

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

UNITED STATES OF AMERICA,

v.

ETHAN NORDEAN, et al.,

Defendants.

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Case No. 1:21-cr-175

Judge Timothy J. Kelly

**DEFENDANT NORDEAN’S SUR-REPLY IN RESPONSE TO THE GOVERNMENT’S
MOTION TO REVOKE RELEASE ORDER**

Defendant Ethan Nordean, through his counsel, files this brief sur-reply in response to legal arguments raised for the first time in the government’s reply in support of its third motion to detain Nordean pretrial. ECF No. 45.

A. Pretrial detention is barred unless the government establishes a felony offense listed in 18 U.S.C. § 3142(f)

Section 3142(f) sets out a list of five categories of offenses that may justify a pretrial detention hearing. 18 U.S.C. § 3142(f)(1). All are felony offenses. *Id.* And not all felony offenses appear there: most of the federal criminal code is not included. Separately, § 3142(f) provides that a pretrial detention hearing may also be held in a case that involves “(A) a serious risk that such person will flee; or (B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.” 18 U.S.C. § 3142(f)(2). “Absent one of these circumstances [in § 3142(f)], detention is not an option.” *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999). *See also United States v. Salerno*, 481 U.S. 739, 747 (1987) (Congress limited pretrial detention

of presumptively innocent persons to defendants charged with crimes that are “the most serious” compared to other federal offenses).

The government’s third detention motion rests almost exclusively on Telegram messages—from individuals other than Nordean—that it says constitute a conspiracy. Gov’t Reply, pp. 2-6. However, the government does not argue that its conspiracy charge, or the two criminal objects of the alleged conspiracy—obstruction of an official proceeding, 18 U.S.C. § 1512(c)(2), and interference with law enforcement during a civil disorder, 18 U.S.C. § 231(a)(3)—constitute detainable offenses listed in § 3142(f)(1). Instead, the government’s exclusive basis for detention under § 3142(f) is the superseding indictment’s charge that Nordean and others destroyed federal property, an offense under 18 U.S.C. § 1361, which the government asserts is a detainable “crime of violence” under § 3142(f)(1)(A). ECF No. 30, p. 3.

In his opposition to the government’s third detention motion, Nordean showed that the superseding indictment does not allege a single instance of the destruction of federal property on the part of Nordean. Instead, it alleges that Nordean and Defendant Biggs “shook a barricade” and that they and “others in the crowd were able to knock it down.” First Superseding Indictment, ¶ 58. An offense under § 1361 constitutes a felony, punishable by up to 10 years in prison, only if the “damage to such property exceeds the sum of \$1,000 . . .” 18 U.S.C. § 1361. The superseding indictment does not allege \$1,000 in damage from Nordean’s alleged barricade shaking. First Superseding Indictment, ¶ 58. The government has not proffered such evidence. Section 3142(f) provides that the Court may detain a person pretrial, “in a case that involves— (A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed.” 18 U.S.C. § 3142(f)(1)(A). Nordean showed that because the government has failed to allege

property destruction, much less damage exceeding \$1,000, attributable to him, there is no basis for Bail Reform Act detention in this case—even before one reaches the question of conditions of release, for which the government similarly articulates no cognizable legal argument. ECF No. 32, pp. 12-13, 21.

The government’s reply fails to dispute the \$1,000 point. ECF No. 45.¹ The argument is therefore forfeited. *Alvarez v. Lynch*, 828 F.3d 288, 295 (4th Cir. 2016) (party’s failure to respond to a conspicuous, nonfrivolous argument in opponent’s brief ordinarily constitutes an argument forfeiture). However, the government inserts a new legal argument into its reply: that the Court may simply detain Nordean under the “dangerousness” standard of 18 U.S.C. § 3142(g)(4), without regard to whether § 3142(f) is satisfied. Gov’t Reply, pp. 9-11 (“The Court Is Not Limited to Consideration of Destruction of Federal Property When Evaluating The Bail Reform Act Factors”).

The government writes, “Section 3142(g)’s language articulates no link between the rationale for a detention hearing under either §§ 3142(e) or 3142(f) and the factors a court considers under § 3142(g).” Gov’t Reply, p. 10. That misses the point. As the D.C. Circuit held in *Singleton*, “[a]bsent one of th[e] [§ 3142(f) factors], *detention is not an option*.” 182 F.3d at 9 (emphasis added).²

¹ The same pleading and proof failure concerning over \$1,000 in damage defeats the government’s contention that a rebuttable presumption of detention exists under 18 U.S.C. § 3142(e), which also requires “an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, *for which a maximum term of imprisonment of 10 year or more is prescribed*.” 18 U.S.C. § 3142(e)(3)(C) (emphasis added).

² The cases cited by the government stand for the distinct point that *if* the government has satisfied § 3142(f)(1) or (f)(2), then the Court’s consideration of release factors under § 3142(g) need not directly correspond to the distinct detention predicates under (f)(1) (list of serious felony offenses) or (f)(2) (risk of flight or obstruction). Gov’t Reply, p. 10 (citing cases). Even here, however, the government does not cite any precedent in support of its point from this

Detention is appropriate under 3142(f)(1), “in a case that involves—

- (A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
- (B) an offense for which the maximum sentence is life imprisonment or death;
- (C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;
- (D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or
- (E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code . . .

18 U.S.C. § 3142(f)(1).

The Court will notice that all of the offenses listed in § 3142(f)(1) are felony offenses. That is in keeping with the Supreme Court’s holding in *Salerno* that Congress intended that the Bail Reform Act limit detention of presumptively innocent persons to “the most serious” of federal offenses. 481 U.S. at 747. The Court will also notice that conspiracy, 18 U.S.C. § 371; obstruction of official proceedings, 18 U.S.C. § 1512(c)(2)³; and interference with law enforcement during a civil disorder, 18 U.S.C. § 231(a)(3), do not satisfy § 3142(f)(1).

Circuit. Although the government cites *Singleton*, the D.C. Circuit in that case explicitly held, “The § 3142(g) factors are not at issue in this appeal.” 182 F.3d at 10.

³ Nordean conspicuously argued in opposition that the superseding indictment does not plead an offense under § 1512(c)(2). ECF No. 32, pp. 17-18. The government did not contest the point in reply. ECF No. 45. Accordingly, the argument is forfeited. *Alvarez*, 828 F.3d at 295.

Similarly, because the offenses listed in that subsection are felonies, if depredation of federal property, 18 U.S.C. § 1361, is to satisfy § 3142(f)(1) it must be an offense “for which a maximum term of imprisonment of 10 years or more is prescribed.” § 3142(f)(1)(A). *See, e.g., United States v. Chavez-Rivas*, 536 F. Supp. 2d 962, 965-66 (E.D. Wisc. 2008) (§ 3142(f)(1)(A) satisfied where “crime of violence” offense carries “maximum term of imprisonment of 10 years or more”); *United States v. Hefner*, 2019 U.S. Dist. LEXIS 23432, *6 (E.D. Tenn. Feb. 13, 2019) (same).

The superseding indictment does not plead a felony offense under § 1361 because it does not identify destruction of federal property exceeding \$1,000. Nor has the government proffered such evidence, even though in other Capitol intrusion cases, the government’s indictments plainly plead that fact, and adduce evidence to support it, where it exists. *See, e.g., United States v. Mostofsky*, 21-cr-138, ECF No. 5 (D.D.C. 2021) (Capitol defendant charged with theft of property exceeding \$1,000 in value, pleading exact alleged value of property, supported by quote from federal contractor (obtained the day before defendant’s arrest)). So, the government’s new argument that the Court may detain Nordean under Section 3142(g) alone is wrong.

B. The superseding indictment does not allege Nordean’s *Pinkerton* vicarious liability for a non-defendant’s § 1361 offense

Indirectly acknowledging its § 1361 failure, the government newly argues that it has still satisfied § 3142(f)(1)(A) because a non-defendant to this case, Dominic Pezzola, smashed a window of Congress on January 6 and that individual is alleged to be a member of the Proud Boys, like Nordean. Gov’t Reply, pp. 6-7. This bootstrapping fails for several reasons.

First, vicarious liability under the *Pinkerton* standard attaches to a defendant from his *co-conspirators*’ crimes. And it is black letter law that it is “essential to determine what kind of agreement or understanding existed *as to each defendant*.” *United States v. Tabron*, 437 F.3d 63,

66 (D.C. Cir. 2006) (emphasis added) (citing *United States v. Borelli*, 336 F.2d 376, 385 (2d Cir. 1964) (Friendly, J.)). Here, the superseding indictment does not allege that Pezzola was a party to the conspiracy alleged in this case. It simply contends he was a member of the Proud Boys and that he smashed a window. First Superseding Indictment, ¶ 62. The government does not allege a conspiracy to commit a specific federal offense between individuals simply by contending they are members of the same political or fraternal organization. The perverse implications of such a theory of criminal liability need no elaboration. *See, e.g., Yates v. United States*, 354 U.S. 298, 324-25 (1957) (abstract principles of political organization to which defendant belonged do not knit together Smith Act conspiracy to overthrow the government).

Second, the government premises its argument on the assumption that Pezzola *is* a Proud Boys member. But it offers no evidence in support of that contention and it is factually disputed. Gov't Reply, pp. 6-7; First Superseding Indictment, ¶ 62.

Third, even if the government had properly alleged Nordean's *Pinkerton* vicarious liability for non-defendant Pezzola's actions, it still has not alleged or proffered over \$1,000 in property destruction from Pezzola's crime. Gov't Reply, pp. 6-7; First Superseding Indictment, ¶ 62.

Fourth, the government separately contends that it satisfies § 3142(f)(1)(A) because it alleges that Nordean aided and abetted Pezzola's window-smashing. Gov't Reply, p. 7. Here, the government is repeating the exact same argument it presented to the Chief Judge in its second attempt to detain Nordean pretrial. In response, the Chief Judge found:

There is no allegation that [Nordean] caused injury to any person or that he even personally caused damage to any particular property. . . . He was a leader of a march down to the Capitol. Once they got there it's not clear what leadership role [Nordean] took at all to the people inside the Capitol or – **even the evidence about [Nordean] directing people to break windows to get into the Capitol is weak, to say the least.** . . .

[T]he weight of the evidence against [Nordean] for aiding and abetting the injury and depredation of Government property, under 18 U.S.C. section 1361, in an amount exceeding \$1,000 when he personally didn't do anything – and **there is no evidence of *specific directions* by [Nordean] to tell his fellow Proud Boys [to] carve some vulgar thing on a door or to – any other specific information about him giving those kinds of *precise orders*** is not as strong and overwhelming to say that the weight of the evidence favors pretrial detention . . .

3/3/21 Hr'g Trans., pp. 79-80 (emboldening and italics added).

The Chief Judge's finding, which is the law of the case, was consistent with the Supreme Court's last word on abetting and abetting liability. *Rosemond v. United States*, 572 U.S. 65, 76 (2014) (“[A] person aids and abets a crime when (in addition to taking the requisite act) he intends to facilitate *that* offense's commission . . . An intent to advance some different or lesser offense is not, or at least not usually, sufficient. Instead, the intent must go to *the specific and entire crime charged.*”) (emphasis added).

C. The government does not satisfy the *Munchel* dangerousness standard by saying that Nordean “remains committed to his [political] cause”

As the Court knows, the D.C. Circuit recently reversed a district court's decision to detain pretrial the “zip-tie Capitol defendant.” *United States v. Munchel*, 2021 U.S. App. LEXIS 8810 (D.C. Cir. Mar. 26, 2021). The court of appeals stressed that, assuming the government has already satisfied § 3142(f), it also “must prove by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community,” under the § 3142(g) factors. *Id.*, *13 (internal quotation marks omitted).

Munchel was seen carrying zip-ties and a taser in the Capitol Building. *Id.*, *2. Walking into the seat of Congress, he announced, “we're not playing fucking nice no god damn more” and that he was “fucking ready to fuck shit up.” *Id.*, *4. The district court had based its dangerousness determination under § 3142(g)(4) on the finding that “Munchel's alleged conduct indicates that he is willing to use force to promote his political ends.” *Id.*, *22. The court of

appeals found this finding “clearly erroneous” because, among other things, the record was absent “evidence that either Munchel or [the co-defendant] committed any violence on January 6[;] [t]hat Munchel or [the co-defendant] assaulted [a person] on January 6 . . . If, in light of the lack of evidence that Munchel or [the co-defendant] committed violence on January 6, the District Court finds that they do not in fact pose a threat of committing violence in the future, the District Court should consider this finding in making its dangerousness determination.” *Id.*, *22.

Judge Katsas, in partial dissent, would have “reverse[d] outright,” not “remanded for a do-over.” *Id.*, *26. Specifically, the Judge addressed the exact argument the government makes for Nordean’s pretrial detention: that “rhetorical bravado . . . invoking the American Revolution” and “would-be martyr[dom]” somehow satisfy the dangerousness standard of § 3142(g). *Id.*, *32. Judge Katsas found this argument misplaced for two reasons: “During the chaos of the Capitol riot, Munchel and [the co-defendant] had ample opportunity to fight, yet neither of them did. Munchel lawfully possessed several firearms in his home, but he took none to the Capitol.” *Id.*, *33-34. Second, the government’s contention that Munchel had a desire to “stop or delay the peaceful transfer of power” is not an “identified and articulable threat to any individual or the community” because:

[T]he transition has come and gone, and that threat has long passed. In the district court, the government warned of an upcoming protest scheduled for March 4. But that protest never materialized, and the government produced no evidence that Munchel . . . had been involved in its planning before [his] arrest.

Id., *34.

In reply, the government falls short of proffering clear and convincing evidence of dangerousness—even on a par with that in *Munchel*. Unlike Munchel, Nordean did not carry zip-ties or tasers in the Capitol. He did not have any weapon at all, though, as in *Munchel*, he could have brought one. He did not commit any violence. The government’s argument is simply

that Nordean is “committed to his cause,” was a leader of a political group, claimed to “represent the spirit of 1776,” and that cherry-picked messages from random members of a 60-person Telegram chat thread unknown to Nordean made reference to the videogame “Minecraft” which the government claims, without evidence, is an esoteric allusion to crimes generally. Gov’t Reply, pp 7-8. But, as Judge Katsas concluded, “the transition has come and gone, and that threat has long passed” and “rhetorical bravado” about patriotism is not sufficient. *Munchel*, 2021 U.S. App. LEXIS 8810, *34.

A recent detention decision in another Capitol case underscores *Munchel*. The government sought pretrial detention of a Capitol defendant who made the following inflammatory public remarks, before and after January 6:

- “The only good Democrat is a dead Democrat”;
- “You want to say that was a mob? You want to say that was violence? No sir. No Ma’am. No, we could have a 2nd Amendment rally on those same steps that we had that rally yesterday. You know, and if we do, then it’s gonna be a sad day, because there’s gonna be blood runnin’ out of that building. But at the end of the day, you mark my word, we will plant our flag on the desk of Nancy Pelosi and Chuck Schumer and Donald J. Trump if it boils down to it”;
- Explaining his plans for President Biden’s inauguration, the defendant said: “I am going to leave either tonight or tomorrow. I’ve got a .357 Henry Big Boy rifle . . . that I got in the trunk of my car, and I’ve got a .357 single action revolver . . . that I will have underneath the front seat on my right side. And I will embrace my Second Amendment, I will keep my right to bear arms, my vehicle is an extension of my home in regard to the constitutional law, and I have a right to have those firearms in my car.”

United States v. Couy Griffin, 21-cr-92 (D.D.C. 2021).

Plainly, these are statements potentially indicative of dangerousness far beyond anything the government has proffered with respect to Nordean. Yet the Chief Judge rejected the government’s detention argument. The Chief Judge found that “the defendant’s statements are highly inflammatory, deeply disconcerting . . .—particularly . . . suggesting that the blood of

elected officials will be spilled because he is unhappy with the outcome of a presidential election, and also that he would subsequently return to Washington, D.C., with firearms. . .” 2/5/21 Hr’g Trans., pp. 41-42, Exh. 2. Nevertheless, the Court determined that these comments had been selectively presented by the government and that the defendant’s law-abiding history and behavior outweighed them. *Id.* The Court was right. Griffin has complied with his standard conditions of release flawlessly for months.

So has Nordean, as his Probation Officer reports. The government’s inability to articulate how Nordean poses a threat to the community when he has successfully complied for over a month with home confinement with GPS location monitoring and is not permitted to leave the Western District of Washington, does not come close to “clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.” *Munchel*, 2021 U.S. App. LEXIS 8810, *13.

Dated: April 5, 2021

Respectfully submitted.
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Certificate of Service

I hereby certify that on the 5th day of April, 2021, I filed the foregoing brief with the Clerk of Court using the CM/ECF system and the Case Administrator Brittany Bryant, which will send a notification of such filing (NEF) to the following CM/ECF user(s):

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And I hereby certify that I have mailed the document by United States mail, first class postage prepaid, to the following non-CM/ECF participant(s), addressed as follows: [none].

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,	)	Criminal Action
	)	No. MJ 21-92
vs.	)	
	)	
COUY GRIFFIN,	)	February 5, 2021
	)	3:31 p.m.
Defendant.	)	Washington, D.C.
	)	

* * * * *

**TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JUDGE BERYL A. HOWELL,
UNITED STATES DISTRICT COURT CHIEF JUDGE**

(Counsel and defendant appearing via videoteleconference)

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(Appearing telephonically)

Court Reporter: Elizabeth SaintLoth, RPR, FCRR
Official Court Reporter

Proceedings reported by machine shorthand, transcript
produced by computer-aided transcription.

P R O C E E D I N G S

THE DEPUTY: Matter before the Court, Magistrate
Case No. 21-92, United States of America versus Couy
Griffin.

Your Honor, for the record, the pretrial agent,
Ms. Christine Schuck, is participating via telephone.

THE COURT: Thank you.

THE DEPUTY: Counsel, please state your names for
the record, starting with the Government.

MS. IYENGAR: Yes, Your Honor.

Good afternoon. Janani Iyengar for the
United States.

THE COURT: Good afternoon.

For the defendant.

MR. D. SMITH: Good afternoon, Your Honor.
David Smith and Nicholas Smith for the defendant,
Mr. Griffin.

THE COURT: All right.

Mr. Griffin, do you have any difficulty hearing
what's going on?

THE DEFENDANT: No, ma'am. I can hear you fine.

THE COURT: All right. And do you agree to
participate in this teleconference via video teleconference
after consultation with your counsel rather than being
physically present in the courtroom?

1 You have to speak, Mr. Griffin.

2 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

3 THE COURT: All right. So we're here on the
4 defendant's motion to revoke the pretrial detention order
5 that was entered by the magistrate judge.

6 Let me just begin by stating the documents that I
7 have reviewed in connection with this motion. I have
8 reviewed the Government's oppos -- certainly the motion
9 itself, docketed at ECF 9; the Government's opposition
10 memorandum, and the defendant's reply.

11 I have reviewed the entire record in the case,
12 including the complaint; the magistrate judge's detention
13 order; the transcript of the detention hearing; and order.
14 And I have also reviewed the original motion filed by the
15 Government in support of its oral motion for pretrial
16 detention, and the defendant's opposition to that motion.

17 I do appreciate that it is -- the defendant's
18 motion is the one that's pending in front of me right now,
19 and usually we start with the moving party. But given the
20 fact that it is the Government's burden to show the need for
21 pretrial detention, I am going to begin with my questions to
22 the Government.

23 So I will hear first from the Government, if there
24 is anything that you would like to highlight. As I said, I
25 have already reviewed the papers in connection with the

1 case; but if there is something that you'd like to highlight
2 for me, please feel free to go ahead.

3 MS. IYENGAR: Yes, Your Honor.

4 I think the, sort of, core of the Government's
5 position is just as Magistrate Judge Faruqui said in his
6 decision; that one of the issues that the Court has to look
7 at when determining if a defendant is going to abide by
8 conditions that the Court sets for him if he is released is,
9 you know, his willingness to trust in this process and to
10 trust in the Government and the Court, and the legitimacy of
11 the Government and the Court.

12 Mr. Griffin has made multiple statements that are
13 outlined in the papers that the Government submitted to the
14 Court illustrating that he does not trust in the legitimacy
15 of the Government. And not only does he not trust in the
16 legitimacy of the Government, he has advocated a violent
17 overthrow of the Government on multiple occasions.

18 And so I think -- you know, the findings that
19 Magistrate Judge Faruqui made were based on issues that the
20 Court had, for the right to examine when determining if
21 Mr. Griffin would abide by what the Court says and,
22 therefore, I don't think that there is any reason to disturb
23 the ruling that he made.

24 THE COURT: So let me just say at the outset,
25 Mr. Griffin is charged only with a misdemeanor case. So he

1 is not charged with some of the more serious conspiracy or
2 felony charges that I have seen brought against people
3 involved or charged due to the events arising on
4 January 6th.

5 So isn't it fairly unusual in a misdemeanor case
6 of any type to have pretrial detention?

7 MS. IYENGAR: Yes. And I think if this was -- as
8 I am sure the Court is aware, the Government has not asked
9 for detention in the majority of the misdemeanor offenses
10 arising out of the incident at the Capitol Building.

11 The reason that Mr. Griffin's case, I think, is
12 set apart is not just because of the statements that he made
13 regarding, you know, there being blood running out of the
14 Capitol Building and holding a second rally at the Capitol;
15 but also the fact that he stated, you know, at this county
16 council meeting that he was going to return to the District
17 for inauguration and that he was going to bring firearms
18 with him when he returned to the District, and that he then
19 actually acted on that. These were not just empty
20 statements that he was making.

21 When he was arrested on January 17th, he was
22 arrested in very close proximity to the Capitol Building,
23 and that was just three days before Inauguration Day --

24 THE COURT: But at the time he did not have any
25 firearms; is that correct?

1 MS. IYENGAR: He did not have any firearms in his
2 possession at that time. What he told FBI agents was that
3 he had brought firearms with him on the trip and had left
4 them at a friend's home along the way --

5 THE COURT: And has the FBI conducted any search
6 either of his home or any other location associated with
7 Mr. Griffin where they have recovered the firearms?

8 MS. IYENGAR: No. They have not conducted a
9 search that has recovered any firearms, no.

10 THE COURT: All right. And so -- I want to be
11 clear about the basis for the Government's seeking pretrial
12 detention here because, certainly, none of the factors set
13 out in 18 U.S.C. Section 3142(f)(1) apply; I think everybody
14 would agree with that.

15 So you are really just seeking detention based on
16 the factors in (f)(2), which is that the defendant presents
17 a serious risk of flight or is otherwise threatening to --
18 poses a serious risk of obstructing justice.

19 So it would -- if I'm understanding the
20 Government's position correctly, you think that Mr. Griffin
21 presents a serious risk of flight because of his statements
22 which the Government's interpreting as basically being
23 anarchist, not believing in the Government at all; do I have
24 that pretty much right?

25 MS. IYENGAR: Yes. That's pretty much correct,

1 yes.

2 THE COURT: All right. So is the Government -- I
3 mean, the Government has, in some of its papers, not just
4 referred to (f) (2) (A), serious risk of flight, but also
5 (f) (2) (B), which is a serious risk of obstructing justice by
6 threatening, injuring, or attempting to threaten or injure a
7 juror or a witness. Are you really not relying on (f) (2) (B)
8 but only on (f) (2) (A), the serious risk of flight?

9 MS. IYENGAR: Yes. At this point I think we're
10 relying primarily on (f) (2) (A).

11 THE COURT: Well, "primarily," or altogether?
12 Because I haven't seen anything in here about -- what has he
13 done to obstruct justice that you are relying on (f) (2) (B)?

14 MS. IYENGAR: Yes. I think we are relying solely
15 on (f) (2) (A), Your Honor.

16 THE COURT: Okay. I wanted to isolate what we're
17 talking about here, and it's not (f) (2) (B), the obstruction
18 of justice; just the serious risk of flight.

19 MS. IYENGAR: That is correct.

20 THE COURT: And one of the things that -- you
21 know, I appreciate the concern about the defendant's
22 comments about carrying a gun, I guess a rifle and various
23 other things -- guns, types of guns, to the inauguration --
24 very provocative -- very provocative statements; and in the
25 wake of the January 6th assault on the Capitol, clearly,

1 deeply disturbing to the citizens of the District of
2 Columbia, as well as everybody who works on Capitol Hill not
3 wanting to have another traumatic event as the one on
4 January 6th was.

5 But other than that statement, I take it -- given
6 the fact that no guns have been recovered from the
7 defendant, that not only did he not have a gun or weapon of
8 any kind, even a stun gun, a stun stick -- any kind of
9 weapon on him on January 6th, he didn't on the date of his
10 arrest either, just short of the inauguration; is that
11 correct?

12 MS. IYENGAR: Yes. That's correct.

13 THE COURT: And there is also no allegation or
14 suspicion -- although I presume your investigation is
15 continuing. But, right now, no proffer from the Government
16 that he damaged any federal property, that he injured or
17 risked injuring another person because of his conduct on
18 January 6th, and certainly didn't have a weapon to do so on
19 January 6th; is that right?

20 MS. IYENGAR: Yes. That's correct.

21 THE COURT: And it's also the Government's proffer
22 that, when he was actually approached and interviewed by the
23 FBI on January 11th, he appeared to be cooperative; is that
24 correct?

25 Am I putting a word in the Government's mouth? Or

1 is that a generally -- is that a general description of how
2 he was when he talked to the FBI?

3 MS. IYENGAR: Yes. I think that's a fair
4 description of how he was.

5 THE COURT: And he even told the FBI then about
6 his plan to return to D.C. to protest again at the
7 inauguration when he was interviewed by the FBI, which --

8 MS. IYENGAR: Yes.

9 THE COURT: -- which was very helpful to the FBI
10 because that's where he was arrested, right, when he came up
11 here?

12 MS. IYENGAR: That's correct.

13 THE COURT: Saving the Government and taxpayers
14 the cost of transporting him up here. But he gave that
15 information to the FBI.

16 MS. IYENGAR: Yes. That's correct.

17 THE COURT: And, in any way, has the defendant
18 engaged in any conduct that the Government's been aware of
19 about trying to evade law enforcement or being evasive in
20 his answers to law enforcement, having a safe house to go to
21 to hide his whereabouts from law enforcement? Has he done
22 any of that?

23 MS. IYENGAR: No, Your Honor.

24 THE COURT: Has he engaged in any effort to cover
25 his tracks, like avoiding using his credit card, avoiding

1 using his cell phone, in an effort to frustrate law
2 enforcement from tracking him down which would be very
3 indicative of a risk of flight? But has he engaged in any
4 of that conduct?

5 MS. IYENGAR: No, Your Honor. He has not engaged
6 in any of that conduct.

7 THE COURT: All right. And I think the Government
8 doesn't dispute that he does have strong ties to New Mexico;
9 is that right?

10 MS. IYENGAR: Yes.

11 THE COURT: I mean, because the Government does
12 mention that he lived in France for a while, but doesn't
13 give me dates of when he lived in France. So I am just
14 trying to pin down the Government's position here.

15 MS. IYENGAR: Yes, Your Honor.

16 Our understanding, anyway, is that he does have
17 strong ties to New Mexico; he is an elected official there.

18 THE COURT: But despite his -- and he is an
19 elected official? I have heard he has a position as
20 commissioner, something like that --

21 MS. IYENGAR: Yes.

22 THE COURT: But is that an elected position?

23 MS. IYENGAR: I believe it is an elected position,
24 yes.

25 THE COURT: All right. Is it a paid elected

1 position?

2 I will just note, for the record, that Mr. Griffin
3 is shaking his head up and down to say yes, it is. But if
4 the Government doesn't have any information about that, I
5 will ask his counsel later.

6 Does the Government have information about that?

7 MS. IYENGAR: No. We don't have any information
8 about that.

9 THE COURT: Okay. But given his ties to the New
10 Mexico community, it's, nonetheless, the Government's
11 position that there are no conditions or combination of
12 conditions that could assure or mitigate any risk of flight
13 he might present?

14 MS. IYENGAR: Well, I think, you know -- I don't
15 think it's so much that there is no condition or combination
16 of conditions; it's that the rhetoric that he has engaged in
17 just leads us to believe that he just will not abide by any
18 conditions that the Court sets.

19 THE COURT: Okay. And, I mean, I have looked at
20 all of his comments. I mean, he clearly views fellow
21 Americans who live here, who have grown up here and work
22 here, who vote here, who -- just because they may not share
23 his political views as some kind of "other," but I haven't
24 seen anything that actually talks about the federal
25 judiciary or judges, have you -- or lawful court orders, or

1 anything like that.

2 Am I missing anything on that?

3 MS. IYENGAR: No. I haven't seen anything with
4 respect to the judiciary. I think all of his comments have
5 been that the President is not legitimately elected, and
6 things of that nature.

7 THE COURT: So it's been focused more on
8 high-level executive branch officials?

9 MS. IYENGAR: Yes.

10 THE COURT: That's been my sense. But, of course,
11 I haven't lived with this case like the Government has and
12 looked at all of the evidence the way the Government has;
13 but that's been my sense.

14 MS. IYENGAR: Yes, Your Honor. It's been mostly,
15 I think, executive branch, and some members of Congress as
16 well.

17 THE COURT: Right. All right. He did make
18 comments about planting a flag on the Speaker of the House's
19 desk and minority or majority leader's desk.

20 Okay. But, so to be clear, the Government is also
21 not arguing that there is clear and convincing evidence that
22 this defendant presents a danger to the safety of other
23 persons or the community; is that right? You are not
24 arguing that?

25 MS. IYENGAR: No. Well, I think we are arguing it

1 to the extent that he has made the comments that he has made
2 that, you know, I think, sort of, are comments of a
3 threatening nature.

4 THE COURT: But there are some statutes that you
5 can charge people for making threats; but he is not charged
6 with any of those, right?

7 MS. IYENGAR: Yes, Your Honor.

8 And I don't think -- we did have a discussion
9 about this. At this point I don't think that the statements
10 he made are threats under the statute. But I think, you
11 know, they still are clearly statements that are of a
12 threatening nature; and I think the Court can still consider
13 them for that purpose --

14 THE COURT: Of course. And I will get to that.

15 But I do think it's an important distinction that
16 troubling statements, obnoxious statements, repugnant
17 statements of a deeply disturbing nature -- even if all of
18 those adjectives applied to Mr. Griffin's statements, it
19 would not amount to sufficiently disturbing statements or
20 threats to even constitute criminal conduct under
21 potentially available federal law; is that right?

22 MS. IYENGAR: Yes. That's our position at this
23 point, yes.

24 THE COURT: All right. Well, I mean -- when I
25 looked at the magistrate judge's order, he does not appear

1 to base his detention order regarding anything having to do
2 with dangerousness to the community because he said at the
3 hearing: Although normally we look at dangerousness to the
4 community, here that's not something we're considering
5 because of the charges that have been brought.

6 His detention order is also quiet, as far as I
7 could read it, on danger, but rests on the defendant being a
8 serious risk of flight, such that no combination of
9 conditions can reasonably assure his appearance at a future
10 proceeding.

11 So I just wanted to make sure I understood the
12 role that dangerousness was playing in the Government's
13 position here. And it's not -- the only dangerousness here
14 is posed by the troubling nature of some of Mr. Griffin's
15 comments publicly; is that right?

16 MS. IYENGAR: Yes, Your Honor. That's correct.

17 THE COURT: Okay. So now -- one of the arguments
18 that the defense makes is that, you know, the charge under
19 18 U.S.C. 1752(a)(1) with which Mr. Griffin is charged, you
20 know, does require more than simply having -- simply
21 presenting proof of the fact that Mr. Griffin jumped over
22 some fences or barriers, you know, to get onto the Capitol
23 grounds and, you know, that can be troubling in itself. But
24 that fact alone doesn't constitute a crime under Section
25 1752(a)(1); and, instead, the Government has to prove, in

1 addition to breaching barriers of a restricted space, the
2 Government also has to prove that the defendant knowingly
3 entered this restricted building without lawful authority
4 knowing that in 1752(c)(1)(B) -- that the restricted space
5 was for the President or other person protected by the
6 Secret Service, is or will be temporarily visiting or, in
7 (C), the grounds were so restricted in conjunction with an
8 event designated as a special event of national
9 significance.

10 So is the Government relying on both (B) -- you
11 know, both of those provisions, (c)(1)(B) and (c)(1)(C)?

12 MS. IYENGAR: Yes. We are relying on both, I
13 guess, (B) and (C).

14 With respect to the first provision, the evidence
15 that we have is that Mr. Griffin attended the rally that
16 President Trump had held prior to when the Capitol riot took
17 place, and all the news reports have shown there was a
18 significant discussion at that rally that Vice President
19 Pence would be present at the U.S. Capitol on the stage
20 overseeing the Electoral College certification.

21 And I think, with respect to the second provision,
22 the whole purpose of people being at the Capitol that day
23 was because there was this Electoral College certification
24 going on; and I think, arguably, that is an event of
25 national significance per the statute. And so I think those

1 two, taken in combination, we can make out a charge based on
2 that.

3 THE COURT: Well, I haven't -- in all of the
4 public statements Mr. Griffin has made, I haven't seen
5 him -- and he certainly publicly announced that he was there
6 on January 6th. He is fairly proud of the fact that he
7 marched on the Capitol. Now, that, many people would view
8 as a very unpatriotic thing to do -- to stop a
9 constitutionally mandated process -- but he is very proud of
10 that.

11 But in the comments that I have seen in the record
12 so far, I haven't seen him also proudly talk about how he
13 was at this rally with the President. Is that part of the
14 Government's proffer, that he was at the rally with the
15 President and therefore knew that Vice President Pence was
16 in the Capitol?

17 MS. IYENGAR: Yes, Your Honor.

18 The evidence that we have is that Mr. Griffin had
19 attended the rally prior to when the riot at the Capitol
20 took place. And President Trump made statements
21 regarding --

22 THE COURT: I have seen those statements, right.

23 MS. IYENGAR: -- his being at the Capitol.

24 THE COURT: Okay. So one of the points that the
25 defendant makes is he intends to exercise his right to a

1 jury trial and that, you know, due to the pandemic -- as
2 everybody -- all the prosecutors in town know, all of the
3 trials have been delayed.

4 You know, the defense papers make the point that
5 he may not be able to have a trial within a year of his
6 arrest, which means he would be sitting in pretrial
7 detention longer than the maximum period of time he could be
8 sentenced under this misdemeanor charge.

9 Does the Government countenance the possibility of
10 subjecting the defendant to pretrial detention longer than
11 the full period of the maximum term of imprisonment that he
12 could be subjected to were he convicted?

13 MS. IYENGAR: Well, obviously, that's a situation
14 that we would like to avoid. I understand that the
15 scheduling situation with COVID is sort of fluid at this
16 point --

17 THE COURT: Well, it's not really fluid, I would
18 say.

19 I mean, I -- as the Chief Judge, I have issued a
20 standing order; we are not having trials before March 15th.
21 And given the situation, I think that March 15th date might
22 be postponed longer, depending on the vaccination rate, the
23 variant rate, the positivity rate, the number of people who
24 agree to wear their masks -- and Mr. Griffin, I understand,
25 has trouble with wearing masks; but that is -- those are all

1 factors that will go into it.

2 I mean, I guess you can say it's -- you know, it
3 might be a form of rough justice for people who don't want
4 to wear masks contributing to the spread of the virus
5 sitting in jail on pretrial detention. But, on the other
6 hand, shouldn't the Court be concerned about the fairness of
7 that kind of result?

8 MS. IYENGAR: Well, Your Honor, I mean -- like I
9 said before, we -- one of the reasons we have not been
10 asking for detention in most of these misdemeanor cases is
11 partially for that reason. We are not trying --

12 THE COURT: Exactly.

13 MS. IYENGAR: -- to increase the prison
14 population -- increase the jail population over misdemeanor
15 offenses.

16 But because this is, I think, a separate type of
17 case from, sort of, the run-of-the-mill misdemeanors we have
18 seen arising from the Capitol riot, that's the reason that
19 we're asking for the hold here.

20 I certainly understand the Court's concern
21 100 percent; we are not trying to expose anybody to COVID --

22 THE COURT: Well, you can get exposed to COVID
23 within the jail or outside the jail.

24 MS. IYENGAR: Yes.

25 THE COURT: I mean, it's not a matter of exposure

1 to COVID that I am concerned about.

2 I am concerned about somebody in pretrial
3 detention for longer than the maximum term of imprisonment
4 if convicted; that's the point I am trying to make, and
5 that's part of the reason that the prosecutors --
6 particularly given the backlog and the delay in having
7 trials due to health and safety concerns -- have not asked
8 for pretrial detention in misdemeanor cases.

9 And, you know, I also look at this case and I see
10 that this is not one of the individuals who banged down
11 doors, sprayed with pepper spray or bear spray law
12 enforcement officials, injured law enforcement officials,
13 poked out the eyes of police in the building.

14 He was with all of those people; I guess he really
15 likes those people; he marched with those people. He was
16 cheering them on with a bullhorn, but he wasn't actually one
17 of the people who did the banging on the doors, the poking
18 out of eyes of police officers, the spraying -- pepper
19 spraying of officers. He wasn't one of the people who
20 entered the building, which is part of the reason he's
21 charged with a misdemeanor.

22 So I have been a little puzzled about the request
23 for detention, pretrial detention in this case and -- while
24 understanding the troubling nature of the comments this
25 defendant made.

1 Is there anything else you want to add?

2 MS. IYENGAR: No, Your Honor.

3 There is nothing else from the Government.

4 THE COURT: All right. Let's turn to Mr. Smith.

5 Am I going to be speaking to -- which Smith?

6 MR. N. SMITH: Nicholas.

7 THE COURT: Nicholas.

8 Okay. Mr. Nicholas Smith, how are you today?

9 MR. N. SMITH: I am well. Thank you, Your Honor.

10 THE COURT: All right.

11 So the complaint in the case includes several --
12 maybe more than that -- screenshots of a person who appears
13 to be the defendant at the January 6th assault on the
14 Capitol; and he appears to be standing on the top of the
15 west steps of the Capitol.

16 Is there any dispute that it's the defendant in
17 those screenshots?

18 MR. N. SMITH: No, Your Honor.

19 THE COURT: All right. And did he also attend
20 that rally by President Trump where the President did talk
21 about Vice President Pence?

22 MR. N. SMITH: Your Honor, I think it was -- Your
23 Honor was right to point out that this is alleged in the
24 case, that he attended the rally, where he participated; if
25 he did attend the rally, what he heard, who he was with --

1 that's not in the charge, in the instrument. I haven't seen
2 it in the discovery that's also been produced and, because
3 of that absence, it hasn't even come up as a subject in the
4 detention hearing so far --

5 THE COURT: Okay. I appreciate that. I am not
6 going to put you on the spot. Although, I might. I am not
7 sure. But I appreciate your response.

8 Okay. So, I mean, I would say that given the
9 defendant's apparent appreciation, for want of a better
10 word, of President Trump, it would surprise me if he came
11 all the way to D.C. on January 6th and decided to skip a
12 rally that the President -- that the President was speaking
13 at just for people like him, like Mr. Griffin, who have
14 bought -- hook, line, and sinker -- the story that this is
15 not a fair election; but I appreciate that you're pointing
16 to the absence in the record to date that Mr. Griffin was
17 actually there. Although, given the people that the FBI has
18 spoken to, they may have that information someplace in the
19 record already, it's just not in the record for this
20 detention hearing.

21 So it's clear from something that is in the record
22 that a person named Matt Struck [sic], who was Mr. Griffin's
23 companion on January 6th, did tell the FBI that both of them
24 had committed some minor trespassing at the Capitol.

25 Would the defendant dispute that characterization?

1 MR. N. SMITH: Your Honor, we would say that the
2 characterization of "minor trespassing" is not -- is not
3 very informative, it doesn't move the needle very far
4 because the statute that the Government has charged
5 Mr. Griffin with is not an all-purpose, Swiss Army Knife,
6 type statute for federal property. It's a much more narrow
7 statute about Secret Service protection for special people;
8 and there are mens rea requirements for this statute that
9 are, as Your Honor said, more involved than simply jumping
10 over a barricade.

11 The Government has to prove, among other things,
12 that Mr. Griffin knew that the area he entered, barricade or
13 not, was an area in which a Secret Service protectee will --
14 quote, Will be temporarily visiting or is visiting. That's
15 1752(c)(1)(B) --

16 THE COURT: Well, one of the things that the
17 defendant -- excuse me.

18 (Unintelligible, simultaneous speaking.)

19 THE COURT: One of the things the defendant
20 proudly proclaimed at a public hearing, I guess, on
21 January 14th, is that when he and this mob of people got to
22 the U.S. Capitol, he stated, There was some fencing up; and
23 they were saying that you could not go any further because
24 this was being reserved for Joe Biden and his inauguration.

25 So this statement certainly suggests that

1 Mr. Griffin was fully aware that the places where he was
2 going he was not supposed to be; it was restricted because
3 of the impending inauguration.

4 Is there some other lens with which to interpret
5 that statement that Mr. Griffin made?

6 MR. N. SMITH: So, Your Honor, on the 6th, the
7 Court knows that the Vice President was presiding in the
8 Capitol -- inside the Capitol at the time.

9 The statute, 1752, requires the Government to show
10 that a defendant crossed any posted, cordoned off, or
11 otherwise restricted area of a building or grounds where a
12 Secret Service protectee is -- is or will be temporarily
13 visiting.

14 The Government alleges that Mr. Griffin did not
15 enter the building where the Vice President was presiding;
16 that's the area under the statute where the Vice President
17 was presiding.

18 The Government alleges that he entered in the area
19 on the west steps of the front Capitol. The Government does
20 not allege that the Vice President was or will be on the
21 west front steps of the Capitol when Mr. Griffin entered
22 that space.

23 THE COURT: All right. So the defendant
24 apparently founded this organization "Cowboys For Trump."

25 I am sort of curious. What makes Mr. Griffin a

1 cowboy; do you know?

2 MR. N. SMITH: Your Honor should direct that
3 question to Mr. Griffin. I am sure he would be able to
4 answer it better than I would.

5 THE COURT: All right. Is there any other
6 information you want to bring to my attention?

7 MR. N. SMITH: Yes. There is, Your Honor.

8 Thank you for this opportunity.

9 There is not much we would add to what Your Honor
10 has already noted, except that there is no record evidence
11 about distrust in the Government or at large on
12 Mr. Griffin's part, although the Government keeps saying
13 there is in its papers. The Government has represented many
14 times in its --

15 THE COURT: You would characterize his comments,
16 Mr. Smith, as just hatred of anybody in the Democratic
17 Party, or dislike, disrespect, disregard -- I don't know
18 what you would call it; but certainly the language he has
19 used is just about people in the Democratic Party and
20 elected officials who happen to be members of the Democratic
21 Party. Is that how you would characterize his animus or the
22 focus of his animus?

23 MR. N. SMITH: Your Honor, I wouldn't go that far.

24 What I would say is that when the Government feels
25 the need to quote sound bytes from people's speeches taken

1 out of context that are five seconds long, and it doesn't
2 feel the need to even tell the Court that the next very
3 statement Mr. Griffin makes, which completely reverses your
4 reflection of that statement, I would say no, I don't feel
5 comfortable saying -- representing Mr. Griffin's political
6 opinions about the Government or at large because there is a
7 five-second sound byte on Facebook that the Government
8 doesn't even do the liberty of quoting for Your Honor.

9 Let me give Your Honor another example of this.

10 So in many of its papers to date, the Government
11 has said that, at a January 14th meeting of the Otero County
12 Commission that Mr. Griffin is a part of, he said that he
13 would bring firearms to the Capitol; they quote the types of
14 firearms. They say Mr. Griffin says it's going to be in my
15 car, I am going to bring it to the Capitol; and then the
16 Government's quote ends there, Your Honor.

17 When the Government put this paper in front of
18 Your Honor, there is a publicly available video that shows
19 Mr. Griffin making this comment. And one second in the
20 video, after the Government ends its quote, Mr. Griffin
21 explains why he said he would have firearms. It has nothing
22 to do with threatening people in Washington, D.C., with
23 threatening to kill people -- although that's the
24 insinuation the Government is trying to place in the Court's
25 mind.

1 Mr. Griffin says: I have been subject to death
2 threats repeatedly as a public official in New Mexico.
3 People have taken pictures of my son, my young child, and
4 put crosshairs over my family's -- over their heads; these
5 are real threats. So Mr. Griffin takes the threats, goes to
6 the FBI, reports them. Says: If you want any more
7 information about these threats, please go to my office in
8 New Mexico. Ask me for my emails, I will make all of this
9 available to you.

10 So why is -- Your Honor asked the question. Your
11 Honor is going in the right direction with some of the
12 questions you ask.

13 But, further, why is the Government insinuating
14 that Mr. Griffin is trying to harm people, which is what
15 it's doing, when there is no evidence of that?

16 Why was it selectively quoting these comments he's
17 made to make it look like he's going after people and
18 harming them when the very next comment in a publicly
19 available statement shows that's not true? Why is it doing
20 this?

21 THE COURT: All right. Does the Government want
22 to respond? And then I will issue my ruling.

23 MS. IYENGAR: So, I guess, just with respect to
24 the argument about the statements, Your Honor, I believe we
25 did quote what he said accurately in the papers that we

1 submitted to the Court, including -- I think there is a
2 statement he made about: The only good Democrat is a dead
3 Democrat. We did state in the papers that we submitted
4 that, after he made that statement, he said: I didn't mean
5 that physically, I meant that politically. So I don't think
6 there is any inaccuracy in anything that was submitted to
7 the Court.

8 THE COURT: All right. I am prepared to rule.

9 At the outset, I am just going to review the
10 applicable law. The Bail Reform Act requires release of a
11 defendant prior to trial unless a judicial officer
12 determines after a hearing that, quote: No condition or
13 combination of conditions will reasonably assure the
14 appearance of the person as required and the safety of any
15 other person in the community. See 18 U.S.C. Section
16 3142(e)(1).

17 The Government bears the burden to establish by a
18 preponderance of the evidence that the defendant poses a
19 serious risk of flight to -- really, in order to trigger a
20 detention hearing and ultimately detention; and that is what
21 the Government is alleging here.

22 To order detention after a hearing, the Court must
23 determine that no condition or combination of conditions
24 will mitigate those risks of flight.

25 And in determining whether any conditions of

1 release will reasonably assure the appearance of a person as
2 required, the Court must take into account the available
3 information concerning four factors that are set out in
4 18 U.S.C. Section 3142(g).

5 Those factors are: One, nature and circumstances
6 of the offense charged; two, the weight of the evidence
7 against the person; three, the history and characteristics
8 of the person including the person's character, physical,
9 and mental condition, family ties, employment, financial
10 resorts, length of residence in the community, community
11 ties, past conduct, history relating to drug or alcohol
12 abuse, criminal history, and record concerning appearance at
13 court proceedings. And then, finally, four: The nature and
14 seriousness to the danger to any person or the community
15 that would be posed by the person's release.

16 On an appeal from a magistrate judge's order of
17 pretrial release, the District Court must conduct a *de novo*
18 review. In conducting this review, the Court examines the
19 available information that touches upon the four statutory
20 factors just listed.

21 Before addressing those statutory factors, I will
22 address a threshold procedural argument raised by the
23 defendant that there was no lawful basis for the magistrate
24 judge to actually conduct a pretrial detention hearing in
25 the first place; this argument is wrong. The magistrate

1 judge made no error in holding a detention hearing.

2 The law requires that a judicial officer hold a
3 hearing to determine whether any condition or combination of
4 conditions will reasonably assure the appearance of the
5 defendant in 18 U.S.C. Section 3142(f); and that must be
6 done upon motion of the attorney for the Government in a
7 case that involves one of the seven factors listed in
8 18 U.S.C. Section 3142(f).

9 The Government doesn't argue that any of the five
10 factors in 3142(f)(1) apply here and, plainly, none of them
11 does; that leaves the two factors outlined in the next
12 statutory paragraph, 3142(f)(2), as possible bases for a
13 detention hearing.

14 Under that section, a judicial officer may hold a
15 detention hearing if there is a serious risk that the
16 defendant will flee, that is, 3142(f)(2)(A), or if there is
17 a serious risk the defendant will obstruct or attempt to
18 obstruct justice in various ways in Section 3142(f)(2)(B).

19 If one of these factors is not met, a pretrial
20 detention hearing may not be conducted and the defendant
21 must be released.

22 The defendant criticizes the Government and the
23 magistrate judge for conducting the hearing on the basis
24 that the defendant presents a serious risk of flight because
25 the Government did not meet its burden to present any

1 evidence about those factors. The defendant conflates,
2 however, the burden that the Government bears to show a
3 serious risk of flight in order to detain a defendant with
4 the burden the Government bears to obtain a hearing pursuant
5 to 3142(f)(2).

6 Certainly, the defendant is correct that a
7 defendant may be detained only if the record supports a
8 finding by a preponderance of the evidence that he presents
9 a serious risk of flight. See *U.S. v Himler*, a Third
10 Circuit case from 1986 which is part of the defendant's
11 motion at 8.

12 The defendant errs in claiming that 3142(f)(2)
13 requires a judicial finding about whether the case involves,
14 in fact, a serious risk of flight before even conducting a
15 detention hearing. To the contrary, the language of 3142
16 directs that a judicial officer -- and I quote, Shall hold a
17 detention hearing upon motion of the attorney for the
18 Government or upon the judicial officer's own motion in a
19 case that involves the 3142(f)(2) factors, and such a
20 hearing must be held immediately upon the person's first
21 appearance before the judicial officer unless a continuance
22 is sought.

23 The Government's burden to prove by a
24 preponderance of the evidence that the defendant presents a
25 risk of flight and no combination of conditions will suffice

1 to ensure his appearance concerns the merits of whether he
2 may be detained, not the preliminary issue of whether the
3 judicial officer must hold a detention hearing.

4 The magistrate judge here fully complied with the
5 procedural requirement of Section 3142. Before the
6 magistrate judge, the Government moved that the defendant be
7 detained pending trial pursuant to Section 3142(f)(2)(A) and
8 (f)(2)(B) of the federal bail statute -- see the
9 defendant's -- the Government's motion at 1 -- and urged the
10 Court to hold a hearing to determine whether the defendant
11 should be detained because of the serious risk the defendant
12 will flee and because there is a serious risk the defendant
13 will obstruct or attempt to obstruct justice, et cetera.

14 The Government has since then dropped the
15 (f)(2)(B) basis for detention, and it is relying now solely
16 on the serious risk of flight.

17 Citing the fact that the defendant lacks ties to
18 the Washington, D.C. metropolitan area, the Government posed
19 that -- and his other lack -- his disregard for the law, the
20 Government posited he posed a serious risk of flight and
21 moved for the hearing. The magistrate judge then acted as
22 required by the mandatory language of 3142(f), and promptly
23 held such a hearing. Thus, both the Government and the
24 magistrate judge acted entirely properly in moving for and
25 promptly conducting a detention hearing.

1 So having established the detention hearing
2 pursuant to Section 3142(f) is proper and, indeed, required
3 in this case on the part of the magistrate judge, given the
4 Government's motion and basis for it, I will now proceed to
5 consider the four 3142(g) factors.

6 Although the magistrate judge properly determined
7 that he was required to hold a hearing and consider those
8 factors, I do respectfully disagree with the magistrate
9 judge's application of the factors here.

10 I will start with the nature and circumstances of
11 the offenses charged -- or the offense charged because it is
12 a single misdemeanor charge.

13 Based upon the Government's investigation to date,
14 the defendant's conduct in this case amounted to marching to
15 the Capitol Building with hundreds or even thousands of
16 other people, many of whom then assaulted the Capitol by
17 breaking windows, violently pushing past police, injuring
18 police officers in the course of that conduct, and damaging
19 the Capitol Building in the course of that; and, then, those
20 mobsters marauded through the hallways, into private
21 offices, even onto the floor of the Senate Chamber, right
22 outside the House of Representatives Chamber. But the
23 defendant was not one of those people who broke into the
24 Capitol; he stayed outside, albeit in areas cordoned off and
25 restricted where he was not supposed to be.

1 The Government has proffered no evidence that this
2 defendant used a weapon, brandished a weapon, carried a
3 weapon on January 6th, or used any violence that day either
4 against the police or the Capitol Building.

5 Consequently, the defendant has been charged with
6 a misdemeanor offense of knowingly entering or remaining in
7 any restricted building or grounds without lawful authority,
8 in violation of 18 U.S.C. Section 1752(a)(1), for entering
9 the Capitol grounds, an offense that carries a penalty of up
10 to one-year imprisonment, rather than more serious felony
11 charges even under that statute of ten years if there is
12 property damage or bodily injury that results.

13 If proven, there is no question that the
14 defendant's conduct was criminal. And for many Americans,
15 his conduct in marching on the Capitol to protest the
16 democratic and constitutionally mandated process of counting
17 the Electoral College certificates was grossly unpatriotic;
18 but, nonetheless, the nature and circumstances of this
19 defendant's particular conduct on January 6th, 2021, weigh
20 in favor of release.

21 As I have said before, what happened on January 6,
22 2021, was not a peaceful protest but, in fact, did result in
23 the disruption, as intended, for hours of the Congress being
24 able to perform its constitutionally mandated task, as well
25 as resulting in the death of five people, and so many more

1 both injured and traumatized.

2 But by contrast to those who entered the building
3 and committed those acts inside the building, the defendant
4 was charged with entering the restricted area of the steps
5 of the west front of the Capitol, and the patio at the top
6 of these steps that was cordoned off with temporary barriers
7 on January 6th.

8 While there, the defendant allegedly borrowed a
9 bullhorn to address a group of protesters and rioters and
10 remained on the steps approximately an hour and a half,
11 according to one of his companions that day; and they left
12 once they smelled the pepper spray.

13 But in contrast to most of the brazen rioters, he
14 was not armed, and he left the Capitol grounds peacefully,
15 although it doesn't diminish the seriousness of the assault
16 or the seriousness of the offense with which the defendant
17 is charged here. He was not a participant in the violent
18 break-in of the Capitol or the marauding mobs roaming the
19 hallways of our legislative branch of government on
20 January 6th, and the charge he now faces reflects that fact.

21 The Government does point to the defendant's
22 public statements as cause for concern, and they are. In a
23 video the defendant filmed himself and apparently posted
24 himself, he referenced that: There is going to be blood
25 running out of that building. But at the end of the day,

1 you mark my word, we will plant our flag on the desk of
2 Nancy Pelosi and Chuck Schumer, and Donald J. Trump if it
3 boils down to it.

4 On January 6, he was filmed on the west Capitol
5 steps threatening: We are not going anywhere. We are not
6 going to take no for an answer. We are not going to get our
7 election stolen from us by China. We are not going to allow
8 it. There will never be a Biden presidency.

9 Later, when he was back in New Mexico, he spoke
10 publicly of his participation in the January 6th riot, and
11 further his plan to return to Washington, D.C. for the
12 inauguration of then President-Elect Biden with guns in the
13 trunk of his car, a revolver, a rifle, et cetera.

14 He has also said: The only good Democrat is a
15 dead Democrat and, shortly after that, saying he did not
16 intend that physically, only politically; that his -- the
17 briefing papers acknowledge that caveat might fall short
18 ethically.

19 He also told the FBI, on January 11th, he hoped
20 the demonstration at the inauguration would be peaceful,
21 that a change in leadership can be accomplished without a
22 single shot being fired; but he also seemingly threatened:
23 No option is off the table for the sake of freedom. These
24 are all words that are deeply disturbing, especially when
25 considered in conjunction with the defendant's decision to

1 return with firearms to D.C. shortly before the President's
2 inauguration on January 20th.

3 His words certainly reflect strong convictions
4 that many in this country would consider unpatriotic,
5 obnoxious, repugnant to the democratic process, certainly
6 harmful to the American body politic when he's talking about
7 fellow Americans.

8 The defendant has argued these words are simply an
9 exercise of the defendant's First Amendment rights, and that
10 the Government erred and the magistrate judge erred in using
11 them to analyze whether pretrial detention is appropriate.
12 He contends that inflammatory though defendant's statements
13 may be, they are patently within the bounds of
14 constitutionally protected speech and, as such, the Court
15 may not deny the defendant pretrial release on account of it.

16 And he suggests that reliance on his statements is
17 appropriate only if they do not comprise constitutionally
18 protected speech, namely, if they are directed to inciting
19 imminent lawless action within the meaning of *Brandenburg v*
20 *Ohio*, which is the Supreme Court case from 1969; not so.

21 The defendant is correct that a criminal defendant
22 may not be punished, for instance, through a greater
23 sentence or even through pretrial detention solely because
24 of his abstract beliefs. See *Wisconsin v Mitchell*, a 1993
25 Supreme Court case citing *Dawson v Delaware*, a Supreme Court

1 case from 1992, and *United States v Lemon*, the D.C. Circuit
2 case from 1983.

3 But, at the same time, the Constitution does not
4 erect a per se barrier to the admission of evidence
5 concerning one's beliefs and associations at sentencing
6 simply because those beliefs and associations are protected
7 by the First Amendment; that's a quote from *Mitchell*, the
8 Supreme Court case from 1993.

9 Crucially, *Mitchell* again says: The First
10 Amendment does not prohibit the evidentiary use of speech to
11 establish the elements of a crime or to prove motive or
12 intent.

13 Likewise, in the pretrial detention context, it is
14 entirely proper to examine and rely upon a defendant's
15 statements if those statements shed any light on the four
16 factors the courts are directed to consider under Section
17 3142(g). See, for example, *U.S. v Daniels*, Northern
18 District of Texas case from January 30th, 2018, which was
19 collecting cases in which courts relied upon defendants'
20 statements in assessing risk of flight for pretrial
21 detention purposes. This is so long as the Court does not
22 seek merely to punish the defendant for his beliefs or
23 statements about his beliefs. See, also, *U.S. v Ervin*, 818
24 F. Supp. 2d 1314, a Middle District of Alabama case from 2011.

25 Also, when a defendant has made specific

1 statements that call into question whether he will abide by
2 a Court's order to appear at trial, it is his conduct and
3 possible conduct that is ultimately an issue, and his
4 statements are relevant only to the extent they reflect on
5 that conduct; that was the use that the Government and the
6 magistrate judge were considering in these statements here.

7 The defendant relies heavily on *U.S. v Lemon*, a
8 1983 D.C. Circuit case, for the proposition that it is
9 improper to consider a defendant's statements in evaluating
10 pretrial detention, and this is a misreading of that D.C.
11 Circuit case.

12 *Lemon* was a case concerning a sentencing, not
13 pretrial detention, of a defendant who was allegedly a
14 member of the Black Hebrew group; and the sentencing judge
15 assumed the defendant had intended to further the illegal
16 aims of the Black Hebrews on the basis of the defendant's
17 association with some Black Hebrew members.

18 The Government had urged the sentencing judge to
19 impose a harsher sentence for the check fraud conviction on
20 the ground that the defendant's alleged membership in the
21 Black Hebrews, and that group's criminal activities,
22 together suggested that the defendant had committed the
23 check fraud as part of a criminal conspiracy.

24 The sentencing judge didn't explain whether he
25 adopted this theory; but the D.C. Circuit concluded that he

1 appeared to have relied on the information about the
2 defendant's alleged associations with the Black Hebrews in
3 imposing an unusually severe sentence for a first-time
4 offender.

5 After holding that a sentence based to any degree
6 on activity or beliefs protected by the First Amendment is
7 constitutionally invalid, the Circuit went on to determine
8 that the Black Hebrew group is protected by the First
9 Amendment and that mere membership would be an impermissible
10 factor at sentencing.

11 The Court further explained that there must be:
12 Sufficiently reliable evidence of the defendant's connection
13 to illegal activity within the Black Hebrews to insure that
14 he was not being given a harsher sentence for mere
15 association with the group and its illegitimate aims and
16 activities, noting that his membership in the Black Hebrews
17 may be evidence of his knowledge of the group's illegal
18 activities and, thus, may be considered for that limited
19 purpose.

20 In a footnote, the Circuit observed, by way of
21 analogy, that similar principles govern the determination of
22 bail status; appellate courts have seriously limited the
23 extent to which protected political speech and association
24 may be the basis for revoking or denying bail, which is the
25 language on this footnote that the defendant relies on.

1 But *Lemon* is wholly consistent with and, in fact,
2 reenforces the principle that a defendant may not be
3 punished, whether through a greater sentence or pretrial
4 detention, solely because of his opinions, beliefs,
5 statements, or associations; but that certainly those views,
6 statements, and associations may be relied upon for purposes
7 of proving, for example, intent or motive.

8 Similarly, with *Williamson v United States*, a
9 Second Circuit case from 1950 on which the defendant relies,
10 you know, also demonstrates this position. *Williamson*
11 stands for the proposition that political speech that is
12 protected by the First Amendment cannot, standing alone,
13 suffice to show danger to the community warranting pretrial
14 or preappeal detention; but *Williamson* does not conflict at
15 all with the holding of *Mitchell*, a Supreme Court case
16 decided 40 years later, that a defendant's speech may be
17 considered to establish the elements of a crime or to prove
18 intent or motive.

19 Here, questions of motive and intent are clearly
20 central to the analysis of the 3142(g) factors. The
21 Government moved for the defendant to be detained pending
22 trial on the grounds that he is a flight risk; and, in
23 evaluating that issue, his intent and state of mind is
24 paramount to determining whether he is a flight risk. The
25 Government -- the Court must decide essentially whether the

1 defendant intends to flee if he is released pretrial.

2 This is precisely the category of situation in
3 which reliance upon a defendant's statement is countenanced
4 by *Mitchell*. As the magistrate judge rightly noted, for
5 instance, during the defendant's initial appearance: Speech
6 here motivates my understanding of what his intent was; see
7 hearing transcript.

8 In short, the magistrate judge acted entirely
9 appropriately in reviewing the defendant's statements for
10 appropriate inferences in evaluating the necessary factors
11 under Section 3142(g). There is absolutely nothing
12 unconstitutional, as the defendant suggests, about the
13 magistrate judge's analysis and reliance on his statements.

14 I do part ways with the magistrate judge, however,
15 in finding that the defendant's statements considered in
16 conjunction with his conduct do not -- because I find that
17 they do not suggest that he intends to flee, or that
18 detaining him pending trial is the only way to ensure his
19 appearance at trial.

20 I agree with the magistrate judge and the
21 Government's interpretation that the defendant's statements
22 are highly inflammatory, deeply disconcerting --
23 particularly for a person who is an elected repre -- elected
24 person in a community and feels comfortable publicly
25 suggesting that the blood of elected officials will be

1 spilled because he is unhappy with the outcome of a
2 presidential election, and also that he would subsequently
3 return to Washington, D.C., with firearms with the intention
4 of, again, being present and armed at the Capitol on
5 January 20th -- I mean, those are sort of outrageous
6 comments; but he proudly said them at a public meeting.

7 But other parts of the defendant's comments and
8 his behavior suggest a more law-abiding view on his part.
9 He did prove, after the January 6th assault on the Capitol,
10 largely cooperative with the FBI. He was forthright with
11 the FBI about his plans to return to D.C. for the
12 inauguration. He cooperated with the FBI in investigating
13 threats that the defendant and his family received once his
14 presence and his role at the January 6 riot were made
15 public.

16 But taken together, his conduct and his statements
17 do not suggest that he presents a serious risk of flight or
18 that because -- in part because his statements reflect a
19 dislike, to put it mildly, of some duly elected federal
20 officials; but he hasn't expressed such a disdain for the
21 judiciary or for court orders, and he does present some
22 respect for law enforcement and some rules.

23 I appreciate that the charge here is that he
24 disregarded signage about restricted areas at the Capitol on
25 January 6th; but his subsequent cooperation with law

1 enforcement shows that he is not a person who has a
2 categorical disdain and disregard for any and every
3 government actor or authority figure and rule, or it doesn't
4 suggest that he has a similar disregard for the Court and
5 can't be trusted to respect release conditions imposed by
6 the Court when so directed.

7 In sum, notwithstanding his inflammatory remarks,
8 the troubling circumstances of his return to D.C., the
9 defendant's charged conduct was largely peaceful; his
10 contemporaneous and subsequent statements, while
11 provocative, do not suggest that there are no combination of
12 release conditions that can assure his appearance in court.

13 As to the second factor, the weight of the
14 evidence against the defendant, the evidence consists of
15 videos, screenshots, his own statements about him being
16 where he wasn't supposed to be on January 6th, and then his
17 subsequent discussions about that; and putting aside some
18 dissection of the statute, the weight of the evidence
19 against this defendant does appear strong, but that evidence
20 has to be calibrated against the charge itself which is,
21 here, a misdemeanor carrying no more than one-year
22 imprisonment.

23 Given the fact that we're in the midst of a global
24 pandemic, and that trials have been delayed due to health
25 and safety concerns, pretrial detention may put the

1 defendant in a position of waiting for a trial as long as he
2 may be required to serve a prison term if he is convicted;
3 this strongly counsels against pretrial detention here.

4 As to the third factor, the history and
5 characteristics of the defendant, those clearly weigh in
6 favor of release. He is employed; apparently, he has been
7 for 30 years. He's also engaged with his community,
8 involved in local government, apparently is an elected
9 county commissioner. He also has other political
10 activities, such as his Cowboys For Trump. He has a limited
11 criminal history, with only one conviction for a DUI that
12 occurred nearly 25 years ago.

13 And although the Government is correct that he
14 apparently has no ties to the D.C. area, he certainly has
15 strong ties to where he lives in New Mexico. He has lived
16 there almost most of his life; he has got his family there;
17 he works there, including as a public servant. He has child
18 support obligations in New Mexico. So all of these factors
19 weigh heavily in favor of release.

20 As to the last factor, about the nature and
21 seriousness of the danger to any person or the community,
22 because of the nature of the crime he's charged with and the
23 fact that the Government asked that he be detained basically
24 only because he presents a flight risk, this factor doesn't
25 appear to play much of a role at all, and really needn't be

1 considered to the extent that some of his comments are
2 targeted at the top federal officials and were made about
3 things that are occurring in Washington, D.C. There doesn't
4 seem to be any evidence that he poses a risk of danger to
5 the community in New Mexico where he lives and will reside
6 if released pending trial.

7 To the extent that he presents a danger in
8 Washington, D.C., I think that can be effectively mitigated
9 by a release condition prohibiting him from entering this
10 city except when required to do so for court hearings.

11 So, accordingly, to the extent this factor -- this
12 last factor of the danger to any person or the community is
13 considered at all, it weighs in favor of release with that
14 condition of release.

15 So my order is: Upon consideration of the
16 proffered evidence presented, the factors set forth in
17 18 U.S.C. Section 3142(g), the possible release conditions
18 set forth in Section 3142(c), the Court finds that the
19 statutory factors weigh in favor of pretrial release and
20 that the Government has not met its burden of establishing
21 by a preponderance of the evidence that no condition or
22 combination of conditions will reasonably assure the
23 appearance of the defendant.

24 The defendant's motion is, therefore, granted.
25 The magistrate judge's pretrial detention ruling is

1 reversed.

2 The defendant will be released pending trial
3 subject to the following conditions:

4 He must report to pretrial services by telephone
5 today -- if that's possible, given the lateness of the hour;
6 and, thereafter, report to pretrial services weekly by
7 telephone. He must verify his address with pretrial
8 services. He must notify pretrial services in advance of
9 all travel within the continental United States; any other
10 travel must be approved in advance by the Court.

11 The defendant must not possess a firearm,
12 destructive device, or other weapon. The defendant must
13 report to pretrial services by phone about any contact he
14 has with law enforcement within 24 hours of such contact,
15 including arrests, questioning, and traffic stops.

16 The defendant must surrender any passports to
17 pretrial services agency for the District of Columbia and
18 not obtain another passport or other international travel
19 document.

20 The defendant must stay out of the District of
21 Columbia except for court or pretrial business, or meetings
22 with his attorney.

23 The defendant must not possess or use a narcotic
24 drug or other controlled substance, unless prescribed by a
25 licensed medical practitioner.

1 The Court is to be notified of any violations of
2 this order.

3 Mr. Griffin, I want to remind you that your
4 presence is required in court, at least remotely for the
5 time being, and that you will be advised when next to
6 appear. So you should stay in close touch with your counsel
7 to make sure you know when that is.

8 I am also required to caution you about your
9 conduct during your release pending trial and of certain
10 penalties that could apply to you.

11 Failing to appear in court as required is a crime
12 for which you can be sentenced to imprisonment.

13 If you violate any condition of release, a warrant
14 for your arrest may be issued, and you may be jailed until
15 trial, and you may also be prosecuted for contempt of Court.

16 Committing a crime while on release may lead to
17 more severe punishment than you would receive for committing
18 that same crime at any other time.

19 It is also a crime to try to influence a juror, to
20 threaten or attempt to bribe a witness or other person who
21 may have information about this case, to retaliate against
22 anyone for providing information about the case, or to
23 otherwise obstruct the administration of justice.

24 Do you understand those cautions, Mr. Griffin?

25 THE DEFENDANT: I do.

1 THE COURT: All right. Is there anything further
2 today from the Government?

3 MS. IYENGAR: No, Your Honor. Nothing further
4 from us.

5 THE COURT: Anything further from defense counsel?

6 MR. N. SMITH: No, Your Honor. Thank you.

7 THE COURT: I can't hear you. Speak up, please.

8 MR. D. SMITH: This is David Smith.

9 Can you hear me?

10 THE COURT: Yes.

11 MR. D. SMITH: When he was arrested, Your Honor,
12 the FBI took his car into custody -- not to forfeit it or
13 anything, but just because there was -- they have to take
14 the car into custody if he's arrested, and he is not with
15 someone who can remove the car.

16 Could the Court direct the Government to see to it
17 that his car is given back to him so he can drive home to
18 New Mexico in it?

19 THE COURT: I will so direct the Government.

20 I expect, Ms. Iyengar, that you will talk to the
21 FBI agents on the case and get that car back to the
22 defendant. I am sure capable counsel can make those
23 arrangements without the Court's intervention.

24 MS. IYENGAR: Yes, Your Honor.

25 THE COURT: All right. If there is nothing

1 further, you are all excused.

2 MS. SCHUCK: Your Honor.

3 THE COURT: Who is talking?

4 THE DEPUTY: Pretrial.

5 THE COURT: Pretrial. Yes?

6 MS. SCHUCK: Christine Schuck with pretrial
7 services.

8 THE COURT: Yes. Ms. Schuck, how are you?

9 MS. SCHUCK: Good. How are you, Your Honor?

10 THE COURT: I am good.

11 MS. SCHUCK: Pretrial would just respectfully
12 request an additional condition that he contact pretrial
13 services by -- on Tuesday, February 9th to have an interview
14 conducted because -- so we can gather some information
15 regarding his residence, his employment, et cetera, because
16 we did not have that information at the time our report was
17 prepared.

18 THE COURT: Yes, Ms. Schuck. I will so direct.

19 Is there a specific time on Tuesday that you would
20 like?

21 MS. SCHUCK: Just between normal business hours
22 which, for us, is 8:30 a.m. to 4:30 p.m., eastern time.

23 THE COURT: All right. Mr. Smith. One of the
24 Mr. Smiths -- excuse me.

25 Do you need the phone number to call?

1 MR. N. SMITH: Yes, please.

2 THE COURT: Ms. Schuck, what is the telephone
3 number that should be called by Tuesday, February 9th by
4 Mr. Griffin?

5 MS. SCHUCK: Sure.

6 The main number is 202-442-1000. And at that time
7 he would be advised who his case manager is and be directed
8 to the case manager who will conduct the interview.

9 THE COURT: All right. Okay. Don't miss that
10 call, Mr. Griffin, because if there is any violation of your
11 release conditions I will be immediately informed.

12 Do you understand that?

13 THE DEFENDANT: I understand.

14 THE COURT: All right.

15 Okay. If there is nothing further, you all are
16 excused. Thank you.

17 MR. D. SMITH: Thank you so much, Your Honor.

18 It was really a pleasure to hear your opinion
19 which I hope you will publish. It sounds like a publishable
20 decision to me.

21 THE COURT: I am probably not going to publish it,
22 but thank you.

23 You are all excused.

24 MR. D. SMITH: Thank you.

25 (Whereupon, the proceeding concludes, 4:43 p.m.)

CERTIFICATE

I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings to the best of my
ability.

PLEASE NOTE: This hearing was held telephonically
in compliance with the COVID-19 pandemic stay-safer-at-home
orders and is therefore subject to the limitations
associated with the use of technology, including but not
limited to telephone signal interference, static, signal
interruptions, and other restrictions and limitations
associated with remote court reporting via telephone,
speakerphone, and/or videoconferencing capabilities.

This certificate shall be considered null and void
if the transcript is disassembled in any manner by any party
without authorization of the signatory below.

Dated this 6th day of February, 2021.

/s/ Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter