flight risk or  
5 danger.

6 First of all, one of the reasons I wanted  
7 to introduce into evidence the -- so just as an  
8 example. The government has indicated that  
9 Mr. Munchel was leaping over this rail and apparently  
10 in an effort to go do something when, in fact, if the  
11 Court looks closely at the exhibit, he is stepping  
12 over the railing and it appears, as the agent  
13 indicated also, that Mr. Munchel was stepping over the  
14 railing in pursuit of his mother.

15 Let me bring this back a little bit more  
16 focused to the factors that the Court has to consider  
17 under 3142(g). Regarding the nature and the  
18 circumstances of the offense, I would submit to the  
19 Court that things that Mr. Munchel is charged with are  
20 trespassing and civil disobedience related charges.

21 He is not charged -- I would submit to  
22 the Court he is not charged with a crime of violence,  
23 a terrorism crime. There's no minor victims involved,  
24 there was no drugs involved. There are no firearms,  
25 explosives or destructive devices involved in this

1 case.

2 I would submit to the Court that the  
3 weight of any evidence of danger is limited. He was  
4 not engaged in any physical violence. The Court has  
5 heard no indication that he's indicated -- that he's  
6 engaged in physical violence during his life or in  
7 this incident.

8 There's no indication at all that he did  
9 anything or had any plans to do anything with the zip  
10 ties or the Taser. And the government's suggestion  
11 that he might have had more severe weapons is just --  
12 it's really a stretch.

13 The Court heard evidence that, in fact,  
14 Mr. Munchel had a pocket knife. When the Court views  
15 the videos and hears -- actually, I guess that's not  
16 in that portion. But there is no indication and it's  
17 unreasonable to think that Mr. Munchel would have  
18 brought some sort of long gun or any gun and stowed it  
19 in a backpack and left it in a crowd of a thousand  
20 people. That was a completely 100 percent out of  
21 character of Mr. Munchel.

22 He is a legal licensed firearm owner.  
23 There's no indication that he has ever used a firearm  
24 or handled a firearm improperly. And there's no  
25 indication that he brought firearms with him to this

1 rally. So I strongly dispute the government's  
2 allegation.

3 Turning to his history and  
4 characteristics, by accounts of everyone who knows  
5 him, he is not a violent person. He is a kind person  
6 who is looking out to help other people. He has solid  
7 ties here in Nashville. He himself has lived here for  
8 two years.

9 He has, you know, the unofficial family  
10 in the Millers, and he has moved up here when they  
11 moved up here. And he has a solid third-party  
12 custodian to stay with. The whole family has  
13 indicated that they are willing to help make sure he  
14 complies with the Court's orders if he's released.

15 We have other evidence that when he was  
16 younger he was -- his character now is similar to his  
17 character when he was younger, growing up in the Boy  
18 Scouts, someone who sticks up for other people. He  
19 was a high school graduate, participated in team  
20 sports. He was a competitive athlete.

21 He has maintained employment, and that's  
22 not -- that's not the easiest thing to do in his line  
23 of work during this time of -- during the pandemic.  
24 So he has maintained steady employment.

25 Another factor the Court has to consider

1 under this statute is that he's not on probation,  
2 parole or supervision at the time this happened. And  
3 the facts, as Mr. Schrader noted, it's a very  
4 relatively small record that's primarily  
5 (indiscernible) simple possession of marijuana. And  
6 all of his criminal history is in his early 20s.

7 The government repeatedly today said,  
8 well, this is all we know so far. And I understand  
9 that. I know there's a massive investigation going  
10 on, but at the same time there's a massive  
11 investigation going on. And as Agent Defeo said, if  
12 Mr. Munchel or anything related to Mr. Munchel came  
13 up, he would be told about it.

14 So there is a lot of investigating going  
15 on and there is nothing to indicate that Mr. Munchel  
16 had nefarious intentions when he went to DC. And  
17 there's nothing to indicate that he's radical or has  
18 been radicalized.

19 Your Honor, he doesn't pose a flight  
20 risk. I talked about some of the details already, but  
21 he has strong ties here. He doesn't have a passport.  
22 He doesn't have the financial means to flee. He  
23 appeared in the past in court as he was directed to do  
24 so. I know there was that one failure to appear, but  
25 as we indicated before, he just didn't even know he

1 was supposed to appear, and then he went to court  
2 within the month and resolved that case anyway.

3 But most importantly -- and I agree with  
4 Mr. Schrader when he says that actions can speak  
5 louder than words. Mr. Munchel's actions here do show  
6 that he's not a flight risk. He didn't -- when his  
7 name started popping up all over the place, he  
8 hunkered down with family here. He didn't try to run  
9 away from this situation.

10 And I -- he did not know or have reason  
11 to believe that law enforcement was looking for him  
12 until Sunday morning, January 10, which is when the  
13 search was conducted at his house. Before that, what  
14 he knew was that people, private citizens and other  
15 people on social media, were attempting to identify  
16 people who were present at the Capitol, and that while  
17 doing that, there were other people who were doxing or  
18 releasing personal information.

19 So he knew that someone had released his  
20 personal information and that was out there in the  
21 world, and he could no longer use his phone. So  
22 turning off the phone is not an effort to avoid law  
23 enforcement. Staying with his family and friends was  
24 not an effort to avoid law enforcement. It was an  
25 effort to try to figure out what the heck to do. And

1 he did, in fact, try to find a lawyer and then the  
2 next morning, Sunday morning when he found out that,  
3 in fact, the FBI was looking for him and that there  
4 was a search warrant, he called and turned himself in  
5 right then.

6 He learned -- from the proof today, he  
7 learned around 11 o'clock, late morning, that the FBI  
8 was looking for him. By 1:30 that day he was in FBI  
9 custody. The Court -- he had turned himself in.

10 The Court -- as the complaint reflects in  
11 this case -- or, sorry, the arrest warrant, the arrest  
12 warrant for Mr. Munchel was issued at 1:15. So he was  
13 in custody 15 minutes after the arrest warrant was  
14 actually issued.

15 In that short time period between when he  
16 learned that he was -- that the FBI had searched his  
17 house and the FBI wanted to talk to him, he talked  
18 with the agent more than once, apparently. He tried  
19 calling an attorney, but even while he's calling an  
20 attorney, including Mr. Martin, he's on his way over  
21 to the FBI to turn himself in. And he did not wait  
22 until an attorney appeared there with him. He went  
23 ahead and turned himself in. That (indiscernible) is  
24 not someone who will not appear in court. That is  
25 someone who will appear in court when they're directed

1 to do so.

2 He also made arrangements to preserve his  
3 phone so that there would be -- to have his phone held  
4 and retained until he knew what was going on, but he  
5 made it clear that it was okay to turn the phone over  
6 to FBI, which is exactly what happened. He made that  
7 clear to the attorney, Mr. Bean, who was the first  
8 attorney he had spoken with and also to Witness 2.  
9 All of that, Your Honor (indiscernible) prepared to  
10 face the music and consequences of their actions and  
11 would appear in court.

12 It's -- I would also submit, Your Honor,  
13 that there's a lot to indicate that he doesn't pose a  
14 danger. And things we heard about today are that he  
15 has no ties -- there's no indication he was tied to  
16 any extremist group, militia groups, antigovernment  
17 groups. The witnesses that were interviewed indicated  
18 that he doesn't have antigovernment sentiments and, in  
19 fact, he is very much prolaw enforcement, which is  
20 also shown by his actions on the videos that the Court  
21 will see.

22 He's very respectful to the law  
23 enforcement. There's no indication he coordinated or  
24 preplanned going to this event or coordinated with  
25 anyone or had plans to do anything when he was there.

1 Again, he has no history of violence, history of  
2 illegally using guns. He did remove a knife and  
3 possibly other items before he went into the Capitol.  
4 He still had the Taser on him, but he had been allowed  
5 to keep the Taser in DC the night before by the Metro  
6 police there.

7 Inside the Capitol, he tried to prevent  
8 other people from engaging in dangerous acts or  
9 violent acts or destruction. I think also in terms of  
10 danger, I think that interactions that the Court will  
11 see in Exhibit 5 that Mr. Munchel had on January 5 is  
12 significant because it shows that he's truthful.

13 He's not trying -- he's not resisting the  
14 police in any way, shape or form. He's not trying to  
15 rile up anyone. He's trying to do the opposite. He's  
16 respectful with the police. He truthfully answers  
17 their questions. He tells other people in so many  
18 words, I'm fine, don't -- leave the police alone,  
19 don't worry about this, they're just doing their job.  
20 I think those also speak to the fact that he doesn't  
21 pose a danger.

22 Regarding his entry into the Capitol  
23 building -- and as the Court will see, they're really  
24 only in there for about 11 minutes. And he is --  
25 there could be other reasons, but certainly a big



1 reason he's in there is because his mother wants to go  
2 in and he is following her in there. He never once  
3 touches his Taser, he never does anything with the zip  
4 ties.

5 I think it's very important for the Court  
6 to look at Exhibits 7 and 8. In the government's  
7 brief the government, I think, insinuates that -- and  
8 in argument the government is insinuating, I think,  
9 that Mr. Munchel and his mother are, you know, right  
10 on the tail of a crowd observing police officers being  
11 attacked and then the mother goes and yells things  
12 over the side at those police officers, like they're  
13 in hot pursuit of them.

14 I would submit to the Court that is not  
15 what the videos show. What the videos show is that  
16 there is a crowd of people that had an interaction  
17 with police. The videos show that Mr. Munchel  
18 appeared -- doesn't appear on the screen when the  
19 officers are there at all. And there's a number of  
20 people between Mr. Munchel and his mother and the  
21 officers. And there's a 15 -- at least a 15-second  
22 gap, and it's not at all clear whether his mother  
23 actually saw what happened to the officers. It's just  
24 not clear from the video at all. So I would  
25 respectfully disagree with the government that they

1 were in hot pursuit of the officers. It appears that  
2 they were behind a crowd that was behind the group  
3 that was in the interaction with the officers and then  
4 they were walking in the same direction.

5 His mother does apparently lean over and  
6 yell something at the crowd below, but we don't know  
7 who's down there or what they're doing at that point.  
8 And Mr. Munchel and his mother were not part of the  
9 crowd that was engaging with those police officers.

10 And what he is doing when he's in the  
11 Capitol is keeping a firm grip on his mother's vest  
12 except when she gets past him. He's asking her what  
13 her purpose is in being there, telling her  
14 (indiscernible). He's trying to keep up with her  
15 while she's going around. He's trying to find their  
16 way out of the building. He's telling other people  
17 not to engage in violence. So all of these things I  
18 think show that he's not a flight risk or danger.

19 As I mentioned earlier, there are  
20 numerous people charged in these Capitol cases in  
21 other jurisdictions, other federal jurisdictions who  
22 have been released. I just want to talk about a few.  
23 This information is available on the DOJ website.  
24 They have a list called Investigations Regarding  
25 Violence at the Capitol, and on that website it

1 includes the case names, fairly up-to-date information  
2 about what cases are about and the affidavit and  
3 complaints in those cases. I'm sorry, fairly  
4 up-to-date information about the procedural posture.

5 But just as some examples of what's going  
6 on in other courts, Christopher Alberts was released.  
7 He was arrested on the Capitol grounds after he did  
8 not respond promptly to the police who were ordering  
9 people to leave the Capitol grounds premises. He was  
10 wearing a bulletproof vest and he had a firearm -- a  
11 firearm on his right hip. He tried to flee when the  
12 officers went to detain him. He was released on  
13 pretrial release.

14 Larry Brock was released on pretrial  
15 release. Mr. Brock is the person, the other person  
16 who had been identified as Zip Tie Guy. He's an  
17 older -- retired military person who was dressed in  
18 full military gear, and he was also carrying zip ties  
19 that he also said he had found in the Capitol. He was  
20 released on pretrial release custody.

21 Jenny Cudd was released. She was inside  
22 the Capitol. She was quoted in newspapers and in the  
23 government's affidavit and complaint saying, we just  
24 pushed and pushed and we got in. She also talked  
25 about how they broke down Nancy Pelosi's door.

1 Hunter Ehmke, E-h-m-k-e, was released.  
2 He tried to break the windows -- or window to get into  
3 the Capitol building. He physically struck the  
4 windowpane with his fist. He was released.

5 Adam Johnson, the individual who stole or  
6 at least moved the House Speaker's lecturn, he was  
7 released.

8 Mark Leffingwell. Mr. Leffingwell tried  
9 to push his way past US Capitol police officers who  
10 had formed a barrier to prevent people from entering  
11 the Capitol. Mr. Leffingwell struck an officer  
12 repeatedly with a closed fist. Mr. Leffingwell has  
13 been released on conditions.

14 Aaron Mostofsky. (indiscernible) inside  
15 the Capitol Rotunda and was wearing a US Capitol  
16 Police bulletproof vest that he had found and carrying  
17 a US Capitol Police riot shield in the Rotunda. He  
18 was released on pretrial release.

19 Robert Packer, who was inside the Capitol  
20 wearing a (indiscernible) Camp Auschwitz shirt and who  
21 had stolen a piece of Nancy Pelosi's name plate, he  
22 was released.

23 Christine Priola, who was inside the  
24 Senate chamber and sat in Vice-president Pence's seat,  
25 she was released.

1                   And then Joshua Pruitt, who earlier  
2 entered the Capitol and then later (indiscernible)  
3 failed to disperse while he was outside the Capitol,  
4 he refused an order from Metro Police to disperse, he  
5 was released.

6                   So these folks, I would submit to the  
7 Court, have more egregious situations. Of course, we  
8 don't have all the facts, but these are people who are  
9 largely in the Capitol, many of people directly  
10 disobeyed orders. Some of them engaged in physical  
11 violence. Some of them stole things, vandalized.  
12 These people, who I would submit are similarly  
13 situated to Mr. Munchel, were released on conditions.

14                  The government has suggested some  
15 conditions of release in its memorandum, and we're not  
16 opposed to those conditions. And we're agreeable to  
17 consideration of any other conditions of release that  
18 the Court may think is appropriate, but we do think  
19 that Mr. Munchel should be released pending trial.

20                  THE COURT: Ms. Alpert, did -- did -- it  
21 maybe should be assumed, but I would assume you would  
22 suggest that Ms. Miller serve as the third-party  
23 custodian. You proffered her as such, and are you  
24 suggesting that would be an appropriate --

25                  MS. ALPERT: Yes.

1 THE COURT: -- condition?

2 MS. ALPERT: And I think -- I think we're  
3 happy for that, if that provides some added assurance.  
4 I think she and the family are a good influence and  
5 will remain a good influence. And they're very fond  
6 of Mr. Munchel.

7 THE COURT: Well, I gather, based on her  
8 testimony, he really doesn't have any other place to  
9 go if he were to be released; right?

10 MS. ALPERT: Correct.

11 THE COURT: Okay.

12 MS. ALPERT: We could -- we could  
13 certainly look into other options, but I believe that  
14 would be the best and most appropriate option.

15 THE COURT: Where's your client being  
16 detained currently?

17 MS. ALPERT: David -- Davidson County  
18 Detention Center.

19 THE COURT: All right, thank you.

20 Mr. Schrader, I'll give you the last word  
21 if you want it, since it's the government's burden.

22 MR. SCHRADER: Just briefly due to it's  
23 almost 5:30 this afternoon. Ms. Alpert --

24 THE COURT: I didn't notice,  
25 Mr. Schrader.

1 MR. SCHRADER: Ms. Alpert mentioned that  
2 (indiscernible) had been released on conditions. I  
3 don't know whether the government sought detention in  
4 those cases, and I think we charged over a hundred  
5 people at this point. I could probably give you just  
6 as many examples of people who have been detained in  
7 these cases, everything -- it's a case-by-case  
8 determination here.

9 You know, the defendant here brought  
10 weapons of various types to the US Capitol, and the  
11 rest of his conduct is, I think, pretty well laid out  
12 on the video. I've made my argument, I won't make it  
13 again.

14 I guess what I'd say is if I can't  
15 convince you after watching that video that he ought  
16 to be detained, there's not anything (indiscernible).  
17 I think the conduct on that video is egregious and it  
18 warrants detention. I'm standing (indiscernible)  
19 serious concern about releasing Mr. Munchel back into  
20 the community.

21 THE COURT: I mean, Mr. Schrader, you --  
22 the conduct on that video is eventually what the  
23 government wants to sentence him for; right? Why  
24 should I make a decision about detention based on the  
25 conduct of the video when that's not really even a

1 decision I've got to make? I've got to make a  
2 decision about whether or not between today and the  
3 time he eventually resolves this matter, that I can  
4 reasonably assure the safety of the community and that  
5 he will appear for court. Why is it -- why should it  
6 be enough what happened on that video?

7 MR. SCHRADER: Because of the seriousness  
8 of the conduct that's before the Court. It is  
9 videotaped evidence of dangerousness, somebody who is  
10 willing to suit up in body armor and take weapons to  
11 the United States Capitol on January 6 when the  
12 electoral vote is counted.

13 We all watched what happened that day,  
14 right. We watched lawmakers get evacuated from that  
15 building. People were -- I mean, people died. Five  
16 people died in the course of this event. And Mr. --  
17 as the Court alluded, I mean, you can't separate  
18 yourself once you go into that hallway, really.

19 You can't say, well, I'm just kind of  
20 there to walk around, particularly when you're dressed  
21 like Mr. Munchel is. I mean, you know, the conduct on  
22 that video just speaks volumes about what it is that  
23 Mr. Munchel is willing to do to carry out his belief.  
24 He's got every right to protest, (indiscernible)  
25 wherever he wants. But he cannot, he cannot carry



1 weapons and pick up flexicuffs and wander around the  
2 Capitol with crowds who are looking for lawmakers  
3 chanting treason.

4 It's shocking conduct. And that is  
5 obviously the Government's concerns here, Your Honor.  
6 That is one of the issues the government  
7 (indiscernible) that we suggest that you detain  
8 (indiscernible).

9 THE COURT: I won't disagree that it's  
10 shocking conduct, but, again, you're saying that  
11 because he engaged in shocking conduct, there's no  
12 condition that I can impose that will assure that he  
13 won't engage in the same conduct in the future.  
14 That's what you're really saying; right?

15 MR. SCHRADER: In part because of the  
16 nature of the conduct (indiscernible) willing to do  
17 because of (indiscernible).

18 THE COURT: Do you think if there --

19 MR. SCHRADER: (indiscernible) engaging  
20 in conduct, engaging in this sort of conduct.

21 THE COURT: Do you think if there hadn't  
22 been a rally that day that Mr. Munchel would have  
23 engaged in that conduct?

24 MR. SCHRADER: I don't know.

25 THE COURT: Well, are you aware of any

1 rallies in the future that he's planning to go to  
2 where that conduct will happen?

3 MR. SCHRADER: I -- I mean, he's been  
4 detained since, you know --

5 THE COURT: Right.

6 MR. SCHRADER: -- it happening. I have  
7 no -- I have no evidence that he is actively making  
8 plans to attend any in the future. I know he's  
9 attended rallies in the past. They weren't violent  
10 rallies.

11 THE COURT: Right.

12 MR. SCHRADER: But it's clear what he is  
13 willing to do. I do think my colleague from DC was  
14 trying to say something, if the Court would entertain  
15 that as well. I don't know that he's entered an  
16 appearance in this case, but he was motioning to say  
17 something.

18 THE COURT: I'll let him talk in a  
19 minute. I want to ask you one more question, and that  
20 is: Do you think that if that rally had ended before  
21 folks went to the Capitol, that Mr. Munchel was going  
22 to go to the Capitol and do anything to interfere with  
23 that vote?

24 MR. SCHRADER: I don't know.

25 THE COURT: Okay.

1 MR. SCHRADER: He -- he dressed -- he was  
2 there for that event.

3 THE COURT: Okay.

4 MR. SCHRADER: He was part of a crowd of  
5 people who (indiscernible) to overturn the results of  
6 the election by storming the Capitol and potentially,  
7 who knows, killing lawmakers, holding them hostage.  
8 (indiscernible) wanted to do those things. The only  
9 thing he didn't have was lawmakers.

10 THE COURT: Right. Okay.

11 Yes, sir. You wanted to say something?

12 MR. BASET: Yes, Your Honor, if I may.  
13 I'm Ahmed Baset from the US Attorney's Office in  
14 Washington, DC.

15 THE COURT: Yes, sir.

16 MR. BASET: And my co-counsel here has  
17 said pretty much everything he could, except one  
18 thing, if I could just emphasize. Your Honor asked a  
19 question of it seems as if the harm -- or the danger  
20 to the community existed at the time of this rally in  
21 DC, and that perhaps that rally not existing anymore  
22 would abate any concern for the community.

23 From -- I think a real acute concern that  
24 we have is that a lot of people disagreed with the  
25 outcome of the election and the -- and President Biden

1 becoming president.

2 And only a very small percentage of those  
3 people ended up going to this rally in DC on the 6th.  
4 And an even smaller percentage of those people  
5 actually had the audacity to enter and storm into the  
6 Capitol. And even far more smaller percentage of  
7 people than that did so with possessing a dangerous  
8 weapon, that being the Taser.

9 We're not even talking about the  
10 flexicuffs that he found, that he didn't give to  
11 police, that he actually took with him back to  
12 Tennessee. And so the concern at that point is you're  
13 talking about someone who not just -- who doesn't only  
14 just believe that the election was stolen, that  
15 President Biden is not the rightful president, but  
16 someone who has an extreme belief in that regard.

17 Insofar as it needs him to take -- go  
18 into the Capitol and -- with possession of these  
19 items, ostensibly going into the Senate floor looking  
20 for legislators at the rest of the crowd --

21 THE COURT: Hang on. I'm sorry to  
22 interrupt you, but can you hang on just a second. I'm  
23 hearing some background noise. It sounds like  
24 somebody else may be talking. If you're not talking,  
25 would you please mute your microphone. We don't need

1 to hear your conversation.

2 I apologize, I didn't mean to interrupt  
3 you. I just wanted to make sure I could hear you.

4 MR. BASET: No, no. I appreciate that,  
5 thank you. And so the point being that this --  
6 someone, at least from the government's point of  
7 view -- and we're making decisions very carefully on  
8 who we are asking to be held. He represents among the  
9 extreme of the extreme that decided to go into the  
10 Capitol building that day with weapons.

11 And moreover, to make the impact for what  
12 that means for the community in Nashville and in the  
13 country abroad is that if he encounters people who  
14 don't share in his position, in his extreme position,  
15 if people have the audacity to actually be proud of  
16 who the president is and to talk about those beliefs  
17 in open air and have different opinions than him, the  
18 concern is that he might not be able to control  
19 himself in those situations.

20 And we saw that he's somebody who  
21 couldn't control himself on the day of this incident.  
22 That is etched into the memory and history of this  
23 country. That is unprecedented in nature. Counsel  
24 raises the issue of, well, he didn't know he couldn't  
25 bring the Taser into the Capitol building, he was

1 allowed to keep it the day before, but that just is --  
2 is -- it's strange credulity and it also is not a  
3 defense because ignorance of the law is not a defense.

4 That's why we have guards outside of the  
5 Capitol building, inside the Capitol building. It's  
6 one of the most fortified buildings in this country.  
7 So to think for a moment that they would allow  
8 somebody like Mr. Munchel inside with a Taser dressed  
9 like that is absurd.

10 And he knew very well that he wouldn't be  
11 able to go in that manner. And, in fact, he relied on  
12 the people in front of him to breach the doors, to get  
13 in with the flexicuffs so that he could achieve what  
14 he ultimately came up to do, which was to stop the  
15 Senate from carrying out its duties, its Democratic  
16 duties and obligations. That was the purpose.

17 He was there with his mother. They share  
18 the same views, and afterwards they didn't -- they had  
19 no remorse for that. They continued to tell people in  
20 the press that, we are revolutionaries prepared to die  
21 because we think that what happened in this election  
22 was wrong.

23 And that opinion doesn't change. If  
24 anything, it intensifies because the president has  
25 been installed. And so from the government's point of

1 view, the injury and the harm and the risk to the  
2 community is not just in the District of Columbia, but  
3 it exists in any place in this country where he may  
4 encounter someone of a different opinion because his  
5 views are extremist.

6 And that's all I have to say. I  
7 appreciate that. Thank you, Your Honor.

8 THE COURT: You wouldn't want me to  
9 believe that he's never encountered people with  
10 different views before in his life, would you?

11 MR. BASET: No, certainly that's not my  
12 argument. My argument --

13 THE COURT: You think now because of  
14 this, anybody he encounters with a different view is  
15 going to be in danger from him.

16 MR. BASET: No. I would proffer, though,  
17 if I may -- and I don't know if this came out at  
18 trial, or at the hearing, but there was an encounter  
19 that he did have at the hotel at the night the Taser  
20 was confiscated from him, the night of the 6th. He  
21 had an encounter with (indiscernible) news reporter  
22 who was videotaping things. He then called him Antifa  
23 and threatened to hurt him and actually put hands on  
24 him. His mother at that point said, I'm going to  
25 spray you with mace. And so to think that --

1 MS. ALPERT: Your Honor, I object. I  
2 object to this being brought in at this point.

3 MR. BASET: Your Honor, can give it zero  
4 weight if you'd like. I merely make the point, I  
5 would be remiss if I didn't, given the severity and  
6 importance of this hearing. If you'd like, give it  
7 zero weight, but what I can say -- and this is  
8 something that the government can support with an  
9 incident report, and it's something that is available  
10 on Open Source --

11 THE COURT: Well, we're done with the  
12 proof in this matter. I don't want to hear about any  
13 other instance than what's in the record already. If  
14 you want to refer to something in the record, I'll  
15 hear from you, but I think -- I think I -- I think  
16 everybody's made their point and I've heard the  
17 arguments of counsel in this case.

18 MR. BASET: Thank you.

19 THE COURT: All right. I tell you what  
20 we're going to do. I need to review these videotapes.  
21 I want to look a little more closely at the exhibits.  
22 I had hearings right up until the time of this one, so  
23 I appreciate you getting those things to me in  
24 advance, but I hadn't really had a chance to look at  
25 them that closely. I don't think that piece will take



1 very long, but I do need to review these videos.

2 What I think we should do is -- y'all are  
3 free to just sort of -- I think what I want you to do  
4 is stay online and -- but you can go about your  
5 business, mute your screens. You know, if  
6 Mr. Schrader, if you and Ms. Alpert have anything to  
7 talk about, y'all can talk by telephone or otherwise  
8 while we're on a little recess.

9 And I'll just -- I'll just come back and  
10 let you know when I'm -- when I'm ready to -- to  
11 render my decision. Okay? Thank you all. We'll in  
12 recess for now.

13 MR. SCHRADER: Thank you, Your Honor.

14 THE COURT: And we still have some  
15 folks -- you're all muted. And when I -- when I'm  
16 ready to render my decision, I'll come back on and  
17 announce that and we'll -- we'll take it from there.  
18 So thank you, everyone. We'll be in recess.

19 (Whereupon, a break was taken.)

20 THE COURT: Okay. We're ready to go back  
21 on the record now. Thank you all for your patience  
22 and waiting. Ms. Alpert, are you there? Very good.  
23 Looks like everyone's back on the screen. I apologize  
24 that it took me a while to get through that, but I  
25 thought it was important, I wanted to review all of

1 the exhibits that were filed in the case.

2 I've reviewed all of the -- the videos  
3 that Ms. Alpert provided as well, so I have -- I have  
4 done that. I guess before I begin, any of the parties  
5 have any announcements or anything else you want to  
6 say before I tender my ruling?

7 MR. SCHRADER: I don't believe so,  
8 Your Honor. I mean, I think it depends on what the  
9 Court's ruling is. I've included in my detention  
10 memo, if the Court's inclined to release the  
11 defendant, we'd ask for a stay until (indiscernible)  
12 Monday to file an appeal with the District Court in  
13 Columbia. We'd also ask (indiscernible) be imposed.  
14 So I just reiterate that request at this time.

15 THE COURT: All right, very good. Thank  
16 you.

17 First of all, I want to commend the  
18 lawyers for their work on this case. I think that  
19 your performance and conduct is a true testament to  
20 the character of our constitution and of the values  
21 and principles that we as Americans hold dear and that  
22 are important, as signified through the Bill of  
23 Rights. Certainly the lawyers have given this time --  
24 this case the time and attention that it deserves.  
25 That's evidenced by your submissions to the Court and

1 by the arguments that you have made.

2 I also want to take a moment to say thank  
3 you to the witnesses in the case who have testified on  
4 behalf of Mr. Munchel, those individuals who have been  
5 willing to put themselves on the line, who have been  
6 there to support Mr. Munchel in this case.

7 It's not lost on this Court that there  
8 are many individuals who come before the Court charged  
9 with criminal offenses who have no one who cares about  
10 them or is willing to stand behind them or stand up  
11 for them. And so I really appreciate the witnesses'  
12 willingness to testify in this case and their  
13 agreement to serve the Court, should I see fit to  
14 include that as a condition of release.

15 I'm sure that my appreciation to those  
16 witnesses pales in comparison, though, to  
17 Mr. Munchel's appreciation, knowing that those folks  
18 are willing to stand up for him and behind him and  
19 with him as he goes through these proceedings.

20 The Bail Reform Act ordinarily requires  
21 that a defendant be released pending trial unless  
22 there are no conditions that will reasonably assure  
23 the appearance of the person at future court  
24 proceedings and the safety of the community.

25 In determining whether or not release is

1 appropriate in the case, the Court is directed to  
2 consider several factors. Those include the nature  
3 and circumstances of the offense charged, the weight  
4 of the evidence against the defendant, the history and  
5 characteristics of the defendant and the nature and  
6 seriousness of the danger posed by the defendant's  
7 release.

8 The Court, in hearing the proof in this  
9 case, takes into account all of those factors.  
10 Additionally, as we conduct this proceeding by video  
11 conference, we're all very well aware of the ongoing  
12 COVID-19 pandemic and its impact on the operations of  
13 the courts and on our daily lives as citizens in this  
14 country.

15 The Court likewise takes into account the  
16 pandemic and its impact, particularly in custodial  
17 situations and the case -- cases of CO-VID that are  
18 prevalent in jail communities among incarcerated  
19 individuals, and gives appropriate consideration to  
20 that.

21 In our society liberty is the norm and  
22 detention prior to trial, without trial is the  
23 carefully limited exception. As the Supreme Court has  
24 stated, unless this right to bail before trial is  
25 preserved, the presumption of innocence secured only

1 after centuries of struggle would lose its meaning.  
2 The traditional right to freedom before conviction  
3 permits a defendant to prepare his defense and  
4 prevents the infliction of punishment prior to  
5 conviction.

6 The Court is also mindful of the tension  
7 that exists between the Bail Reform Act and the  
8 presumption of innocence which applies to Mr. Munchel,  
9 as it does to all individuals charged with criminal  
10 offenses under our constitutional system.

11 As an initial matter, having reviewed the  
12 video submissions from the defendant in this case, I  
13 have to say that from an emotional standpoint,  
14 Mr. Schrader's arguments have a lot of appeal. Seeing  
15 the conduct of fellow citizens on January the 6th and  
16 what happened at the Capitol is -- is difficult to  
17 watch. It's something that I'm not sure that there  
18 are many of us who ever thought we would see in this  
19 country.

20 And there's an obvious visceral reaction  
21 to it that I think is natural and reasonable for  
22 individuals to have, and the Court has to give that  
23 the appropriate consideration but also has to be  
24 guided by the law in this case and has to consider the  
25 factors that the law requires be considered in this

1 case.

2 With respect to Mr. Munchel's history and  
3 characteristics, the Court's reviewed the bond report  
4 in this case, heard the testimony and reviewed the  
5 submissions of the parties. Mr. Munchel's a high  
6 school graduate with some trade schooling. He grew up  
7 in Georgia, it appears, for the most part; lived in  
8 Nashville for a couple of years.

9 Court's heard about his employment and  
10 about his character and the type of person he's  
11 perceived to be by his friends. And it appears that  
12 he's maintained employment up until the time of his  
13 arrest. He's in good health.

14 As evidenced from the search of his home,  
15 Mr. Munchel -- and also of his social media and other  
16 aspects, Mr. Munchel enjoys the privileges of  
17 citizenship, of having opinions and expressing those  
18 opinions.

19 Mr. Munchel also appears to be interested  
20 in firearms. The search of his residence discovered a  
21 number of firearms. The Court also notes that  
22 Mr. Munchel has a permit, conceal carry permit. There  
23 was argument from counsel suggesting that he has a  
24 permit that not only allows him to carry in a  
25 concealed fashion, but also in an unconcealed fashion.

1           The Court's reviewed and considered  
2     Mr. Munchel's criminal history, as it is. He has two  
3     prior convictions, appear to be for simple possession  
4     of marijuana in Georgia. Those convictions are both  
5     over five years old. He has no felony convictions.  
6     No convictions for any crime of violence. There's not  
7     been any proof of any probation violations alleged.  
8     And at the time of this offense, he is not and was not  
9     on probation.

10           In looking at the dual considerations  
11    that the Court must consider regarding risk of flight  
12    and dangerousness, I'll take the flight issue first.  
13    The government argues that, in part, Mr. Munchel  
14    should be detained because he poses a risk of flight.  
15    In support of this position, the government argues  
16    that Mr. Munchel deactivated his social media  
17    accounts. He gave his cell phone to an associate. He  
18    left his house. He didn't show up for work and did  
19    not disclose to his brother where he was.

20           The Court does not accept the  
21    government's assumption that this indicates a risk of  
22    flight. The Court heard evidence, and I think can  
23    generally take judicial notice that there was a large  
24    contingent of individuals after this event on the 6th  
25    who were engaged in detective activity for lack of a

1 better term, on social media platforms, attempting to  
2 identify individuals, attempting to locate them.

3 The Court heard proof that there was --  
4 that Mr. Munchel was receiving threatening  
5 communications, harassing communications, that there  
6 was a lot of media interest in him. And the Court  
7 believes that those are legitimate and reasonable  
8 considerations for why an individual might take the  
9 actions of deactivating social media and passing off  
10 their cell phone to another individual.

11 With respect to the giving of the cell  
12 phone to the individual in this case, the Court's  
13 heard proof, and there's no counterevidence, that the  
14 purpose of that was to preserve the information that  
15 was contained on it, to assure that it could be  
16 utilized and that it was subsequently provided to the  
17 authorities in this particular case.

18 Likewise, and most importantly, I would  
19 say, it became clear that when -- when it became  
20 clear, rather, that the FBI was searching for  
21 Mr. Munchel by way of the search warrant executed at  
22 his house and him receiving notice of that, he  
23 voluntarily turned himself in. He communicated,  
24 reached out to the FBI, made arrangements to surrender  
25 and did, in fact, surrender.



1           As my conversation and discussion with  
2       Mr. Schrader evidences, it wasn't until there was the  
3       existence of a warrant, there really wasn't anything  
4       for Mr. Munchel to turn himself in on. Once he knew  
5       for certain that there was law enforcement interest in  
6       him by way of the search and indication that there  
7       would be a warrant forthcoming, he turned himself in.

8           Certainly in the time period between that  
9       Friday evening and the Sunday when he surrendered, if  
10      Mr. Munchel were inclined to flee, he had ample  
11      opportunity to do so, and he didn't. He stayed in the  
12      area. The Court heard testimony from the individuals  
13      he stayed with.

14           The Court accepts and credits that  
15      testimony and believe that in light of that testimony  
16      and in light of all those circumstances, there is no  
17      risk of flight by Mr. Munchel, and that does not form  
18      a basis upon which to detain him.

19           In any event, the Court believes that  
20      Mr. Munchel's prior experience with the criminal  
21      justice system suggests that he'll stand up and answer  
22      to his charges, and there's no reason to believe that  
23      imposing conditions of release would not also  
24      reasonably assure his appearance at future court  
25      proceedings. And the Court believes that through

1 those conditions that appearance can be reasonably  
2 assured and, therefore, declines to detain Mr. Munchel  
3 on the basis of a risk of flight.

4 So that leaves the second consideration,  
5 and that's the issue of dangerousness. As I said in  
6 questioning during argument, mobs are dangerous.  
7 They're inherently dangerous. Whether it's a mob at a  
8 sporting event or mob at a concert or a mob at a  
9 political protest or a mob intendant upon doing  
10 damage, anytime you choose to be a part of a mob,  
11 there is a mob mentality and you automatically connect  
12 yourself to that dangerousness.

13 In this case it appears, as the  
14 government's indicated, that Mr. Munchel chose to be a  
15 part of that mob. He chose to be a part of this group  
16 that engaged in the conduct that's outlined in the  
17 criminal complaint and that is captured by numerous  
18 videos and photographs and the like. It's conduct  
19 that is dangerous as an inherent nature. It's conduct  
20 that bore out itself to be dangerous in this incident.

21 The Court also should look to the issues  
22 of motive, intent and actions in addressing this issue  
23 of dangerousness. Was there an intent to do harm?  
24 That's not clear in this case as it relates to this  
25 particular defendant. As I noted throughout the

1 hearing, there is evidence of -- sort of on both sides  
2 of that coin. Mr. Munchel made some statements that  
3 are captured on the audio that are very troubling and  
4 concerning. And he also made statements that are  
5 exactly the opposite of those statements.

6 So it's not clear what his motive was.  
7 It's not clear what his intent was. The proof on  
8 these issues are inconsistent. What we do know is  
9 what his actions were. And his actions were to follow  
10 the mob, to go into the Capitol, to interfere with  
11 governmental functions, all of the things that I  
12 relied upon to find probable cause for the charges  
13 that have been brought in this case.

14 We know that he took a Taser gun into the  
15 Capitol, based upon the evidence that's been  
16 presented. We know that he picked up the zip ties  
17 once he -- once he arrived in the Capitol. What the  
18 government also argues that they believe he had other  
19 weapons, perhaps more dangerous weapons than the stun  
20 gun, and he didn't take those weapons into the  
21 Capitol. Presumably that means he had a choice to  
22 take lethal weapons into the Capitol and made a choice  
23 not to do that.

24 Likewise, there's the issue of advance  
25 planning. What advanced planning was there in this

1 situation? There's been no evidence presented to me  
2 that Mr. Munchel was engaged in any advance planning  
3 for these activities. And when one looks at the  
4 videotapes and listens to the audio of those tapes,  
5 seems pretty clear that there isn't much of a plan.

6 In fact, Mr. Munchel repeatedly asks his  
7 mother what her plan is, what's her goal, what's she  
8 going to do. That all suggests to me that Mr. Munchel  
9 didn't go to Washington, DC with an intention of  
10 storming the Capitol and causing harm to any  
11 individuals in there.

12 And the items that he had on them -- had  
13 on himself, while they may classify under the statutes  
14 as dangerous weapons, there's no evidence that he  
15 utilized those weapons, no evidence that he used those  
16 zip ties, no evidence that he even knew he was going  
17 to be in possession of zip ties unless and until he  
18 happened upon them during the course of being in the  
19 building.

20 The Court's considered all of these  
21 factors in the decision as to whether or not  
22 Mr. Munchel poses a danger to the community. And  
23 that's really the crux of the matter. The Court has  
24 to decide in this case whether or not there are  
25 conditions that will reasonably assure the safety of

1 the community between today and the time that  
2 Mr. Munchel addresses the charges in this case in  
3 their final form.

4 I asked the government pointblank what  
5 that danger was, and they referred to Mr. Munchel's  
6 radicalization, his views that he holds with regard to  
7 the legitimacy of the president, the presidential  
8 election and of the government and his prior actions  
9 in this situation of going to Washington, DC, going  
10 into the Capitol, carrying a Taser gun and having the  
11 zip ties.

12 The Court believes that in light of this,  
13 Mr. Munchel does not pose an obvious and clear danger  
14 to the safety of this community. Mr. Munchel has no  
15 prior history of violence. He's an individual who's  
16 had beliefs in the past. He's been to other rally  
17 situations that clearly didn't rise to the level or  
18 get out of control in the manner that this one did.  
19 And there's no evidence that he's ever taken any  
20 action on that.

21 Mr. Munchel has -- is an individual who's  
22 kept a lot of weapons. Those weapons appear to be  
23 lawful. He appears to legally possess those weapons.  
24 But what strikes me as significant as it relates to  
25 the dangerousness around those weapons, while just

1 describing the weapons can feel and seem dangerous,  
2 that's a danger that this Court believes it can  
3 control. Those weapons have been seized. A condition  
4 of release will be that Mr. Munchel not possess any  
5 firearms or other dangerous weapons. The Court  
6 believes that Mr. Munchel will comply with those  
7 conditions.

8 One thread that seems to run through,  
9 notwithstanding Mr. Munchel's conduct here, is his  
10 apparent respect for law enforcement. And that's --  
11 it's a little bit counterintuitive because on the one  
12 hand his actions are an absolute disrespect of law  
13 enforcement, but on the other hand, the videos show  
14 him speaking with law enforcement in respectful ways,  
15 indicating his support of law enforcement. That's  
16 consistent with his prior actions and prior  
17 statements.

18 And so the Court believes that when told  
19 to do something, that Mr. Munchel is capable of  
20 following those instructions and will comply with  
21 those orders.

22 It's also not lost on this Court, a  
23 factor that wasn't really discussed much, and that is  
24 that the government indicates that Mr. Munchel was  
25 aware that law enforcement was on his tail, that

1 people were looking for him. He had all those  
2 weapons, and it doesn't appear that he did anything to  
3 try to hide the weapons or secret away weapons and  
4 there's no indication that there are any other weapons  
5 that he's storing somewhere else. It appears that he  
6 just left these weapons where they were.

7 And that would suggest that he did not  
8 have a nefarious intent in possessing those weapons or  
9 was holding those weapons for some improper purpose in  
10 the future. In any event, the Court believes that by  
11 imposing a condition that he not possess any firearms  
12 or dangerous weapons, that that concern can be  
13 alleviated.

14 As the government notes, Mr. Munchel is  
15 entitled to his opinions. It's protected under the  
16 constitution. He has a right to hold those beliefs.  
17 He has a right to state those beliefs. He doesn't  
18 have the right to do what he did on January the 6th.

19 Now, that's for another day, but  
20 certainly the Court's heard evidence in this case that  
21 would suggest that he engaged in conduct that is, at  
22 its core, dangerous. Again, the issue, though, is  
23 whether or not there are conditions that I can impose  
24 that can reasonably assure the safety of the  
25 community.

1 I believe that the government's (sic)  
2 requested conditions in this case are conditions that  
3 will reasonably assure the safety of the community. I  
4 have no reason to believe that Mr. Munchel won't  
5 comply with those conditions. I have no reason to  
6 believe that Mr. Munchel is a member of any organized  
7 collective action against the government.

8 There was reference to a group, the  
9 Oathkeepers. There's also testimony Mr. Munchel has  
10 no apparent connection to them. While he may have  
11 some affinity to them or gave them a fist bump, gave  
12 somebody associated with them a fist bump, it's a very  
13 different thing than saying that he's a part of any  
14 sort of organized group like that.

15 Likewise, as I said, no evidence that he  
16 made planning in advance in terms of what he was going  
17 to do in DC. It appears that that trip was planned  
18 just days before the event, that he went to that event  
19 and then fell into the mob.

20 I believe that, again, there are  
21 conditions that I can impose that will reasonably  
22 assure the safety of the community in this case and,  
23 therefore, find that release is appropriate.

24 Now, I want to be clear that this  
25 decision in no way is intended to condone the actions



1 on January the 6th. I found that those actions are  
2 dangerous. I believe those actions are dangerous.  
3 They're dangerous in many ways. They're dangerous  
4 to -- in terms of the conduct that occurred, the  
5 evidence supports that. There were numerous injuries,  
6 including death.

7 It's also dangerous to our system of  
8 government and our democracy and our constitution.  
9 But, again, the consequence of those actions is for  
10 another day. What's for today is whether or not there  
11 are conditions that can reasonably assure the safety  
12 of the community between now and the time those  
13 consequences happen with regard to the underlying  
14 charges.

15 Based upon the totality of the  
16 circumstances, giving due consider to all the factors  
17 that the Court must consider in this case, the Court  
18 finds that there are conditions that I can impose that  
19 will reasonably assure the safety of the community.

20 Therefore, it will be the order of the  
21 Court that Mr. Munchel will be released subject to the  
22 following conditions: He must not violate federal,  
23 state or local law while on release. He must advise  
24 the Court or the pretrial services office or  
25 supervising officer in writing before making any

1 change of residence or telephone number. He must  
2 appear in court as required and, if convicted, must  
3 surrender to serve any sentence that may be imposed as  
4 directed.

5 I'm also going to order that he be placed  
6 in the custody of Ms. Miller who will serve as the  
7 third-party custodian. He will reside with Ms. Miller  
8 at her address. Ms. Alpert, I'd ask that you, upon  
9 completion of the matters and at an appropriate time,  
10 have Ms. Miller indicate her signature on the order.

11 I'd ask that you provide the address and  
12 other identifying information directly to probation,  
13 rather than include it in the order to protect the  
14 issues that we've already talked about. Ms. Miller's  
15 agreed to supervise Mr. Munchel, to use every effort  
16 to assure his appearance at court proceedings and  
17 notify the Court immediately if he violates any  
18 condition of release or is no longer in the  
19 custodian's custody.

20 Additionally, I'm going to impose the  
21 following additional conditions: That Mr. Munchel  
22 must submit to supervision by and report for  
23 supervision to the pretrial services office as  
24 directed. I will require that, at a minimum, he must  
25 call pretrial services once per week. However, I'll

1 leave the frequency and method of that communication  
2 to pretrial services for anything greater than once  
3 per week. The once per week will be a minimum.

4 He is to continue or actively seek  
5 employment. He is to abide by the following  
6 restrictions on personal association, residence and  
7 travel. That travel will be limited only within the  
8 Middle District of Tennessee unless preapproved by  
9 pretrial services.

10 The defendant may not travel outside the  
11 continental United States without court approval.  
12 Defendant must participate in all future court  
13 proceedings as directed. And he may not go to  
14 Washington, DC unless he is appearing for court,  
15 meeting with pretrial services or consulting with his  
16 attorney. So effectively his travel will be limited  
17 to the Middle District of Tennessee and the District  
18 of Columbia as specified herein.

19 He is to avoid all contact, directly or  
20 indirectly, with any person who is or maybe a victim  
21 or witness in the investigation or prosecution. That  
22 includes any codefendants in the case. He's not to  
23 possess a firearm, destructive device or other  
24 dangerous weapon. He's not to use alcohol  
25 excessively. He's not to use or unlawfully possess a

1 narcotic drug or other controlled substance defined in  
2 21 United States Code Section 802 unless prescribed by  
3 a licensed medical practitioner.

4 He's to submit to testing for prohibited  
5 substance if required by pretrial services. That  
6 testing may be used with random frequency and may  
7 include urine testing, the wearing of a sweat patch,  
8 remote alcohol testing system and/or any form of  
9 prohibited substance screening or testing.

10 Defendant must not obstruct, attempt to  
11 obstruct or tamper with the efficiency and accuracy of  
12 prohibited substance screening or testing.

13 He's to participate in a program of  
14 inpatient or outpatient substance abuse therapy and  
15 counseling if directed by pretrial services.

16 He'll participate in the following  
17 restriction and comply with its requirements as  
18 directed: That will be home detention. You are  
19 restricted to your residence, in this case the  
20 residence of Ms. Miller, at all times except for  
21 employment, education, religious services, medical,  
22 substance abuse or mental health treatment, attorney  
23 visits, court appearance, Court-ordered obligations or  
24 other activities approved in advance by the pretrial  
25 services office.

1           You're to submit to location monitoring  
2       as directed by the pretrial service office or  
3       supervising officer and comply with all of the program  
4       requirements and instructions. You must pay all or  
5       part of the cost of the program based on your ability  
6       to pay as directed or determined by the pretrial  
7       services office or supervising officer.

8           You're to report as soon as possible or  
9       within 48 hours to the pretrial services office or  
10      supervising officer every contact with law enforcement  
11      personnel, including arrests, questioning or traffic  
12      stops. You're to permit pretrial services to visit  
13      you at home or elsewhere at any time and allow the  
14      pretrial services officer to confiscate any contraband  
15      in plain view.

16           And you are to quarantine for 14 days  
17      upon release prior to reporting to pretrial services  
18      to be placed on electronic monitoring in light of the  
19      ongoing pandemic and concern for the probation office  
20      and pretrial services, in light of that fact.

21           I need to also advise you of the  
22      following penalties and sanctions of violating any of  
23      the foregoing conditions of release may result in the  
24      immediate issuance of a warrant for your arrest, a  
25      revocation of your release, an order of detention,

1 forfeiture of any bond and a prosecution for contempt  
2 of court and could result in imprisonment, a fine or  
3 both.

4 While on release if you commit a federal  
5 felony offense, the punishment is an additional prison  
6 term of not more than ten years. For a federal  
7 misdemeanor offense, the punishment is an additional  
8 prison term of not more than one year. This sentence  
9 will be consecutive, meaning in addition, to any other  
10 sentence that you receive.

11 It's a crime punishable by up to ten  
12 years in prison and a \$250,000 fine or both, to  
13 obstruct a criminal investigation, tamper with a  
14 witness, victim or informant, retaliate or attempt to  
15 retaliate against a witness, victim or informant or  
16 intimidate or attempt to intimidate a witness, victim,  
17 juror, informant or officer of the Court.

18 The penalties for tampering, retaliation  
19 or intimidation are significantly more serious if they  
20 involve a killing or attempted killing. If after  
21 release you knowingly fail to appear as the conditions  
22 of release require or to surrender to serve a  
23 sentence, you may be prosecuted for failing to appear  
24 or surrender and additional punishment may be imposed.  
25 If you're convicted of an offense punishable by a term

1 of imprisonment of five years or more but less than 15  
2 years, you'll be fined not more than \$250,000 or  
3 imprisoned for not more than five years or both.

4 For any other felony, you'd be fined not  
5 more than \$250,000 and imprisoned for not more than  
6 two years or both; and for a misdemeanor you'd be  
7 fined not more than \$100,000 and imprisoned for not  
8 more than one year or both. A term of imprisonment  
9 imposed for failure to appear or surrender will be  
10 consecutive to any other sentence that you may  
11 receive.

12 And normally, Mr. Munchel, I would pass  
13 you a copy of this order, have you review it with your  
14 attorney and sign in open court. However, since we're  
15 conducting this proceeding by video conference, I need  
16 to ask you a series of questions. Do you acknowledge  
17 that you're the defendant in this case and that you're  
18 aware of the conditions of release that I've  
19 previously reviewed with you, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you promise to obey all  
22 the conditions of release, to appear as directed and  
23 surrender to serve any sentence that might be imposed  
24 in the case?

25 THE DEFENDANT: Yes, Your Honor.

1                   THE COURT: And are you aware of the  
2 penalties and sanctions set forth in the document that  
3 I just reviewed?

4                   THE DEFENDANT: Yes, Your Honor.

5                   THE COURT: All right. This will be the  
6 order of the Court. You'll be released subject to  
7 these conditions.

8                   Mr. Schrader, I'll hear from you about  
9 the stay.

10                  MR. SCHRADER: Yes, Your Honor. We do  
11 intend to (indiscernible) District of Columbia and  
12 would ask (indiscernible) the end of the day on Monday  
13 for us to file that with the court in DC.

14                  THE COURT: Mr. Schrader, in some of the  
15 other cases before this Court, I've received  
16 information from the district indicating -- from the  
17 District of Columbia with regard to setting cases and  
18 have been advised that in the event the government  
19 wished to seek detention upon appearance in DC before  
20 a magistrate judge if the defendant was released here,  
21 that that was to be set in person, no earlier than  
22 three business days following the hearings in the  
23 jurisdiction of arrest.

24                  I gather what you're suggesting is  
25 something otherwise, that you wish to directly appeal



1 this and you'd like time by way of a stay to seek that  
2 appeal. Do you have any knowledge about this -- this  
3 email that I've received from your office about  
4 setting things?

5 MR. SCHRADER: I don't. This is a  
6 request from the (indiscernible) the government in at  
7 least up four other cases (indiscernible).

8 THE COURT: Yeah, I'm sorry, I'm having  
9 trouble hearing you. Maybe you want to refresh your  
10 screen so I can hear you. You might try that.

11 MR. SCHRADER: Sure, just a moment.

12 THE COURT: Thank you.

13 MR. SCHRADER: Maybe that works better.

14 THE COURT: Yeah, I think that might be a  
15 little bit better.

16 MR. SCHRADER: I know there's a  
17 (indiscernible) at least one other case, there was a  
18 gentleman who was photographed in I think in Pelosi's  
19 chair, I believe an Arkansas defendant, that he was  
20 released on conditions there. The government filed an  
21 emergency motion with Judge Beryl Howell, a judge in  
22 DC. She issued the transfer order as a result of the  
23 government's request. So we'd like to proceed under  
24 the same, basically give the judge there a day to rule  
25 on this (indiscernible).

1 THE COURT: Yeah, I'm familiar with that  
2 case. I think the request for stay in the -- in the  
3 district where the magistrate judge ruled was denied,  
4 if I'm correct; isn't that right?

5 MR. SCHRADER: I don't know.

6 THE COURT: Okay.

7 MR. SCHRADER: I don't know whether  
8 Mr. (indiscernible) I don't know.

9 THE COURT: I'm sorry --

10 MR. SCHRADER: Do you have --

11 THE COURT: You broke up a little bit on  
12 me, there. Go ahead, sir.

13 MR. BASET: Yes. My understanding is  
14 that we had made an oral request to stay in Arkansas.  
15 The judge denied that oral request. We then filed an  
16 emergency motion here in DC for -- to revoke --  
17 reconsider that decision. Chief Judge Howell, my  
18 understanding, she granted the government's motion to  
19 stay the order releasing the defendant in that case  
20 and for transfer of that matter to DC.

21 I believe it's still pending, as far as  
22 whether -- as to the ultimate decision to release.  
23 And so the only thing in that case so far is  
24 Judge Howell has granted the government's motion to  
25 reconsider and that matter is pending.

1 THE COURT: Okay, thank you. I  
2 appreciate your input on that.

3 Ms. Alpert, you want to be heard on this?

4 MS. ALPERT: Yes, Your Honor. We would  
5 object to a stay. In general there are four  
6 considerations on whether a stay is appropriate, and  
7 the Sixth Circuit has found that the two most  
8 important factors are whether the movant has made a  
9 strong showing that he is likely to succeed on the  
10 merits of the appeal that they're seeking. Here, I  
11 don't believe the government has made any showing  
12 of -- that it's likely to succeed on the merits of  
13 seeking detention.

14 And, in fact, based on the list of cases  
15 where other similarly or more egregiously situated  
16 defendants have been released, I don't think that the  
17 government has a likelihood of success on the merits.

18 Secondly, the Court should consider  
19 whether the movant -- whether the government will be  
20 irreparably injured absent the stay. I think the  
21 answer is also no. The government has not  
22 demonstrated any irreparable injury, and particularly  
23 not with the conditions that the Court has imposed.  
24 We're asking the Court to allow Mr. Munchel to remain  
25 at home on home detention on very strict conditions

1 until the government proceeds with an appeal.

2 It also appears, I am familiar -- I think  
3 the email that the Court mentioned was forwarded -- I  
4 think Mr. Schrader may have forwarded that email to  
5 the Court and myself at some point -- earlier point in  
6 this case. And it looks like they may even do video  
7 hearings.

8 The government's asking the Court to keep  
9 Mr. Munchel in custody because it doesn't like the  
10 ruling, but it really doesn't meet -- that doesn't  
11 meet the standard for getting a stay at this point.  
12 I'd respectfully ask the Court to release Mr. Munchel.  
13 If the government chooses to proceed with an appeal,  
14 it can do that.

15 THE COURT: Very good.

16 It's your motion, Mr. Schrader. I'll  
17 give you the last word on it if you want it.

18 MR. SCHRADER: Your Honor, we just  
19 (indiscernible). I understand (indiscernible) until  
20 Monday, we can appeal that issue in DC.

21 THE COURT: Hang okay, Mr. Schrader. I'm  
22 sorry, Mr. Schrader, I'm just -- I'm not catching  
23 enough to follow what you're saying. I'm not sure  
24 what we can do here, but if --

25 MR. SCHRADER: (indiscernible) speak up.

1 THE COURT: How about -- what about this.  
2 Do you think you could telephone in? I think maybe  
3 we'll have a little better -- I mean, I don't mind  
4 trying to work with you to do it by video, but I think  
5 if we can -- it's more important to hear what you say  
6 than me to see what you look like. Because you're not  
7 getting any better. You just -- I'm just not getting  
8 enough of what you're saying, I'm sorry.

9 All right, very good. Yes, sir. Thank  
10 you.

11 (Pause in proceedings.)

12 THE COURT: Okay, if you mute your video,  
13 I think I'll hear you okay on the phone.

14 MR. SCHRADER: Done. Can you hear me all  
15 right now?

16 THE COURT: Excellent, thank you. Go  
17 ahead.

18 MR. SCHRADER: Okay. Thank you,  
19 Your Honor. So I think what Ms. Alpert was saying was  
20 that the government's not happy with the Court's  
21 ruling and wants to keep Mr. Munchel detained. That's  
22 true, except that we're only requesting that he be  
23 detained through Monday so that we can give the court  
24 in DC an opportunity to rule on the motion here. And  
25 I don't want to argue too much the facts of the other

1 case, the case involving the gentleman in Ms. Pelosi's  
2 chair, but the Court there clearly believed the Court  
3 satisfied the requirements that it needed to satisfy  
4 to issue a stay of the magistrate judge's ruling in  
5 that case.

6 And here, I mean, I -- from what I --  
7 from my understanding of the conduct in this case  
8 versus the conduct in that case, I think -- I don't  
9 think it's hard for us to argue that it is a much  
10 closer case for detention here. And so I think we  
11 have a much higher likelihood of success on the merits  
12 in Washington.

13 THE COURT: All right, give me just a  
14 second. Y'all bear with me.

15 MR. SCHRADER: Sure.

16 (Pause in proceedings.)

17 THE COURT: Okay, thank you all for your  
18 patience. I've heard the positions of the parties and  
19 given some consideration to this matter. We're here  
20 now just after 7:15 p.m. on Friday evening. The  
21 Court's heard the proof in this matter. I've made my  
22 decision. I feel comfortable in my decision. But I  
23 likewise understand the government's intentions in  
24 this case. And I think that considering all the  
25 factors and sort of weighing those against each other,

1 the prudent approach in this case will be to grant a  
2 temporary stay of my ruling. I'm not going to give  
3 you to the end of business on Monday. I'll give you  
4 until 10:00 a.m. on Monday Central time. And we'll --

5 MR. SCHRADER: Thank you, Your Honor.

6 THE COURT: We'll see what happens from  
7 there.

8 MR. BASET: Thank you, Your Honor.

9 THE COURT: Mr. Munchel, the Court's made  
10 its ruling in this case. What happens from here on is  
11 not up to me. I certainly hope that this experience  
12 is one that you'll learn from, that if my order stands  
13 and you're released subject to these conditions, that  
14 you'll understand the importance of complying with  
15 those conditions.

16 Ms. Alpert, Mr. Martin will tell you that  
17 the most important thing you can do between now and  
18 the time you resolve this case is to sleep at the foot  
19 of the cross and not have any issues come up with  
20 regard to these conditions, assuming that they hold.  
21 I'm comfortable and confident that the rulings that  
22 I've made in this case are correct, that you can  
23 comply with my conditions, and I hope that you'll do  
24 so.

25 And with that, Mr. Schrader, anything

1 further from the government's standpoint we need to do  
2 today in this case?

3 MR. SCHRADER: No, Your Honor, I don't  
4 believe so.

5 THE COURT: Ms. Alpert, anything else for  
6 your client?

7 MS. ALPERT: No, thank you.

8 THE COURT: Mr. Schrader, let me ask one  
9 thing. We've referred to this email about setting  
10 matters. Is this something -- I don't really  
11 understand this. Typically it's not -- I don't set  
12 matters in other districts. They run their calendars.  
13 Do I need to include something in the order about --  
14 about his appearance in the district or not?

15 MR. SCHRADER: I don't know that I have a  
16 great answer for you. We've been getting some  
17 guidance from those courts up there in trying to deal  
18 with these cases around the country. I've just been  
19 passing that along to the Court as I've gotten it.

20 So I can -- I'm happy to follow up and  
21 see if I can get some additional guidance if you have  
22 a specific question that you want me to ask them. I'm  
23 maybe just as well-positioned as anyone to do that.

24 THE COURT: Okay. Well, we'll run some  
25 traps on that. And we'll -- if it's something that we



1 need to do, we'll -- we'll enter an order on Monday  
2 setting an appearance in the district. And if you --  
3 if you have any additional information, if you'd share  
4 it with myself and Ms. Alpert, I'd appreciate that,  
5 Mr. Schrader.

6 MR. SCHRADER: I will.

7 THE COURT: Ms. Alpert, anything else for  
8 your client tonight?

9 MS. ALPERT: No, thank you.

10 THE COURT: Thank you all. We'll be in  
11 recess. Good luck to you, Mr. Munchel.

12 **\*\*\*END OF ELECTRONIC RECORDING\*\*\***  
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**REPORTER'S CERTIFICATE**

I, Roxann Harkins, Official Court Reporter  
for the United States District Court for the Middle  
District of Tennessee, in Nashville, do hereby  
certify:

That I transcribed from **electronic  
recording** the proceedings held via video conference on  
January 22, 2021, in the matter of UNITED STATES OF  
AMERICA v. ERIC MUNCHEL, Case No. 3:21-mj-2668;

that said proceedings in connection with the  
hearing were reduced to typewritten form by me; and  
that the foregoing transcript is a true and accurate  
transcript of said proceedings.

This is the 27th day of January, 2021.

s/ Roxann Harkins\_\_\_\_\_  
ROXANN HARKINS, RPR, CRR  
Official Court Reporter