IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case no. 1:21-cr-00003-RCL-1
	)	
JACOB ANTHONY CHANSLEY,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO REOPEN DETENTION HEARING AND FOR PRETRIAL RELEASE BASED ON NEW EVIDENCE AND INFORMATION

COMES NOW, Defendant, Jacob Anthony Chansley, by and through his undersigned counsel, and for his Motion to Reopen Detention Hearing and for Pretrial Release Based on New Evidence and Information, states to the Court as follows:

PROCEDURAL HISTORY

1. The Defendant was originally charged under a sealed Complaint filed in this District on January 8, 2021.The Defendant, having heard that federal law enforcement sought to make contact with him, promptly contacted the FBI and self-surrendered without incident on January 9, 2021. Two days later, on January 11, 2021, Defendant was indicted in this District. A true and correct copy of the Indictment is attached hereto, incorporated herein by the reference, and marked Exhibit A. The Defendant made his initial appearance herein before U.S. Magistrate Deborah Fine in the District of Arizona. A Detention Hearing was conducted before Magistrate Judge Fine on January 15, 2021. Magistrate Judge Fine ordered the Defendant detained pending trial. The Defendant was then transferred to the District of Columbia and is being held in a state facility run by the Commonwealth of Virginia in Alexandria under an agreement with the U.S. Bureau of Prisons. The Defendant filed a Motion for Pretrial Release, the hearing for which was

conducted and gave rise to an Order dated March 8, 2021. The March 8, 2021 Order was reasoned and supported by a Memorandum filed by this Court concurrently with the Order denying Defendant's Motion for Pretrial Release. A copy of this Court's March 8, 2021 Memorandum setting forth the reasoning of the Court for its Order of March 8, 2021 is attached hereto, incorporated herein by reference, and marked Exhibit B.

2. Following the hearing, a transcript of the record of the hearing that gave rise to the March 8, 2021 Order was requested and received. A true and correct copy of same is attached hereto, incorporated herein by reference, and marked Exhibit C.

3. Also following the hearing, Defendant's counsel made a public plea for video and images depicting the Defendant leading up to, during and immediately following Defendant's January 6, 2021 appearance at the Capitol.

4. Since the hearing, the Government has commenced with the release of discovery herein, the most of which was released in the days immediately preceding the filing of the present Motion.

5. New evidence procured and amassed and discovery released since the hearing supports the premise that this Court's March 8, 2021 Order denying Defendant's request for pretrial release was erroneous, based on inaccuracies and without evidence.

6. Additionally, it has been determined that several other defendants who participated in the events of January 6, 2021 have been released before trial, even though the conduct of those defendants is indistinguishable, or worse (significantly worse) than the well documented conduct of Chansley.

7. Additionally, in an effort to permit the Government to dissuade itself of its erroneous beliefs about Chansley and to garner insight into the character and person of the Defendant, the Government was permitted to debrief Chansley without restriction on multiple occasions.

8. Defendant's counsel has been punctilious about sharing with the Government on as close to a real time basis as possible the evidence that supports the erroneous nature of many of the factual assertions made by the Government (and considered by this Court) to deny Defendant's Motion for Pretrial Release by its March 8, 2021 Order.

9. Defendant's counsel has been equally punctilious about sharing with the Government video footage and images procured as a result of efforts and contacts of Defendant Chansley. While the video footage and images of this category were not all probative of matters related to the Defendant, the procurement and provision of same to the Government demonstrated the Defendant's commitment to doing what was right for the country.

LEGAL DISCUSSION

10. Title 18 U.S.C. § 3142(f)(2) allows the Court to reopen a detention hearing under the following circumstances:

> The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

18 U.S.C. § 3142(f)(2). Thus, the hearing may be reopened if (1) information exists that was not known to the movant at the time of the hearing and (2) that information has a material bearing on

the issues of whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of the community.

11. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

12. The Bail Reform Act of 1984 authorizes one of those carefully limited exceptions by providing that the court "shall order" a defendant detained before trial if it "finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(e). "In common parlance, the relevant inquiry is whether the defendant is a 'flight risk' or a 'danger to the community.'" *United States v. Vasquez-Benitez,* 919 F.3d 546, 550 (D.C. Cir. 2019). Here, the Court appeared to hold that Chansley should be detained on the basis of the danger posed by the finial on the tip of the flagpole he carried through the day of January 6.

13. In assessing whether pretrial detention is warranted for dangerousness, the district court considers four statutory factors: (1) "the nature and circumstances of the offense charged," (2) "the weight of the evidence against the person," (3) "the history and characteristics of the person," and (4) "the 11 nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142(g)(1)–(4). To justify detention on the basis of dangerousness, the government 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." *Id.* § 3142(f). Thus, a defendant's detention based on dangerousness accords with due process only insofar as the district court determines that the defendant's history, characteristics, and alleged criminal conduct make clear that he or she poses a concrete, prospective threat to public safety.

14. In *Salerno*, the Supreme Court rejected a challenge to this preventive detention scheme as repugnant to due process and the presumption of innocence, holding that "[w]hen the Government proves by clear and convincing evidence that an arrestee *presents an identified and articulable threat* to an individual or the community, we believe that, consistent with the Due Process Clause, a court may disable the arrestee *from executing that threat*." 481 U.S. at 751 (emphasis added).

15. Other courts have found a defendant's potential for compliance with release conditions relevant to the detention inquiry. *See, e.g.*, *United States v. Hir*, 517 F.3d 1081, 1092–93 (9th Cir. 2008) (explaining that release conditions require "good faith compliance" and that the circumstances of the charged offenses indicate "that there is an unacceptably high risk that [the defendant] would not comply. . . with the proposed conditions"); *United States v. Tortora*, 922 F.2d 880, 886–90 (1st Cir. 1990). While failure to abide by release conditions is an explicit ground for revocation of release in 18 U.S.C. § 3148(b), it defies logic to suggest that a court cannot consider whether it believes the defendant will actually abide by its conditions when making the release determination in the first instance pursuant to 18 U.S.C. § 3142.

16. Under 18 U.S.C. § 3142(f)(1)(E), detention is permitted if the case involves "any felony . . . that involves the *possession* or use of a . . . dangerous weapon." (emphasis added). The Bail Reform Act thus explicitly authorizes detention when a defendant is charged with committing certain felonies while possessing a dangerous weapon, as is alleged in this indictment.

17. This Court's determinations in support of detention were clearly erroneous; and (2) several other defendants who participated in the insurrection have been released before trial, even though the conduct of those defendants is indistinguishable (or worse) than their conduct on January 6.

18. In this case, this Court and the Government knows the Defendant has no criminal history. Thus, his history and characteristics weigh against a finding that no conditions of release would protect the community. *Munchel*, 2021 WL 620236, at *6, *8. The crux of this Court's reasoning was that Defendant's flagpole and finial was a spear and, as such, a dangerous weapon.

19. The crux of the constitutional justification for preventive detention under the Bail Reform Act is that "[w]hen the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community, . . . a court may disable the arrestee from executing that threat." *Salerno*, 481 U.S. at 751. Therefore, to order a defendant preventatively detained, a court must identify an articulable threat posed by the defendant to an individual or the community. The threat need not be of physical violence, and may extend to "non-physical harms such as corrupting a union." *United States v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988) (quoting S. REP. NO. 98–225, at 3(1984), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3195–96). But it must be clearly identified. *See Salerno*, 481 U.S. at 750 (noting that the Act applies in "narrow circumstances" where "the Government musters convincing proof that the arrestee, already indicted or held to answer for a serious crime, presents a demonstrable danger to the community"); *cf. Tortora*, 922 F.2d at 894 (Breyer, C.J., concurring) (reversing an order of release where the district court failed to "carefully analyze[] the danger [the defendant] posed"). Detention cannot be based on a finding that the defendant is unlikely to comply with conditions of release absent the requisite finding of dangerousness or risk of flight; otherwise, the scope of detention would extend beyond the limits set by Congress. Under The Bail Reform Act of 1966, "[t]he law requires reasonable assurance[,] but does not demand absolute certainty" that a defendant will comply with release conditions because a

stricter regime "would be only a disguised way of compelling commitment in advance of judgment." *United States v. Alston*, 420 F.2d 176, 178 (D.C. Cir. 1969).

20. The threat must also be considered in context. *See Tortora*, 922 F.2d at 888 ("Detention determinations must be made individually and, in the final analysis, must be based on the evidence which is before the court regarding the particular defendant. The inquiry is fact bound." (internal citations omitted)). It follows that whether a defendant poses a particular threat depends on the nature of the threat identified and the resources and capabilities of the defendant. *Cf. Nwokoro*, 651 F.3d at 110–11 (noting that evidence "favoring appellant's pretrial release" included the fact that appellant had no assets under his control, no ability to flee the country, and "no prior criminal record"). Whether the defendant poses a threat of dealing drugs, for instance, may depend on the defendant's past experience dealing, *see, e.g.*, *United States v. Briggs*, 697 F.3d 98, 102 (2d Cir. 2012), and her means of continuing to do so in the future, *see, e.g.*, *United States v. Henry*, 172 F.3d 921 (D.C. Cir. 1999) (unpublished).

21. Here, the Government has not adequately demonstrated that it considered whether Defendant posed an articulable threat to the community in view of his conduct on January 6, and the particular circumstances of January 6. This Court based its dangerousness determination on a finding that "defendant's flagpole was a dangerous weapon," and that "he poses a clear risk to the community." *Munchel*, 2021 WL 620236, at *6. In making this determination, however, the Court did not explain how it reached that conclusion except by asking the Government's AUSA her opinion, and despite the fact that "the record contains no evidence indicating that, while inside the Capitol, Defendant vandalized any property or physically harmed any person," and the absence of any record evidence that Defendant committed any violence on January 6; that Defendant assaulted no one on January 6; that he did not enter the Capitol by force; and that he

vandalized no property are all factors that weigh against a finding that Defendant poses a threat. If, in light of the lack of evidence that Defendant committed violence on January 6, the District Court finds he does not in fact pose a threat of committing violence in the future, the District Court should consider this finding in making its dangerousness determination. Defendant was not one of those who actually assaulted police officers and broke through windows, doors. A proper dangerousness determination to justify detention must be made based on evidence.

22. The Government also failed to demonstrate that it considered the specific circumstances that made it possible, on January 6, for Defendant to threaten the peaceful transfer of power. The Defendant had a unique opportunity to obstruct democracy on January 6 because of the electoral college vote tally taking place that day, and the concurrently scheduled rallies and protests. Thus, Defendant was arguably able to attempt to obstruct the Electoral College vote by entering the Capitol together with a large group of people. Because Defendant did not vandalize any property or commit violence, the presence of the group was critical to their ability to obstruct the vote and to cause danger to the community. Without it, Defendant who did not engage in any violence and who was not involved in planning or coordinating the activities— seemingly would have posed little threat. The Court found that Defendant was a danger to act in the future, but did not say how the Defendant would be capable of doing so now that the specific circumstances of January 6 have passed. This, too, is a factor that the Court should consider.

23. Finally, Defendant argues that the Government's proffer of dangerousness should be weighed against the fact that the Government did not seek detention of defendants who admitted that they pushed through the police barricades nor did it seek to detain defendants charged with punching officers, breaking windows, discharging tasers at officers, and with planning and fundraising for the riot.

24. It cannot be denied that the violent breach of the Capitol on January 6 posed a grave danger to our democracy, and that those who participated could rightly be subject to detention to safeguard the community. *Cf. Salerno*, 481 U.S. at 748 ("[I]n times of war or insurrection, when society's interest is at its peak, the Government may detain individuals whom the government believes to be dangerous." (citations omitted)). But Courts have a grave constitutional obligation to ensure that the facts and circumstances of each case warrant this exceptional treatment.

GOVERNMENT-DEFENDANT INTERACTION

25. On March 16, 2021, Defendant's counsel provided to the Government a Report of Interview prepared by Defendant's counsel's investigator, a recently retired FBI Special Agent, which permitted the Government to be possessed of information regarding the provenance of video footage of value not previously possessed by the Government. The video footage depicted destruction and theft of classified Government property and, further, depicted clearly those responsible for same. But for the efforts of Defendant Chansley, this footage would not have been received by the Government at that opportune time. The Government expressed an elevated degree of appreciation for this video.

26. The video footage referenced in the preceding paragraph, was uploaded to the Government's secure portal for use by the Government and dissemination to law enforcement.

27. On March 19, 2021, Defendant's counsel provided to the Government video footage depicting Defendant Chansley during his January 6, 2021 visit to the Capitol thwarting a crime (theft) by yelling at another person in the Capitol who was attempting to steal a "muffin" from a breakroom in the Capitol. A link to this video: https://youtu.be/xnlHZzI-Mx8.

28. On March 22, 2021, the Defendant's counsel provided the Government with a copy of a school related "Career Paper" written by the Defendant in 2005. The paper evidences the long-

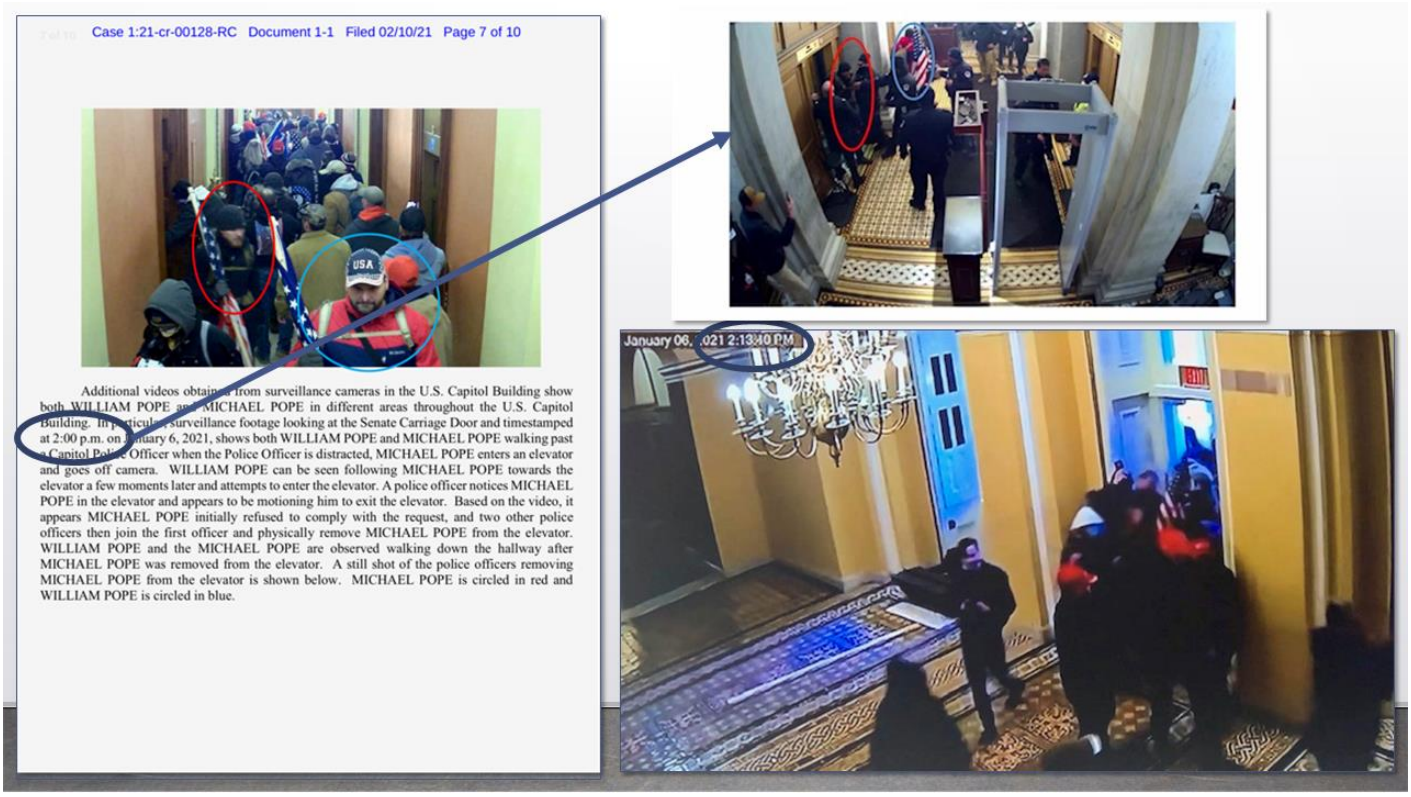
standing loving and caring nature of the Defendant for all, even those who hate him. A true and correct copy of the paper is attached hereto, incorporated herein by reference, and marked Exhibit D.

29. On April 6, 2021, the Defendant's counsel provided the Government with a video depicting Defendant Chansley on the stairs located on the East Side of the U.S. Capitol Building across from the Supreme Court at approximately 4 PM on January 6, 2021. The video depicts Mr. Chansley in close proximity to two Capitol Police. Mr. Chansley is holding his flag and flagpole, replete with the finial that the Court has described as the tip of a spear. Notably, the Government did not produce for the Courts or Defendant's counsel's inspection the flagpole with the finial, despite Government's discovery provided after March 8, 2021 reflecting they were in the possession of the Government. In the video, Mr. Chansley is speaking on his megaphone. Images of those listening to Mr. Chansley are also obviously depicted. It was noted, the Capitol Police appeared to be protecting Defendant Chansley as he spoke, did not seek to disarm Defendant, and did not exhibit indicia of trepidation or concern. The provenance of this video was provided to the Government. A link to this video: https://youtu.be/PyjfNBP24ro .

30. Also on April 6, 2021, the Defendant's counsel provided the Government with a video that depicts clearly a number of individuals (not the Defendant, who did not scale any wall) surrounding and actively participating in the scaling of the wall in front of the Capitol Building, this despite stairs being located immediately to the left of the wall being scaled. The provenance of this video was provided to the Government. A link to this video: https://youtu.be/15Fesf-qjf8 .

31. Also on April 6, 2021, the Defendant's counsel provided the Government with a copy of the following images assembled in exhibit form using Government verbiage from the Indictment of other January 6 defendants (Pope brothers) showing them in the Capitol at 2:00 PM per the

Government's surveillance cameras. The third photo (bottom right) shows Mr. Chansley strolling through the open door at 2:13:40. It was pointedly noted that per the Government's own images, the Pope Brothers were not the only protesters in the building at 2:00 p.m. As part of the cover letter issued to the Government, it was made clear Mr. Chansley was not in the first wave of those entering the Capitol Building on January 6, 2021, despite the Government's assertion to that effect, which it made during the hearing of Defendant's Motion for Pretrial Release and which gave rise to the March 8, 2021 Order of this Court denying same.



32. On April 7, 2021, Defendant's counsel confirmed with the Government the uploading to the Government's secure portal of 22 videos received by virtue of Mr. Chansley. The videos depicted 22 non-public videos of the January 6, 2021 events at the Capitol. As part of this presentment to the Government, Defendant's counsel provided the Government with a copy of

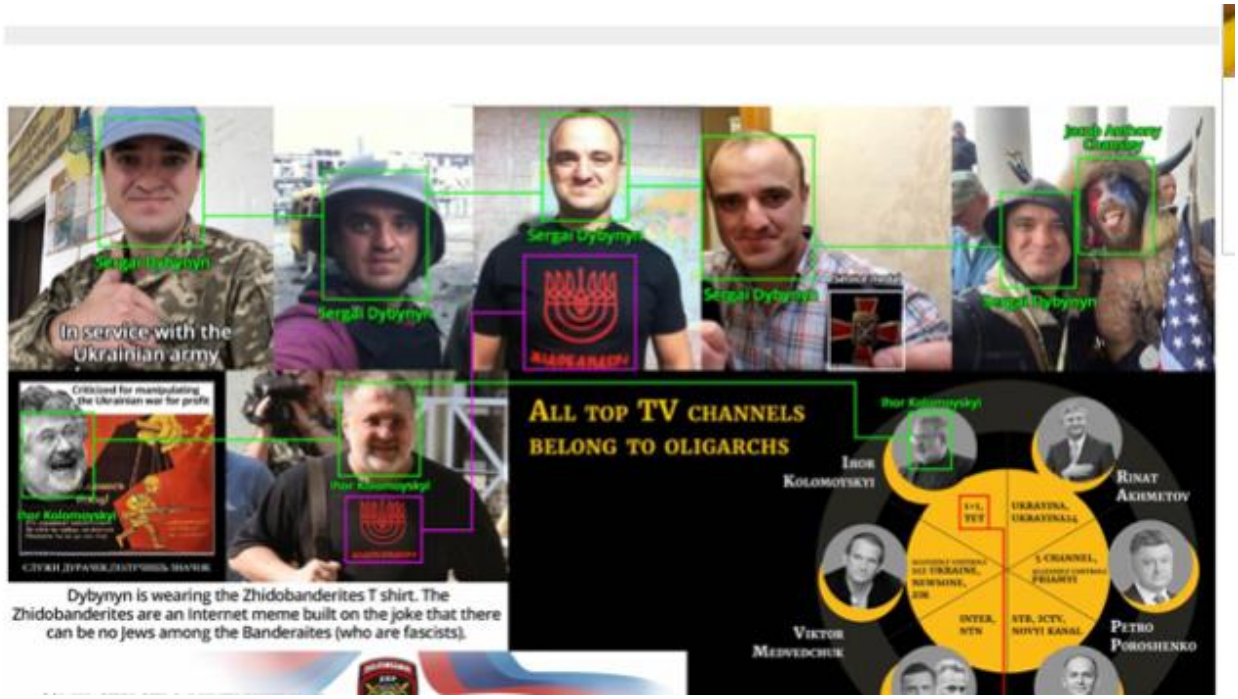
the Interview Report prepared by Defendant's counsel's investigator to memorialize the interview.

33. Also on April 7, 2021, Defendant's counsel provided to the Government a series of still images redacted from the *New Yorker* video used by the Government herein which depicts the Defendant as he enters the Chamber with his flagpole in one hand and a megaphone in the other, confirming that the door through which he passed was being held open by Capitol Police Officer Robishaw, a proposition soundly repudiated by the Court in its March 8, 2021 Memorandum.

34. It was determined after the hearing by this Court of the Defendant's Motion for Pretrial Release that the *New Yorker* video was not presented in temporally chronological order and was heavily edited.


Watch New Yorker video of Senate Chamber door opening.
Note CHAMSLEY is holding his spear in one hand, the other his bullhorn AS he walks through doorway. He didn't open the door himself.
The door is opened FOR him, by ROBISHAW, and then closes behind ROBISHAW.
If someone opens a door FOR you, and escorts you, aren't you being invited in? How is this trespassing?

35. On April 9, 2021, Defendant's counsel provided the Government with a journalist provided montage of images, one of which depicted the Defendant with an individual (one of countless individuals who sought selfies with the Defendant during the Defendant's stroll down Pennsylvania Avenue toward the Capitol on January 6, 2021). The individual depicted with the Defendant was subsequently identified as a foreign national of interest to the Government. This image was provided to assist the Government in its preparation for one of the debriefings of the Defendant, which was subject to delay and re-setting due to the same logistical issues experienced by Defendant's counsel with scheduling of meetings and contact with Defendant. The provenance of the image was also provided to the Government. The Government acknowledged that it found the image to be helpful.



36. On April 21, 2021, Defendant's counsel provided the Government with additional information recalled by the Defendant after one of the debriefing conferences then recently conducted by the Government with Chansley.

37. On April 28, 2021, Defendant's counsel provided the Government with a video depicting the Defendant, replete with his flagpole and finial, outside the Capitol Building following his presence inside the Capitol Building on January 6. Chansley is pontificating in the immediate presence of Capitol Police and giving rise to no indicia of alarm or concern by law enforcement (who actually appear to be protecting Mr. Chansley). A link to this video: https://youtu.be/PyjfNBP24ro .

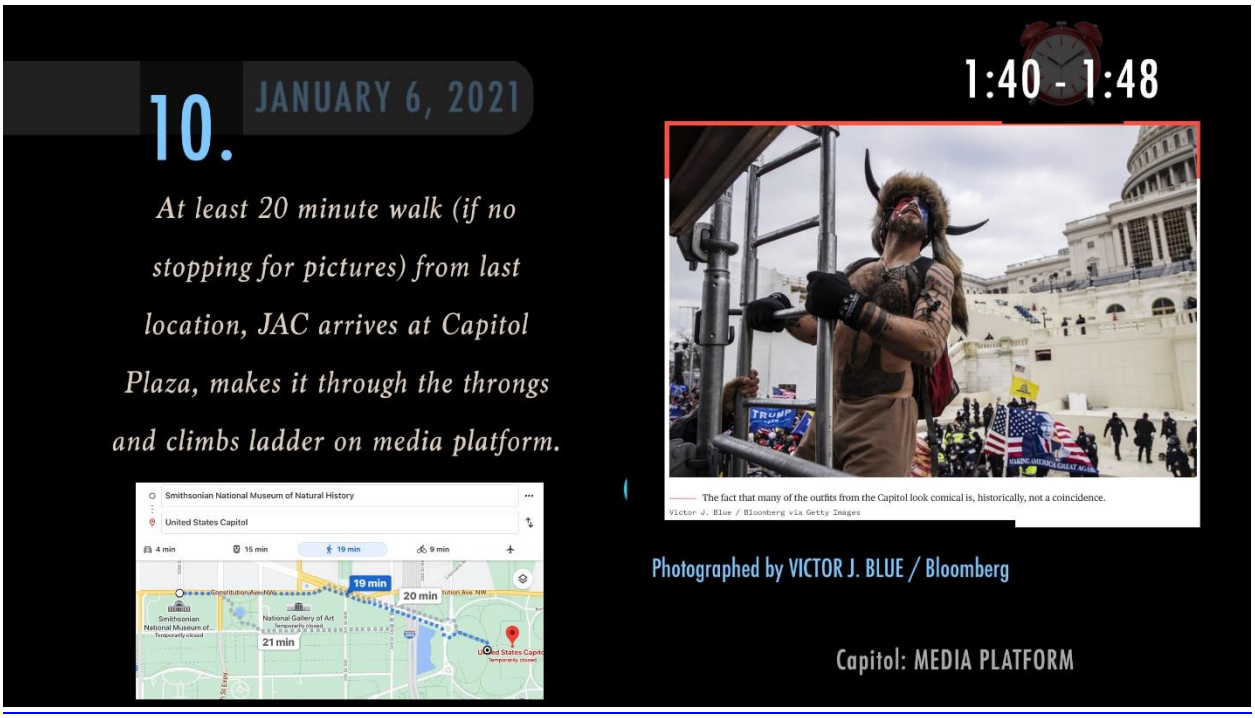
38. On April 28, 2021, Defendant's counsel provided the Government with a PowerPoint compilation of videos that chronicle the actions of Chansley prior to his entry into the Capitol, through the Capitol, and after his departure from the Capitol. Simultaneously, Defendant's counsel provided the Government with a PowerPoint video presentation and index delineating the sources of the videos comprising the PowerPoint and a separate spreadsheet which delineates each portion of the produced piece, describes same, delineates the time of the day to which each of the January 6 images/videos correspond, and the source of the video (as depicted in the attached list).

39. A copy of the Index corresponding to the video PowerPoint is attached hereto, incorporated herein by reference, and marked Exhibit E.

40. A copy of the Spreadsheet corresponding to the video PowerPoint is attached hereto, incorporated herein by reference, and marked Exhibit F.

A link to the video PowerPoint:

https://youtu.be/52ge1NaFYBc
https://youtu.be/wTcwgLy2N2Y
https://youtu.be/K3fY6jWdgzQ
https://youtu.be/Q3gfU3wEVRw
https://youtu.be/qCml7W-M1RU
https://youtu.be/qAHrKyzJPFk
https://youtu.be/uug0fChKZJ4
https://youtu.be/uvJtrgoM_uU
https://youtu.be/GrK_TJkXfg4



https://youtu.be/3nyT_ryjF-c
https://youtu.be/E-NHVtsMWdo
https://youtu.be/ph_37Us_aWo
https://youtu.be/UZncSuCG-vE
https://youtu.be/9Sz64T-MNkE
https://youtu.be/KLhBcmBNBmM
https://youtu.be/ruyal_AGnUk
https://youtu.be/qsxaHwrBZDA

https://youtu.be/aO-Zc7Jo19Q
https://youtu.be/H09J6U4s1c8
https://youtu.be/9qb0iiHIAlU
https://youtu.be/uIc_2DY5m00
https://youtu.be/AZamJEDVD70
https://youtu.be/eEXV3CpqB_M
https://youtu.be/0phocFE2giA
https://youtu.be/lgKu7euBDc8
https://youtu.be/YIn0kliiHeY
https://youtu.be/OjNcrO_1oJ4

https://youtu.be/NuJYneIlIeo
https://youtu.be/8ME0EYAMcK4
https://youtu.be/7e-NUP1IQT4 .

41. On May 11, 2021, Defendant's counsel provided to the Government the following publicly available video depicting what was represented to be the departure of then Vice-President Pence from the Capitol at 1:59 PM on January 6, 2021, prior to Mr. Chansley's 2:13 PM entry into the Capitol Building.

Referenced link: https://projects.propublica.org/parler-capitol-videos/?id=rqAltiD2WvNU.

42. It has since been learned that the Government in some cases has asserted on the record the former Vice-President was present inside the Capitol at all times during January 6, 2021 until the Electoral College vote had been completed. It has since been noted the Government has not noted this position in other cases arising out of January 6 events at the Capitol. The temporal issue in this regard relates to the designation of the Capitol as a "restricted" building, as defined under federal law and appears to call into question viability of not less than two of the Counts herein.

43. On May 13, 2021, Defendant's counsel provided the Government with a video depicting law enforcement holding open a door to the Capitol and a number of law enforcement personnel standing by as people walk by into the Capitol Building. At least one of the officers is captured uttering what appear to be supportive words to those walking into the Capitol Building. A link to this video: https://youtu.be/dR_XFeLS-bc .

44. Also on May 13, 2021, Defendant's counsel provided the Government with another video depicting law enforcement personnel on January 6, 2021 waving protesters past barricades after having opened the barriers. A link to this video: https://youtu.be/ZCs7WkgftbY .

45. Also on May 13, 2021, Defendant's counsel provided the Government with two other videos. One was a longer video understood to not have been possessed by the Government. One was a 40 second video depicting a group of people, including Chansley, in the Senate Salon on the Second Floor. The protestors are talking with the police. "The police here are willing to work with us and cooperate peacefully with our First Amendment allowance, to gather more Americans under the condition that they will come and gather peacefully to discuss what needs to be done to save our country," says a third-party, using Chansley's bull horn. The totality of the video demonstrates a clear granting of permission to Defendant and others to be in the Capitol provided they were peaceful. In addition to Officer Robishaw, an identified senior Capitol Police Inspector is immediately present and expressing concurrence with the permission. They evidence no concern about Chansley's flagpole or finial.

An image of the Senior Capitol Police Inspector: 

A link to the shorter publicly available video: https://amgreatness.com/2021/05/16/video-shows-u-s-capitol-police-gave-protesters-ok-to-enter/

46. On May 15, 2021, Defendant's counsel provided the Government a study of *The New Yorker* video for the purposes of identifying where Chansley fell in the line of those who entered the Senate Chamber on January 6, 2021. This temporal order of appearances required careful scrutiny given the edited nature of the video. The study comprised still shots of portions of the video to permit tracking of the Chamber attendees. The abbreviation "JAC" is used to refer to

Chansley. *The New Yorker* video depicts the groups in the Senate Chamber – between Josiah COLT (who scaled the chamber walls and was photographed at 2:45p in Speaker's chair) and "JAC" being escorted in to the Chamber by Officer Robishaw just before 3:00p. The study also reflects another group that comes in during Chansley's recital of a prayer. Color coding has been used for clarity of that which is depicted. The code is as follows: YELLOW: people who are in Senate lobby with JAC, or came up with first group. GREEN: people who appear more than once with JAC in different areas. Based on the study, it appears Defendant was the 45th person to enter into the Chamber on January 6, 2021, depending on whether previously situated members of the media are included.

47. In addition to thwarting a theft inside the Capitol, and contrary to the prior assertions by the Government, Chansley assisted law enforcement at the request of law enforcement by directing people to leave the Capitol per then President Trump's directive. A link to video depicting same: https://youtu.be/YFsht5ygtdk .

48. In addition to the foregoing, at all times during interaction with law enforcement, Chansley was supportive of law enforcement, going so far as to get in line with them to protect law enforcement and attempting to force another fur wearing "caveman" attendee at the Capitol to return a shield taken from law enforcement.

49. On May 25, 2021, Defendant's counsel provided the Government video which depicted Chansley in front of The Capitol prior to entering the building. Chansley is standing in a decorative elevated circle of grass. Chansley is shouting his trademark, "Freedom." The video depicts hundreds of others walking by and past Chansley to enter the Capitol well prior to Chansley (again supporting the fact Chansley was not leading the charge into The Capitol as erroneously asserted by the Government in its pleadings herein). In the immediate vicinity of the Defendant, the video further depicts people walking through temporary fencing which had been moved aside by law enforcement (as depicted in another video provided herein), this despite the signage on the temporary fencing reading, "Area Closed." The video further depicts in the immediate vicinity of the Defendant law enforcement handing out bottles of water to and elbow bumping with other attendees at The Capitol as they traverse forward toward the open entry into The Capitol (Note, water is designated in the Capitol's official visitor policies as "Strictly Prohibited"). The video also depicts the Defendant taking time to permit another attendee at The Capitol to take a selfie with Defendant. The video further depicts clearly that the Defendant was high profile, shouting, with his flagpole (replete with finial described by the Court as a spear) in

the immediate vicinity of law enforcement who exhibited zero indicia of concern with or alarm about the flagpole (finial or spear notwithstanding) and did nothing to akin to that which was otherwise done by law enforcement on January 6, 2021 when dangerous weapons were noted, i.e. seize them, arrest the bearers of same, disarm the person possessing same, or otherwise neutralizing any concern arising therefrom. Link to this video here: https://youtu.be/1Vxeh2Nu1Zw .

DISPRATE PRETRIAL RELEASE TREATMENT OF JANUARY 6 DEFENDANTS

50. On May 15, 2021, Defendant's counsel provided the following image to the Government:

51. The foregoing image is actually an image procured from public pleadings filed by the Government in the **USA v. Secor** case arising out of events of January 6. Mr. Secor is understood to have been recognized by the Government as the first person involved in the January 6 events to have sat in former Vice-President Pence's chair. This is at the outset of the first group appearing in the Senate Chamber. The Chamber clock corroborates that this is well before Chansley was escorted into the Chamber by Officer Robishaw.

52. Mr. Secor was ordered released pending trial in March. He is understood to be a 22-year-old college student, who had an "America First flag" with him during his time in the Capitol on January 6. The flag had a finial. His counsel argued as a matter of record there was no evidence the pole was used for violence, and Mr. Secor didn't commit any violence.

53. "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 (9th Cir. 1991) (citing United States v. Winsor, 785 F.2d 755, 757 (9th Cir. 1986)); accord United States v. Jones, 566 F. Supp. 2d 288, 292 (D.NY 2008).

54. On May 15, 2021, Defendant's counsel provided the Government with sixteen (16) images as part of an ongoing effort to demonstrate the disparate position of the Government vis-à-vis Defendant. The images related to another January 6 defendant, Albert Chiarpelli. There are also images depicting Mr. Chansley well back in the pack of individuals following Defendant Chiarpelli.

55. Mr. Chiarpelli then traversed throughout the Capitol at approximately the same time as and in close proximity to Chansley. Notwithstanding same, and even though it appears Chiarpelli was not initially candid about his appearance in the Capitol, no detention was sought. No passport was required to be turned in. He was released on his own recognizance. One of the images provided the Government in this regard is depicted below:

56. As a necessary part of the process of evaluating the posture to date of the Government vis-à-vis Chansley, it was necessary to examine the position of the Government in cases involving similarly situated January 6 defendants.

57. In *United States v. Michael Foy*, 1:21-cr-00108-TSC the Government has not sought detention for individuals who were demonstrating outside or even inside the Capitol. The government has not requested detention for individuals charged with various felony offenses, including Obstruction and Assault on a Federal Officer. Upon close inspection, even defendants who have been accused of similar or more destructive conduct have been released.

58. *United States v. Chad Jones*, 1:21-mj-00076-ZMF –Mr. Jones is also charged under section 111(b), alleging the use of a deadly or dangerous weapon or infliction of bodily injury. Mr. Jones's intent was on display when he used a flagpole to repeatedly and forcefully strike and break the glass of the doorway where Ashley Babbitt was shot and killed as she climbed through a broken pane. (Mr. Foy is not alleged to have used any force inside the Capitol building, not with

the hockey stick or anything else and not against anything or anybody). Just before Mr. Jones started breaking the glass, lawmakers and staff were seen on the other side of the doors from the angry mob, being evacuated. Below is a still shot from the Complaint.

59. The still shot depicts Mr. Jones in a red jacket in which he is shown breaking the glass with the pole moments before Babbitt is shot.

60. The Complaint states: "An officer inside the Speaker's Lobby, facing the door with a gun raised, can be seen at the [left] side of the video in the close vicinity of the doorway as the officer points the gun and fires at Ms. Babbitt, Jones could still be seen next to the door with the pole, just to the left of where Ms. Babbitt was shot. The Government did not request Mr. Jones's detention and Magistrate Judge Harvey released him on special conditions.

61. *United States v Vitali Gossjankowski*, 1:21-cr-00123-PLF – According to the Indictment, Mr. Gossjankowski has been charged under 18 U.S.C. § 111(b) for assaulting a

federal officer with a dangerous weapon (a Taser) after being videotaped trying to forcefully and violently enter a restricted area of the Capitol and activating the Taser multiple times. The Complaint describes that an officer near Mr. Gossjankowski suffered a heart attack and was hospitalized after being Tased multiple times on the back of his neck. While Mr. Gossjankowski said he recognized the officer during an interview, he denied using the Taser on him. He is also charged with Section 1752 offenses for being in restricted areas of the Capitol while carrying or using a dangerous weapon. The government did not object to his release.

62. *United States v. Matthew Miller*, 1:21-cr-00075-RDM –Mr. Miller was charged with ten offenses, including assault on a federal officer under section 111(b), the lead charge against Mr. Foy. Mr. Miller allegedly discharged a fire extinguisher, as captured in the image below. He is also accused of using a crowd barrier fence as a makeshift ladder to scale the walls of the Capitol. Mr. Miller was also charged with offenses under Section 1752 involving use or carrying of a dangerous weapon.

63. *United States v. Rachel Powell*, 1:21-mj-00197-GMH – Ms. Powell, known in the press as the "bullhorn pink hat lady", was filmed using a battering ram to break a large window of the Capitol so that she and others could force their way into the Capitol. Ms. Powell was also filmed using a bullhorn to direct people inside the Capitol toward lawmakers, seeming to have detailed knowledge of the floor plan. Among other charges, Ms. Powell is accused of entering or remaining in a restricted area with a dangerous weapon. Ms. Powell was released by a magistrate judge in the Western District of Pennsylvania. The Government appealed the release order, but Chief Judge Howell denied the appeal.

64. *United States v. Robert Packer*, 1:21-cr-00103-CJN – Mr. Packer was photographed inside the Capitol wearing a "Camp Auschwitz" t-shirt, suggesting anti-Semitic beliefs and

endorsement of the Holocaust, depicted in an image set forth in his Complaint. Mr. Packer was charged with entering or remaining in a restricted building and violent entry and disorderly conduct on Capitol grounds. He had previously been convicted of forging public records, driving under the influence, driving without a license, and had a warrant for failing to appear in court. The government did not request pretrial detention of Mr. Packer.

65. *United States v. Mark Leffingwell*, 1:21-cr-00005-ABJ – Mr. Leffingwell was charged with assault on a federal officer under section 111, as well as several counts under 18 U.S.C. § 1752(a) and 40 U.S.C. § 5104I(2). Mr. Leffingwell allegedly pushed past a wall of law enforcement officers who were attempting to keep people out of the Capitol and then repeatedly punched an officer with a closed fist. Mr. Leffingwell did not raise any facts justifying his conduct. The Government did not object to Mr. Leffingwell's release on conditions.

66. *United States v. Joseph Biggs*, 1:21-mj-00126-RMM – Mr. Biggs is an admitted member of the Proud Boys, an extremist group the government describes as a "pro-Western fraternal organization for men who refuse to apologize for creating the modern world; aka Western chauvinists." Mr. Biggs posted a plan on social media for the Proud Boys to go to D.C. on January 6, 2021, but not to wear their distinctive black and yellow clothing, saying "we are going to blend in like you" (referencing Antifa). He is alleged to have been at the front of the crowd whose members breached the Capitol and to have entered the Capitol within 20 seconds of its breach. He appeared to have been wearing an earpiece and carrying a walkie-talkie for communication purposes (and presumably coordination with other Proud Boys) during the riot. He was released in the Middle District of Florida and it does not appear that the government appealed his release.

67. *United States v. Matthew Capsel*, 1:21-mj-00122-RMM – Mr. Capsel was charged with assaulting a federal officer. Mr. Capsel was captured on video fighting against National Guardsmen attempting to hold a boundary with riot shields, as shown below in an image from his complaint. There is no evidence supporting a justification defense for Mr. Capsel. Mr. Capsel persisted in fighting until he was pepper sprayed. The Government's oral motion to detain Mr. Capsel was denied in the Southern District of Illinois. It appears that the Government did not appeal Mr. Capsel's release.

68. *United States v. Josiah Colt*, 1:21-cr-00074-TFH – Mr. Colt went to the rally on January 6 wearing tactical assault gear, including a helmet. He was infamously photographed scaling down the wall of the gallery in the Senate chamber. According to the Complaint, Mr. Colt claimed in a Facebook video that he was the first person to sit in Speaker Pelosi's chair (which was actually Vice President Pence's chair) and calls Pelosi a traitor. The Government did not seek Mr. Colt's detention. See image below:

69. *United States v. Christopher Alberts*, 1:21-cr-00026-CRC – Mr. Alberts was stopped on Capitol grounds on January 6, 2021, after the emergency curfew, when a law enforcement officer noticed a bulge on his hip that turned out to be a handgun with a fully loaded high-capacity magazine. He also carried a spare magazine in a holster on his other hip and was wearing a bullet- proof vest. In his backpack, he was carrying a gas mask, a military-style meal-ready-to-eat (MRE), and a first aid kit. The Government's oral motion to detain Mr. Alberts was denied and he was released by Magistrate Judge Harvey. The Government did not appeal.

70. *United States v. Nicholas DeCarlo and Nicholas Ochs*, 1:21-cr-00073-BAH — Messrs. DeCarlo and Ochs are charged with conspiring with each other and other persons to stop Congress's certification of the election results. Mr. Ochs is a founding member of the Proud Boys Hawaii chapter with the group's name tattooed on his arm. They engaged

in planning, fundraising, and forcibly stormed past barricades. In a video posted on social media, DeCarlo stated he traveled to DC to stop the vote counting. Another video of the two of them is titled "Twas the Night Before REVOLUTION!!!" They are alleged to have defaced the Memorial Door of the Capitol with the words "Murder the Media," as shown below in an image from Mr. DeCarlo's complaint.

71. Ochs is charged with stealing flex cuffs from a Capitol police officer. Ochs posted a picture of them on social media showing them smoking cigarettes in the Capitol. The Government did not seek their pretrial detention.

72. *United States v. Matthew Council*, 1:21-mj-00008-GMH – Mr. Council is alleged to have forced his way through a police line inside the Capitol during which process he pushed a

female uniformed Capitol police officer and had to be pepper sprayed. There were no facts alleging that Mr. Council's actions were justified. The Government did not seek Mr. Council's detention.

73. *United States v. Gina Bisignano,* 21-cr-00036-CJN –Ms. Bisignano is accused of being an "instigator, a director, and an active participant in the violence, destruction and obstruction at the Capitol" on January 6. ECF No. 12 at 1. On the front lines of the crowd pushing against the police line, as pictured below, she allegedly shouted through a bullhorn things like: "Everybody, we need gas masks! We need weapons! We need strong, angry patriots to help our boys!"

74. In her case, she is charged in her Indictment with destruction of Government property. After she was released in her home district, Judge Nichols denied the appeal and ordered Ms. Bisignano to be released.

75. *United States v. Jenny Cudd*, 21-mj-00068-TNM – Ms. Cudd is alleged to have been inside the Capitol without authorization. According to the Complaint, after leaving the Capitol, Ms. Cudd livestreamed a video in which she stated, "I was here today on January 6th when the new revolution started in the Capitol." In describing her entrance, she further stated, "we just pushed, pushed, and pushed, and yelled go and yelled charge." She also said, "fuck yes, I am proud of my actions, I fucking charged the Capitol today with patriots today. Hell, yes, I am proud of my actions." She later told a local news station during an interview, "Yes, I would absolutely do it again." The Government did not seek Ms. Cudd's detention. Moreover, on February 4, 2021, the Court granted Ms. Cudd's motion to travel to Mexico to participate in a work-related retreat, which neither the Government nor Pretrial Services opposed.

76. *United States v. Bruno Cua*, 21-cr-00107-RDM – Mr. Cua entered into Senate chamber floor, armed with a baton and is alleged to have pushed officers. Prior to January 6th, he made numerous posts on social media imploring others to abandon peaceful protests and to take weapons to Washington D.C. on January 6th. Subsequent to January 6th, he posted on social media and bragged about "fighting his way into the Capitol." Mr. Cua was released into third-party custody after the appeal of the Magistrate Court's detention order.

77. *United States v. Mostofsky* (Case No. Unknown) - Mr. Motofsky is alleged to have stolen a Capital Police shield. He stole a police bullet proof vest. He carried a

pointed 5-foot wooden spear. He wore animal pelts like those worn by the Defendant. Ironically, the Defendant tried to help law enforcement by asking Mr. Motofsky to return the shield to law enforcement. He was given bond immediately.

78. *United States v. Michael Sparks*, 21-cr-00087 – Mr. Sparks is charged with multiple counts, including obstructing law enforcement. He was released on his own recognizance.

MENTAL WELL BEING OF DEFENDANT

79. Defendant has been in solitary confinement (22 hours or more per day) since promptly and peacefully self-surrendering in early January 2021.

80. Concern about the apparent and emergent need of Defendant for mental health care was brought to the attention of the Court of May 22, 2021. This Court has ordered a Psych Exam be conducted on Defendant. More importantly, the Court also advised it would communicate to U.S. Marshals the need to provide the Defendant with interim mental health care. The goal should be to keep Defendant in a position of not having his psychological state in question.

81. The Court has been apprised of the difficulties and cumbersome nature of the COVID related protocols which remain in place at the facility where the Defendant is being detained. The Government has sought the designation of this case as "complex." The discovery corresponding to this case is sizeable, much of it electronic in nature.

82. A protective order has been issued in the case relative to discovery and its copying and dissemination.

83. Defendant is currently detained in Virginia.

84. Defendant's counsel is based in St. Louis, Missouri.

85. Weekend visits have been restricted by the facility to family members seeking time with their loved ones.

86. Weekday visits are limited in time and availability.

87. The hours required to simply view the videos and images associated with discovery in the present case significantly exceed the time available to permit anything resembling a timely and meaningful completion of this undertaking.

88. Review of discovery with a criminally accused is a necessary part of the administration of justice and the accordance of an accused of due process.

89. The mental health of the Defendant required to navigate the discovery review process is vital to putting the Defendant in a position of knowledge with respect to the discovery, evidence, the case, risks associated with decisions relating to the case, and the meaningful processing by the Defendant of same.

90. The pre-existing mental vulnerabilities of the Defendant were evident and patent at the time of his shirtless presentation on January 6, 2021 in the cold of a Washington, DC winter day. The acuity of the vulnerable Defendant has waned with each passing day of solitary confinement. The effects of same, like ivy, have slept, crept and now leapt.

91. To the Defendant, there is no end in sight.

92. The combined issues of acuity and availability simply must enter into the mix of the Court in its decision with respect to pretrial release.

93. The color of the face, painted or otherwise, should not play a role in the Government's position or the Court's decision with respect to pretrial release.

THE DEFENDANT

94. The Court is already aware of the fact that Defendant has zero criminal history.

95. The Court is already aware of the fact that Defendant is a life-long resident of Phoenix, where he resides with his mother, also a life-long resident of Phoenix.

96. The Court is already aware of the Defendant's Shaman faith and commitment to Ahimsa.

97. The Court is already aware of the fact the Defendant does not have a passport, speaks no foreign languages, and has been out of the country only as part of his service in the U.S. Military.

98. The Government has not alleged nor can the Government allege that Defendant assaulted anyone or threatened anyone on January 6. This is because the Defendant did not do so.

99. The Government has not alleged the Defendant stole any property on January 6. This is because the Defendant did not do so.

100. The Government has not alleged the Defendant had a gun or knife, zip tie, camouflage, SWAT attire, or other indicia consistent with violence or plans of violence. This is because the Defendant did not do so.

101. The Government has not alleged the Defendant was destructive to any property or thing inside the Capitol on January 6. This is because the Defendant did not do so.

102. Rather, the Government, in a fashion inconsistent with its posture in other cases involving other January 6 defendants with flagpoles with finials, has garnered the attention of the Court to the mischaracterization of the flagpole carried by the Defendant. The Court has embraced the mischaracterization of same as a spear. Indeed, review of the transcript of this Court's inquiries propounded upon the Assistant United States Attorney about the characterization of the Defendant's flagpole as a "dangerous weapon" appears to be anything but spontaneous. The flagpole is in the possession of the Government. It has been in the possession of the Government since the Defendant self-surrendered. The Defendant voluntarily granted the Government access to it. The Government knows it was part of the Defendant's Shaman attire, routinely donned at political rallies, including those at which security checkpoints existed to preclude the presence of weapons (such as the rally at The Ellipse on January 6), at which the Secret Service protected President spoke.

103. The Government has not alleged the Defendant acted violently or threateningly with his flagpole. This is because the Defendant did not do so.

104. The law enforcement with whom Defendant interacted from the time the President spoke at The Ellipse, during his selfie-laden stroll down Pennsylvania Avenue, in front of, up and into the Capitol, through the Capitol, and immediately outside of the Capitol after exiting the Capitol did not state or exhibit any indicia of alarm or threat. If there was a perceived "dangerous" component to same, why was nothing done?

105. Throughout this journey, Defendant interacted with and was in ongoing close contact with law enforcement, many of whom engaged in conversation with the Defendant. No one stopped the Defendant. No one asked the Defendant to surrender his flagpole. No effort was made to seize the flagpole. Countless others had flags and poles and finials.

106. It is no secret the Defendant's image has become the media driven face of January 6. It is no secret the Defendant's costume, fur, horns, bare tattoo ridden torso, and iconic dental perfection has caused Defendant to be the go-to image, day-in-day-out, for traditional and social media throughout the world when reporting, discussing, castigating, pitying, insulting, parodying, demonizing, supporting and explaining the events and people involved in the events of January 6.

107. The Defendant is and at all times pertinent hereto has been vulnerable. Vulnerable to the words and actions of his commander-in-chief. Vulnerable to social media. Vulnerable to those who held themselves out as lovers of America, lovers of the Constitution, lovers of all that is the American Way. The Government knew the Defendant was in the military. The Government has access to the Defendant's military records. The Government knows the Defendant was honorably discharged after service as a "super soldier" in the Navy. He took an oath to defend the

Constitution against all enemies, foreign and domestic. The Government has done its due diligence on the Defendant. The Government has spared no expense. The Government has been granted access to the Defendant. The Government has taken advantage of the opportunity. The Government cannot identify one single incident ever in the life of the Defendant in which the Defendant has been violent.

108. Our nation and our Courts and our people all recognize the importance of the words "cruel" and "unusual," especially when they are used back-to-back.

109. Having pointed out the foregoing not previously produced or procured evidence which significantly alters the mix of that upon which the Court previously relied as a basis for its March 8, 2021 Order, Defendant is compelled to place front and center the fact the Government did not produce the all-important flagpole and finial for examination by the Court and Defendant's counsel.

110. As noted, the Government has been in possession of same since the Defendant voluntarily provided the Government access to same at the time of his peaceful voluntarily self-surrender.

111. The foregoing is supported by FBI Reports of Interviews produced by the Government after the hearing giving rise to this Government's March 8, 2021 ruling.

112. Upon review of the Court's March 8 2021 Order, one is compelled to note the Court's apparent *sua sponte* inquiry to the Government's Assistant United States Attorney about the "spear" held by the Defendant being a "dangerous weapon" and the Court's one word support for the Government's erroneous opinion with the word "right". (Exhibit B, Page 24, Lines 3-11).

113. Upon information and belief, and as corroborated by the Government's subsequently-produced documents, the finial on Defendant's flagpole was affixed to the pole with a zip tie.

This was required because the screw originally at the bottom of the finial had (long before January 6) broken off, hence the use by Defendant of a zip tie to permit the flagpole to be adorned by a finial which could not be used as a spear. The finial was affixed by a zip tie for decorative purposes and was not able to be used for violent purposes.

114. The Government knew or should have known the flagpole and finial were not dangerous – the Government has possessed same for over five (5) months.

115. The Government represented to this Court the Defendant was "leading the charge" into the Capitol, permitting that characterization to bleed into the same allegation about Defendant's entry into the Chamber. The Government knew Chansley was not in the first wave of those who entered the Capitol; knew Chansley did not have to overcome Police lines or barriers; knew that Defendant and others in his proximity during ingress into both the Capitol and Chamber reasonably could have believed they were doing so as express permittees versus nefarious interlopers.

116. The Court gave much attention to a video also referenced, again purportedly *sua sponte*, by the Court during the hearing of Defendant's Motion for Pretrial Release that the Court opined depicted Chansley leading the charge into the Capitol at a place which precluded Defendant from not noting the concurrent entry through a broken window right next to the doorway through which Defendant traversed to gain entry into the Capitol.

117. Again, only after hearing was the Defendant accorded the opportunity to identify and view the video upon which the Court relied.

118. The video is one-dimensional. The Capitol is majestic. It has molding, pillars, corners, edging, recesses and domes. It echoes and resonates from within its walls. Sound bounces. On January 6, 2021, at the time of the Defendant's entry, the entire foyer was filled with exuberant,

loud, noise makers. The window has since been scrutinized. It sets back from the flow of people gaining entry into the Capitol through the open doorway through which Defendant passed, effectively being "around the corner." The flow of people ran perpendicular to the line created by the handful of people who appear to enter by means of the recessed window shrouded by corner molding. This is noted not because of its lack of relevance to the Defendant's pursuit of pretrial release (indeed there is no relevance), but rather, is mentioned because of this Court's apparent *sua-sponte* focus on same at the hearing of Defendant's Motion for Pretrial Release.

119. Further pretrial detention of Defendant is not supported by any evidence, much less the weight of the evidence.

120. The foregoing forecloses any contention that pretrial release is anything but appropriate.

121. Rhetorical bravado aside, the Government has zero basis to support any assertion the Defendant is a flight risk, a danger to the community, or even that the Defendant was ever in his life violent.

122. If the Defendant had wanted to be violent, he wouldn't have rendered himself the most readily identifiable January 6, 2021 attendee at the Capitol, he wouldn't have helped thwart a theft, he would not have helped empty out the Capitol, he wouldn't have tried to recover property stolen from law enforcement, he wouldn't have aligned himself with law enforcement, engaged in supportive banter with law enforcement or admonished others to be respectful of law enforcement. And certainly, he would not have peacefully and promptly self-surrendered.

123. In reviewing the FBI Reports of Interview provided by the Government after the hearing of Defendant's Motion for Pretrial Release, it is clear (contrary to the Government's prior assertion) that the Defendant was not threatening to go to the inauguration of President Biden. Regardless, that transition has come and gone.

124. The threat of a March 4, 2021 uprising has also come and gone.

125. The Government is incapable of identifying or articulating a threat of any nature posed by Defendant.

126. The record in the prior hearing giving rise to the March 8, 2021 Order of this Court was incomplete, and misrepresented.

127. Since January 9, 2021, Defendant has been subjected to COVID-19 response protocol mandated solitary confinement for 22 plus hours per day, Defendant has been compelled to endure cruel and unusual punishment of a nature akin to the gulag of Solzhenitsyn fame. The former President blanketly referred to those who appeared at the Capitol on January 6, 2021 as "special." Chansley is indeed special. The Government knows Chansley is special.

128. This proclamation of Former President Trump may, to many, be the sole proclamation which they can embrace without apprehension.

129. It appears the Government has abandoned the assertion the Defendant is a flight risk because his image without face paint is now universally recognized.

130. The Government's job is to see justice done. Defense counsel's job is to advocate for that justice on behalf of a client. It is the Court's duty, regardless of the color(s) of the face of the Defendant, to follow the law and not prompt a record to support a predetermined fate of a special, vulnerable American.

131. To date, the United States does not acknowledge having laws governing opinion or thought, and while to date the United States does not acknowledge having re-education prison camps ala Cambodia circa 1977, the resultant effect of confining its "special" citizens in solitude for 22 hours plus per day for an indefinite term is nothing short of a wholesale Khmer Rouge-like protocol designed to send a message that if you are special enough to believe and act with

reliance on the words and actions of your standing Commander-in-Chief, you deserve neither compassion nor patience, but rather, deserve the fate of the forgotten.

132. This Court is uniquely positioned to read aloud for the benefit of the Government, nay the world, the words of late Soviet/Russian poet, Yevgeny Yevtushenko, in his work "Babi Yar." ". . . Wild grasses nestle over Babi Yar, the trees look sternly as if passing judgment. Here, silently, all screams, and hat in hand, I feel my hair changing shade to gray . . . "

WHEREFORE, Defendant prays this Honorable Court issue an Order granting Defendant pretrial release subject to such terms and restrictions as the Court deems just and meet in the circumstances.

Respectfully Submitted,

KODNER WATKINS

By: /s/ Albert S. Watkins

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CERTIFICATE OF SERVICE

Signature above is also certification that on May 26, 2021, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court utilizing the CM/ECF system which will send notification of such filing to all parties of record.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on January 8, 2021

UNITED STATES OF AMERICA	:	**CRIMINAL NO.**
	:	
v.	:	**MAGISTRATE NO. 21-MJ-018**
	:	
JACOB ANTHONY CHANSLEY, also known as "Jacob Angeli,"	:	**VIOLATIONS:**
	:	**18 U.S.C. § 231(a)(3)**
	:	**(Civil Disorder)**
Defendant.	:	**18 U.S.C. § 1512(c)(2)**
	:	**(Obstruction of an Official Proceeding)**
	:	**18 U.S.C. § 1752(a)(1)**
	:	**(Entering and Remaining in a Restricted Building)**
	:	**18 U.S.C. § 1752(a)(2)**
	:	**(Disorderly and Disruptive Conduct in a Restricted Building)**
	:	**40 U.S.C. § 5104(e)(2)(A)**
	:	**(Violent Entry and Disorderly Conduct in a Capitol Building)**
	:	**40 U.S.C. § 5104(e)(2)(G)**
	:	**(Parading, Demonstrating, or Picketing in a Capitol Building)**

INDICTMENT

The Grand Jury charges that:

COUNT ONE

On or about January 6, 2021, within the District of Columbia, **JACOB ANTHONY CHANSELY**, also known as "Jacob Angeli," committed and attempted to commit an act to obstruct, impede, and interfere with a law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder, and

the civil disorder obstructed, delayed, or adversely affected the conduct and performance of a federally protected function.

(**Civil Disorder**, in violation of Title 18, United States Code, Section 231(a)(3))

COUNT TWO

On or about January 6, 2021, within the District of Columbia, **JACOB ANTHONY CHANSELY**, also known as "Jacob Angeli," attempted to, and did corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, by committing an act of civil disorder, and threatening Congressional officials, and unlawfully remaining in a restricted building without lawful authority, and engaging in disorderly and disruptive conduct.

(**Obstruction of an Official Proceeding**, in violation of Title 18, United States Code, Section 1512(c)(2))

COUNT THREE

On or about January 6, 2021, in the District of Columbia, **JACOB ANTHONY CHANSLEY**, also known as "Jacob Angeli," did unlawfully and knowingly enter and remain in the United States Capitol, a restricted building, without lawful authority to do so.

(**Entering and Remaining in a Restricted Building**, in violation of Title 18, United States Code, Section 1752(a)(1))

COUNT FOUR

On or about January 6, 2021, in the District of Columbia, **JACOB ANTHONY CHANSLEY**, also known as "Jacob Angeli," did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engaged in disorderly and disruptive conduct in and within such proximity to, the United States Capitol, a restricted building, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions, by forcing his way inside the United States Capitol and traversing

the United States Capitol Grounds in an effort to prevent the Electoral College votes from being certified.

(**Disorderly and Disruptive Conduct in a Restricted Building**, in violation of Title 18, United States Code, Section 1752(a)(2))

COUNT FIVE

On or about January 6, 2021, in the District of Columbia, **JACOB ANTHONY CHANSLEY**, also known as "Jacob Angeli," willfully and knowingly entered or remained on the floor of a House of Congress or in any cloakroom or lobby adjacent to that floor, without authorization to do so.

(**Violent Entry and Disorderly Conduct in a Capitol Building**, in violation of Title 40, United States Code, Section 5104(e)(2)(A))

COUNT SIX

On or about January 6, 2021, in the District of Columbia, **JACOB ANTHONY CHANSLEY**, also known as "Jacob Angeli," willfully and knowingly paraded, demonstrated, and picketed in a Capitol Building.

(**Parading, Demonstrating, or Picketing in a Capitol Building**, in violation of Title 40, United States Code, Section 5104(e)(2)(G))

A TRUE BILL:

FOREPERSON.

Michael Sherwin/JSL

Attorney of the United States in
and for the District of Columbia.

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

JACOB ANTHONY CHANSLEY,

Defendant.

Case No. 21-cr-3 (RCL)

MEMORANDUM OPINION

After defendant Jacob Anthony Chansley was arrested on charges stemming from his participation in the January 6, 2021 breach of the United States Capitol, a magistrate judge in the District of Arizona ordered him detained pending trial. ECF No. 11 at 1, 10–13. Defendant now asks this Court to vacate the magistrate judge's order of detention and release him as he awaits trial. ECF No. 12. After the government filed its opposition, ECF No. 17, and defendant replied, ECF No. 18, the Court held a hearing on defendant's motion.

Upon consideration of the parties' filings, ECF Nos. 7, 12, 17, 18, 23, the arguments set forth at the hearing, and the underlying record, the Court finds that no condition or combination of conditions of release will reasonably assure defendant's appearance as required or the safety of others and the community. *See* 18 U.S.C. § 3142(e)(1). Accordingly, the Court will **DENY** defendant's motion to revoke the magistrate judge's order of detention.

I. BACKGROUND

A. Factual Allegations

The government proffers the following evidence in support of its opposition to defendant's motion for pre-trial release. At approximately 1:00 pm on January 6, 2021, a joint session of Congress convened to certify the Electoral College vote count for the 2020 Presidential Election. ECF No. 7 at 2. As elected members of the U.S. Senate and House of Representatives met in separate chambers inside the U.S. Capitol building, a large crowd gathered outside. *Id.* U.S. Capitol Police Officers, as well as temporary and permanent security barriers, stood between the crowd and the Capitol. *Id.*

Between 1:00 and 2:00 pm, individuals from the crowd forced their way through the barricades and past Capitol Police officers, advancing to the exterior façade of the Capitol building. *Id.* As the mob approached the building, the joint session continued inside, with then-Vice President Mike Pence presiding in the Senate Chamber. *Id.* Despite the efforts of Capitol Police officers to prevent the crowd from entering the building, the mob forced its way past the officers and into the Capitol. *Id.* As the mob broke into the building, Congressional members and Vice President Pence were forced to evacuate. *Id.* at 2–3.

Defendant was one of the rioters who breached the Capitol building. *Id.* at 3. His actions that day were extensively photographed and recorded. *Id.* at 10; *see* ECF No. 17 at 3 (citing "A Reporter's Video from Inside the Capitol Siege," *The New Yorker* (Jan. 17, 2021), https://www.newyorker.com/news/video-dept/a-reporters-footage-from-inside-the-capitol-siege) (hereinafter "The New Yorker Footage"). Defendant's unmistakable outfit included a horned coyote-tail headdress; red, white, and blue face paint; gloves; and no shirt. ECF No. 7 at 3.

Defendant carried a six-foot pole with an American flag zip-tied to the shaft and a metal spearhead fixed to the top. *Id.* He also carried a bullhorn. *Id.*

As rioters smashed the glass windows of the Capitol building and began climbing inside, defendant entered the building through an adjacent doorway. ECF No. 23, Ex. 2 at 00:10–00:34.[1] Once inside, Capitol Police Officer Keith Robishaw attempted to calm the rioters and move people out of the area, but defendant used his bullhorn to encourage the crowd. ECF No. 7 at 3–4. Defendant then approached Officer Robishaw and screamed at him that "this was their house" and that "they were there to take the Capitol, and to get Congressional leaders." *Id.* at 3. When Officer Robishaw and other officers told the rioters to leave the area from the same way they had entered, most complied. *Id.* at 4. Defendant, however, disobeyed this order and instead began heading up a stairwell toward the Senate Chamber. *Id.*

Once inside the Senate Chamber, defendant began pounding his spear on the ground and screaming obscenities. ECF No. 17 at 3. Officer Robishaw, now in the Senate Chamber alone with the rioters, asked defendant to assist him by using his bullhorn to get the rioters out of the Chamber. *Id.* at 4. Instead of cooperating, however, defendant walked up to the Senate dais where Vice President Pence had been presiding minutes before. *Id.* Defendant announced that he was going to sit in Vice President Pence's chair because "Mike Pence is a fucking traitor." ECF No. 17 at 4. He then asked another rioter to photograph him. *Id.* at 5. While standing at the dais, defendant scrawled a note to Vice President Pence on a piece of paper sitting on the desk, reading, "ITS ONLY A MATTER OF TIME JUSTICE IS COMING!" *Id.* at 5. Defendant then turned to *The New Yorker* reporter filming inside the Senate Chamber and repeated his same message: "It's only a matter of time. Justice is coming." *Id.*

[1] Consistent with the protective order governing discovery in this matter, *see* ECF No. 24, Exhibits 1 and 2 to ECF No. 23 were made available to defense counsel and the Court.

After more rioters entered the Chamber, defendant led the crowd in what he described as a "prayer" over his bullhorn. The New Yorker Footage, *supra* at 08:02. "Thank you for allowing the United States of America to be reborn," he exclaimed. ECF No. 17 at 5. "Thank you for allowing us to get rid of the communists, the globalists, and the traitors within our government." *Id.*

B. Defendant's Interviews and Arrest

The following day, on January 7, 2021, defendant called the Federal Bureau of Investigation ("FBI") Washington field office and asked to speak with law enforcement. ECF No. 7 at 5. Defendant confessed that he was the person photographed standing at Vice President Pence's seat on the Senate dais, wearing face paint and a horned headdress. *Id.* at 5–6. He further explained that he entered the Capitol "by the grace of God" and said he was glad he sat in the Vice President's chair because Vice President Pence is a child-trafficking traitor. *Id.* at 6. Defendant stated that he did not intend for his note to Vice President Pence to be understood as a threat. *Id.* But he expressed his interest in returning to Washington, D.C. for the 46th Presidential Inauguration, telling the FBI: "I'll still go, you better believe it. For sure I'd want to be there, as a protestor, as a protestor, fuckin' a." *Id.* Later that day, in an interview with NBC News, defendant boasted about his involvement in the events on January 6th, saying, "[t]he fact that we had a bunch of our traitors in office hunker down, put on their gas masks and retreat into their underground bunker, I consider that a win." *Id.* at 6 (citing "Capitol Rioter in Horned Hat Gloats as Feds Work to Identify Suspects," *NBC News* (Jan. 7, 2021), https://www.nbcnews.com/news/us-news/capitol-rioter-horned-hat-gloats-feds-work-identify-suspects-n1253392).

On January 8, 2021, the government initiated this criminal matter by filing a sealed Complaint in this District. ECF No. 1. The Complaint charged defendant with knowingly entering or remaining in any restricted building or grounds without lawful authority in violation of

18 U.S.C. §§ 1752(a)(1) and (2) and with violent entry and disorderly conduct on Capitol grounds in violation of 40 U.S.C. §§ 5104(e)(2)(A) and (G). *Id.* The same day, U.S. Magistrate Judge G. Michael Harvey issued a warrant for defendant's arrest. ECF No. 2-4.

The next day, January 9, 2021, defendant drove to the FBI field office in Phoenix, Arizona to speak with authorities again. ECF No. 7 at 6. At this point, defendant had not yet learned of the warrant for his arrest or the criminal Complaint, as both documents were still sealed. *Id.* During that second interview, defendant twice told law enforcement that he had plans to drive to the Arizona State Capitol. *Id.* Corroborating those plans, law enforcement found the horned headdress, face paint, six-foot spear, and bullhorn in defendant's car, which was parked outside the FBI field office. *Id.* Defendant was then arrested at the Phoenix FBI office. *Id.*

C. Procedural History

On January 11, 2021, defendant was indicted in this District. ECF No. 3. The Indictment charges defendant with civil disorder in violation of 18 U.S.C. § 231(a)(3) and obstructing an official proceeding in violation of 18 U.S.C. § 1512(c)(2), both of which are felonies. *Id.* at 1–2. It also charges defendant with four misdemeanors: entering and remaining in a restricted building in violation of 18 U.S.C. § 1752(a)(1), disorderly and disruptive conduct in a restricted building in violation of 18 U.S.C. § 1752(a)(2), violent entry and disorderly conduct in a Capitol building in violation of 40 U.S.C. § 5104(e)(2)(A), and parading, demonstrating, or picketing in a Capitol building in violation of 40 U.S.C. § 5104(e)(2)(G). *Id.* at 1–3.

The same day he was indicted, defendant had an initial appearance before U.S. Magistrate Judge Deborah M. Fine in the District of Arizona. ECF No. 11 at 8. The government sought defendant's pre-trial detention and, on January 15, 2021, Magistrate Judge Fine held a detention hearing. *United States v. Chansley*, 2:21-mj-05000-DMF, ECF No. 5; ECF No. 11 at 17. After

hearing argument from both sides, the magistrate judge found that no condition or combination of conditions would reasonably assure the appearance of the defendant as required or the safety of others and the community. ECF No. 11 at 10. Accordingly, she ordered defendant detained pending trial. *Id.* at 10. In support of the order of detention, Magistrate Judge Fine found:

> Despite Mr. Chansley's voluntary communications with federal investigators, the evidence before the Court confirms Mr. Chansley's motivations and capabilities to participate in similar unlawful acts while on pretrial release. Mr. Chansley broke through barricades, unlawfully entered the Capitol Building, disobeyed police orders to leave, refused a police request to quell the crowd using his bullhorn, and instead ran up onto the dais where Vice President Pence had been presiding just minutes before and scrawled a threatening note. Mr. Chansley's willingness to very publicly attempt to obstruct the official duties of the United States Congress certifying the vote count of the Electoral College makes clear his disregard for the importance of following orders during official proceedings such as the D.C. District Court case now charging him with serious crimes. Further, on Twitter in late November 2020, Mr. Chansley had previously promoted identifying and then hanging those he believes to be traitors within the United States government.

Id. at 11.

After defendant was transferred to the District of Columbia Central Detention Facility ("D.C. jail"), he submitted an inmate request form for a religious dietary accommodation based on his shamanistic faith. *See* ECF No. 8 at 1–2. He explained that he eats only organic food because of his faith. *Id.* Defendant refused to eat the food given to him while his request was pending, and the D.C. jail eventually denied his request. *Id.* After one week without food, defendant filed an "emergency motion for sustenance or, in the alternative, for pretrial release." ECF No. 6. The government opposed defendant's request for pre-trial release but took no position on his request for organic food. ECF No. 7. After holding a hearing, the Court granted defendant's motion for a religious dietary accommodation, finding that the D.C. jail's refusal to accommodate defendant's sincerely held religious beliefs violated the First Amendment. ECF No. 8 at 6–11. Because

defendant withdrew his alternative request for pre-trial release, the Court did not rule on it. *See id.* at 1. The next day, the D.C. jail represented that it was unable to comply with the Court's Order, so the U.S. Marshal transferred defendant to the Alexandria Detention Facility in Virginia. ECF No. 9.

Now, one month later, defendant again seeks pre-trial release. ECF No. 12. He argues that after Magistrate Judge Fine ordered him detained, "significant developments have occurred and a number of significant facts have come to light, all of which" now make pre-trial release appropriate. *Id.* at 7. Those developments, he argues, include the fact that President Biden was inaugurated and the fact that the COVID-19 pandemic has made it difficult for defense counsel and defendant to have unmonitored communications. *Id.* at 7–8. Alternatively, defendant asks to be temporarily released pursuant to 18 U.S.C. § 3142(i) for the "compelling" reasons that his faith precludes him from receiving a COVID-19 vaccination and that the pandemic has made it "impossible" for defense counsel and defendant to speak privately. *Id.* at 24.

The government opposes defendant's request for pre-trial release. ECF No. 17. It incorporates the arguments raised in its opposition, ECF No. 7, to defendant's "emergency motion for sustenance or, in the alternative, for pretrial release," and it further proffers details of the events on January 6th from a video captured inside the Capitol and published by *The New Yorker*. ECF No. 17 at 1, 4.

After defendant replied, ECF No. 18, the Court held a hearing on defendant's motion. During the hearing, defense counsel represented that defendant was welcomed into the Capitol by police officers. To refute this claim, the government referenced video footage of defendant that was in the government's possession but had not yet been disclosed to defendant. Accordingly, at the Court's direction, the government disclosed the video footage to defendant and the Court. *See*

ECF No. 23 (referencing Exhibits 1 and 2). Also during the hearing, the government referenced an interview given by defendant and defense counsel to 60 Minutes+, which aired on March 4, 2021. The government provided the link to that interview in its sur-reply. ECF No. 23 (citing "60 Minutes+ | Series Premiere | Full Episode | Paramount+, *YouTube* (Mar. 4. 2021), https://www.youtube.com/watch?v=osb7X6tAwpc) (hereinafter "60 Minutes+ Interview").

Defendant's motion is now ripe for consideration.

II. LEGAL STANDARDS

A. Pre-Trial Detention Under the Bail Reform Act

The Bail Reform Act, 18 U.S.C. § 3141 *et seq.*, authorizes the detention of defendants awaiting trial on a federal offense only under certain, limited circumstances. 18 U.S.C. § 3142(f). First, the government may seek a defendant's pre-trial detention if the charged offenses fall into any of five enumerated categories. § 3142(f)(1). Those categories include:

> **(A)** a crime of violence,[2] a violation of section 1591, or an offense listed in section 2332b(g)(5)(B)[3] 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 . . . the Controlled Substances Import and Export Act . . . or [46 U.S.C. § 705],
>
> **(D)** any felony if [the person charged] has been convicted of two or more offenses described in [§§ 3142(f)(1)(A)–(C)], or two or more State or local offenses that would have been offenses described in

[2] The Bail Reform Act defines "crime of violence" as (A) "an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another," (B) "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," or (C) "any felony under chapter 77, 109A, 110, or 117." 18 U.S.C. § 3156(a)(4).

[3] Section 2332b(g)(5)(B) lists offenses that become a "federal crime of terrorism" when the offense is "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct." 18 U.S.C. § 2332b(g)(5)(B).

> [§§ 3142(f)(1)(A)–(C)] 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[4] . . . or any other dangerous weapon[.]

18 U.S.C. § 3142(f)(1)(A)–(E).

Second, the government may also seek detention—or the court may *sua sponte* hold a detention hearing to determine whether pre-trial detention is appropriate—if the case involves "a serious risk" that the defendant will flee or "will attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror." § 3142(f)(2).

If the Bail Reform Act authorizes pre-trial detention, the judicial officer must hold a hearing to determine whether there are conditions of release that would reasonably assure the appearance of the defendant as required and the safety of any other person and the community. § 3142(f). If the judicial officer finds that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community," the judicial officer *shall* order the person detained pending trial. § 3142(e)(1). A finding that no condition or combination of conditions would reasonably assure the safety of any other person and the community must be supported by clear and convincing evidence. § 3142(f). And a finding that no conditions would reasonably assure the defendant's appearance as required

[4] The Bail Reform Act defines "destructive device" as (A) "any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or device similar to any of the devices in the preceding clauses," (B) "any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter," and (C) "any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled." 18 U.S.C. § 921(a)(4).

must be supported by a preponderance of the evidence. *United States v. Xulam*, 84 F.3d 441, 442 (D.C. Cir. 1996).

In two situations, the Bail Reform Act establishes a rebuttable presumption that no condition or combination of conditions will reasonably assure the safcty of any other person and the community. § 3142(e). First, a rebuttable presumption arises if the judicial officer finds that (a) the person has been convicted of certain listed federal offenses, including a "crime of violence," or similar state offenses, (b) that offense was committed while the person was on release pending trial for another offense, and (c) not more than five years has elapsed since the date of conviction of that offense or the release from imprisonment, whichever is later. § 3142(e)(2). A rebuttable presumption also arises if the judicial officer finds probable cause to believe that the person committed any of five categories of enumerated offenses.[5] § 3142(e)(3).

If the case does *not* involve either of those circumstances, there is no rebuttable presumption of detention and the court instead must consider the following factors to determine whether there are conditions that would reasonably assure the defendant's appearancc and the public's safety:

> **(1)** the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of Section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device
>
> **(2)** the weight of the evidence against the person
>
> **(3)** the history and characteristics of the person, including—
>
> > **(A)** the person's character, physical and mental condition, family ties, employment, financial resources, length of

[5] Those categories include, (A) "an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act . . . the Controlled Substances Import and Export Act . . . or [46 U.S.C. § 705], (B) "an offense under [18 U.S.C. §§ 924(c), 956(a), 2332b], (C) "an offense listed in [18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed," (D) "an offense under [18 U.S.C. § 77] for which a maximum term of imprisonment of 20 years or more is prescribed," or (E) "an offense involving a minor victim" under certain enumerated sections of title 18. § 3142(e)(3).

> residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings
>
> **(B)** whether, at the time of the current offense of arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, state, or local law; and
>
> **(4)** the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

§ 3142(g).

B. Review of a Magistrate Judge's Order of Detention Under 18 U.S.C. § 3145(b)

If a magistrate judge orders a defendant detained, the defendant "may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order." 18 U.S.C. § 3145(b). The motion shall be decided promptly. *Id.* The court having original jurisdiction of the offense reviews the magistrate judge's order of detention *de novo* as to issues of both law and fact. *United States v. Hunt*, 240 F. Supp. 3d 128, 132–33 (D.D.C. 2017); *United States v. Chrestman*, No. 21-MJ-218, 2021 WL 765662, *5–6 (D.D.C. Feb. 26, 2021).

C. Temporary Release Under 18 U.S.C. § 3142(i)

In addition to seeking review of a detention order by the court having original jurisdiction of the offense under 18 U.S.C. § 3145(b), the Bail Reform Act also allows defendants ordered detained to move for temporary release under 18 U.S.C. § 3142(i). Section 3142 provides that after a judicial officer enters an order of detention, the officer "may by subsequent order, permit the temporary release of the [defendant], in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason." 18 U.S.C. § 3142(i). A defendant moving under § 3142(i) bears the burden of showing that he is entitled to relief. *United States v. Riggins*, 456 F. Supp. 3d 138, 149 (D.D.C. 2020).

Before the COVID-19 pandemic, few courts had considered what amounts to "another compelling reason" necessitating release, as motions brought under § 3142(i) typically sought temporary release for the defendant's preparation of his defense. *See, e.g.*, *United States v. Lee*, 451 F. Supp. 3d 1, 6 (D.D.C. 2020) (collecting cases). More recently, however, courts have confronted the argument that temporary release under § 3142(i) is necessary due to the conditions in detention facilities caused by the COVID-19 pandemic. *See, e.g.*, *id.*; *Riggins*, 456 F. Supp. 3d at 149; *United States v. Otunyo*, No. 18-CR-251, 2020 WL 2065041, at *9 (D.D.C. Apr. 28, 2020); *United States v. Thomas*, 456 F. Supp. 3d 69, 72 (D.D.C. 2020); *United States v. Dhavale*, No. 19-MJ-92, 2020 WL 1935544, at *5–6 (D.D.C. Apr. 21, 2020). And while some courts have granted temporary release under § 3142(i) when the defendant has serious underlying health conditions that exacerbate the risk of severe illness or death from COVID-19, *see, e.g.*, *Thomas*, 456 F. Supp. 3d at 78–79, courts recognize that the existence of COVID-19 alone does not present a "compelling reason" necessitating temporary release, *see, e.g.*, *Dhavale*, 2020 WL 1935544, at *5–6; *Otunyo*, 2020 WL 2065041, at *9.

III. DISCUSSION

A. The Bail Reform Act Authorizes Defendant's Pre-Trial Detention

As a threshold matter, the Court must first determine whether the Bail Reform Act allows the government to seek pre-trial detention. *See* 18 U.S.C. § 3142(f). The government argues that defendant is subject to pre-trial detention under § 3142(f)(1)(E) because he carried a dangerous weapon (a six-foot spear) during the commission of the crimes charged. ECF No. 7 at 8. In response, defendant argues that he did not carry a "dangerous weapon" into the Capitol because the object he carried was not a six-foot "spear" but rather a "flagpole" with "a spear finial." ECF No. 12 at 13. The spear finial, he notes, is the "traditional Native American design." *Id.*

The Court agrees with the government that defendant is subject to pre-trial detention under § 3142(f)(1)(E).[6] Section 3142(f)(1)(E) allows the government to seek pre-trial detention in cases involving "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 . . . or any other dangerous weapon." Defendant was charged with two felonies: civil disorder in violation of 18 U.S.C. § 231(a)(3) and obstruction of an official proceeding in violation of 18 U.S.C. § 1752(a)(1). ECF No. 3 at 1–2. As both parties agree, neither of these felonies is a "crime of violence" as defined by the Bail Reform Act. *See* ECF No. 12 at 18; ECF No. 17 at 2 n.2; *see also* 18 U.S.C. § 3156(a)(4) (defining "crime of violence").

The only issue to be decided, then, is whether a six-foot pole with a metal spearhead fixed to the top constitutes "any other dangerous weapon." § 3142(f)(1)(E). The Bail Reform Act does not define the term "dangerous weapon," nor is the Court aware of any case in this Circuit or any other that defines "dangerous weapon" as used in the Bail Reform Act. The same term is, however, used in functionally analogous contexts elsewhere in Title 18 of the U.S. Code, such as the federal assault statutes: 18 U.S.C. §§ 111 and 113. Section 111(b) criminalizes assault of a federal officer using a "deadly or dangerous weapon." 18 U.S.C. § 111(b). And Section § 113(a)(3) punishes assault "with a dangerous weapon" when committed within the special maritime and territorial jurisdiction of the United States. § 113(a)(3).

As used in Sections 111 and 113, courts have consistently defined "dangerous weapon" as an object that is either inherently dangerous or is used in a way that is likely to endanger life or inflict great bodily harm. *See United States v. Anchrum*, 590 F.3d 795, 802 (9th Cir. 2009); *United*

[6] Because the Court finds that defendant is subject to pre-trial detention under § 3142(f)(1)(E) of the Bail Reform Act, it need not consider the government's alternative argument that defendant is also subject to detention under §§ 3142(f)(2)(A) and (f)(2)(B). *See* ECF No. 7 at 8–9.

States v. Smith, 561 F.3d 934, 939 (9th Cir. 2009) (en banc); *United States v. Sturgis*, 48 F.3d 784, 787–88 (4th Cir. 1995); *United States v. Gibson*, 896 F.2d 206, 210 & n.1 (6th Cir. 1990); *United States v. Guilbert*, 692 F.2d 1340, 1343 (11th Cir. 1982) (per curiam). "Inherently dangerous" weapons are those that are "obviously dangerous" such as "guns, knives, and the like." *Smith*, 561 F.3d at 939 (quoting *United States v. Riggins*, 40 F.3d 1055, 1057 (9th Cir. 1994)). Conversely, "objects that have perfectly peaceful purposes may be turned into dangerous weapons" when used in a manner likely to cause bodily harm. *United States v. Rocha*, 598 F.3d 1144, 1154 (9th Cir. 2010).

Under this definition, the Court finds that a six-foot pole with a metal spearhead fixed to the top is, undoubtedly, a dangerous weapon. Like a knife, it is inherently dangerous. Both objects have a sharpened point designed to inflict harm by piercing or puncturing. Moreover, a spear can inflict those puncturing and stabbing wounds at a distance, making it even more effective as an offensive weapon than a knife. Thus, because defendant's six-foot spear is inherently dangerous, it does not matter whether defendant *actually used it* to cause bodily harm while inside the Capitol. *See Smith*, 561 F.3d at 939.

Defendant's attempt to downplay the dangerousness of the spear by characterizing it as a "flagpole" with "a spear finial" is unpersuasive. ECF No. 12 at 14. No matter the word one uses to describe the object defendant carried, defendant cannot escape the fact that he carried a six-foot pole with an approximately six-inch, sharp, metal object fastened to the top. *See* ECF No. 17 at 3. And whether the sharpened metal point is referred to as a "spear" or "a traditional Native American design," it is still, like a knife, inherently dangerous. ECF No. 12 at 13.

Perhaps most meritless of all is defendant's argument that the spear is not a "dangerous weapon" because state flags with "spear finials" are "universally displayed in easily accessible

public locations in all Federal Buildings." *Id.* This fact, he argues, "give[s] rise to the inevitable conclusion that the Government must not be too concerned that a member of the public will use the flagpole with an eagle or spear finial as a weapon, otherwise they would not employ [them] across the country in Federal Government Buildings." *Id.* at 13–14. Yet whether or not an object is a dangerous weapon, of course, does not turn on its availability within government buildings. By defendant's logic, knives would not be considered dangerous weapons due to their availability in government building cafeterias. The Court declines to adopt defendant's "readily-available-in-government-buildings" standard for determining whether an object is a "dangerous weapon" under the Bail Reform Act.

In sum, the Court finds that because this case involves a "felony that is not otherwise a crime of violence . . . that involves the possession . . . of . . . any other dangerous weapon," the government may seek defendant's pre-trial detention under 18 U.S.C. § 3142(f)(1)(E). When a defendant is subject to pre-trial detention, as defendant is here, the Bail Reform Act provides that the Court must order defendant detained pending trial if, after a hearing, it finds that "no condition or combination of conditions will reasonably assure the appearance of [defendant] as required and the safety of any other person and the community." 18 U.S.C. § 3142(e)(1). In the sections that follow, the Court will address defendant's dangerousness and risk of flight. Ultimately, it concludes that no condition or combination of conditions could reasonably achieve either objective.

B. The Court Finds, by Clear and Convincing Evidence, that No Condition or Combination of Conditions Will Reasonably Assure the Safety of Other Persons and the Community

The Bail Reform Act does not establish a rebuttable presumption of detention in this case. *See* 18 U.S.C. § 3142(e)(2)–(3). Accordingly, to determine whether any condition or combination

of conditions will reasonably assure the safety of others and the community, the Court must consider available information concerning four subjects set forth in 18 U.S.C. § 3142(g). Those subjects include the nature and circumstances of the offenses charged, the weight of the evidence against defendant, defendant's history and characteristics, and the nature and seriousness of the danger to any person or the community that would be posed by defendant's release. § 3142(g)(1)–(4). The Court will address each in turn.

i. Nature and Circumstances of the Offenses Charged

The first factor to consider under § 3142(g) is "the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1951, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device." 18 U.S.C. § 3142(g)(1). Though defendant was not charged with any of the offenses listed in § 3142(g)(1), defendant's conduct on and after January 6th indicates his willingness to resort to violence to undermine the legitimate functions of the United States government. Furthermore, defendant's refusal to obey orders from law enforcement while inside the Capitol building indicates that he would not comply with conditions of release imposed to keep the public safe.

a. Defendant's Actions and Statements Evince a Willingness to Resort to Violence to Halt the Legitimate Functions of the United States Government

On January 6, 2021, defendant publicly and proudly displayed his intent to disrupt the legitimate functions of our government. Most troubling of all, however, is the fact that defendant's actions and statements on and leading up to January 6th indicate his willingness to halt those functions by means of violence. Defendant entered the Capitol building carrying a six-foot pole with a metal spearhead fixed to the top. ECF No. 17 at 3. Once inside, he disobeyed orders from Capitol Police Officer Robishaw to leave the building and encouraged other rioters by yelling

through his bullhorn. ECF No. 7 at 3–4. Eventually, he made his way into the Senate Chamber, where he banged his spear on the ground, screamed obscenities, and refused to let Officer Robishaw use his bullhorn to get rioters out of the Chamber. ECF No. 7 at 4; ECF No. 17 at 3–5. Defendant then walked up to the dais, asked another rioter to photograph him, and sat in the Vice President's chair. ECF No. 17 at 4. Defendant, like every other person in this country, has the right to assemble and to peacefully protest. What he cannot do, however, is storm into the Capitol building during a joint session of Congress to stop Congress from certifying the results of a lawful election.

Shedding light on defendant's actions, and distinguishing him from many others present that day, are the statements defendant made leading up to and on January 6th. Before the Court considers those statements, however, it must first confront an objection defendant raises to doing so: that considering his statements when deciding whether to detain him pending trial would violate his First Amendment right to free expression. ECF No. 12 at 20–21; ECF No. 18 at 8.

Defendant is mistaken. While caselaw suggests that "mere advocacy" alone is insufficient for a finding of dangerousness, *Leary v. United States*, 431 F.2d 85, 91 (5th Cir. 1970), the Supreme Court has explicitly held that courts *may* consider otherwise-protected speech to establish a defendant's motive or intent during the commission of some other unlawful conduct. *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) (holding that the First Amendment "does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent"). So whether defendant's speech *itself* was criminal is an issue the Court need not decide today. For even if his statements were themselves protected, the First Amendment does not prohibit their consideration as evidence of motive or intent. Indeed, consistent with that principle, courts often consider a defendant's statements as evidence of motive or intent when deciding whether he should

be detained pending trial. *See, e.g.*, *United States v. Daniels*, No. 18-CR-5, 2018 WL 620537, at *6 (N.D. Tex. Jan. 30, 2018); *United States v. Ervin*, 818 F. Supp. 2d 1314, 1317–18 (M.D. Ala. 2011); *United States v. Mehanna*, 669 F. Supp. 2d 160, 165 (D. Mass. 2009); *United States v. Reiner*, 468 F. Supp. 2d 393, 399 (E.D.N.Y. 2006).

Here, defendant's statements on and before January 6th show that, over time, defendant cultivated an intent to halt the legitimate functions of the United States government and a willingness to resort to violence to do so. In November 2020, defendant made statements on Twitter promoting "identifying and then hanging those he believes to be traitors within the United States government." ECF No. 11 at 11. Once inside the Capitol, he screamed at Officer Robishaw that the rioters were there to "get Congressional leaders." ECF No. 7 at 4. After defendant made his way into the Senate Chamber, he announced that Vice President Mike Pence is a "fucking traitor" and left a note for the Vice President on the Senate dais reading, "ITS ONLY A MATTER OF TIME JUSTICE IS COMING!" *Id.* at 4–5. Defendant then thanked God for "allowing us to get rid of the communists, the globalists, and the traitors within our government." ECF No. 17 at 5. These statements cast a shadow in both directions. They show that defendant entered the Capitol building on January 6th not to ponder Statuary Hall, but with an intent to disrupt the functions of our government by means of force. They also illustrate the types of future conduct defendant may engage in should he be released pending trial.

At the hearing and in his briefs, defendant characterizes himself as a peaceful person who was welcomed into the Capitol building on January 6th by police officers. The Court finds none of his many attempts to manipulate the evidence and minimize the seriousness of his actions persuasive. First, defendant argues that the note he left for Vice President Pence was not meant to be a threat. ECF No. 12 at 16. In support of this argument, he points to video footage of him writing

the note, which he says shows "the caution employed . . . to make sure that he replaced the writing utensil utilized to write the note carefully back into the holder from which it had been originally garnered." *Id.* Additionally, he argues, the words written simply mirrored statements made earlier that day by President Trump. *Id.*

Defendant's focus on this minutia does not change the Court's view of the overall tenor of his statements both before and during the assault on the Capitol. Long before January 6th, defendant publicly promoted the hanging of those he believed to be "traitors" in the United States government. ECF No. 11 at 11. Defendant's views on that subject did not dissipate with time. For after he breached the Senate Chamber, defendant announced that he would sit in the Vice President's chair because Vice President Pence is a "fucking traitor." ECF No. 17 at 4. Then, he left a note to Vice President Pence saying, "ITS ONLY A MATTER OF TIME JUSTICE IS COMING!" *Id.* at 5. Reading that note in the context of defendant's earlier promotion of the execution of "traitors" invalidates the notion that defendant breached the Capitol merely to leave peaceful, political commentary on the Senate dais.

Second, defendant argues that "but for the actions and words" of former President Trump, he would not have entered the Capitol building. ECF No. 12 at 10. He claims that he merely "heeded the invitation" of President Trump to "walk down Pennsylvania Avenue and go to the Capitol." *Id.* at 11. To substantiate this claim, defendant points to former President Trump's impeachment trial. *See id.* at 11–13. The Court need not question the sincerity of this claim. Even taking defendant's claim at face value, it does not persuade the Court that defendant would not pose a danger to others if released. If defendant truly believes that the only reason he participated in an assault on the U.S. Capitol was to comply with President Trump's orders, this shows defendant's inability (or refusal) to exercise his independent judgment and conform his behavior

to the law. These are not the qualities of a person who can be trusted on conditional release. Moreover, the fact that defendant attributes his actions on January 6th to President Trump does little to persuade the Court that defendant will not act in the same or similar ways again. In fact, in his interview with 60 Minutes+, defendant stated that he does not regret his loyalty to former President Trump. 60 Minutes+ Interview, *supra* at 12:50–12:54.

For the same reasons, the Court finds unpersuasive defendant's argument that he should be credited because he "admonished others to go home when Trump finally tweeted that it was time to go home." ECF No. 18 at 7. Tellingly, defendant decided it was time to leave not because of the violence and destruction that took place, but because President Trump told him to. Again, defendant refused to exercise his independent judgment in assessing the situation. The fact that defendant left the building only once President Trump told him to—after ignoring the same pleas from Capitol Police Officer Robishaw—further illustrates defendant's disrespect for law enforcement.

Third, defendant argues that he "did not have any specific plan to travel to or enter into the Capitol." *Id.* at 20. Evidence in the record, however, belies the claim that the events of January 6th happened on a whim. As Magistrate Judge Fine noted in her findings of fact, defendant made statements on Twitter in November 2020 promoting the "identifying and then hanging those he believes to be traitors within the United States government." ECF No. 11 at 11. And as defendant himself acknowledged in one of the public statements made since his arrest, "[t]here is a lot that happened over time which led up to January 6, 2021." ECF No. 12 at 11. The Court thus finds incredible defendant's claim that he had no plans to travel to or enter the Capitol.

Fourth, the fact that the 46th Presidential Inauguration has already occurred does not persuade the Court that defendant no longer poses a danger to other persons and the community.

See ECF No. 12 at 7. The statements defendant has made to the public from jail show that defendant does not fully appreciate the severity of the allegations against him. To the contrary, he believes that *he*—not the American people or members of Congress—was the victim on January 6th. *See* ECF No. 12 at 11. In his public statement made on February 8, 2021, defendant stated, "[p]ease be patient with me and other peaceful people who, like me, are having a very difficult time piecing together all that *happened to us*, around us, and by us." *Id.* (emphasis added).

Defendant's perception of his actions on January 6th as peaceful, benign, and well-intentioned shows a detachment from reality. *See* 60 Minutes+ Interview, *supra* at 04:21–4:25 ("I was peaceful. I was civil. I was calm. I said a prayer and I sang a song."); ECF No. 12 at 11 ("Please be patient with me and other peaceful people . . . ."). When asked to characterize his actions on January 6th during the 60 Minutes+ interview, defendant stated, "[w]ell, I sang a song, and that's a part of shamanism. It's about creating positive vibrations in a sacred chamber." 60 Minutes+ Interview, *supra* at 00:24–00:40. And though defendant expressed remorse about going inside the Capitol building on January 6th, *see* ECF No. 12 at 11, defendant was not charged with simple trespass. In addition to being charged with entering and remaining in a restricted building, defendant was also charged with civil disorder, obstructing an official proceeding, disorderly and disruptive conduct in a restricted building, violent entry and disorderly conduct in a Capitol building, and parading, demonstrating, or picketing in a Capitol building. ECF No. 3 at 1–3. If defendant does not understand the severity of the allegations against him, the Court finds no reason to believe he would not commit the same or similar actions again.

Finally, defendant claims that by the time he arrived at the Capitol, he "casually" walked up the steps "among a crowd of similarly peaceful people" toward the entrance as he passed police officers who told him, "the building is yours." ECF No. 18 at 4. In support of this claim, defendant

submits a seventeen-second YouTube clip. *Id.* (citing Unlisted Video, *YouTube* (Jan. 14, 2021), https://www.youtube.com/watch?v=BxVSFagSMGM&t) (hereinafter "Unlisted Video"). The clip shows officers wearing black body armor walking down steps through a path cleared by a large group of civilians. Unlisted Video, *supra* at 00:00–00:13. Defendant—wearing his red, white, and blue face paint and horned headdress—appears on the steps among the crowd. An unidentified speaker standing behind the camera then says, "We have the building. They're withdrawing. There's nobody else inside." *Id.* Another unidentified speaker standing outside the view of the video responds to the first speaker: "What do you mean there's nobody else inside?" *Id.* The first speaker replies, "We just extracted. This is the cops. The building is yours," and motions with his hand up the steps. *Id.*

This piece of evidence has two flaws. First, defendant submits this clip as evidence that he was welcomed into the building by Capitol Police officers. But as discussed at the hearing, it is deeply unclear from the video who stated, "the building is yours." Without this information, the Court certainly cannot construe this statement as an invitation from police officers to enter the building. Second, we do not know at what point during the siege the video was taken. This is problematic. If rioters had already breached the Capitol, the officers walking down the stairs may have been *forced* out of the building. So the statement "the building is yours" may have been factually accurate—rioters were indeed in control of the building—but hardly an endorsement by officers of their breach. At the hearing, the Court raised these issues with defense counsel and asked him to explain why he believed the video showed police officers inviting defendant in. Defense counsel responded, candidly, that he believed the video to corroborate defendant's claim because the media had portrayed the video that way. As defense counsel should be well aware,

relying on the media's interpretation of evidence to substantiate a claim will not suffice in a court of law.

Not only is defendant unable to offer evidence substantiating his claim that he was waved into the Capitol, but evidence submitted by the government proves this claim false. A video submitted by the government captures rioters breaking through the windows of the Capitol building. ECF No. 23, Ex. 2 at 00:10–00:25. At the same moment that rioters smash the glass and crawl through the windows, the video pans over to show a large group of rioters walking through an adjacent doorway into the Capitol building. *Id.* at 00:24–00:30. Included in that group is defendant, who is easily identifiable by his horned headdress. *Id.* at 00:26–00:34. The government's video shows that defendant blatantly lied during his interview with 60 Minutes+ when he said that police officers waved him into the building. 60 Minutes+ Interview, *supra* at 05:07–05:08. Further, this video confirms that defendant did not, as defense counsel claims, enter the building "contemporaneously with the exiting by Capitol Police." ECF No. 12 at 16. Nor did he enter, as defense counsel represents, in the "third wave" of the breach. To the contrary, he quite literally spearheaded it.

In sum, defendant has evinced an intent to disrupt the legitimate functions of the United States government and a willingness to resort to violence to do so. This intent indicates that ordering defendant released pending trial would pose a danger to the public.

b. Defendant's Statements and Actions on January 6th Show That He Will Not Comply with Court-Ordered Conditions of Release

Not only do the circumstances of the crimes charged indicate that defendant poses a risk to public safety, but defendant's actions also show that he will not comply with Court-ordered conditions of release. Defendant's conduct inside the Capitol building on January 6th demonstrates his willingness to openly and publicly flout orders from law enforcement. When Officer Robishaw

attempted to calm the crowd inside the Capitol building, defendant used his bullhorn to encourage other rioters. ECF No. 7 at 3–4. And when Officer Robishaw asked the rioters to leave the building, defendant disobeyed this order and instead headed up a stairwell toward the Senate Chamber. *Id.* at 3. Once inside the Senate Chamber, defendant refused to cooperate when Officer Robishaw asked to use his bullhorn to get the rioters out of the Chamber. *Id.* at 4. Based on this conduct, the Court has no faith that defendant would comply with conditions of release, such as a curfew or an ankle monitor.[7]

ii. Weight of the Evidence

Furthermore, the evidence that defendant carried a dangerous weapon, disobeyed law enforcement officers, and obstructed lawful government proceedings is not weak or ambiguous. To the contrary, defendant's conduct on January 6th was extensively documented, making him one of the most well-known rioters present that day. *See* ECF No. 17 at 3–5. So not only does the evidence against defendant paint a picture of an individual willing to resort to violence to stop the legitimate functions of our government, but that evidence is voluminous and strong.

Defendant does not challenge the overwhelming weight of the evidence against him. Instead, he attempts to counterbalance that evidence by raising the defense of "estoppel by entrapment." ECF No. 12 at 21. Specifically, defendant argues that because he felt that he was answering the call of President Trump and acting in reliance on President Trump's statements, prosecuting him for his actions on January 6th would violate the Due Process Clause. *Id.* (citing

[7] In the 60 Minutes+ Interview, defendant says that he was "escorted" into the Senate Chamber. 60 Minutes+ Interview, *supra* at 5:09–5:15. It is true that video footage shows defendant walking into the Chamber in front of a Capitol Police officer. *See* New Yorker Footage, *supra* at 6:17–6:24. But everything captured on the video after defendant's entrance undercuts that claim. While inside the Senate Chamber, Officer Robishaw repeatedly asked defendant and other rioters present to leave the area. *Id.* at 6:40–6:43, 7:27–7:29. And though Officer Robishaw did so in a polite tone while inside the Chamber, it is clear from the video that the officer was vastly outnumbered. *See id.* at 7:17–7:23.

Cox v. Louisiana, 379 U.S. 536 (1965); *Raley v. Ohio*, 360 U.S. 423 (1959)). The Court need not dwell on defendant's invocation of the estoppel-by-entrapment defense. The same argument was raised and rejected in another case involving a participant in the January 6th events, and the Court adopts the reasons for rejecting that argument set forth there by Chief Judge Beryl Howell. *See Chrestman*, 2021 WL 765662, at *11–14.

iii. History and Characteristics of the Defendant

Next, defendant's history and characteristics further indicate that no condition or combination of conditions would reasonably assure the safety of any other person and the community. Though defendant has no criminal history, the Court finds his blatant disregard for the law on January 6th to be a telling indicator of how defendant would act if released pending trial. Not only did defendant have the audacity to enter the U.S. Capitol during a joint session of Congress, disrupt the certification of the Electoral College vote, and walk into the Senate Chamber, but he did so with full knowledge that he was being captured on film. *See,* e.g., ECF No. 17 at 5. In fact, he even asked another rioter in the Senate Chamber to photograph him on the dais. *Id.* These are not the actions of a person who is shy about breaking the law. And, as explained in detail above, defendant's statements after January 6th indicate that does not fully appreciate the severity of the charges brought against him.

Furthermore, defendant's history of drug use and his willingness to lie about that drug use are yet more examples of defendant's willingness to openly break the law. *United States v. Chansley*, 2:21-mj-05000-DMF, ECF No. 5 at 9. A pre-trial services report prepared in the District of Arizona reported that defendant smokes marijuana three times per week. *Id.* And though defendant told pre-trial services that he does not use any other drugs, defendant has openly stated on his podcast that he uses psychoactive substances and mushrooms as part of his shamanistic

practice. *Id.* Thus, despite having no criminal record, defendant's actions on January 6th were not the first time he broke federal law and publicly displayed his remorseless for having done so.

Defendant argues that he should be credited for contacting law enforcement officers as soon as he became aware of their interest in him. ECF No. 12 at 19. His willingness to speak to law enforcement officers, however, does not persuade the Court that he appreciates the gravity of the allegations against him or that he will not break the law again. Defendant's statements to law enforcement officers and NBC News before his arrest indicate that he did not believe he did anything wrong. *See* ECF No. 7 at 6. In fact, defendant told the officers that he would go back to Washington, D.C. if he had the chance. *Id.* He also said that he had plans to go to the Arizona State Capitol. *Id.* These statements are not those of a person who turned himself in after acknowledging his own guilt.

Furthermore, defendant did not "peacefully surrender himself to authorities upon request," as he says he did. ECF No. 12 at 19. Defendant seeks to portray his trip to the FBI office in Phoenix, Arizona as evidence of his willingness to submit to lawful authority. However, at the time defendant arrived at the Phoenix field office in for his second interview, the criminal complaint and arrest warrant were still sealed. ECF No. 7 at 6. So not only did defendant believe that he had done nothing wrong when he arrived at the field office that day, but he also was unaware of the warrant issued for his arrest. Therefore, defendant did not self-surrender. Instead, he merely visited the FBI office for an interview and happened to be arrested while there because of the outstanding warrant. The Court thus finds that defendant's interactions with law enforcement in the days leading up to his arrest do not indicate cooperation warranting pre-trial release.[8]

[8] Defendant also explains that he offered to speak at President Trump's impeachment trial. ECF No. 12 at 10, 12. Apparently, defense counsel would like the Court to infer from this offer that defendant is no longer under President Trump's spell. There are two problems with this inference. First, defendant was not actually called as a witness, so the Court is unable to consider this hypothetical testimony as it pertains to his flight

iv. Nature and Seriousness of the Danger Posed to the Community by Defendant's Release

The nature and seriousness of the danger posed by defendant's release also weigh in favor of pre-trial detention. The Court cannot overstate the gravity of defendant's conduct on January 6th. Were defendant released pending trial, he would have the opportunity to again attempt to disrupt the United States government or harm members of Congress. Moreover, defendant's release would allow him to plan with others who might be willing to engage in these acts. Given the nature of this risk, the Court finds that ordering defendant to remain on home confinement would not sufficiently protect the public. And though the Court could also order that defendant is prohibited from communicating with others via telephone or the Internet, the Court is not persuaded that defendant would comply with this condition. In support of this finding, the Court relies on defendant's alleged refusal to follow directives from law enforcement officers once inside the Capitol building. His flagrant disrespect for law enforcement indicates that he would not adhere to conditions imposed by this Court.

For these reasons, the Court finds by clear and convincing evidence that no condition or combination of conditions of release could reasonably assure the safety of other persons and the community. *See* 18 U.S.C. § 3142(e)(1).

C. The Court Finds, by a Preponderance of the Evidence, that No Condition or Combination of Conditions Will Reasonably Assure Defendant's Appearance as Required

Next, the Court must determine whether any condition or combination of conditions would reasonably assure defendant's appearance as required. 18 U.S.C. § 3142(e)(1). Again, the Court must consider the circumstances set forth in § 3142(g) to make this finding. Based on the gravity

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risk. Second, the notion that defendant is no longer beholden to President Trump is undercut by defendant's statement on 60 Minutes+ that he does not regret his loyalty to the former President. 60 Minutes+ Interview, *supra* at 12:52–12:56.

of the conduct leading to the crimes charged, the weight of the evidence against defendant, defendant's ties to the group "QAnon," and the lack of an appropriate custodian, the Court finds by a preponderance of the evidence that no conditions of release would mitigate the risk of flight.

i. Nature and Circumstances of the Offense Charged

Defendant faces serious penalties if convicted of the offenses charged. The first of defendant's two felony charges, civil disorder in violation of 18 U.S.C. § 231(a)(3), carries a maximum sentence of five years' imprisonment. *See* 18 U.S.C. § 231(a)(3). The second felony charged, obstruction of an official proceeding in violation of 18 U.S.C. § 1512(c)(2), carries a maximum sentence of twenty years' imprisonment. *See* 18 U.S.C. § 1512(c)(2). Though defendant represents that he does not have any prior criminal history (save a speeding ticket on his drive home from the Capitol) convictions for the charged offenses could nevertheless result in a substantial term of imprisonment. *See* ECF No. 12 at 14 & n.1. This fact weighs in favor of pre-trial detention.

ii. Weight of the Evidence

The strong weight of the evidence against defendant also increases the risk that he will flee. As explained above, defendant's actions inside the Capitol were photographed and captured on video. *See, e.g.*, ECF No. 17 at 3–5. Defendant has also admitted, both to law enforcement and in public statements, that he was the individual wearing the horned headdress and face paint inside the Capitol on January 6th. ECF No. 7 at 5–6; ECF No. 12 at 11. The overwhelming weight of the evidence may further prompt defendant to flee and thus weighs in favor of pre-trial detention.

iii. History and Characteristics of the Defendant

Next, defendant's history and characteristics further suggest that no conditions can mitigate the risk that defendant will flee. At the detention hearing before Magistrate Judge Fine, the

government proffered evidence indicating that defendant is a leader and mascot of "QAnon," a group that preaches conspiracy theories and has become widely publicized in recent months. *United States v. Chansley*, 2:21-mj-05000-DMF, ECF No. 5 at 9. Given his prominent position in this group, the government argued, defendant is able to "quickly raise large sums of money for travel through non-traditional sources." *Id.* Indeed, defendant has previously "demonstrated an ability to travel long distances using untraceable methods." *Id.* Despite being unemployed and having no known source of income, defendant has traveled across the country to attend protests. ECF No. 11 at 12.

In response, defendant argues that he is not a flight risk because he has resided in Phoenix, Arizona his entire life, lives with his mother, does not travel internationally (except for during his service with the U.S. military), does not have a passport, and does not have a criminal history. ECF No. 12 at 14. The facts that he has lived in one place his entire life, does not travel internationally, and does not have a passport do not persuade the Court that defendant would not abscond somewhere inside the United States. As for defendant's lack of a criminal record, the Court finds that the seriousness of the allegations against him and the video footage of defendant's actions on January 6th reveal defendant's current state of mind and willingness to break the law. Finally, defendant's plan to return to his mother's house would not mitigate his risk of flight. In the March 4, 2021 interview with 60 Minutes+, defendant's mother repeatedly stated that her son did nothing wrong on January 6th. 60 Minutes+ Interview, *supra* at 13:23–13:40, 17:40–17:52. Instead, she said, her son merely "walked through open doors" and was "escorted into the Senate." *Id.* Defendant's mother further stated that she believes defendant to be "innocently sitting in a prison cell." *Id.* at 17:44. The Court is not persuaded that defendant's mother will ensure his compliance with any conditions of release imposed, and defendant identifies no other custodian.

Finally, defendant also argues that he is not a risk of flight because he is a "man of Shamanic faith," has written and self-published two books, "has zero interest in dealing with and addressing all matters political," is an "artist," "wishes to continue his longstanding effort to support abused children," has "created on-line classes on the Shamanic faith," and "wishes to focus his energies and efforts on strengthening his commitment to his faith and the principle of Ahimsa, [i.e.,] being one which promotes living a life which does no harm to any living being, regardless of its size or complexity." ECF No. 12 at 14–15. Though possibly relevant at sentencing, these arguments about defendant's faith, aspirations, and interests are irrelevant to the question of whether any conditions will reasonably assure defendant's appearance as required.

In sum, the Court finds by a preponderance of the evidence that no condition or combination of conditions will reasonably assure defendant's appearance as required. *See Xulam*, 84 F.3d at 442.

D. Defendant Has Not Shown a "Compelling Reason" Necessitating Temporary Release Under 18 U.S.C. § 3142(i)

In addition to his motion to vacate Magistrate Fine's order of detention, defendant seeks the alternative relief of temporary release under 18 U.S.C. § 3142(i). ECF No. 12 at 24. Section 3142(i) provides that after issuing an order of detention:

> The judicial officer may, by subsequent order, permit the temporary release of the [defendant], in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

18 U.S.C. § 3142(i).

As explained above, a defendant moving under § 3142(i) bears the burden of showing that his temporary release is "necessary" for some "compelling reason." *Id.*; *Riggins*, 456 F. Supp. 3d at 149. Here, defendant says that his temporary release is necessary because his faith precludes

him from receiving a COVID-19 vaccination and because COVID-19 has rendered "meaningful" and "unmonitored" communications between defendant and defense counsel "impossible." ECF No. 12 at 24.

To put it plainly, defendant's religious objection to the COVID-19 vaccine is not a relevant reason, let alone a "compelling reason," to grant his temporary release. § 3142(i). Some courts have granted temporary release under § 3142(i) in rare cases when the defendant has serious underlying health conditions that exacerbate the risk of severe illness or death from COVID-19. *See, e.g.*, *Thomas*, 456 F. Supp. 3d at 78–79. By contrast, defendant candidly states that he is "not in a position to honestly represent to the Court that he [has] an underlying medical condition which makes him especially vulnerable to the virus." ECF No. 12 at 24. The fact that defendant will not accept a vaccination (should one even become available to him while he is detained) does not make him any more vulnerable than he is right now.

Last but not least, the Court must address what surely must be the most remarkable assertion in defendant's briefing: that temporary release is "necessary" because defense counsel is currently unable to privately communicate with his client. ECF No. 12 at 24. As defense counsel puts it, the COVID-19 pandemic has made "meaningful unmonitored protracted periods of consultation" with his client "impossible." *Id.* To the contrary, just a few days ago, defense counsel conducted a lengthy videoconference with his client. That meeting, however, was not used to discuss legal strategy but instead was used to conduct an interview with 60 Minutes+, a national news media outlet.

The interview begins with only the defendant and defense counsel visible on the screen. 60 Minutes+ Interview, *supra* at 3:16–3:19. Defense counsel then asks defendant, "You're in a room alone?" to which defendant, speaking from the Alexandria jail, responds "yes." *Id.* at 3:26.

"And the door is closed?" counsel asks. *Id.* at 3:28. Defendant responds, "it is." *Id.* at 3:29. "This is Laurie," defense counsel says, as the 60 Minutes+ reporter enters the field of view of the camera capturing defense counsel. *Id.* at 3:31. From there, defendant and defense counsel spoke at length to the 60 Minutes+ reporter about the events on January 6th.

The issue, then, is not that defense counsel cannot confidentially communicate with his client. The issue is that when defense counsel *is* able to speak with his client, he squanders the opportunity for private conversations, preferring instead to conduct a public interview. Such media appearances are undoubtedly conducive to defense counsel's fame. But they are not at all conducive to an argument that the only way defense counsel could privately communicate with his client is if defendant were temporarily released. Given defense counsel's decision to use what could have been a confidential videoconference on a media publicity stunt, that argument is so frivolous as to insult the Court's intelligence. For these reasons, the Court finds that defendant has not met his burden of establishing a "compelling reason" necessitating his temporary release. 18 U.S.C. § 3142(i).

IV. CONCLUSION

For the reasons explained above, the Court will **DENY** defendant's motion for pre-trial release, ECF No. 12.

A separate Order consistent with this Memorandum Opinion shall follow.

Date: March 8, 2021

Royce C. Lamberth
Hon. Royce C. Lamberth
United States District Judge

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,	)	Criminal Action
	)	No. 1:21-cr-00003-RCL-1
Plaintiff,	)	
	)	**Detention Hearing** (via video)
vs.	)	
	)	
Jacob Anthony Chansley,	)	Washington, D.C.
	)	March 5, 2021
Defendant.	)	Time: 3:00 p.m.

Transcript of **Detention Hearing** (via videoconference)
Held Before
The Honorable Royce C. Lamberth (via videoconference)
United States Senior Judge

A P P E A R A N C E S

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P R O C E E D I N G S

(REPORTER'S NOTE: This hearing was held during the COVID-19 pandemic restrictions and is subject to the limitations of technology associated with the use of technology, including but not limited to telephone and video signal interference, static, signal interruptions, and other restrictions and limitations associated with remote court reporting via telephone, speakerphone, and/or videoconferencing.)

THE COURTROOM DEPUTY: We're on the record for Criminal Case 21-3, United States of America v. Jacob Anthony Chansley.

Counsel, please identify yourself for the record.

MR. WATKINS: My name is -- oh, I'm sorry.

MS. PASCHALL: Good afternoon, Your Honor.

MR. WATKINS: I'm sorry. Go ahead, Ms. Paschall.

MS. PASCHALL: Good afternoon, Your Honor. Kimberly Paschall for the United States.

MR. WATKINS: Good afternoon, Your Honor. My name is Albert Watkins. I'm here for the defendant, Jacob Chansley.

THE COURT: All right. Mr. Chansley, can you hear me okay?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Ms. Paschall wasn't showing up on my screen. Let me see if we can get her.

THE COURTROOM DEPUTY: Judge, I think there's so many parties, everyone is not listed. So it may kick Ms. Paschall out. So let me see if I can mute myself and you can see

Ms. Paschall.

THE COURT: All right. Okay.

THE COURTROOM DEPUTY: Can you see her now?

THE COURT: I see her. All right.

Mr. Watkins, it's your motion, so you can go first.

MR. WATKINS: Thank you, Your Honor.

We are here for the defendant's motion for pretrial release, which was not something that was unexpected by, I don't think, anyone. But that being said, the defendant in this matter did have a -- a detention hearing shortly after he surrendered to authorities in Phoenix prior to the inauguration of President Biden. And since that time, there have been a number of developments, which I believe make it appropriate for the defendant to be released pending trial.

First and foremost, and more obviously, President Biden has been duly seated. The impeachment trial of Donald Trump has been conducted. The role of our former President in inciting was painstakingly set forth in the impeachment trial, not something that we need to belabor, but it was an important development that occurred since Mr. Chansley was placed into custody.

The investigation by the Department of Justice is very fluid. It's continuing to this day and will continue with remarkable strength for quite some time. The investigation into the events of January 6th and the roles of -- of the

former President and a number of others in positions of authority is currently also being investigated by the Legislative Branch, and that investigation is very fluid. The investigation of the former President for criminal charges is, upon information and belief, being undertaken by the Department of Justice.

The former President has been sued by U.S. Representative Thompson for civil damages for the former President's inciting those that were at the Ellipse on January 6th. Today, former House Manager for the impeachment of President -- former President Trump filed a civil suit for damages and equitable relief under the terrorism act, and that -- that particular suit is part of this fluid undertaking that seems to be part of what we have been moving forward with, which is a shifting of a dialogue from the lynch mob mentality to one which involves really drilling down into and looking at the facts that have really surfaced and have given rise to this -- this -- this event on January 6th.

But the lawsuit today by the former House Manager actually alleges that the President convinced people, like the defendant, that something was occurring at the Capitol, which if it was true, would have justified their actions. Now, we're not taking that position. We're just pointing out for the Court's edification that everything is in -- in influx and the mindset that existed when the defendant turned himself into

authorities in Phoenix is significantly different than we are dealing with here today.

The March 4 resurrection of the Trump presidency obviously did not occur. A State Department aide appointed by Trump was arrested and is accused of storming the Capitol and beating police with a riot shield.

So we have worked very diligently across the virtual courtroom with Ms. Paschall. It's been collaborative. It's been respectful. It's been professional and, actually, a pleasure. We both have a common objective, and that includes doing that which is in the best interests of our country. That is an objective that is shared by the defendant.

So when we look at this motion for pretrial release, there are not -- not only a bunch of need to acknowledge this shift in dialogue, but we want to make sure that people like Jacob Chansley and millions of others in this country who really did adore former President Trump are not subject to retribution and ridicule that renders even more divisive a nation that is filled with enough divisiveness to last a lifetime.

I understand that the issues that the Court has to address with respect to pretrial release are ones that need to be fleshed out. The government has previously pointed out that Jacob Chansley is a flight risk and should not be released for that reason.

Jacob Chansley is 33 years old. He does not have a passport. He has zero criminal history. Other than two years in the U.S. military serving on the Kitty Hawk, he has never gone outside of this country. He was born in Phoenix. He has lived in Phoenix all of his life. He lives there with his mother. He is a person who has not only zero criminal background, but I pointed out to the Court that he received a traffic ticket in Oklahoma on the way back from D.C. in January. And I want to confirm with this Court that the mother of Jacob identified in the paperwork and -- the ticket has been paid. It was in Seminole County, Oklahoma. So that -- that's not an issue.

My client is one of hundreds of thousands of people who appeared at the Ellipse to support President Trump, to help him save the country. These are our neighbors. They're our friends. They are our relatives. They're our colleagues. They are our fellow Americans, and there's too many of them to hold them in disdain.

There is compassion and patience that's going to be required as a great many Americans extricate themselves from a long-standing propaganda-ridden period of leadership by individuals who chose to be untruthful, misrepresent -- misrepresent things, just simply lie.

The case that we're dealing with is tremendously atypical. The government has asserted that my client, who,

granted, had the -- the most recognizable costume and appearance of probably anybody at the Capitol on January 6th -- but the assertion was made that my client was leading the charge into the Capitol.

In fact, there's miles and miles and miles of footage of my client from January 6th. That footage reflects and indicates that my client was in the third wave of folks who went to the Capitol. My client went to the Ellipse. If President Trump had told him to walk to the Washington Monument, stand on his head and sing a prayer, my client would have walked to the Washington Capitol [sic] and stood on his head and said a prayer. My client was walking to the Capitol -- and I provided the Court with the video footage that we were able to garner through an independent investigative undertaking. The former FBI special agent who garnered it is available in the -- in the anteroom here if the Court wants to inquire of that special agent.

My client was a full 1.2 miles away from the Capitol at -- at a time when the Capitol had already been breached. My client, according to Google, was a 25-minute walk away from the Capitol, but my client wasn't walking. He was -- he was walking down the street, stopping, talking, letting people take selfies with him, screaming at the top of his lungs the word "freedom."

My client was not a leader of the charge. There's video

that's been provided to this Court that's been widely circulated in the media of my client walking like Forrest Gump up the steps into the Capitol as Capitol police are walking down the steps. There's no barricades. There's no -- there's no police lines, and the police are saying, "The building is yours."

THE COURT: But that -- that was not quite so clear from the video that I saw, that that's who spoke those words. It looked like a demonstrator. It sounded more like a demonstrator. That was not clear that was police who said that. It was more -- more apparent that that was a demonstrator who said "The building is yours." How do you characterize that as being a policeman who said it?

MR. WATKINS: Well, two reasons, Your Honor. And I know this means very little, but the fact of the matter is that's how the media has reported it over and over and over again. I, of course, do not ascribe to the fundamental principle that if the media says it, it's absolutely true and if they say it over and over again, it's more true. So I respect that.

My impression listening to it --

THE COURT: I'll try to not laugh at that line.

MR. WATKINS: I beg your pardon, Your Honor?

THE COURT: I said I'll not laugh at that line.

MR. WATKINS: Oh, please -- Your Honor, I've worked

with a therapist for many years, and he hasn't fired me yet, and I will tell you that I respect anyone who laughs at any time. It's important in this life.

That being said, my -- my client is -- oh, with respect to the law enforcement officers. In my viewing and my listening to the -- the footage, it did appear to me that that's what the police were saying, but now that you bring it up -- and I don't have the video right in front of me. I don't have it. The point that's important there is if you see my client's horns, he's not -- he's just strolling up the steps. There's no police barricade. There's no police line. The doors are open and --

THE COURT: But if others had shoved the police aside -- I understand the door might be open. But I thought the door was open and there were people climbing through the windows at the moment your client went through the open doors. Is that not correct?

MR. WATKINS: No, Your Honor. My -- my client was coming up the stairs and going into the building well past the breach and well following the breach of the Capitol. In fact, the stairs that my client walked up, as I -- I understand it -- and I did, as best I could with the barbed wire and the fences the other day, attempt to make sure that I have a clear understanding. I -- I obviously am not the be-all and end-all here. But the door my client walked into was being held by a

Capitol policeman as my client entered into the Capitol. There's a lot of footage of my client interacting peacefully, chatting with and supporting law enforcement who were similarly positioned in this part of the Capitol.

THE COURT: I -- I'll ask the government this, but I thought I had seen a picture of your client walking in a door but 5 feet away people were walking through a window at the same moment. He could not have not seen that happen from the pictures I saw.

MR. WATKINS: I have not seen that picture, and that picture has not been provided to me, and we have drilled down --

THE COURT: It was on the front page of the *Washington Post*, the one I saw. I'll ask the government what -- when they respond. They can tell me if I saw that incorrectly. I thought I saw it on the front page of the *Washington Post* one day.

MS. PASCHALL: You have not seen that incorrectly, Your Honor, and the government will wait until Mr. Watkins is finished to fully address the walking through open doors.

THE COURT: Okay. Maybe it was someone else.

MR. WATKINS: Well, I imagine, Your Honor, that there are not many individuals in that crowd who were wearing horns, furs, tattoos, and a shirtless upper torso. That's just my thought. And I -- I feel pretty good about that thought, at

least the accuracy of that thought.

THE COURT: All right.

MR. WATKINS: So the point I'm making at this point in considering a pretrial motion is that the -- the demeanor and the -- the undertakings of my client as depicted in the tons of video that we have seen -- I have not seen the image that you're referring to, Your Honor -- is my client appears enthusiastic. He appears energized by the President, but he does not appear as being possessed of a forethought that is nefarious on any level. He has no -- no zip ties, no camo gear, no bulletproof vests, no helmets. He has no colleagues with him.

He screams, "Freedom." That was his -- that was his crying call. In the -- in the Capitol he said a prayer. In the Capitol when the President tweeted out much later it's time to go home, there's video footage of my client telling people, "The President has said go home. It's time to go home. Leave." You have video from -- not video footage, but anecdotally -- but we're looking for video footage -- of my client instructing people to not do damage, to put back little food items that were from a -- a tray that -- or some area where you get food in the -- in the Capitol.

I've noted and I will note painstakingly that my client in 33 years has zero criminal history. He volunteered to appear at the Phoenix FBI. He spoke honestly. He spoke

transparently. He provided them with the authority to search his car where his shaman outfit and attire was located. He's been a long-standing volunteer and worker; by that I mean, a five-year-solid history of working with abused kids.

He's a self-published writer. One of his books -- and this is really important. One of his books is a fiction piece. I have not read it. I'm never going to read it. I'm not going to tell you it's a great book. I'm going to tell you if you look at the back cover, you can see that the -- the guy has a story to tell. It's a fiction story. It looks fun. I'm not a fiction guy.

You have a one man -- or one mind at a time. Now, this is an important book because it shows you where his mind was before the conspiracy theories, the mindset that was part of this protracted propaganda. This is a man who is also a writer.

And, Your Honor, when we were on -- on Zoom or -- on a prior motion, you looked over my shoulder, and you asked me what that painting was or what type it was. Over my shoulder right now is a Cheshire Cat. That's a painting painted by the defendant. Now, I'm bringing this up because he is -- in addition to being a painter and a writer, he's a potter. He's a shaman. His hero was Mahatma Gandhi and Jesus Christ.

He follows ahimsa, and the fundamental principle associated with ahimsa is you do not cause damage or harm to

any living thing, no matter how big or how small. This is a man who captures insects and releases them, like -- like a cat.

So we're -- we're dealing with the government accusing my client of -- and asserting that my client is a leader of the charge. And I'm not diminishing the -- the intelligence of my client. I'm not belittling my client. I'm calling it for what it is, Your Honor. My client was wearing horns and a fur. He had tattoos around his nipples. He wasn't leading it anywhere. He was a follower. He was one of millions of Americans who felt for the first time in their lives that they were well -- their voices were being heard by a man that they had a special bond with.

We can't ignore the role of a former President, but we cannot use that as the basis for effigial painting of people like Mr. Chansley and other peaceful people who did the wrong thing, who broke the law, and who behaved in a fashion that involved making a decision. So we're not talking about exculpation. We're talking about mitigating culpability.

The circumstances here are other worldly, Your Honor. We have a former President who was prosecuted by our government for inciting, through words and actions, while at the same time the government -- that same government is prosecuting those who were inciting; sending all of us a terrible message that you have no right to believe in the words of the President, that you have no right to expect the words of the President to be

truthful and if you do what the President says, you're going to jail.

So my client, because of COVID, has been in solitary confinement. Obviously that's -- it's smart. The government is doing the right thing. The detention facility is doing the right thing, but the result is horrific for Mr. Chansley, a guy who was not violent, a guy who was not in any way, shape, or form other than a guy who made some really bad choices and who he put his faith in and allowed him to be vulnerable and made a decision not just to walk down Pennsylvania Avenue because the President was coming with him and not just to go to the Capitol because the President said to do so. But that he listened to the words and -- for four-plus years the words of our former President and the actions, that he believed wrongfully that that gave him license to go into the Capitol.

So when -- on a practical matter, because of where Jacob Chansley is, and because what we're dealing with on behalf of the government -- on behalf of -- on behalf of my client, we are unable to fully and collaboratively undertake matters with the government. And remember, both the government and defendant share the same goal. I know that we are -- we are public right now.

So my client has charges pending against him. Some felony. The federal sentencing guidelines are very important. There's certain sections of this federal sentencing guidelines

which can be significant to the benefit of my client, including, by way of example, 5K1.1. The government has an interest in garnering collaborative undertakings that are not encumbered by COVID and COVID-related protocols.

The Court here has seen the difficulty with communication that's created by virtue of the world of one-dimensional Zoom or platforms like Zoom. They're burdensome. They're burdensome as they relate to both the defendant and the government. In fact, the government provided me today with a proposed protective order, which we believe is very appropriate. It's a consent protective order. We know and are greatly respectful of the government's duty, obligation, and we don't want to impede in any way or compromise the integrity of the discharge of the duties by Ms. Paschall on behalf of the government and the people of the U.S.

But that protective order will render even more cumbersome as it relates especially to electronic data, video, computer-related data, or data and information that requires computer access. I've been to the facility in Alexandria, and while I think everyone there is doing their level best, COVID is very tough. The facility is not geared up for a complex case with endless hours of electronic data available and necessarily going to have to be reviewed.

More importantly, when I talked about the benefits under

the federal sentencing guidelines that can help the government and help the defendant, we've been thwarted, even though we've been trying. We, the government and the defendant, have been trying to accommodate -- accommodate the detention center's schedule, and we haven't been able to do it. We tried. Got cancelled. And we've got one set up. We were hoping to have it completed before today so that the contentious nature of our respected discharge of our duties was not going to result in a protracted hearing.

The defendant had a flagpole. The flagpole had a thing on it. The government has suggested that there are two examples of defendants that were cited that have been detained like Mr. Chansley. One of them beat up a cop, and, regretfully to us, he did it with a flagpole. I respect the government's characterization of my client's flagpole -- flag and finial as a potential weapon. There's been no footage that I've seen, no image that I have seen that demonstrates that my client used that flag as anything other than part of his outfit, the same outfit that he wore at Trump rally after Trump rally. The government has asserted -- and I point out to the Court that these finials are the same finials that are in federal buildings all over the country.

But the government has asserted that my client is a danger, he's a danger for flight risk because nobody will recognize him without his makeup on. Indeed, one of the first

things we did was make sure his mug shot unadorned with paint was out there. Mr. Chansley is internationally recognized and recognizable. He has no resources for international travel.

And he counsels as a shaman and pays his bills. He's not a wealthy man, but he is self-sufficient. He speaks no foreign languages, at least no recognized foreign languages. Perhaps as a shaman he has some shaman howl or something that might be a shaman-like utterance, but it's not a recognized language.

With the defendant, what you see is what you get. He is not a danger. He is not a risk. He has never been a danger or a risk. He has apologized, and he made a point of doing so. There's no plea deal out there. There's no negotiated disposition or there's no wink or nod. The defendant's honor is really important as somebody who does ascribe to ahimsa, to make sure that he let our country know that he was mortified at having placed fear in the hearts of others, and he did so publicly. He did so without equivocation. He's not hiding behind Trump. He's not blaming this on Trump.

Now, his lawyer -- that would be me, Your Honor -- has made no secret about the mitigation aspects of this case and the role the former President played in all that happened on January 6th. But it's not my place to judge a former President, nor is it my place to be anything other than an advocate for my client. It's my duty.

So while I am respectful of the position of the government, and while I understand and appreciate the duty of Ms. Paschall vigorously objecting to any assertion that my client is appropriately suitable for release, there is not a characteristic of my client that is depicted in any image, any video, any anecdotal authorities substantiated by evidence that supports the proposition he was anything other than a guy at the Ellipse who, at the invitation of the President, without a forethought, with all of his shaman attire, his outfit, his speech, his regalia, strolled down Pennsylvania Avenue, almost like I said, like Forrest Gump, just ending up walking into the Capitol.

Was he wrong? Yes. Has he owned that? Yes. Is he extricating himself from the mess that has occurred over the course of the four-plus years? Yeah. He's meditated. He's committed himself to being true to his shaman faith and to his -- commitment to ahimsa. There has been a release widely publicized about his apology. And, Your Honor, if you watch the history of the story here with this man, my client, he came and he spoke voluntarily to Phoenix police. He did so openly, not believing for a second that he had done anything wrong.

He asked me to request a pardon, despite the fact that I suggested he not hold his breath, and, indeed, it was an important part of the process to ask for a pardon so my client could see firsthand that the man who he's asking to pardon him

was not the man that my client thought he was. And that was a dose of humbling betrayal. It was gut wrenching. It was a kick in the chest.

My client went from that point to expressing deep disappointment in the former President and to then recognize it, bellying up to the bar. He recognized he had a duty to our country, to the people of this great land, to the government, to everyone to own that he was wrong. And he apologized, and he did so in unequivocal fashion. He did it without a but.

So now we are faced with Mr. Chansley requesting of this Court the opportunity to -- to be released during the pendency of this trial, knowing, Your Honor -- I can assure you that the importance to my client of reaching out affirmatively to the government -- and, again, Your Honor, I'm aware we are in a public setting -- reinforces that we are not dealing with a man of violence. We're dealing with a man who is introspective, who is self-critical, and who is probably significantly more swiftly coming to grips and reconciling this make-believe world that became for millions of Americans -- and still is for many -- reality.

And with that, we -- every one of us -- I'm not speaking for the Court, but I suggest every one of us in this country have a duty to look in the mirror and ask ourselves what role we played in creating this environment that was so divisive and so alarmingly dysfunctional as to permit day in, day out,

multiple times daily, the affirmative representation of untruths by our highest, most powerful leader in the land.

Part of the process of healing our nation is not castigating those who are caught under this horrific make-believe world, but part of it should require compassion and patience by all of us as they go through that process, like Jacob Chansley has and continues to do.

And that's how we're going to heal as a nation. So I would request, Your Honor, that the Court release the defendant during the pendency of this case, subject to the conditions deemed appropriate by this Court, provided that the Court recognizes that I'm in St. Louis, the defendant is in Phoenix -- is a resident, and the -- the Court proceedings are obviously in the District of Columbia.

THE COURT: All right. Ms. Paschall.

MS. PASCHALL: Thank you, Your Honor.

I won't belabor what is already in the government --

THE COURT REPORTER: Ms. Paschall.

MS. PASCHALL: -- reply and then -- Nancy, are you able to hear me?

THE COURT REPORTER: Yes. Can you just speak up a little bit louder?

MS. PASCHALL: Sure.

THE COURT REPORTER: Thank you.

MS. PASCHALL: I'll get closer to the microphone as

well. Thanks, Nancy.

The government's not going to belabor what's already in our papers, Your Honor. I think Your Honor's question about how the defendant entered the building is an important one, because the evidence shows quite the contrary. In fact, the government can name at least four points at which the defendant should have known that it would have been completely inappropriate to continue.

As Mr. Watkins has mentioned, I am working with him on a protective order. So there may be videos that he has not been able to see. What I might suggest is that Your Honor and Mr. Watkins be able to view these videos so that the government is not speaking out of turn and evidence is now available to all parties under some sort of limited protective order so that the record is clear. And I'm happy to provide video that the government has received with -- with all parties.

But suffice it to say that every day the government is getting more and more evidence in these cases, as we are getting videos that come to us not only by law enforcement sources, but also from social media and from other defendants.

Your Honor is not incorrect. There is a photograph of the defendant entering the building, mere feet from -- away from somebody who is breaking through the priceless glass windows of the Capitol. I know this to be true because we have it on video. There is absolutely no way that the defendant

could have thought that police were escorting him into the building when the window is being cracked open by other people in the mob, the doors were opened with no police in sight, and the alarms of the building are going off. It's just factually not borne out by the evidence.

Before that moment in time, we have video evidence of the defendant on top of the scaffolding that was in place for the inauguration. He is staring down at a police line, a barrier of bike racks, and officers are present before the steps. And many mobsters are in front of that police line yelling, screaming, and the police are holding the line. And the defendant is up above the crowd on the scaffolding watching this happen. There is no reasonable interpretation of events where this man could believe that it was okay once those barricades had come down, once those police were overborne that he could continue to walk up those steps.

Third point in time the defendant should have known that he wasn't allowed in the building is in some of the now famous photographs taken by the AFP that show the defendant standing directly opposite of Capitol Police Officer Robishaw as he holds the line outside the Senate Chamber. There's a clear interaction happening there in the photographs that showed that the defendant should go no further. It's not as though Officer Robishaw has opened his arms and let the defendant pass. That's clearly not what is happening there.

And, finally, we have the video from *The New Yorker* of the defendant on the Senate floor where, once again, Officer Robishaw, who is alone in the chamber, is trying his best to keep the peace, get those who are in there out of the chamber. He asks the defendant multiple times in that *New Yorker* video to leave. The defendant, again, is up at the Vice President's seat. He is asking people to take his photograph. He's leaving the note "ITS [sic] ONLY A MATTER OF TIME JUSTICE IS COMING!"

And then other people are flooding to the chamber, and the defendant takes to his bullhorn while Officer Robishaw is standing by unable to remove all of these people from the space and yelling about how thankful he is for the opportunity to take the traitors out of our government. I don't think there's much debate over what the evidence of this case is, Your Honor. I think it's about the characterization of that evidence. And the government submits there's no reasonable interpretation of events where this man thought that any of this was appropriate behavior.

The government's not going to belabor the point about the weapon. There is ample evidence that this defendant was carrying a 6-foot long spear with him when he was face to face with Officer Robishaw. He's not charged with using that weapon in an assault against Officer Robishaw, but it is clearly relevant to the 1512 and 231 charges. He's obstructing police

in their discharge of their duties while holding this weapon. And --

THE COURT: Because it meets the definition of a dangerous weapon?

MS. PASCHALL: It does, Your Honor. And we noted in our opposition papers the Chief Judge's decision in the Chrestman case. That's 21-mj-218, I believe. Where the Chief Judge described how for the purposes of the detention statute under (f)(1)(E) it need not be that the defendant is holding a firearm or destructive device.

THE COURT: Right.

MS. PASCHALL: There are a multitude of weapons that would constitute an (f)(1)(E) hold. And with respect to that, I would actually point Your Honor back to your own decision in the Munchel and Eisenhart case, 21-cr-118. Your Honor, of course, is familiar. Those defendants have not been charged with assaulting police officers. Those defendants have not been charged with destruction of property. Those defendants are charged with very similar charges to what this defendant is charged with, carrying a dangerous weapon during a civil disorder during obstruction of Senate.

THE COURT: Well, they had a stun gun, but it was a dangerous weapon, just like this spear would be.

MS. PASCHALL: Correct, Your Honor.

THE COURT: And the picture of the spear shows

that -- that end piece is a long piece of metal there; right?

MS. PASCHALL: Yes, Your Honor, at the top of that pole.

THE COURT: I looked at the picture, and it looked like that's a long piece of metal; is that right?

MS. PASCHALL: That is the government's understanding, Your Honor, and the government actually has recovered that item. It was something that was taken out of the defendant's car in Phoenix when he arrived at the FBI. So yes.

THE COURT: So, in your view, that would meet the statutory definition of dangerous weapon?

MS. PASCHALL: Yes, Your Honor, it does.

I think the -- the characterization that the defendant was merely following the instructions of the President, as if this were the first time that he had ever considered something like this, is not exactly correct. And we know how the defendant feels to this day about some of these issues because he has spoken to the press about them. He spoke to the press within a day or so after leaving the Capitol and expressing his delight -- that lawmakers, who he calls traitors, were in gas masks and in bunkers -- in a way that is both chilling and inexcusable.

And we know how the defendant feels today, because the defendant continues to give interviews to the press from jail,

and his characterization of what happened that day is not supported by the evidence. His belief that he did nothing wrong except for enter the building is not supported by the evidence.

He claims to be sorry, but he also claims to still be an adherent to several of the conspiracy theories that brought him to this place. And to be clear, Your Honor, the government does not, by any stretch of the interest of justice, argue that this man can't hold whatever beliefs he wants. His First Amendment is unassailable. What he cannot do is act on those beliefs in a way that is contrary to the law. And Your Honor has no reason to believe from the evidence in this case that if he were released he wouldn't continue to do so.

The defense argues he's not a flight risk. I suppose the fact that he is now on national media all the time perhaps mitigates that risk. The concern the government has is if this man has no job, no money to speak of, how does he keep ending up at these events? He's been in D.C. for at least two protests. The defense says he was not a part of any larger group. The government is not charging him with a conspiracy at this point, but we know that he traveled with other people from Arizona.

And we know that he had a rich online following; that he was active on many media platforms. The government cannot be in a position to say that he wouldn't take to those platforms

once again to continue his characterization of these events and to continue the work that may remain for those who are still adhering to this idea that the current government is not a legitimate government and that the 2020 election was stolen. And we know that the defendant still believes that because he told *60 Minutes* as much.

So what do we expect from him if he is released? That he's suddenly going to abandon all of these ideas and will retreat quietly to Arizona? This man has purposefully drawn attention to himself. When he spoke with the FBI, he told them as much. He dresses this way. He carries these implements. He shows up at these rallies with a bullhorn because it draws attention to him. It draws attention to his cause.

And, again, the government does not argue that Mr. Chansley can't peacefully protest, he can't hold whatever beliefs he wants to. The government's problem is that adherence to these things and apparently following the former President of the United States led him to commit federal felonies.

And there's nothing in the record to indicate that he wouldn't do so again. In fact, the day that he came to the FBI and was arrested, he was on his way to another protest. Why did he have the weapon? All of these accoutrements were in his car, and he was ready to be protesting once again.

The -- I think that we need not belabor most of this at

this point, Your Honor, but I would just encourage the Court to consider the evidence of this case. It's actually not unique. It's not atypical. While we can all hope that January 6th is a once-in-a-lifetime event, we can't rely on that. We can't on a hope and prayer assume that this defendant wouldn't continue his dangerous activities if he was let out. We can't assume that he would abide by conditions if he's charged with an obstruction charge, which he is, and that he doesn't believe in the legitimacy of this government, which he does.

So the government argues that the clear and convincing standard that the magistrate judge in Arizona found is still in place today; that he is a danger to the community, that he would be a risk for flight and obstruction, and that he wouldn't be able to follow conditions of release. And that's why the government is asking that he continue to be held.

THE COURT: How do you propose that we -- we made some kind of record -- I just had this problem in the other case, which is on appeal now. And I had to sign an order today supplementing the record, because it was not entered in the record for the Court of Appeals, the videos which I did view and use in the record of -- of the -- some of the videos that were not -- there was not a record made in the district court of what was in the record. And I used some videos in my opinion there.

So if -- if the defendant is going to have -- and see

the videos you were just describing to me, how are we going to do this in the record here and -- and give the defendant access? We can do it *in camera* and have the -- the defendant present to view them, and we could do that separately. Or how -- we've got to do this in a way that the defendant can also have the -- so it's in the appellate record as well, if there's an appeal from whatever I do. I just -- I just signed an order this afternoon in the other case because the Court of Appeals has got to have a record.

MS. PASCHALL: I think what may be appropriate, Your Honor, is the government can file, perhaps, a surreply to the defendant's reply citing as exhibits what we've mentioned today. And I can work with Your Honor's chambers and with Mr. Watkins to disclose those videos. Again, they are videos that we would typically be asking for a protective order for. So I may seek a limited protective order just for those videos at this time. I understand Mr. Watkins and I still have further things to hash out about the larger --

MR. WATKINS: Actually, Ms. Paschall, to -- to save time, I think we have, given your most recent contact with me, worked out a protocol that will be good for making the proposed protective order work.

Your Honor, I am compelled, as a matter of record, to make sure that it is clear that the mischaracterization of my client's statements are noted. One of the things, quite

frankly, I'm -- I'm troubled by, the government's contemporaneous position that my client is somehow not in any way, shape, or form susceptible to having his culpability reduced by virtue of the fact that, you know, we have, as a matter of pretty overwhelming substantial record that the world has seen, that the government has put forth that in fact, and indeed, Trump convinced people, like my client, that something was occurring, which if it had been true, would have lawfully justified their actions.

And we can't look at peaceful people -- and I don't care whether they're on top of a scaffolding looking down or walking -- skipping and jumping rope down Pennsylvania Avenue. You have millions of Americans in this country, you have hundreds of thousands in D.C. on the 6th, high tens of thousands going down to the Capitol because they genuinely believed in the truth of that which was being asserted by our highest hired hand in the land, our President, our chief executive officer.

There was no violence by a man who's 33 years of age with zero criminal history. We have a guy and defendant -- a defendant in Illinois who was violent, is part of this January 6th event, and he's out. We have people who are -- from Missouri that -- that swiped property, ripped property off of the building itself and tried to sell it online. They're home. They're brushing their teeth in their own sink.

My guy is not depicted anywhere -- and, obviously, Ms. Paschall, I don't have -- I wish I had been provided interviews that you have referred to, but, nonetheless, none of them depict my client violent.

You can look at that flag. You can look at the images of my client with that flag at Trump rally after Trump rally. He's never used it in any violent or threatening fashion. He didn't do so on January 6th. And that top, it's not a spear. It's a finial. A finial, like a ball, an eagle, or it's a spearhead. That's a finial. That's the three finials that are used.

We can characterize things on behalf of the government any way you want. That's your right. That's your duty. You're an advocate, and I respect that. And as an American, I respect that -- as a citizen, I respect the desire to put people in jail that were violent, that were -- that were acting in a fashion which was destructive and -- but you can't lump all of them under one moniker.

And, Your Honor, we're dealing with this horrible reality that this country is still with millions of people who are good peaceful people that were absolutely smitten by the action of a man who our very same government has prosecuted for inciting those that are being prosecuted for listening to the words of their President. We had people like Mr. Chansley who are released. We have people who have acted violently on

January 6th who are released. We have no one who is currently being held without -- without being able to garner pretrial release who was not violent, was not destructive, doesn't have weapons.

The only thing that can be done by the government is to take a look at this stick with a flag with zip ties holding the flag on it and call it a spear. If there was ever a case, a situation, where one of the criminally accused, who has come forth publicly, shared at risk of ridicule, not just how he believes and thinks, but his apology and his doing so without equivocation, doing so without fear of somebody seeing him with what his face looks like, without paint, it's Jacob Chansley, a man who owns it.

Your Honor, this is as appropriate case for pretrial release as exists in any that arise out of the January 6th event.

THE COURT: All right. I have one additional question; that is, the marshal asked me yesterday at noon -- he -- it had come to his attention that Mr. Chansley had given an interview to *60 Minutes*, and he asked whether I had given permission for that, because under the marshals regulations, the sheriff could not have authorized that unless I had authorized it. And he told the sheriff he didn't believe I had authorized it, but he wanted to be sure I had not authorized it. I assured him I had not.

And so can you tell me how that came about? The circumstance seems to be that you did it as a subterfuge; that there was an interview of you and your client and the interview was done in your office by video --

MR. WATKINS: Yes, Your Honor.

THE COURT: -- to *60 Minutes*.

MR. WATKINS: Yeah. Absolutely, Your Honor. I'm not -- there's no subterfuge here at all, and I apologize to this Court if there's anything that I have done that's somehow interpreted that way. That -- Your Honor, I made sure that there was -- first of all, there was no effort to seek any interview in -- in the jail. And I thought that's what would have required the acquiescence of the marshals service, the Department of Justice, and I didn't know about this Court.

THE COURT: Well, the jail was only told this was an attorney-client interview by video.

MR. WATKINS: Well, no. I -- I asked for a Zoom conference with him, Your Honor. The image of --

THE COURT: But only you and the client.

MR. WATKINS: Well, I didn't --

THE COURT: That's what the jail was told.

MR. WATKINS: I -- I -- I didn't represent that to them, Your Honor. I didn't say -- in the same breath, I'll tell you, I didn't tell them it was for an interview with *60 Minutes*.

THE COURT: I'm sure you didn't.

MR. WATKINS: No, I --

(Indiscernible simultaneous cross-talk.)

THE COURT: They would not have authorized it. You knew they wouldn't have authorized it.

MR. WATKINS: No, no, Your Honor, I -- it didn't occur to me that I would not be able to capture the image -- the video image of my client in my office. I -- tying into the system would have been --

THE COURT: It didn't occur to you -- they told me that they told you that in advance. In fact, I have a document where they sent that to you in advance. I'll file that in the record today.

MR. WATKINS: As an -- as an officer of this court, I'm representing affirmatively to you that I did not under any circumstances try to conduct subterfuge to this Court certainly, but certainly also not to the -- not to the facility where my client is currently housed. It's just not my style.

I will say that, yes, I did make the independent arrangements with *60 Minutes*. I did take steps to make sure they understood they could not capture an image of my client until it was in my office. I did take steps to make sure that they were respectful of the protocol that had to be followed to not try to wire into our system to capture audio.

So I -- to -- I certainly -- I certainly would not have

done this knowing that this was something that was going to be a matter of public record, like pretty high-profile public record, if there was something that wasn't appropriate about it.

THE COURT: I'll make a copy of -- of what was given to me and put it on the record today so you can respond.

MR. WATKINS: Thank you, Your Honor.

THE COURT: Fine.

Any other argument on the motion?

MS. PASCHALL: I --

THE COURT: I'll let you file the surreply with whatever you want to get in the record too.

MS. PASCHALL: Thank you, Your Honor.

And I just want to direct Your Honor to what is already cited in our motion regarding the defense on estoppel by entrapment. Again, this was addressed by the Chief Judge in the Chrestman case, and that's laid out fully in the government's motion rather than --

THE COURT: I think the Chief Judge said we don't have kings in this country, was her line; right?

MS. PASCHALL: I believe that's correct, Your Honor.

THE COURT: I think that summed it up.

Okay. Anything else you want to say?

MS. PASCHALL: No, Your Honor.

THE COURT: Mr. Watkins, anything else?

All right. This will be submitted. I'll rule as prompt as I can after I see this surreply and -- and we get everything we need in the record.

Do you have anything else you want to get in the record, Mr. Watkins besides --

MR. WATKINS: Your Honor, I think I've covered everything.

THE COURT: Okay.

MR. WATKINS: I appreciate it.

THE COURT: All right. Thank you very much, Counsel. We'll be in recess.

(The proceedings concluded at 4:20 p.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Nancy J. Meyer, Registered Diplomate Reporter, Certified Realtime Reporter, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenograph notes and is a full, true, and complete transcript of the proceedings to the best of my ability.

Dated this 8th day of March, 2021.

/s/ Nancy J. Meyer
Nancy J. Meyer
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
333 Constitution Avenue Northwest, Room 6509
Washington, D.C. 20001

EXHIBIT D

Jake Angeli-Chansley

5-6-05

P4

Career paper

My career of choice is to be a "master", a Christ, a Buddha, or a Muhammad, whichever you prefer to call it. Now most people would say that there is no such career, and that a career is something you do for a ***living***. Then I would reply with a smile and say. "What better ***living*** is there". I was not chosen for this career, I chose it. Most would say that I can't choose that career. Than I would say, "What did Jesus do? He was not chosen, he chose". Everything is choice. I chose this career because I know it is my soul's intent to get out of the illusion as well as to help others to get out of the illusion. When I say "illusion", I mean the physical world. The fact that we are physical is an illusion. Here is why I say this, because if you break everything down its all atoms, then you cut them in half and we have quarks. And when we break those quarks down into smaller and smaller pieces we have the same basic component, it is all energy. Me, my pencil, my desk, its all made up of the same stuff. Everything is in motion, even those things which appear to be sitting still. Jesus, Buddha and Muhammad all understood this and stopped believing in the illusion. They saw everything for what it really was, so for them the illusion disappeared. This does not mean that there were not times where they began to feel the illusion again, so when they did, they would go away to re-evaluate there none physical ness. This is why Jesus spent 40 days and 40 nights of introspection in the desert, but this was not the only time that he withdrew. Now having explained that we can move on.

When one gets out of the illusion, all skills, abilities, and talents are at your fingertips waiting to be exercised. This includes moving things with your mind, healing the sick, and rising from the dead. The master understands that all of these things are possible. When Jesus was on the cross and the crowds of people were telling him that if he was the real Messiah, to come down from the cross so they could see and believe. He did not because he did not have to prove to anyone that he was God, but then three days later when no one was watching, he rose from the dead, only to prove to himself that he was in fact God as he claimed himself to be.

This "career" involves the development of Self, and ***LOVE*** for all whom cross my path even those whom hate me and badmouth all that I say and do. It also requires a tremendous amount of patients, faith, spiritual knowledge, enough questions about reality and life, and enough ability to stand outside the box and to see yourself standing outside the box and then to see yourself watching yourself standing outside the box. Buddha's, Christ's, and Muhammad's soul all came to this planet for the very reason of getting out of the illusion. But they first had to believe it was an illusion, so they could begin to understand that it was their souls intent to get out of the illusion. Allow me to elaborate on "getting out of the illusion". The best way to put it is to say that your soul is dreaming all of this. And this "reality" is simply a construction of one's thoughts in one's dream. When one has a dream it feels very real right. It is also possible to control dreams right. Well what Jesus, Buddha, and Muhammad did is they realized that it was all a dream and they controlled it. They stopped believing that it was real.

The daily responsibilities of being a master are ***nothing***. That is the beauty of it; one can choose whatever one wants to create in one's reality. The master is constantly

evolving into something 10 times what the master was the day before. This is why every day of the master's life is the best day of their life. This appeals to me very much, to have the freedom to do whatever I choose and have it be the best day of my life every day. What kind of loony would pass that opportunity up? The irony is the opportunity is there for everyone every day and people choose in ignorance to be angry or sad than have ultimate bliss. The opportunities are endless for the master. ***I can save the world if I choose!***

The futures of the master is simple, that is to create as many masters as one can. The true master is not the one with most students but the one who creates the most masters. The true leader is not the one with the most followers, but the one who creates the most leaders. The true teacher is not the one with the most knowledge, but the one who causes the most others to have knowledge. The true God is not the One with the most servants, but the One who serves the most, thereby making Gods of all others.

The promotions and advancements are endless. For the master understands the concept of "the more you are, the more you can become, and the more you can become the more you have yet to be". The biggest secret to life is that life is not a process of discovery, but rather a process of creation.

One of the most glorious things about being a master is that money and material wealth do not matter and because they do not matter they are not needed. So the master has all of the wealth in the world simply by being alive. This is far more than any boss or job can pay you.

Another awesome thing about being a master is there are no disadvantages. Some people may consider others hatred and loathing for them to be a disadvantage. In fact the

master has more who hate him/her than the anti-Christ. However, the master understands that it is not what others think of them that matters, but only what the master thinks of himself/herself. I for one have many whom have a strong hate or dislike for me for very silly reasons or for what appears to be no reason at all. But I do not return their hate; in fact I love these people and openly express my love for them. Some ask why, and I tell them that my love counteracts their hate and then that love is all that exists, and love is forever. It doesn't matter to me that my love is not returned, because I understand that the souls of those who dislike me love me as much as I love them and it is just their ego that hates me. Not even disaster can faze the master because the master knows that from the seeds of disaster, comes the growth of Self. The master understands pain is simply an error in thinking. The master gets rid of even the worst pain by knowing that pain is merely physical, in this way the master "heals". Pain is a result from a judgment about something, remove the judgment and the pain disappears. Pain and disaster are simply perceived illusions in the eyes of the master and nothing is painful which you know is not real. Thus self grows. And growth starts every second.

The growth of Self is the very reason that I am going into the military after high school. This is because I wish to see the world and understand every possible point of view and culture. This too will help my Self grow tremendously. I long to understand all. Especially that with which I may not agree, because if I can understand that with which I do not agree then that is another big step on the ladder of life. This ladder of life has no end so I can keep growing and growing and growing. Jesus, Buddha, and Muhammad, all had this same thirst for understanding. What is very humorous is that when I ask questions and long to understand most of the time I am ridiculed and put down. But if

these people understood my motive for my questions then I imagine they would hand over the information I seek without hesitation. If only people could understand how much I love and care for them, (I mean everyone I meet when I say "people"). "For if you only love those who love you what reward is there in that?"

The beauty of the life of the master is he/she understands that no schooling is needed there is no curriculum to study because everything is already known. It is just a matter of experiencing it. Everyday something that is already known to the soul is experienced to the fullest. Some say life is school, I totally disagree with that statement. School is somewhere one goes to learn something that one does not already know not somewhere one goes to experience what is already known, that is what the purpose of life is. To experience to the fullest the glory of God.

The day I "graduate" is the day I die. To be totally honest I look forward to death, because that means I get to go back to the one who sent me. And I know that everyone I have ever met and all whom I have loved and cherished will be there. And we will frolic together in paradise. It brings tears to my eyes to ponder on the beauty, love, warmth, peacefulness, and most of all, the wisdom that all will experience together forever and ever.

EXHIBIT E

1_2020 Interview with JACOB ANTHONY CHANSLEY.mp4	4/22/2021 1:12 PM
2_NOV 2020 Violence not necessary.mp4	4/22/2021 6:13 PM
3_NOV 2020 Bittersweet losing election.mp4	4/22/2021 6:14 PM
4_NOV 2020 Understands Constitution.mp4	4/12/2021 4:32 AM
5_NOV 2020 Get informed involved in peaceful political process.mp4	4/12/2021 4:39 AM
6_NOV 2020 Traitor is common in his vernacular.mp4	4/22/2021 6:57 PM
7_9.00 Comes from patriotic family.mp4	4/22/2021 9:37 PM
8_1.10 American History Museum.mp4	4/27/2021 10:46 A
9_1.20 Walking and leading chanting USA USA.mp4	4/27/2021 10:51 A
10_1.30 Standing on Media Platform Ladder.JPG	4/23/2021 2:39 AM
11_1.40 Platform Uncomfortable and Takes step back.mp4	4/23/2021 2:41 AM
12_1.45 Watches first rioters from afar_Hey Hey stop that.mp4	4/23/2021 2:47 AM
13_1.50 Jake comes DOWN scaff walks away.mp4	4/22/2021 10:01 P
14_1.54 to 2.03 First Sightings of JAC under scaff over 9 min_not involved.mp4	4/25/2021 6:57 PM
15_1.58 JAC Chants USA USA.mp4	4/24/2021 9:19 PM
16_2.03 Chants of USA JAC not involved.mp4	4/23/2021 6:55 AM
17_2.05 They are forming a pocket behind us_FEW people.mp4	4/23/2021 7:00 AM
18_2.08 Stepping over railing_FEW people.mp4	4/23/2021 7:05 AM
19_1.52 to 2.08 Groups of people that passed JAC under scaff.JPG	4/23/2021 7:18 AM
20_2.08 to 2.10 Going up stairs JAC well behind.mp4	4/24/2021 9:34 PM
21_2.12 Others rush_JAC doesnt crest stairs until 52s_JX (1).mp4	4/27/2021 10:55 A
22_2.12 Cropped view of prev video to see JAC in detail_JX.mp4	4/27/2021 10:56 A
23_2.12 More people rush toward Capitol_ JAC stays back_JX.mp4	4/25/2021 11:15 A
24_2.12 Another view. JAC back others rush toward Capitol_PP.mp4	4/25/2021 11:06 A
24_SS_2.12 Stairs to Entry Screen Shots_PP.JPG	4/26/2021 2:39 AM
25_2.12 Full video_ JAC not involved_BG On the Scene.mp4	4/25/2021 3:18 PM
26_2.13 Capitol Entry_Security Footage (1).mp4	4/27/2021 11:03 A
27_2.13 Capitol Entry_USDC Exhibit_JAC stops man from stealing muffin.mp4	4/25/2021 8:32 PM
28_2.22 JAC enters the Senate Lobby to awaiting photographers.mp4	4/26/2021 3:42 AM
29_2.22 Front and Back views.mp4	4/26/2021 4:03 AM
30_IMAGES_JAC in Senate Lobby calm non threatening.JPG	4/26/2021 4:09 AM
31_2.55 to 3.30 JAC in Sen Gallery Chamber_Chant Prayer.mp4	4/26/2021 12:44 A
32_3.30 to 5.30 JAC tells people to go home.mp4	4/26/2021 12:52 A
33_6.00p JAC at Sofitel Hotel.mp4	4/26/2021 5:54 AM

EXHIBIT F

EXH #		TIME / STAMPS	SUBJECT: "JAC Paraphrase"	FILE NAME	SOURCE
A	NOVEMBER	2020			
1.	INTERVIEW: November 2020	N/A	JAC describes Shamanism and his practice of Life Magic. Discusses how the use of loud sound waves, the singing, the drumming, sound waves can affect the quantum (sub-atomic) realm - used to bring positive energy. Especially when you do it LOUDLY. That you dress up in a way to scare off evil spirits Especially when you do it loudly.	1_Interview Nov 2020	https://youtu.be/mYCI_3mc7uY
2.	PROTEST: November 20, 2020 Board of Supervisors Vote Certification Maricopa County, AZ	N/A	Violence is not necessary, but protest and prayer is. "The more we practice Gandhi, MLK, Jr, non-violence, civil disobedience, the closer we are to taking back our country. So, violence, not necessary at all. Protest, most certianly necessary. Prayer, most certainly necessary.	2_Violence not necessary	https://youtu.be/rDUxllvw2m8
3.	PROTEST: November 20, 2020 Board of Supervisors Vote Certification Maricopa County, AZ	N/A	New opportunity after election, just need to do the work. "This corruption is opportunity … now we know who the TRAITORS are, but we have to do the WORK to get rid of them. Wants a Recall Election.	3_Bittersweet but opportunity	
4.		N/A	"Rights cannot be taken, only given away. What we're doing here is exercising first amendment, freedom to assemble, freedom of speech.	4_Understands constitution and rights	
5.	PROTEST: November 20, 2020 Board of Supervisors Vote Certification Maricopa County, AZ	N/A	Explains how to watch the webinar of the Board of Supervisors meeting.	5_Informing the public about gov meetings	
6.	PROTEST: November 20, 2020 Board of Supervisors Vote Certification Maricopa County, AZ	N/A	Everyone is a traitor. He uses that word and prolific profanity as part of his vernacular. "So … media, full of traitors. Local government full of traitors, Washington DC, full of traitors."	6_Uses traitor to describe many	

B	**PRE-RALLY**	**JAN 6, 2021**				
	7.	VIDEO: JAC walking around before rally. "Early in the morning of January 06th 2021 in Washington D.C. a line formed over four miles long six people wide of people wanting to get in to see President Donald J. Trump speak. Remember **this is just the early birds**, never have we seen this many people at once, the line wrapped around the Washington monument."	*8:00 - 11:30*	He comes from a very patriotic family. "Make America Great": Words and Music by Martha Angeli-Chansley and Jim Whitaker. JAC walking around speaking through his bullhorn. "This is the communists last stand in America...You think they're going to try and take this from us? Come on, now."	7_9.00a Pre Rally_ Patriotism is in family	https://youtu.be/43ZC2hYlcdY
C	**CONSTITUTION AVE**					
	8.	VIDEO: Taken near American History Museum	*1:10 - 1:20*	Walking , stopping, smiling, taking pictures with people.	8_1.10 American History Museum	https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d4cdb175-329d-4f8d-b070-e3ca5dc503d6
	9.	VIDEO: Constitution Ave / 10th Ave (Smithsonian Museum of Natural History)	*1:15 - 1:25*	"USA, USA", "Freedom"	9_1.20 Walking and leading chanting USA USA	https://youtu.be/kR4JIK0Ea-4
D	**CAPITOL: MEDIA PLATFORM**					
	10.	IMAGE: JAC on media platform ladder	*1:25 - 1:45*		10_1.30 Standing on Media Platform Ladder	NBC News. Jan 13, 2021. Photo by Victor J. Blue/Bloomberg via Getty Images.
	11.	VIDEO: JAC on top of platform.	*1:25 - 1:45*	Becoming more uncomfortable with what guy who borrowed his bullhorn is saying. He takes a big step back.	11_1.40 Platform uncomfortabel and takes step back	https://youtu.be/W5BMuSEKzEU
E	**CAPITOL: MEDIA PLATFORM/SCAFFOLDING**					
	12.	VIDEO: JAC watches from afar, yells at someone for throwing object at police	**1:49**	Watches as what appears to be first group break through barrier under scaffolding. When someone from crowd throws object at police, JAC yells "Hey, hey, stop that shit!". Albert Ciarpelli, gray haired man can be seen early in clip near JAC.	12_1.45 Watches rioters from afar _ Hey Hey stop that	https://projects.propublica.org/parler-capitol-videos/?id=dkhyPhIBrq8P

F	**CAPITOL: UNDER SCAFFOLDING**					
13.	VIDEO: JAC coming down from scaffolding on the media (far right) side and walking in other direction. Man has 2nd flag with spear finial. Helps JAC and holds his flag for him. (INSURGENCE USA)	***1:50 - 2:08***	JAC on far right side of scaffolding, coming down from where press are . A man with a large flag and a spear finial meets him at the bottom and helps him with his flag.	13_1.50 Jake comes DOWN scaff walks away	John Sullivan / JAYDEN X https://youtu.be/PKBOEhLHD4c John Sullivan / INSURGENCE USA https://youtu.be/P34tO5eaLhg
14.	VIDEO: Five sightings of JAC under scaffolding. (Jayden X)	***1:50 - 2:08***	JAC not involved, just watching, looking around.	14_1.54 to 2.03 First Sightings of JAC under scaff over 9 min_not involved	
15.	VIDEO: Sixth sighting of JAC under scaffolding (from **ITV News)**	***1:58***	JAC chanting, "USA, USA" with the crowd. Compare with next video, where chant is heard but JAC not involved, out of character. Michael Curzio, who has been at the top of the scaffolding this whole time is now chanting near him.	15_1.58 JAC Chants USA USA	ITV News, Robert Moore correspondent
16.	VIDEO: Seventh sighting of JAC under scaffolding (Jayden X video)	***2:03***	Chant heard, but JAC not involved, just watching. No barricades between police and rioters at the front.	16_2.03 Chants of USA JAC not involved	
17.	VIDEO: Eighth sighting of JAC under scaffolding (Jayden X video).	***2:05***	Closing off the area behind JAC. There are very few people now in the scaffolding area and entry to the area is closed off. Hundreds of people have been seen under the scaffolding since 1:45p.	17_2.05 They are forming a pocket behind us_FEW people	
18.	VIDEO: Ninth sighting of JAC under scaffolding (Jayden X video)	***2:08***	JAC climbs over hand rail to area of lots of empty space. Police and rioters at the front appear calm.	18_2.08 Stepping over railing_FEW people	
19.	Screenshots of rioters in the "staging area" during the time JAC is under the scaffolding and before he steps over railing.	***1:52 - 2:08***	Different groups of rioters	19_1.52 to 2.08 Groups of people that passed JAC under scaff	John Sullivan / JAYDEN X https://youtu.be/PKBOEhLHD4c John Sullivan / INSURGENCE USA https://youtu.be/P34tO5eaLhg
G	**CAPITOL: SCAFFOLDING TO TOP OF STAIRS**				

20.	VIDEO: JAC going up the steps	***2:08 - 2:10***	JAC in group going up the stairs from scaffolding to top of steps.	20_2.08 to 2.10 Going up stairs JAC well behind	
21.	VIDEO: JAC as group engages police. After barricades are released, JAC remains standing at the top of the stairs while others rush to entry points.	***2:12***	Everyone else move directly towards the Capitol. JAC remains behind and turns around to view the way he came.	21_2.12 Others rush_JAC doesnt crest stairs until 52s_JX	
22.	See above	***2:12***	See above.	22_2.12 Cropped view of prev video to see JAC in detail_JX	
H	**CAPITOL: STAIRS to ENTRY**				
23.	**VIDEO: Throngs of people are heading toward the Capital entry points, however, JAC is seen standing in the grassy area.**	***2:12***		23_2.12 More people rush toward Capitol_ JAC stays back_JX	
24.	**VIDEO: JAC is seen still standing in the grassy area with his back to the crowd as they race toward the Capital doors**	***2:12***		24_2.12 Another view. JAC back others rush toward Capitol_PP	https://projects.propublica.org/parler-capitol-videos/?id=StkJb205ViGR
24_SS	**See above**	***2:12***	At least 40 people are rushing toward the Capital doors using boards and riot shields to smash the doors and window. JAC is not involved.	24_SS_2.12 Stairs to Entry Screen Shots_PP	
25.	**VIDEO: Damage to windows and doors of the Capital**	***2:12***	Only video to show initial damage to both windows and doors. Almost no damage to left window or door.	25_2.12 Full video_ JAC not involved_BG On the Scene	https://youtu.be/aUjtmt_9GcY
I	**CAPITOL: ENTRY**				
26.	**VIDEO: Shows JAC entering the Capitol at 2:13:40.**	**2:13:40**	Shows substnaital damage to left window and door.	26_2.13 Capitol Entry_Security Footage	2nd IMPEACHMENT VIDEO FOOTAGE. https://youtu.be/m26mFKKJyZU
27.	***VIDEO: JAC follows crowd through door and yells "hey, hey'hey" at man stealing muffin from a break room.***	***2:13***	JAC can be seen and heard.	27_2.13 Capitol Entry_USDC Exhibit_JAC stops man from stealing muffin	USDC EXHIBIT
J	**CAPITOL: SENATE LOBBY**				

28.	**VIDEO: JAC enters Senate lobby.**	**2:22**	JAC is greeted by at least 6 photogeaphers for what appears to be a photo shoot. JAC is posing, for photos, not yelling or threateneing anyone.	28_2.22 JAC enters the Senate Lobby to awaiting photographers	https://projects.propublica.org/parler-capitol-videos/?id=1do91KWUgjXQ
29.	**VIDEO: Front and back views of JAC in Senate lobby.**	***2:22***	JAC is calm and not raising his voice.	29_2.22 Front and Back views	https://projects.propublica.org/parler-capitol-videos/?id=1do91KWUgjXQ https://youtu.be/Udk7RkEXlKc
30.	**STILL SHOTS: JAC in Senate Lobby**	***2:22 - 2:55***	JAC is calm, talking, listening, and not yelling or threatening.	30_IMAGES_JAC in Senate Lobby calm non threatening	Reuters, AP, Getty Images, New York Times
K	**CAPITOL: SENATE GALLERY / CHAMBER**				
31.	**VIDEO: JAC in Senate Gallery and Chamber**	**2:55 Gallery 2:58 Chamber**	JAC (Shaman chant and prayer)	31_2.55 to 3.30 JAC in Sen Gallery Chamber_Chant Prayer	https://youtu.be/270F8s5TEKY
L	**CAPITOL: OUTSIDE**				
32.	**VIDEO: JAC telling people at the Capital to go home**	***3:30 - 5:30***	JAC tells the crowd that President Donald Trump has asked everyone to go home and says "so what are we going to do, were going to get out of here, lets go home."	32_3.30 to 5.30 JAC tells people to go home	https://www.youtube.com/watch?v=emggKyR65Zg https://hubblecontent.osi.office.net/contentsvc/videohostpage/video?lcid=1033&syslcid=1033&uilcid=1033&app=3&ver=16&build=16.0.13530&platform=Win32&streamsso=true&appCorrelation=E19E1C29-F889-4169-8FBF-98C687F49A3A&url=https%3A%2F%2Fwww.youtube.com%2Fembed%2FemggKyR65Zg%3Ffeature%3Doembed
M	**AFTER CAPITOL**				
33.	**Outside Sofitel Hotel, Washington DC approximately 6pm. JAC not concerned**	**6:00p**		33_6.00p JAC at Sofitel Hotel	Emailed from Defense Witness