

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

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:21-cr-00028-APM-15
)	
JASON DOLAN,)	
)	
Defendant.)	

GOVERNMENT’S MOTION FOR REVOCATION OF ORDER OF RELEASE

Defendant Jason Dolan should be detained pending trial, as he is a danger to the community. Like detained co-defendant Kenneth Harrelson (as “Gator 6”), Defendant Dolan (as “Turmoil”) helped lead a group of Oath Keepers who organized and plotted with coconspirators to stop the certification of the Electoral College vote, prepared to use violence if necessary, and stormed the Capitol. Like Harrelson, Defendant Dolan deposited his weapons at the “QRF hotel” in Arlington before coming into Washington, D.C. But unlike Harrelson, who still had firearms at his house upon his arrest, Dolan has since hidden his firearms.

For these reasons, the Court should revoke the order of release entered on June 3, 2021, by Magistrate Judge William Matthewman of the U.S. District Court for the Southern District of Florida, in case 9:21-mj-08212-BER-1.¹

I. Background

Video recorded on January 6, 2021, captured the defendant among a “stack” of more than a dozen individuals dressed in camouflaged para-military gear moving in a deliberate and organized manner toward the Capitol building. An additional recording shows the stack moments later embedded near the front of a violent mob that is attempting to break open the doors of the

¹ In the Southern District of Florida, Judge Matthewman initially stayed his release order until June 4, and then until June 10, and finally until this Court resolves the instant motion.

Capitol building. The video depicts the doors later opening and the subsequent flow of people into the building, to include the defendant and members of the stack. Selfies and surveillance video taken inside of the Capitol Rotunda further evince Defendant Dolan's and his coconspirators' presence inside.

Co-defendant Jessica Watkins characterized their insurgent effort to breach the Capitol building as "forcing entry into the Capitol building" and said that it was "[f]orced. Like Rugby." On the afternoon and evening of January 6, co-defendant Graydon Young wrote on Facebook that "[w]e stormed and got inside." Co-defendant Kelly Meggs wrote in a Signal chat, "Ok who gives a damn who went in there.... We are now the enemy of the State." An hour later, Kelly Meggs wrote to the same Signal chat: "We aren't quitting!! We are reloading!!"

Based on his actions described above, on May 26, 2021, a grand jury issued a fourth superseding indictment charging Defendant Dolan with conspiracy, in violation of 18 U.S.C. § 371 (a felony); destruction of government property, in violation of 18 U.S.C. § 1361 (a felony); obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2) (a felony); and entering a restricted building without lawful authority, in violation of 18 U.S.C. § 1752(a) (a misdemeanor).

On May 27, 2021, the FBI arrested Defendant Dolan in the Southern District of Florida. The FBI also searched Defendant Dolan's house.

On May 28, 2021, Defendant Dolan had his initial appearance before Magistrate Judge Bruce E. Reinhart. On the government's motion, Judge Reinhart ordered Defendant Dolan detained during a short continuance, pursuant to 18 U.S.C. § 3142(f).

On June 2, 2021, Judge Matthewman conducted a detention hearing at which FBI Special Agent Justin Spence testified. The case was continued until the following day. On June 3, 2021, Judge Matthewman denied the government's motion for detention and ordered Defendant Dolan

released. On June 6, 2021, Judge Matthewman entered an order further explaining his release decision.²

II. Legal Standard

a. Detention Hearing

The government submits this motion for revocation of Judge Matthewman's release order pursuant to 18 U.S.C. § 3145(a)(1). The Court's review should be *de novo*.

“Although the D.C. Circuit has yet to opine on the question, substantial precedent supports the view that a magistrate judge's detention order is subject to *de novo* review by the district court.” *United States v. Cua*, No. CR 21-107 (RDM), 2021 WL 918255, at *3 (D.D.C. Mar. 10, 2021) (citation omitted). Indeed, the D.C. Circuit recently noted that Chief Judge Howell conducted a *de novo* review of a release order under Section 3145(a), and that district courts have “broad discretion” to review magistrate judges' detention decisions. *United States v. Munchel*, 991 F.3d 1273, 1280 & n.3 (D.C. Cir. 2021) (citation omitted).

Upon holding a detention hearing, the Court “shall order” a defendant detained 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). Here, there are no conditions that could assure the latter; in other words, releasing the defendant would present a “danger to the community.” *United States v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019).

“When the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community,” the Supreme Court has

² Judge Matthewman's order is attached as Exhibit 1. The transcripts from the June 2 and 3 hearings are attached Exhibits 2 and 3, respectively. Note that the date in the caption of the transcripts is incorrectly listed as 2020 rather than 2021.

explained, “a court may disable the arrestee from executing that threat.” *United States v. Salerno*, 481 U.S. 739, 751 (1987). Notably, “the threat need not be of physical violence, and may extend to ‘non-physical harms such as corrupting a union.’” *Munchel*, 991 F.3d at 1283 (quoting *United States v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988)). “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 nature and seriousness of the danger to any person or the community that would be posed by the persons’ release.’” *Id.* at 1279 (quoting 18 U.S.C. § 3142(g)).

At a detention hearing, the government may present evidence by way of a proffer. *United States v. Smith*, 79 F.3d 1208, 1209-10 (D.C. Cir. 1996).

b. Application of Presumption and Factors To Be Considered

As Judge Matthewman found, there is a presumption of detention under Section 3142(e). Under Section 3142(e)(3)(C), the presumption arises if the offense – here, felony destruction of property under Section 1361 – is “listed in [S]ection 2332b(g)(5)(B)” and carries “a maximum term of imprisonment of 10 years or more.” It is, and it does.

Moreover, the offense of felony destruction of property not only gives rise to the presumption of detention under Section 3142(e)(3)(C), but it *also* constitutes a federal crime of terrorism as part of the nature and circumstances of the offense to be considered under Section 3142(g)(1).³

³ To show that the offense is a “[f]ederal crime of terrorism” to be considered as part of the “nature and circumstances of the offense” under Section 3142(g)(1), the government must meet both of Section 2332b(g)(5)’s prongs: (A) purpose of offense and (B) enumeration of offense. The conduct of Defendant Dolan and his coconspirators – invading and temporarily taking over the national legislature while it was convening, pursuant to federal law, to formally count the ballots for the presidential election – was clearly “calculated to influence or affect the conduct of

Here, the government is not relying on the strength of the evidence as to the Section 1361 violation to support Defendant Dolan's detention. In fact, once the grand jury has found probable cause that Defendant Dolan violated Section 1361 (felony) – and here, it has – the government has satisfied its burden under Section 3142(f)⁴ to trigger a detention analysis under Section 3142(g). *See United States v. Singleton*, 182 F.3d 7, 12 (D.C. Cir. 1999).

III. Argument

Defendant Dolan cannot rebut the presumption of detention under Section 3142(e)(3)(C). And the factors to be considered under Section 3142(g) support Defendant Dolan's continued detention.

Defendant Dolan is similarly situated to co-defendant Harrelson, and so he should be detained pretrial like Harrelson. They drove to Washington, D.C., together – in a car rented by Dolan. On their way into the city, they went to the “QRF hotel” in Ballston together – presumably to deposit their high-powered weapons. They stayed at the Hilton Garden Inn together. On January 5, they travelled together near the Capitol – likely to conduct surveillance for their operation the following day. On January 6, they arrived at the Capitol together shortly before 2 p.m., and before the remaining members of the stack; the two men then together assumed a position near the top of the east side stairs. At around 2:40 p.m., both men – together with the other members of the stack – forcibly entered the Capitol. They were both recording their crime; in fact, Dolan's hands, holding his Android phone, are visible in Harrelson's video.

government by intimidation or coercion” under Section 2332b(g)(5)(A). And because the offense is enumerated in Section 2332b(g)(5)(B), the definition of “[f]ederal crime of terrorism” has been satisfied.

⁴ The same rationale would apply to the detention analysis under Section 3142(e)(3)(C).

Their similarities then continued into the Capitol building. They stayed together inside, heading south towards the House of Representatives after they penetrated the Rotunda. With co-defendant Kelly Meggs, they went towards Statuary Hall and then congregated near the hallway to the Speaker's office. Defendant Dolan eventually left the Capitol – with Harrelson – about 17 minutes after he forced his way in.

On January 7, the two men left the city together and travelled back to the Comfort Inn Ballston. There, they collected their weapons. Then, in Defendant Dolan's rented car, they drove home to South Florida.

While some of the “plus factors” that warranted detaining Harrelson that do not apply to Defendant Dolan – notably, Harrelson lied at his detention hearing, was anointed the “ground team lead” by Kelly Meggs, and had a “go bag” and firearms at his house at the time of his arrest – Defendant Dolan has two significant “plus factors” himself. First, he appears to have learned from Harrelson's arrest two months prior, because he cleaned his house of weapons and Oath Keepers clothing. Second, Defendant Dolan is still espousing a troubling conspiracy-theory belief that the Capitol Police wanted the rioters to come inside the building and disengaged the “magnetic locks” that would allow the doors to open – illustrating a lack of remorse and continued danger from Defendant Dolan.

In addition, Defendant Dolan recruited others to the Oath Keepers and has since taken significant efforts to delete or secrete evidence.

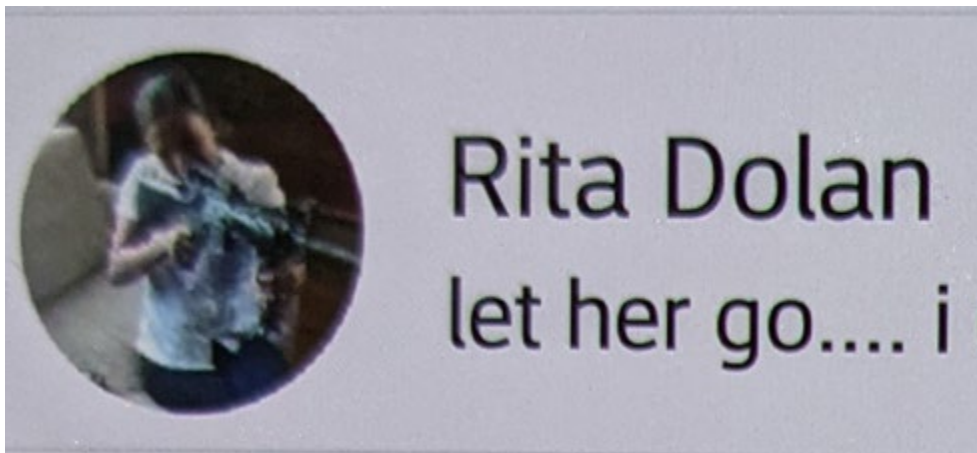
a. Firearms

The government submits that Defendant Dolan has access to multiple high-powered firearms, and he is dangerous because he has hidden them.

1. Bases for government's belief

Neighbors. At the time of Defendant Dolan's arrest on May 27, the FBI interviewed his neighbors. One neighbor (N-1) reported that Defendant Dolan owned multiple firearms, including at least two assault rifles and a 9mm handgun. N-1 stated that Defendant Dolan always wore the 9mm handgun on his person. Another neighbor (N-2) reported that N-2 believed Defendant Dolan owned firearms because Defendant Dolan spoke to N-2 about his firearms.

Cell phone. The contact photo for Defendant Dolan's wife in his cell phone⁵ shows her holding an AR-platform firearm:



YouTube. The government obtained Defendant Dolan's records from Google (including YouTube). From November 3, 2020, through April 2021, Defendant Dolan often left comments on videos on channels related to firearms, including a channel devoted to "AR15." In some of the comments Defendant Dolan affirmatively mentions his own firearms, like the following December 1, 2020, comment: "I use my knife daily, my flashlight weekly, my first aid kit monthly and my firearms.....well, that's another story." In a December 9, 2020, comment, he wrote about buying his daughter a firearm when she was 7 years old.

⁵ Defendant Dolan's cell phone has not yet been forensically examined.

Department of Defense records. According to the Department of Defense, Defendant Dolan was a marksmanship instructor in the Marine Corps for approximately a decade.

Comfort Inn Ballston / Co-defendant Harrelson. Like the government's evidence against co-defendant Harrelson,⁶ the evidence against Defendant Dolan shows that he went to the Comfort Inn Ballston (the "QRF hotel") on January 5, likely to deposit his weapons, and then returned with Harrelson on January 7 to collect them.

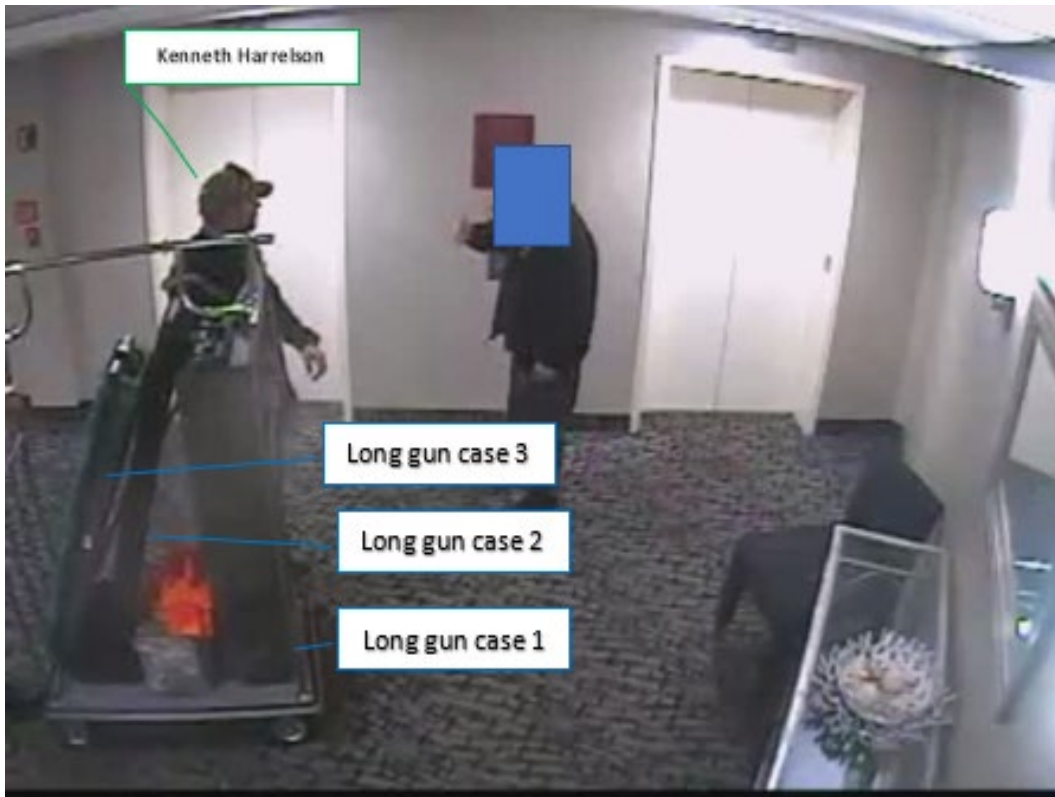
In the Florida Signal Chat, Harrelson's reference to needing to locate his "shit" on the morning on January 7 is most naturally read as a reference to his weapons, given that his clothing and other personal effects would have been with him at the Hilton Garden Inn (where, with Dolan, he appears to have spent the nights of January 5 and 6). Especially in light of the fact that co-defendant Kelly Meggs had previously advised that "Dc is no guns," (ECF 127 at ¶ 39), the most logical inference is that Defendant Dolan – along with Harrelson – left the guns with his comrades just over the border in Virginia in anticipation of an opportunity to use them later in the nation's capital.

The below still frames from the Comfort Inn surveillance video capture Defendant Dolan and co-defendant Harrelson retrieving at least three long gun cases on the morning of January 7. It appears that the two men were travelling alone together (in Defendant Dolan's rented car), as no one leaves the hotel with them.⁷

⁶ The government incorporates its evidence against co-defendant Harrelson (ECF 152) on this point.

⁷ The third person in the picture appears to be assisting them with the retrieval.





2. Dangerousness

Given his actions in forcibly storming the Capitol, Defendant Dolan's access to multiple firearms makes him almost by definition a danger to the community. This is especially true because he is hiding those firearms from the government.

Neither Defendant Dolan nor his wife admitted to having firearms in the house. In fact, at the time the FBI arrested Defendant Dolan and searched the house he shares with his wife, both he and his wife told the FBI that there were no firearms present in the house – and that neither of them owned any firearms. He also answered “no” to Pretrial Services’ question about whether there were “firearms in residence.”

While the FBI recovered one long gun from Harrelson's house, it did not locate any long gun cases. The implication is that Defendant Dolan had the long gun cases in his possession, but has since hidden them (along with the long guns themselves).⁸

The recovery of multiple firearms from premises controlled by a defendant can “clearly show that the defendant is a danger to the community” and must be detained, even when none of the charges against the defendant involve violent acts. *United States v. Nikolow*, 534 F. Supp. 2d 37, 39 (D.D.C. 2008). If that premise applies to the recovery of multiple firearms, it is especially true for the *hiding* of multiple firearms.

b. Gateway Pundit Interview

Just two weeks ago, Defendant Dolan apparently gave an interview to the Gateway Pundit, describing his actions on January 6 and a conspiracy theory about the Capitol Police actually

⁸ Dolan rents the house he shares with his wife, and the government is not aware of Defendant Dolan owning any other properties. Indeed, his counsel proffered that Defendant Dolan does not own any property at all. 6/3/21 Tr. at 36.

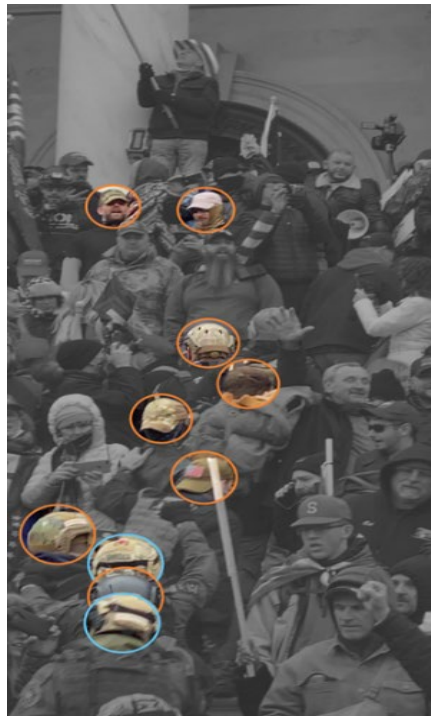
unlocking the “magnetic” doors to let him inside.⁹ Judge Matthewman held that the government did not meet its burden to prove that Defendant Dolan in fact gave the interview. The government does so below.

The interviewee, whose voice was intentionally masked by the website operator, described himself in terms that match Defendant Dolan.

First, the interviewee said he was on the steps when the stack of other Oath Keepers approached:

So, I was up on the steps with another member of Oath Keepers and what had end up happening is we didn't know where anybody was...alright so I am on the steps with only one other member of Oath Keepers, and we actually at this point we see other Oath Keepers down at the bottom of the steps and we just raise our hands and kid of wave at them and they see us... that's where you have the infamous stack video.

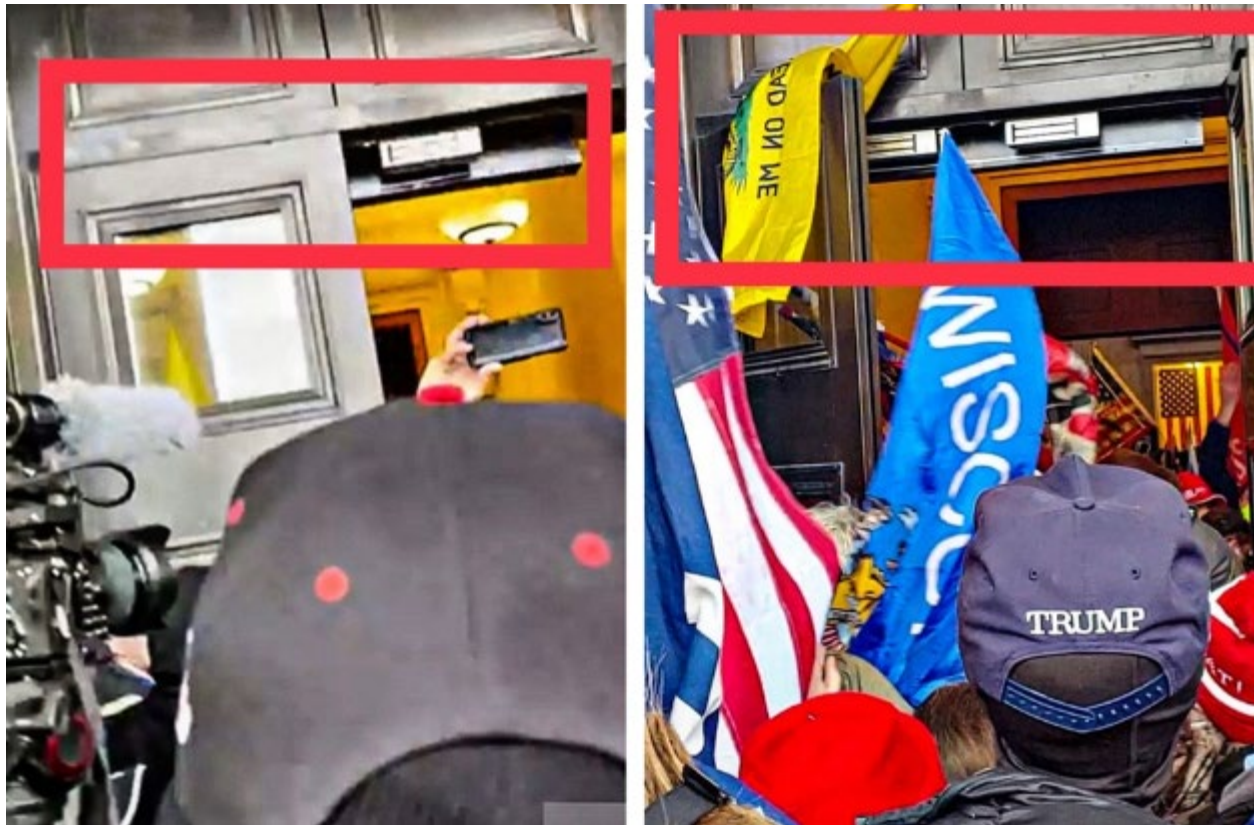
Defendant Dolan was in fact standing next to Harrelson at the top of the steps:



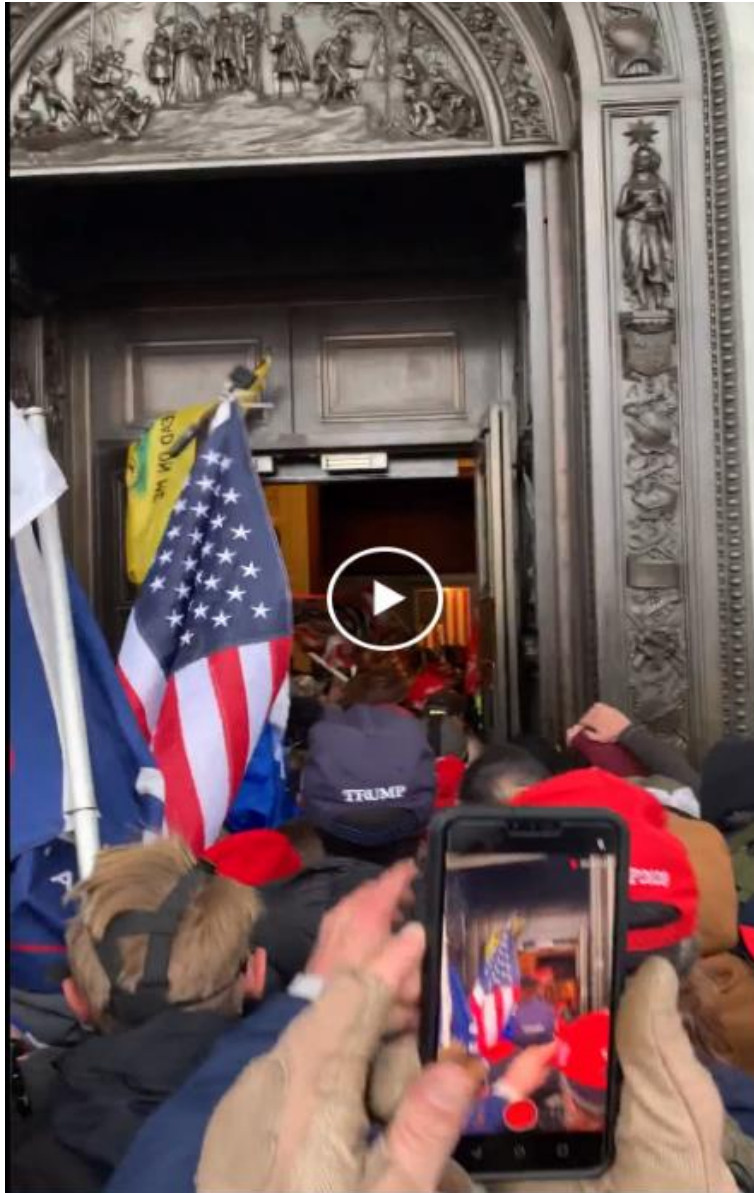
⁹ See <https://www.thegatewaypundit.com/2021/05/huge-exclusive-us-capitol-doors-jan-6-magnetically-locked-someone-inside-capitol-security-release>. Attached as Exhibit 4 is a rough transcript of the audio of the interviewee posted on the website.

Second, the interviewee said he was a “20-year US Marine Veteran, I am retired.” Defendant Dolan retired from the Marines after 20 years of service.

Third, the interviewee provided two photographs to the website ostensibly to show the “magnetic lock”:



Video recovered from Harrelson’s phone shows Defendant Dolan standing in front of Harrelson, holding up his Android cell phone, and taking a picture of almost the precise scene that the interviewee later provided to the website. A screenshot from Harrelson’s video (IMG_1399) is below, showing some of the same clothing, types and location of flags, and doors:



Fourth, the interviewee said he was an Oath Keeper, that he entered the Capitol with the stack, and that he expected to be arrested soon. Of the approximately 13 members of the stack, all but 6 had been arrested at the time the interviewee made his comments. (The arrests of Defendant Dolan and co-defendants Hackett and Isaacs have since brought that number down to 3.)

c. Recruitment

On December 16, 2020, Defendant Dolan commented on a YouTube video: “Well, If you’re interested in supporting your town, community, neighbors, state, and country then join the Oath Keepers!!! ...Don’t feel alone in your fight for America, join a militia.”

On December 22, 2020, Defendant Dolan simply left the following comment on a YouTube video: “Join the Oathkeepers.”

d. GoToMeeting Planning

Like Harrelson, Defendant Dolan was heavily involved in GoToMeeting sessions leading up to January 6. He attended more than 10 sessions (most under his phone number and one under his name), including the “dc planning call” that Harrelson organized on January 3:

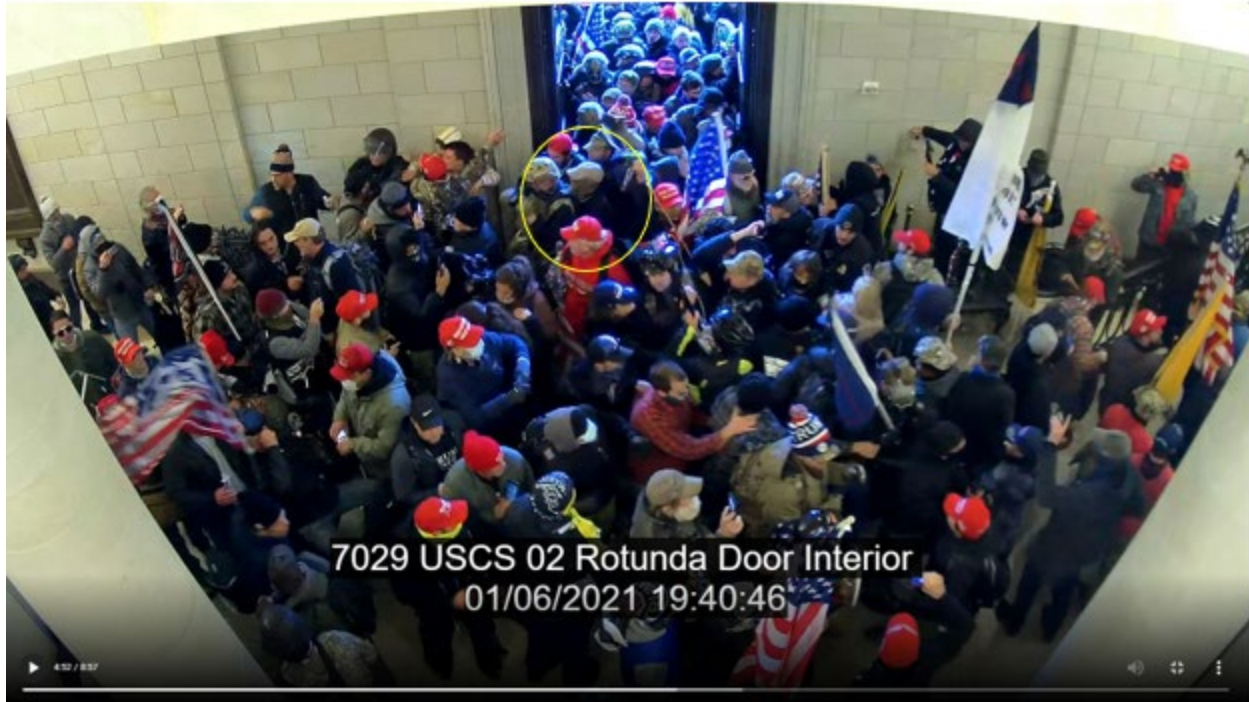
mcs_session_id	meeting_id	session_subject	session_date	session_start_time	participant_name	participant_type	participant_start_time	participant_end_time
2729370902252072991	402746613	dc planning call	2021-01-03	2021-01-02 23:45:52.502	[REDACTED]	attendee	2021-01-02 23:46:29.920	2021-01-03 00:40:18.478
6374825893399201568	402746613	dc planning call	2021-01-02	2021-01-02 23:45:11.451	[REDACTED]	attendee	2021-01-02 23:45:16.128	2021-01-02 23:45:45.585
690290304325714720	832999189	friday free for all	2020-12-19	2020-12-18 23:28:03.573	[REDACTED]	attendee	2020-12-18 23:31:28.019	2020-12-19 00:35:05.730
609754553438047519	587522317	monday night florida chapter call	2020-12-29	2020-12-28 23:53:34.059	[REDACTED]	attendee	2020-12-29 00:28:47.356	2020-12-29 00:59:35.710
3557609921446754586	365832389	monday night call	2020-12-22	2020-12-22 00:26:33.367	[REDACTED]	attendee	2020-12-22 00:31:56.156	2020-12-22 00:36:33.528
3557609921446754586	365832389	monday night call	2020-12-22	2020-12-22 00:26:33.367	[REDACTED]	attendee	2020-12-22 00:37:15.808	2020-12-22 02:09:48.025
3557609921446754586	365832389	monday night call	2020-12-22	2020-12-22 00:26:33.367	[REDACTED]	attendee	2020-12-22 00:31:08.176	2020-12-22 00:31:25.782
1245553571912983328	704555229	warrior wednesday with gator 6	2020-12-17	2020-12-16 23:26:27.724	[REDACTED]	attendee	2020-12-17 00:00:34.682	2020-12-17 00:16:48.070
3024583177173998617	636852837	florida dc op planning chat	2020-12-31	2020-12-30 23:58:20.845	[REDACTED]	attendee	2020-12-31 00:00:25.603	2020-12-31 00:30:17.306
221285922763256608	851557861	miami review and positions	2020-12-12	2020-12-12 01:13:23.355	[REDACTED]	attendee	2020-12-12 01:14:16.012	2020-12-12 01:47:34.140
1627787793994893855	736327669	ok florida	2020-12-08	2020-12-08 00:26:50.894	[REDACTED]	attendee	2020-12-08 01:05:30.063	2020-12-08 01:42:09.146
4489116172388913177	444206493	ok national call	2020-12-17	2020-12-17 01:26:40.803	[REDACTED]	attendee	2020-12-17 01:32:05.841	2020-12-17 03:47:26.122
1678905188927019039	736327669	ok florida	2020-12-01	2020-12-01 00:28:08.487	[REDACTED]	attendee	2020-12-01 00:28:22.259	2020-12-01 01:47:53.664
6579575848173327136	736327669	ok florida	2020-11-17	2020-11-17 00:41:55.468	[REDACTED]	attendee	2020-11-17 00:44:27.343	2020-11-17 02:24:23.585
2721357660624739360	736327669	ok florida	2020-11-24	2020-11-24 00:27:09.012	[REDACTED]	attendee	2020-11-24 01:18:57.838	2020-11-24 01:54:08.530
2721357660624739360	736327669	ok florida	2020-11-24	2020-11-24 00:27:09.012	[REDACTED]	attendee	2020-11-24 00:29:03.148	2020-11-24 01:18:24.186

1	session subject	session type	session date	session duration	participant name
591	warrior wednesday with gator 6	scheduled	2020-12-03	41.47	jason dolan

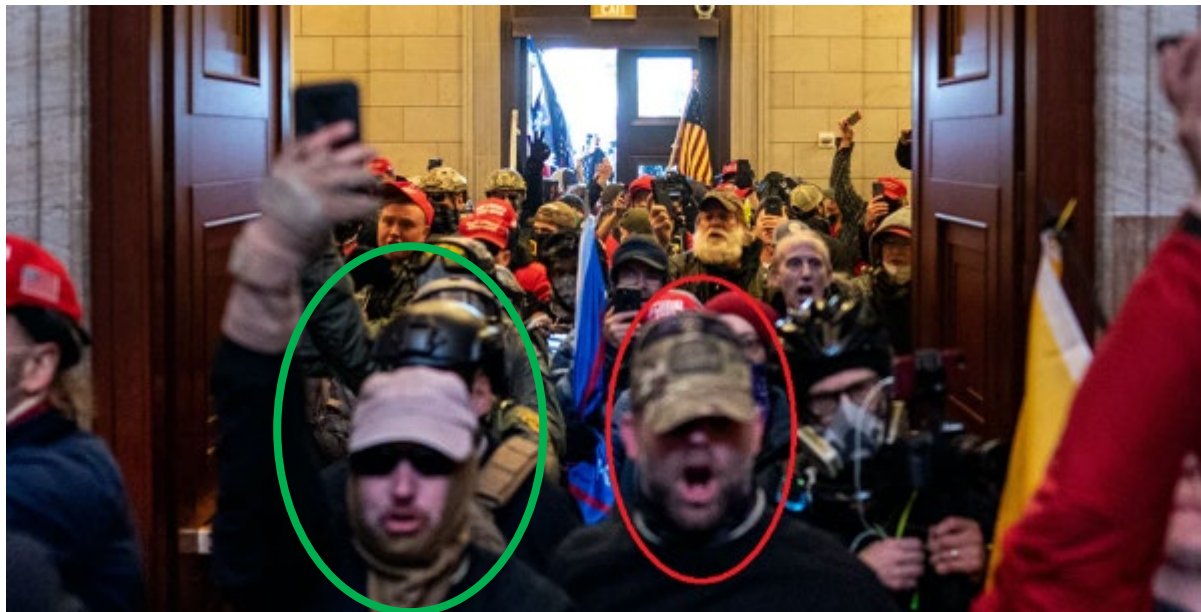
e. Actions Inside the Capitol

Defendant Dolan appears to spend his approximately 17 minutes inside the Capitol with co-defendants Harrelson and Kelly Meggs.

From the Capitol surveillance video, Defendant Dolan is seen forcibly entering the building at around 2:40 p.m.:

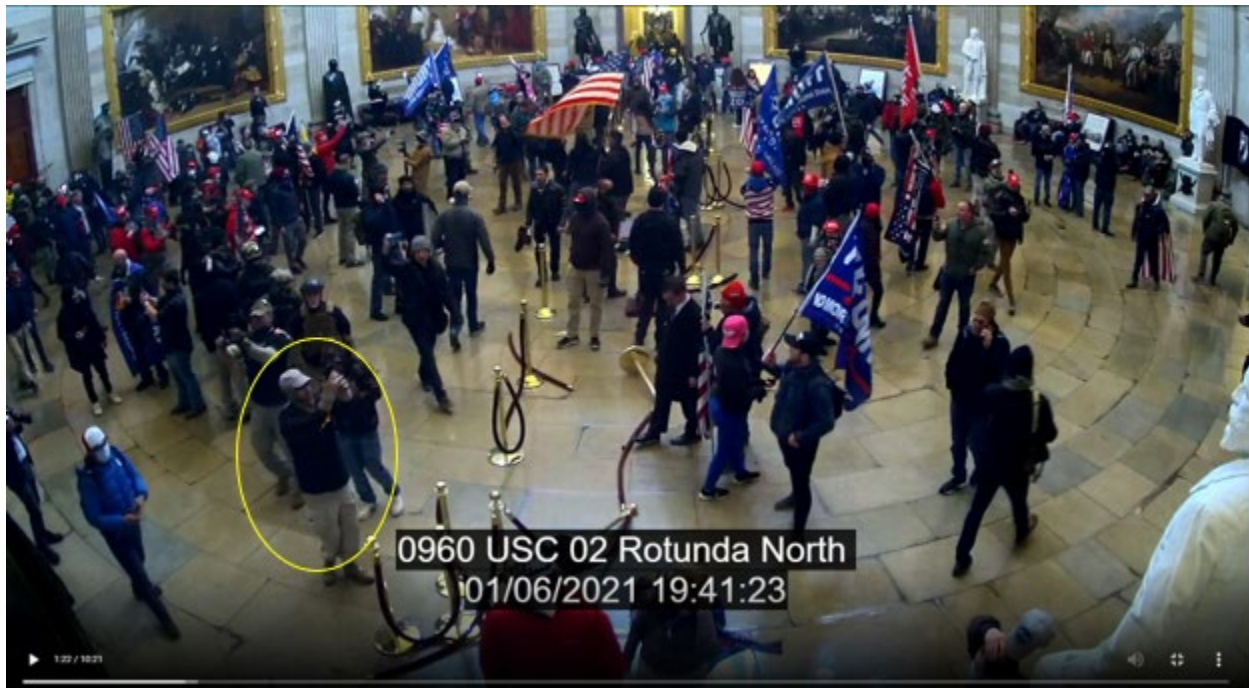


A photojournalist captured Defendant Dolan (green oval) and co-defendant Harrelson (red oval) storming from the just-breached east doors into the Rotunda, at the front of a pack of several of their coconspirators¹⁰:



¹⁰ See <http://www.kentnishimura.com/january-6-2021-siege-trump-supporters-storming--us-capitol-attack>.

In the Capitol surveillance video, Defendant Dolan first moves into the Rotunda, where he is just in front of co-defendants Harrelson and Young:



In the video from Harrelson’s phone (IMG_1399), starting at around 1:21 on the counter, the crowd loudly chants, “Treason! Treason!” At the 1:45 mark, a person – it’s unclear if it’s Harrelson, Defendant Dolan, or someone standing near them – yells, “This is our fucking house!” At the 2:27 mark, a person – again, it’s unclear if it’s Harrelson, Defendant Dolan, or someone standing near them – states, “We took the fucking Capitol.”

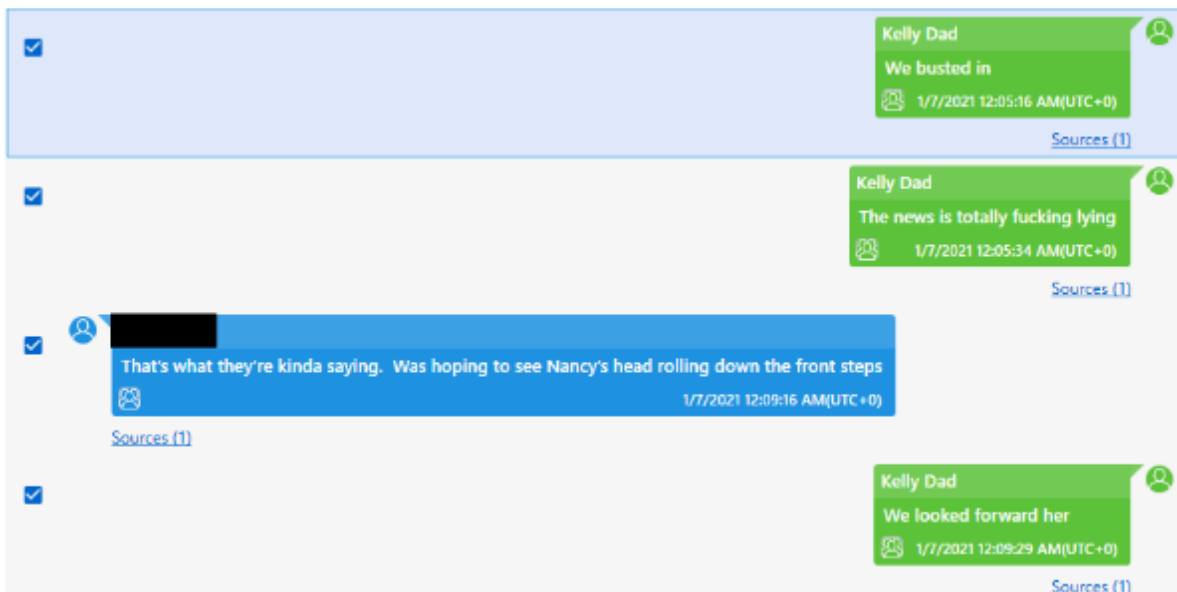
Defendant Dolan, with other members of the conspiracy, including notably co-defendants Kelly Meggs and Harrelson, moved south, across the Rotunda, into Statuary Hall:



The men then congregate for about six minutes in a vestibule near the Speaker's formal office, as shown in a photo from the vantage point of a person standing in this area:



The coconspirators' movements and statements are relevant to their intent, and their dangerousness. When Defendant Dolan moved south in the direction of the House chamber, it is reasonable to infer that he and his coconspirators may have been going to look for Speaker Nancy Pelosi. Indeed, on the evening of January 6, co-defendant Caldwell (who remained outside the Capitol but apparently was in communication with coconspirators inside) wrote: "Proud boys scuffled with cops and drove them inside to hide. Breached the doors. One guy made it all the way to the house floor, another to Pelosi's office. A good time." And co-defendant Kelly Meggs,¹¹ with whom Defendant Dolan appears to have been travelling while inside the Capitol, had the following exchange with another person on the night of January 6 on Signal about having sought out Speaker Pelosi:



Indeed, surveillance video shows that Defendant Dolan – along with co-defendants Kelly Meggs and Harrelson – was in this area for several minutes after leaving Statutory Hall. He re-

¹¹ In the extraction from his cell phone, co-defendant Kelly Meggs's name appears as "Kelly Dad." Also, the time zone is UTC, which in January was five hours ahead of Eastern Time.

entered the Rotunda from this area at around 2:52 p.m. Defendant Dolan remained inside the Capitol for about 17 minutes in total, until finally leaving with Harrelson at around 2:57 p.m.:



f. Deleting and Hiding Evidence

In addition to stashing his firearms, Defendant Dolan appears to have taken additional steps to distance himself from the Oath Keepers and individuals associated with the Oath Keepers after January 6.

The records from Google show that Defendant Dolan deleted all of his emails around March 12, 2021. The timing is conspicuous: That is the same day that co-defendant Harrelson was indicted – and the day after Harrelson had his initial appearance, which garnered media attention.

On January 6, Defendant Dolan (with the red arrow) was wearing a black “Oath Keepers” t-shirt while standing on the steps of the Capitol:



The FBI did not locate the t-shirt during an exhaustive search of Defendant Dolan’s house. The FBI also did not locate his tan gloves or his olive gaiter.

Finally, defense counsel represented at the earlier hearing that Defendant Dolan had cut off contact with the Oath Keepers. *See* 6/3/21 Tr. at 31 (“If he had an association with the Oath Keepers, he has completely disassociated himself with them. . . . [T]here was no contact with him and the Oath Keepers, there was no continuing contact.”). But records recovered from Harrelson’s phone prove otherwise: On March 2, 4, and 9, 2021, Defendant Dolan called Harrelson on Signal¹²:

¹² Because the Signal records were deleted by Harrelson but then forensically recovered, the “duration” of the answered calls appears to be nil.

	Parties	Date	Time	Duration	Direction	Status	Source
2	From: Jason Jason To: GATOR 6 GATOR 6	3/9/2021	3/9/2021 8:24:03 PM(UTC-5)	00:00:00	Incoming	Answered	Signal
3	From: Jason Jason To: GATOR 6 GATOR 6	3/4/2021	3/4/2021 2:06:41 PM(UTC-5)	00:00:00	Incoming	Answered	Signal
7	From: Jason Jason To: GATOR 6 GATOR 6	3/2/2021	3/2/2021 5:27:35 PM(UTC-5)	00:00:00	Incoming	Answered	Signal


And Harrelson was arrested on March 10, the day after Defendant Dolan's last call to him.

IV. CONCLUSION

For all these reasons, the government submits that Defendant Dolan has not rebutted the presumption under Section 3142(e)(3)(C) that he be detained pretrial, as there are no conditions that will reasonably assure the safety of the community. Judge Matthewman's release order should be revoked, and Defendant Dolan should be detained pending trial.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

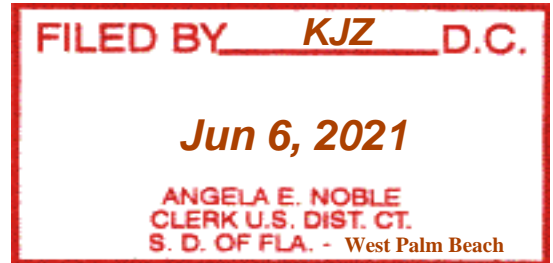
Case No. 21-8212-BER

UNITED STATES OF AMERICA,

v.

JASON DOLAN,

Defendant.



**ORDER DENYING GOVERNMENT’S ORE TENUS MOTION
FOR PRETRIAL DETENTION**

THIS MATTER is before the Court upon the Government’s *ore tenus* motion to detain Defendant Jason Dolan (“Defendant”) without bond pending trial in accordance with 18 U.S.C. § 3142, commonly known as the Bail Reform Act of 1984. The Government moved for pre-trial detention of Defendant on the basis that he is a substantial or serious risk of flight or nonappearance and a danger to the community.¹ The Court held an in-court detention hearing on June 2, 2021, which continued on June 3, 2021.²

At the conclusion of the detention hearing, the Court orally denied the Government’s request for to hold Defendant in pretrial detention, for the reasons stated on the record. This written

¹ At the outset of the detention hearing, the Government announced that it was seeking Defendant’s pretrial detention on both risk of flight or nonappearance and dangerousness grounds. However, it became apparent during the course of the hearing that Defendant does not present a serious risk of flight or nonappearance, and the Government primarily focused its argument as to the dangerousness prong to support its pretrial detention request.

² Defendant requested to appear at his removal and detention hearing in-person from the courtroom rather than remotely. The Court granted that request. Further, in order to expeditiously and fairly address the pending matters in this district, the undersigned allowed CJA counsel Frederick Charles Hutchinson III, Esq., to remain on the case during these removal and detention proceedings so that he could be present with Defendant in the courtroom. The undersigned U.S. Magistrate Judge was present in the courtroom, while Defendant’s out-of-state *pro hac vice* counsel, Michael T. van der Veen, Esq., FBI Special Agent Justin Spence, and the prosecutor, Mark Dispoto, Esq., all appeared remotely. Both Defendant and the Government were in agreement with this procedure.

Order now follows.

I. The Release of Defendant Dolan on Strict Release and Bond Conditions, and the Denial of the Government’s Request for Pretrial Detention, Comports with the Bail Reform Act and Applicable Case Law, Including the Recent Decision of the D.C. Circuit in *U.S. v Munchel*

As stated on the record at the hearing, the Court has ordered Defendant released under the careful supervision of the U.S. Probation Office’s Special Offender Unit (SPU) with very strict conditions, including but not limited to, Home Incarceration at his residence in Wellington, Florida, where he resides with his wife and 18-year-old daughter; GPS Location Monitoring; no contact with any Oath Keepers or anyone who participated or was involved in the January 6, 2021 attack on the U.S. Capitol; computer and electronic device monitoring to ensure that Defendant does not have or use any form of encrypted communications; no firearms in his possession or home; travel restrictions; surrender of his passport; compliance with all standard conditions of release; and a \$100,000 personal surety bond co-signed by Defendant’s wife and adult daughter.³

It must be noted at the outset that Defendant is a U.S. citizen and a resident of Palm Beach County, Florida; he is married with an adult child; he has no prior criminal convictions of any kind; he served in the U.S. Marines for 20 years where he attained the rank of Staff Sergeant and was Honorably Discharged upon retirement in 2014; he has the support of his family as his wife and adult daughter both agreed to co-sign the \$100,000 personal surety bond and appeared in court on his behalf; and he recently had a hip replacement and has mobility issues. The U.S. Probation Office completed a Pretrial Services Report after interviewing Defendant and recommended his

³The Government previously notified the Court of its intent to appeal the undersigned’s release Order to the Honorable Amit P. Mehta, U.S. District Judge in the U.S. District Court for the District of Columbia, and it requested a stay of this Court’s release Order. The Court granted a stay in its discretion pursuant to S.D. Fla. L.R.4(a)(2) on June 4, 2021 [DE 13], thereby staying the release Order regarding Defendant until June 10, 2021 at 4:00 p.m.

release on conditions.

The Court is convinced, after carefully considering all the evidence, exhibits, testimony, information, proffers, and argument, that the release of Defendant on very stringent conditions, and denial of pretrial detention, is in full accord with the dictates of the Bail Reform Act and applicable case law, including a very recent decision of the District of Columbia Circuit Court of Appeals.

Specifically, in *U.S. v. Munchel*, 991 F.3d 1273, 1275 (D.C. Cir.), *judgment entered*, 844 F. App'x 373 (D.C. Cir. 2021), the U.S. Court of Appeals for the District of Columbia Circuit considered the consolidated appeals of two defendants, Eric Gavelek Munchel and Lisa Marie Eisenhart, who had been charged in relation to the same U.S. Capitol attack which occurred on January 6, 2021, and who were subsequently ordered held on pretrial detention on dangerousness grounds. The District of Columbia Court of Appeals remanded both pretrial detention orders. *Id.* at 1285. Upon remand, the Government withdrew its request for pretrial detention, and both defendants were ordered released by the U.S. District Court for the District of Columbia. *U.S. v. Munchel and Eisenhart*, 1:21-cr-118-RCL (D.D.C. Mar. 29, 2021), ECF No. 60. The very recent *Munchel* opinion, dealing with the issue of pretrial detention in two cases arising out of the same January 6, 2021 assault on the U.S. Capitol, provides further clear legal guidance to the Court and is fully supportive of this Court's decision to deny pretrial detention and order Defendant Dolan's pretrial release on stringent conditions.

In *U.S. v. Munchel*, *supra*, the Court of Appeals quoted *U.S. v. Salerno*, 481 U.S. 739, 755 (1987) for the following proposition: "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." 991 F.3d at 1279. Importantly, the Court of

Appeals in *Munchel* opined that to order a defendant preventatively detained on dangerousness grounds, a court must identify “an articulable threat posed by the defendant to an individual or the community.” *Id.* at 1290. Although the threat need not be of physical violence, “it must be clearly identified.” *Id.* at 1293. In Defendant Dolan’s case, the Government did not establish by clear and convincing evidence that he poses an articulable threat to an individual or the community; nor did the Government sufficiently establish a clearly identified threat posed by Defendant’s release.

In sum, while the January 6, 2021 attack on the U.S. Capitol, in which Defendant allegedly participated along with scores of other individuals, was reprehensible, illegal, and traitorous to the United States of America and its democratic institutions, this Court must nonetheless resist the knee-jerk urge to detain, and instead must scrupulously follow the law set forth in the Bail Reform Act, 18 U.S.C. § 3142, applicable case law, and the principles of our U.S. Constitution. In doing so, it is very clear that the Government’s effort to detain Defendant is without support and is thus due to be denied.

II. Defendant Dolan Successfully Rebutted the Statutory Rebuttable Presumption Which Applies in this Case

While the statutory rebuttable presumptions in 18 U.S.C. § 3142(e) do apply in this case⁴, the Court finds that Defendant has successfully rebutted these presumptions. “Once the statutory presumptions are raised, the defendant carries the burden of production to come forward with evidence to rebut the presumptions.” *U.S. v. Quartermaine*, 913 F.2d 910, 916 (11th Cir. 1990). But this “obligation to come forward with evidence does not shift to the defendant the

⁴ The undersigned made a finding at the detention hearing that the statutory rebuttal presumptions under 18 U.S.C. § 3142(e)(3)(C) apply here. Defendant has been charged with an offense (felony destruction of property, in violation of 18 U.S.C. §§ 1361, 2) which is an offense listed in section 2332b(g)(5)(B) of title 18, U.S. Code, and for which a maximum term of imprisonment of 10 years or more is prescribed.

government’s burden of persuasion.” *Id.* (citing *U.S. v. King*, 849 F.2d 485, 488 (11th Cir. 1988)).

In a rebuttable presumption case, the defendant bears the burden of producing evidence to suggest that he is not dangerous and/or that he is not likely to flee if released. *Quartermaine*, 913 F.2d at 916 (quoting *U.S. v. Hurtado*, 779 F.2d 1467, 1479 (11th Cir. 1985)). In presumption cases, “the presumption becomes evidence to be considered along with other evidence listed in the [Bail Reform] Act as indicative of risk of flight or danger to the community.” *Quartermaine*, 913 F.2d at 916. Finally, the presumption of detention does not alter the defendant’s underlying presumption of innocence. *See* 18 U.S.C. § 3142(j).

Because Defendant met his burden of production and successfully rebutted the statutory rebuttable presumptions, and because the Government failed to meet its burden of persuasion, the Court finds that Defendant’s release is appropriate despite the existence of the statutory presumptions.

III. Analysis of Bail Reform Act Statutory Factors

A. Nature and Circumstances of the Offenses Charged

Defendant is charged by way of a Fourth Superseding Indictment in case number 21-cr-28-APM in the U.S. District Court for the District of Columbia with the following four counts: conspiracy, in violation of 18 U.S.C. § 371 (Count 1); obstruction of an official proceeding and aiding and abetting, in violation of 18 U.S.C. §§ 1512(c)(2), 2 (Count 2); destruction of government property and aiding and abetting, in violation of 18 U.S.C. §§ 1361, 2 (Count 3); and knowingly entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count 4). If convicted, Defendant faces up to five years in prison for Count 1, up to 20 years in prison for Count 2, up to 10 years in prison for Count 3, and up to one year in prison

for Count 4.

While the charges against Defendant are very serious and involve participation along with scores of others in a horrific, wholly unjustified attack on our U.S. Capitol and upon our institutions of government, he is not alleged to have assaulted or attacked a U.S. Capitol police officer or any other person; he did not possess a firearm, Taser or any weapon while in the U.S. Capitol; he did not possess Zip ties or handcuffs; he is not alleged to be a leader of the Oath Keepers; and he appears to have been in the U.S. Capitol for approximately ten minutes. While he is charged with destruction of government property in Count 3, there was no proffer or evidence presented that Defendant himself actually destroyed any government property. Rather, it appears that, as to Count 3, he is charged under an aiding and abetting theory pursuant to 18 U.S.C. § 2.

Although the charges are very serious and strike at the foundations of our democracy, Defendant's personal involvement appears to be less egregious than many others who personally attacked law enforcement officers, personally damaged property, sought to locate and injure or kill members of Congress, or possessed weapons while in the U.S. Capitol. Accordingly, this first factor—the nature and circumstances of the offenses charged—is neutral as to Defendant's detention or release.

B. Weight of the Evidence

The Court took judicial notice of the Fourth Superseding Indictment in 21-cr-28-APM in the U.S. District Court for the District of Columbia. The Court need not repeat those allegations here but has carefully reviewed the allegations, many of which were asserted by the Government, and discussed by the parties and the Court, during the lengthy detention hearing.

The Government's proffer also included the assertion that surveillance footage from the Comfort Inn in Arlington, Virginia, from January 7, 2021 at 8:55 a.m., shows Defendant and a co-

defendant pushing a luggage dolly through a hotel. The Government proffered that the luggage dolly appears to have rifle cases on it. While law enforcement believes that participants in the January 6, 2021 entry into the U.S. Capitol building used this hotel to store weaponry, law enforcement cannot be sure what was inside the containers on the dolly. Accordingly, this alleged fact provides little support for the Government's request that Defendant be detained.

The Government also alleges, but cannot currently prove, that the anonymous Oath Keeper who provided an interview to thegatewaypundit.com on May 24, 2021, was Defendant Dolan. During that interview, the anonymous individual acknowledged that the Government was going to arrest him, and he alleged that the deep state had intentionally released magnetic locks on the U.S. Capitol doors to allow the rioters inside on the day of the attack. While these comments are noted, the Government failed to meet its burden to show that these comments were, in fact, made by Defendant Dolan. The Court cannot simply assume this Defendant made those comments.

The Government further argued that Defendant had disposed of firearms and Oath Keepers gear in likely anticipation of his arrest and search of his home. The facts show that Defendant was recently arrested at his home located in Wellington, Florida. When law enforcement executed the lawfully acquired federal search warrant, they were unable to locate any firearms or any Oath Keepers clothing or memorabilia. Law enforcement interviewed several of Defendant's neighbors, many of whom reported that they had previously seen firearms in Defendant's residence. One individual stated that Defendant often carries a firearm outside of his home. Additionally, during a cursory search of Defendant's cell phone, law enforcement uncovered a photo of Defendant's wife holding an assault-style weapon. Law enforcement believes that Defendant intentionally removed all evidence of firearms and all evidence showing his affiliation with the Oath Keepers from his home to avoid detection by law enforcement. While this position of the Government is

certainly plausible, it is also plausible that Defendant decided to cease further involvement with the Oath Keepers and has sold his firearms or stored them elsewhere. In any event, the Government's proffer and argument does not establish a knowing or willful destruction of evidence or obstruction by Defendant.

In sum, the weight of the evidence as to the charges lodged against Defendant is substantial. Additionally, a grand jury has already made a finding of probable cause as to the charges lodged against Defendant. Therefore, while the Government failed to sufficiently establish or prove the entirety of its proffer, the weight of the evidence against Defendant is a factor in favor of detention.

C. History and Characteristics of the Defendant

The Court takes judicial notice of the Pretrial Services Report, in which the assigned Pretrial Services Officer and the Supervisory Probation Officer recommended that Defendant be released on strict conditions.

Defendant was born in Jacksonville, Arkansas, on June 26, 1976. He graduated from Lawrence High School in Lawrence, New Jersey, and he earned an Associate's Degree from Hawaii Pacific University in 2003. He served in the U.S. Marine Corps for two decades, from August 1994 until August 2014. Defendant received an honorable discharge and reached the rank of Staff Sergeant. Defendant possesses a U.S. passport and has traveled to The Bahamas, Singapore, Iceland, England, Malaysia, Germany, and Indonesia, as well as additional countries.

Defendant's mother lives in Georgia, and his father is deceased. His two siblings live in Missouri and Arizona, respectively. Defendant has been married for approximately 19 years and has an 18-year-old daughter. He lives with his wife and daughter in Wellington, Florida, and has been associated with the same address for the past five years.

Defendant has been unemployed for the past one and a half years. He left his previous

employer—the Four Seasons Hotel in Palm Beach, Florida—to get hip replacement surgery, and he has been unable to find new employment. He receives military retirement pay and benefits. Defendant owns a truck, but he owes money on it. His wife drives an unencumbered sedan. Defendant does not have substantial net assets, and his income and expenses generally break even monthly.

Defendant is generally in good physical health, but he had a hip replacement surgery approximately 18 months ago and still suffers from pain and mobility issues. He also has some “gut problems.” Defendant has no history of mental health treatment, substance abuse history, or substance abuse treatment. Defendant’s history and characteristics favor his release on bond and other conditions.

D. Defendant’s Criminal History

Defendant has never been convicted of a crime. When he was 18 years old, he was arrested in New Jersey for possession of “a firearm” at school. However, despite the title of the crime charged, he was actually arrested for showing a pocketknife to his shop teacher. The charge was ultimately dismissed. Thereafter, when he was 23 years old, Defendant was arrested in Myrtle Beach, South Carolina, for assault and battery (high and aggravated nature). That arrest allegedly involved a bouncer tossing Defendant out of a bar, and the charge was ultimately withdrawn. Defendant’s lack of any criminal convictions, along with his brief and ancient history of arrests, favor his release on bond and other conditions.

IV. Legal Standard

The policy underlying the Bail Reform Act “is to permit release under the least restrictive condition compatible with assuring the future appearance of the defendant.” *U.S. v. Price*, 773 F.2d 1526, 1527 (11th Cir. 1985) (per curiam). The policy underlying the Bail Reform Act “is to

permit release under the least restrictive condition compatible with assuring the future appearance of the defendant.” *U.S. v. Price*, 773 F.2d 1526, 1527 (11th Cir. 1985) (per curiam). When the Government seeks to detain a criminal defendant pending trial based on his status as a flight risk, it must prove by a preponderance of the evidence that no condition or set of conditions will reasonably assure his presence at trial. *U.S. v. Medina*, 775 F.2d 1398, 1402 (11th Cir. 1985). By contrast, when the Government seeks to detain a criminal defendant based on a contention that he is a danger to the community, it must show by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of the community. *Id.*

“Under the statutory scheme set forth in the Bail Reform Act, ‘it is only a limited group of offenders who should be denied bail pending trial.’” *U.S. v. Enix*, 1:15-CR-00142 EAW, 2016 WL 3960905, at *2 (W.D.N.Y. Jul. 21, 2016) (quoting *U.S. v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007)). *See also Munchel, supra; Salerno, supra.*

V. Discussion

A. Likelihood of Defendant’s Appearance if Released

As noted previously, the Court finds that the Defendant has successfully rebutted the statutory rebuttable presumption as to risk of flight or nonappearance in Court, and further, that the Government has failed to meet its burden of establishing Defendant’s risk of flight or nonappearance in Court by a preponderance of the evidence. For the reasons orally stated on the record and for the reasons contained in this written Order, the Court finds that Defendant does not present a serious risk of flight or nonappearance in court if released on bond and other stringent conditions. The Court finds that there are conditions of release which will reasonably assure Defendant’s presence when required at all court proceedings. Finally, the Court finds that the stringent combination of pretrial release conditions imposed by the Court will reasonably assure

Defendant's presence at all court proceedings if Defendant is released.

Defendant is a U.S. citizen who resides in Wellington, Florida. He has lived at the same residence with his wife and 18-year-old daughter for approximately five years. There is no indication that he was planning to flee even though he seemingly knew that law enforcement was coming to arrest him at some point. Defendant lacks the financial resources to flee, and he appears ready to face the charges lodged against him. His behavior in court was appropriate and respectful. Defendant is a U.S. citizen who served his country honorably for 20 years as a U.S. Marine. In sum, the Court finds that Defendant has rebutted the statutory presumption and that the Government has failed to show by a preponderance of evidence that Defendant is a risk of flight or nonappearance in court if released.

B. Nature and Seriousness of the Danger to Any Person or the Community that would be posed by Defendant's Release

As noted previously, the Court finds that Defendant has successfully rebutted the statutory presumption of dangerousness, and that the Government has failed to meet its burden as to dangerousness by clear and convincing evidence. The Government failed to establish that Defendant poses an articulable threat to an individual or the community and failed to sufficiently show a clearly identified threat posed by Defendant's release. *See Munchel, supra*.

For the reasons stated orally on the record and the reasons stated in this written Order, the Court finds that Defendant does not constitute a danger to the community or to any person in the community if released on bond and stringent conditions. Furthermore, the Court finds the stringent combination of conditions of release that it has ordered will reasonably assure the safety of any person and the community.

VI. Conclusion

Based on the dictates of the Bail Reform Act and applicable case law, and based on the


record before this Court, it is clear that pretrial detention of Defendant Dolan is unsupported by the facts and the law. The undersigned finds that there are conditions of release that will reasonably assure the safety of the community and Defendant's appearance at trial. *See U.S. v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985) (affirming court's decision to release on bond a defendant charged with a violation of the RICO Act); *U.S. v. Capolongo*, 16-cr-8284, 2016 WL 4272371 (S.D. Fla. Aug. 10, 2016) (denying the Government's request for pretrial detention in removal case), *aff'd*, *U.S. v. Capolongo*, 16-cr-522-28, DE 174 (S.D.N.Y Aug. 12, 2016). For the foregoing reasons, and for those stated on the record in open Court, it is hereby **ORDERED** that the Government's *ore tenus* motion for Pretrial Detention is **DENIED**; and it is

FURTHER ORDERED that Defendant shall be released upon a \$100,000 personal surety bond co-signed by Defendant's wife and adult daughter. The bond shall carry all the standard conditions of release and also include the following special conditions: (1) Defendant cannot obtain or apply for a new passport or travel documents, as he already surrendered his passport to the U.S. Probation Officer in Court; (2) Defendant must report to Pretrial Services as directed; (3) Defendant will have no contact whatsoever with any victims, witnesses, Oath Keepers, or anyone who participated or was involved in the attack on the U.S. Capitol on January 6, 2021; (4) Defendant shall not possess any firearms, and there can be no firearms in his home; (5) Defendant will be on Home Incarceration with GPS Location Monitoring 24 hours a day (paid for by Defendant) with allowances for approved or emergency medical needs; (6) Defendant will be under the supervision of the U.S. Probation Office's Special Offender Unit (SPU) which provides very close supervision of a released defendant; (7) Defendant shall not possess encryption software on any computers/phones/devices, and U.S. Probation is permitted to search Defendant's devices for such software; (8) Defendant shall actively seek full-time employment and any employment

shall be approved by Pretrial Services or the Court; and (9) Defendant will be restricted to traveling solely within the Southern District of Florida, and to the District of Columbia for court proceedings but only when approved by U.S. Probation or the Court; and it is

FURTHER ORDERED that this Order is stayed until 4:00 p.m. on Thursday, June 10, 2021, to allow the Government an opportunity to perfect an appeal to the Honorable U.S. District Judge Amit P. Mehta, in the U.S. District Court for the District of Columbia, who is presiding over the pending Indictment in that District. Defendant shall remain in custody until that date or until further Order of the Court.

DONE and ORDERED in open court at West Palm Beach, Palm Beach County, in the Southern District of Florida, on the 3rd day of June, 2021, and signed this 6th day of June, 2021.


WILLIAM MATTHEWMAN
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CASE NO. 21-mj-08212-BER

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON DOLAN,

Defendant.

JUNE 2, 2020

WEST PALM BEACH, FLORIDA

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TRANSCRIPT OF **DETENTION** HEARING
BEFORE THE HONORABLE MATTHEWMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Wednesday, June 2, 2021.

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Are we ready to start?

THE COURTROOM DEPUTY: The CSO is just bringing Mr. Hutchinson back.

THE COURT: I'll wait.

THE COURTROOM DEPUTY: He is here.

Calling United States of America against Jason Dolan, case number 21-8212-BER.

THE COURT: All right. So this is United States District Court for the Southern District of Florida. This is Duty Court, I'm Judge Matthewman.

Who is here today for the United States?

MR. DISPOTO: Your Honor, Mark Dispoto appearing on behalf of the United States.

THE COURT: All right. Good morning.

Who is here on behalf of the defendant?

MR. HUTCHINSON: Judge, in person, Rick Hutchison.

MR. VAN DER VEEN: Good morning, Judge, Michael van der Veen on behalf of the defendant.

THE COURT: All right. And I know that you have filed a pro hac vice motion which I believe I granted, is that correct?

MR. VAN DER VEEN: That is correct, Judge.

THE COURT: Is Manny Vasquez here today or not?

MR. HUTCHINSON: I don't believe he is, Judge.

1 THE COURT: All right. I believe also there have
2 been CJA lawyer, Mr. Hutchinson, is that right?

3 MR. HUTCHINSON: I'm here, Judge.

4 THE COURT: Mr. Hutchinson is in the courtroom.

5 We have Mr. Dolan at the moment appearing by Zoom
6 video conference from the marshal cell block here, in the West
7 Palm Beach Federal Courthouse. So the first thing we need to
8 address is whether or not this matter should proceed by Zoom
9 video conference or we do it in the courtroom here, this
10 morning.

11 Obviously, the defendant has a constitutional right
12 to be present here, in the courtroom. I'm here in the
13 courthouse, and if the defendant wishes to have the hearing in
14 the courtroom today, we will go ahead and do that. If the
15 defendant wishes to waive his right to be personally present in
16 the courtroom, we can go ahead and do it by Zoom.

17 How does the defendant wish to proceed?

18 MR. VAN DER VEEN: Judge, I don't know your setup.
19 If it is not too cumbersome, we would prefer to be in person.

20 THE COURT: Mr. van der Veen, where are you?

21 MR. VAN DER VEEN: I'm in my office on Spruce Street,
22 Philadelphia.

23 THE COURT: You can't be here in five or ten minutes,
24 I presume.

25 MR. VAN DER VEEN: I won't be, but the CJA attorney

1 has offered to be available in the courtroom not to conduct the
2 argument but just to assist in any way, if in person is
3 required.

4 THE COURT: All right. And the defendant is
5 insisting on a courtroom hearing, that's fine, not a problem.
6 He has a right to do that.

7 Ken, how long do we need to set that up so that we
8 can have an in-court hearing so I would allow.

9 If there is any Department of Justice lawyers
10 attending, Mr. Dispoto, they can attend by phone or Zoom; and
11 Mr. van der Veen, I would allow to appear by phone or Zoom.

12 How can we set up that in a short period of time,
13 Ken?

14 THE COURTROOM DEPUTY: I can probably do it in 10 to
15 15 minutes.

16 THE COURT: All right. Will Counsel be able to
17 either be in the courtroom or appear by Zoom?

18 THE COURTROOM DEPUTY: Yes.

19 MR. DISPOTO: I will be available by Zoom as well, as
20 will the Government witness, Agent Spence.

21 THE COURT: All right. The alternate would be I can
22 always be set up for tomorrow morning and everybody can be in
23 the courtroom; but if the parties are willing to go ahead and
24 proceed with myself and the defendant and Mr. Hutchinson in the
25 courtroom and then proceed by Defense Counsel van der Veen by

1 video conference, and Mr. Dispoto and the agent by video
2 conference, we can probably set that up in about 15 minutes.
3 If the defendant is insisting on the agent being in the
4 courtroom, that's a different story.

5 Or, Mr. van der Veen, do you want to go ahead and set
6 this up with the defendant in the courtroom and Mr. Hutchinson
7 in the courtroom, and everybody else excluding myself and my
8 courtroom deputy appearing by Zoom, does that work on your end?

9 MR. VAN DER VEEN: Yes, Judge.

10 THE COURT: All right. And let's just go ahead, Ken.
11 Would you swear in Mr. Dolan.

12 THE COURTROOM DEPUTY: Yes, Judge.

13 Raise your right hand.

14 JASON PATRICK DOLAN, DEFENDANT WITNESS, SWORN

15 THE COURT: Just state your name for the record,
16 please.

17 THE DEFENDANT: My name is Jason Patrick Dolan.

18 THE COURT: All right. And I just want to confirm,
19 you are in agreement with your Counsel, Mr. van der Veem having
20 the hearing in the courtroom and him appearing by video
21 conference; the prosecutor and agent by video conference, and
22 I'll be in the courtroom; and we will be in the courtroom and
23 my courtroom deputy; does that work for you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. So why don't we do this. It

1 is now almost 11:00. Why don't we --

2 Do you think you can have it all set and ready to go
3 by 11:15, Ken?

4 THE COURTROOM DEPUTY: Yes.

5 THE COURT: Why don't we re-adjourn at 11:15.

6 If there is anybody listening or anybody present, you
7 are welcome in the courtroom. The courtroom will be open to
8 the public. I'll be in the courtroom; Mr. Dolan will be in the
9 courtroom; my courtroom deputy will be in the courtroom;
10 Mr. Dolan's family members will be in the courtroom. If the
11 agent testifies or he testifies will be by video conference.
12 Mr. Dispoto, the prosecutor, will be appearing by video
13 conference, if there are any DOJ lawyers from up in the DC U.S.
14 Attorney's Office that wish to appear by phone or video
15 conference; and I'll allow Mr. van der Veen to appear by video
16 conference as well.

17 All right. So we will come back let's say 11:15, and
18 hopefully, we can get the show on the road at that point. All
19 right.

20 MR. DISPOTO: Your Honor, do we need to log out and
21 log back in on the same Zoom link?

22 THE COURTROOM DEPUTY: Yes.

23 THE COURT: Mr. Dispoto, Mr. van der Veen, just go
24 ahead and log out now. Just a few minutes before 11:15, log
25 back in and we will be able to get everything going so we can

1 have the hearing today.

2 MR. DISPOTO: Thank you, Judge.

3 THE COURT: All right, see you all in a little bit.

4 (Recess was had at; and the proceedings resumed
5 at 11:15 A.M.)

6 THE COURT: Let's call the case.

7 THE COURTROOM DEPUTY: Yes, Judge.

8 Calling United States of America against Jason Dolan,
9 case number 2108212-BER.

10 THE COURT: All right. So we are in court. We
11 started this hearing earlier. I will tell the parties since we
12 are in this large -- in our large courtroom, when you are in
13 the hallways here in the courthouse or entering the courthouse,
14 you have to wear a mask. Here, in the courtroom, if you wish
15 to wear a mask, you are welcome to do so. If you don't wish to
16 wear a mask, and are socially distanced, you can certainly go
17 ahead and do that. Any witness that testifies, I would want to
18 be able to see their face, so I would ask that the witness take
19 off their mask, if any witness testifies.

20 So we are here in the courtroom, we have Mr. Dolan
21 here. I know that Mr. Dolan was previously placed under oath
22 by video conference; but, Ken, can you place him under oath,
23 since we are here in the courtroom, and I'm personally here in
24 the courtroom with him.

25 THE COURTROOM DEPUTY: Yes, Judge.

1 Raise your right hand.

2 JASON PATRICK DOLAN, DEFENDANT, SWORN

3 THE COURT: Just state your name, for the record,
4 again.

5 THE DEFENDANT: My name is Jason Dolan.

6 THE COURT: All right; you can have a seat,
7 Mr. Dolan.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. So we have Mr. Hutchison here
10 in court with Mr. Dolan, correct?

11 MR. HUTCHINSON: Yes. Good morning, Your Honor; and
12 I have also got his wife Maria and Donna Corrine here, as well.

13 THE COURT: Could they stand up, please.

14 Good morning to both of you.

15 All right. And I know, Mr. Hutchinson, you were
16 appointed pursuant to the Criminal Justice Act, correct?

17 MR. HUTCHINSON: That is correct, sir.

18 THE COURT: All right. And then after that, there
19 was a pro hac vice appearance of counsel, a request by counsel
20 to appear here pro hac vice by Mr. Michael T. van der Veen, and
21 he is appearing by Zoom, is that correct?

22 MR. HUTCHINSON: Yes, Your Honor, he is on now.

23 THE COURT: Mr. van der Veen, can you hear and see me
24 okay?

25 MR. VAN DER VEEN: I can, Judge; thank you.

1 THE COURT: So now you are private counsel for
2 Mr. Dolan, is that correct?

3 MR. van der VEEN: I am.

4 THE COURT: All right. And is that for all
5 proceedings here, in this district removal matter?

6 MR. VAN DER VEEN: Yes, Judge.

7 THE COURT: All right. And detention, removal,
8 anything here in the Southern District of Florida, would that
9 be correct?

10 MR. VAN DER VEEN: Correct, Judge.

11 THE COURT: All right. And, Mr. Hutchinson, I know
12 that you have been appointed under the Criminal Justice Act.
13 It is a little unusual to have a CJA lawyer and a private
14 lawyer come in, but in light of the circumstances, if it is
15 okay with you, I would ask that you continue on through this
16 hearing, since you are present in the courtroom with Mr. Dolan,
17 and Mr. van der Veen is in Pennsylvania, is that agreeable to
18 you, Mr. Hutchinson?

19 MR. HUTCHINSON: It is, Your Honor. I'm happy to do
20 it.

21 THE COURT: All right.

22 Mr. van der Veen, is that agreeable to you?

23 MR. VAN DER VEEN: Yes, Judge.

24 THE COURT: Mr. Dolan, is that agreeable to you that
25 Mr. van der Veen will appear today by video conference and

1 Mr. Hutchinson will be here in the courtroom with you?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. So it is a little unusual,
4 but let's go ahead and proceed that way, in the interest of
5 judicial and attorney economy, so we can resolve this matter as
6 promptly as possible.

7 All right.

8 MR. HUTCHINSON: May I be seated, Judge?

9 THE COURT: Yes, of course.

10 MR. HUTCHINSON: Thank you.

11 THE COURT: So let's -- first of all, if we could
12 deal with the removal issue. Mr. Dolan, you have been charged
13 by way of a fourth superseding indictment in the United States
14 District Court for the District of Columbia. Have you received
15 a copy and reviewed a copy of that fourth superceding
16 indictment?

17 THE DEFENDANT: It was read to me, Your Honor; I
18 don't have it.

19 THE COURT: Mr. Hutchinson, do you have a copy of
20 that indictment, the fourth superseding indictment with you?

21 MR. HUTCHINSON: Briefly --

22 THE DEFENDANT: I had it read to me, Your Honor.
23 That's it, I don't have it.

24 THE COURT: Mr. Hutchinson, do you have a copy of
25 that indictment the fourth superseding indictment.

1 MR. HUTCHINSON: I do.

2 THE COURT: You have it there with Mr. Dolan?

3 MR. HUTCHINSON: Yes, Judge.

4 THE COURT: So you and Mr. Dolan both have that.

5 It appears that you are charged in counts one, two,
6 three, and four of this fourth superseding indictment.

7 Count one is a conspiracy 234 violation of Title 18,
8 United States Code, Section 371. That is charged from at least
9 as early of November 3, 2020, through January 6, 2021.

10 Count two charges you with obstruction of an official
11 proceeding, and aiding and abetting in violation of Title 18,
12 United States Code, Sections 1512(c)(2) and Section 2 of
13 Title 18.

14 MR. HUTCHINSON: What count was that, Judge?

15 THE COURT: That was count two.

16 MR. HUTCHINSON: Thank you.

17 THE COURT: Violation of U.S. Code, Sections
18 1512(c)(2) and 2, obstruction of an official proceeding and
19 aiding and abetting which allegedly occurred on or about
20 January 6, 2021 in the District of Columbia.

21 Count three charges you with destruction of
22 Government Property, and aiding and abetting in violation of
23 Title 18, United States Code, Sections 1361 and 2, 18 U.S.C. 2.

24 And then count four charges you with a violation of
25 Title 18, United States Code, Section 1752(a)(1) remaining in a

1 restricted building or grounds.

2 All right, so that's what you are charged with here;
3 and you do have a copy of the fourth superceding indictment.
4 You and your counsel have that.

5 Now you are here for a removal hearing. The reason
6 you are here is even because you were indicted in the United
7 States District Court for the District of Columbia, you were
8 arrested here, in this district, and brought before the court
9 here; and I, as the judge here today, will be addressing your
10 removal hearing and your detention hearing.

11 Now, as far as removal, you do have the right to
12 identity hearing for the Government to prove that you are the
13 person that the other district is seeking, that would be the
14 District of Columbia. If you waive that hearing, if you waive
15 the removal hearing, you are not admitting guilt, you are
16 merely saying that they have not arrested the wrong person,
17 that they have not arrested the wrong Jason Dolan.

18 Now you have a right to bond or detention hearing in
19 this district or in the other district, but not in both. You
20 also have the right to explore resolving this case in this
21 district, pursuant to Federal Rule of Criminal Procedure 20.
22 Under that rule, the case can be transferred to this district
23 from the District of Columbia, but only if you wish to plead
24 guilty and only if the prosecutor here and the prosecutor there
25 agree; and if you wish to explore that possibility, you may ask

1 to have more time to consider that possibility.

2 So the first issue here is whether we are going to
3 have a contested removal hearing or if the defendant is going
4 to agree to removal. Have you had a chance to address that
5 Mr. van der Veen?

6 MR. VAN DER VEEN: Yes, Judge. We are going to agree
7 to the removal. We do not contest identity.

8 THE COURT: All right, thank you.

9 Again, as I told you, Mr. Dolan, by agreeing to
10 removal, you are not admitting guilt, you are merely saying
11 that they have not arrested the wrong person; do you understand
12 that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Ken, do we have a form that we can hand
15 down to Mr. Dolan?

16 THE COURTROOM DEPUTY: I'll have to one brought up.

17 THE COURT: So we will have a form in a moment here.
18 Let me ask you a few questions about your decision
19 here, Mr. Dolan. Are you clear headed today?

20 THE DEFENDANT: Yes, I am, Judge.

21 THE COURT: Are you under the influence of any drugs,
22 narcotics, alcoholic beverages?

23 THE DEFENDANT: No, I'm not.

24 THE COURT: Have you had enough time to talk with
25 your counsel, Mr. Hutchinson and/or Mr. van der Veen regarding

1 your decision to waive removal in this case and agree to
2 identity and agree to removal to the District of Columbia?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Do you have any questions for
5 the Court or for your lawyers about that issue?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: All right. So I'm going to find that the
8 defendant has knowingly and voluntarily waived his right to a
9 contested removal hearing and has agreed with the advice of
10 competent counsel to consent to removal to the District of
11 Columbia.

12 And Ken, once we get that form, we will go ahead and
13 ask Mr. Hutchinson and his client to execute that.

14 THE COURTROOM DEPUTY: Yes, Judge.

15 THE COURT: All right. How long do you think that
16 will be?

17 We will have that form in just a minute. Let's deal
18 with the removal hearing; then after that, we will go to the
19 detention issue.

20 MR. VAN DER VEEN: Judge, may I identify all lawyers
21 that on the Zoom that are associated with the case either by in
22 person or in Zoom or by telephone without Zoom.

23 THE COURT: Yes. I know we have Mr. Hutchinson here,
24 in the courtroom, along with Mr. Dolan. Mr. Dispoto is here on
25 behalf of the United States.

1 Correct, Mr. Dispoto?

2 MR. DISPOTO: Yes, sir.

3 THE COURT: Are there any other prosecutors that are
4 online?

5 Doesn't appear; I don't see or hear any other
6 prosecutor, so it is just you today, Mr. Dispoto.

7 MR. DISPOTO: Yes, sir.

8 THE COURT: And who is the agent that you have today?

9 MR. DISPOTO: Special Agent Spence from the FBI, he
10 is on.

11 THE COURT: FBI Agent Spence, I do see him there.

12 All right. Are there any other Counsel that are
13 attending this hearing today?

14 MR. VAN DER VEEN: Not for the Defense, Judge.

15 THE COURT: So it appears that's all it is.

16 Mr. Dispoto, it is you; Mr. van der Veen; Mr. Hutchinson here
17 in the courtroom; we have Agent Spence. It doesn't appear that
18 anybody else is responding.

19 MR. VAN DER VEEN: Thank you, Judge.

20 THE COURT: Just one moment, while we get that form.

21 And while we are doing that, I was handed the
22 defendant's motion in opposition to the Government's motion for
23 Pretrial Detention. Has that been provided to you,
24 Mr. Dispoto?

25 MR. DISPOTO: Judge, I did receive an e-mail a few

1 moments ago from what appears to be Mr. van der Veen's law
2 clerk. It is a relatively short motion. It is, I think, about
3 four pages. I did eyeball it; but quite honestly, being on the
4 Zoom, I wasn't able to completely digest it. I don't need any
5 additional time to review it, so we are ready to proceed.

6 THE COURT: All right. It is as you stated, it is
7 short, three pages of text. The significant lines are on the
8 fourth page. It was probably done in a hurry, because "motion"
9 is spelled wrong, it is spelled M-O-T-I-O-I-N. Unless that's a
10 different spelling that I'm not aware of.

11 But in any event, you do have a copy of it,
12 Mr. Dispoto?

13 MR. DISPOTO: Yes, Judge.

14 THE COURT: All right. Don't need any more time?

15 MR. DISPOTO: No, Your Honor.

16 THE COURT: Okay, great.

17 Okay. And I do have that, Mr. van der Veen, so I
18 will review that.

19 MR. VAN DER VEEN: Judge, I only filed it because the
20 Government in the other cases that I have seen around the
21 country have been filing written motions for detention. I
22 didn't know if I missed it in some way, so we tried to file
23 something quickly, last night; had some difficulty and did it
24 again this morning.

25 THE COURT: It's not a problem. I have not seen a

1 Government motion in this case, so there is nothing that's been
2 filed and nothing presented to me, at this point, a written
3 motion.

4 MR. van der VEEN: Please excuse the typo, I abhor
5 and am disappointed there is one.

6 THE COURT: I understand, I understand.

7 MR. VAN DER VEEN: I wasn't speaking --

8 THE COURT: While we are waiting for my courtroom
9 deputy to come back with the form, I'm going to take a quick
10 minute to review the motion and also the Pretrial Services
11 report.

12 You do, Mr. Hutchinson, have a copy of the Pretrial
13 Services report.

14 MR. HUTCHINSON: I do, Judge.

15 THE COURT: Great.

16 MR. HUTCHINSON: Thank you.

17 THE COURT: Okay. So Mr. Hutchinson, my courtroom
18 deputy is handing you and your client a waiver removal form.
19 If you will just review that with him, if he is willing and he
20 wishes to, if you could both sign that and pass it up to my
21 courtroom deputy.

22 MR. HUTCHINSON: Yes, sir.

23 THE COURT: So Mr. Dolan, I have been handed a form
24 here. It is a waiver of Rule 5, and 5.1 hearings. It is
25 entitled, "United States of America versus Jason Dolan, case

1 number 21-8212-BER," that's our case here, in the Southern
2 District of Florida.

3 It says that "I understand that I have been charged
4 in another district, the District of Columbia," that's United
5 States district Court for the District of Columbia; and it
6 states here, "I agree to waive my right to an identity hearing
7 and production of the warrant." It dated today's date,
8 June 2nd, 2021; and above the defendant's signature line, there
9 is a signature. Is that your signature there, Mr. Dolan?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Did you sign that knowingly and
12 voluntarily?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Is that what you want to do?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: I'm going to go ahead and approve the
17 waiver and note that the defendant, Mr. Dolan, is not
18 contesting removal, and therefore he will be removed to the
19 District of Columbia whether it is by order or warrant remains
20 to be seen because we need to hold a detention hearing.

21 Both sides are ready for the detention hearing, at
22 this point, is that correct, Mr. Dispoto?

23 MR. DISPOTO: Yes, Your Honor.

24 THE COURT: Mr. van der Veen?

25 MR. VAN DER VEEN: Yes, Judge.

1 THE COURT: Mr. Hutchinson.

2 MR. HUTCHINSON: Yes, Your Honor.

3 THE COURT: Okay.

4 So, first of all, if you could just tell me, I will
5 take judicial notice of the fourth superseding indictment
6 issued in the District of Columbia. I'm also going to take
7 judicial notice of the Pretrial Services report regarding
8 Mr. Dolan; and I will allow the Government to proceed by
9 proffer with the agent present. But first of all, if you could
10 first tell me what is the basis that the Government is seeking
11 Pretrial Detention of the defendant?

12 MR. DISPOTO: We are seeking Pretrial Detention, Your
13 Honor, based on risk of flight as well as danger to the
14 community.

15 THE COURT: All right. So you are arguing there is a
16 serious risk of flight and a danger to the community, if
17 Mr. Dolan were released?

18 MR. DISPOTO: Yes, sir.

19 THE COURT: That there are no conditions or
20 combination of conditions of release that would reasonably
21 assure his presence in court or his threat to the community.

22 MR. DISPOTO: Yes, sir.

23 THE COURT: Now is there a rebuttal presumption in
24 this case? I know there is a destruction of evidence count.
25 What is the Government's position on whether or not there is a

1 rebuttal presumption in this case?

2 MR. DISPOTO: Your Honor, there is a rebuttal
3 presumption pursuant to 3142(c)(3) which indicates that an
4 offense listed in 18 U.S.C. 2332b (g)(5)(B) for which a maximum
5 term of imprisonment of ten years or more is prescribed. And
6 in this case, as the Court correctly noted, Section 1361 of
7 Title 18 is one of those enumerated offenses.

8 THE COURT: Okay, so let me just understand it.

9 Your position is that under 3142(e)(3)(C) Title 18, a
10 presumption arises if the offense felony destruction of
11 property under 1361 is listed in 2332b g)(5)(B), and carries a
12 minimum term of imprisonment of ten years or more.

13 MR. DISPOTO: Maximum.

14 THE COURT: What did I say, minimum, I meant maximum,
15 I meant maximum term.

16 MR. DISPOTO: Yes.

17 THE COURT: So your position is that under
18 3142(e)(3)(C), along with the 2332b(g)(5)(B), there is a
19 presumption that as to danger, risk of flight, or both?

20 MR. DISPOTO: I believe both, Your Honor.

21 THE COURT: Okay. Now is the Government asserting
22 this is a federal crime of terrorism?

23 MR. DISPOTO: Yes -- hold on, let me just
24 double-check.

25 Yes.

1 Cases involved -- cases that involve an offense
2 listed in 2332b(g)(5)(B), that defines federal crime of
3 terrorism does, in fact, qualify for 1361. So the answer to
4 shower question is yes.

5 THE COURT: All right. So you are hanging the
6 presumption -- your argument on the presumption is based on the
7 destruction of evidence count primarily, is that correct?

8 MR. DISPOTO: Count three, 1361.

9 THE COURT: Right, okay.

10 So let me hear from the Defense on whether or not you
11 agree with that.

12 MR. VAN DER VEEN: Judge, I have count three as
13 destruction of government property, not destruction of
14 evidence.

15 THE COURT: Right. If I said that, I misspoke. It
16 is destruction of government property.

17 MR. VAN DER VEEN: Okay. Judge, I would disagree
18 with the Government's argument there. My client is really, in
19 count three, based on a conspiracy theory of which in the
20 indictment there is no evidence that he conspired to destruct
21 property, and there is absolutely zero evidence in the
22 indictment -- or I think by what will be the FBI's testimony of
23 my client destroying any property, hurting any property of any
24 kind.

25 THE COURT: All right. Well, we --

1 MR. VAN DER VEEN: And so my client, I don't think --

2 THE COURT: All right. So I think that in count
3 three, it is a destruction of property count, and I believe
4 that is under the aiding and abetting statute as well as the
5 substantive statute. So it is Title 18, United States Code,
6 1361, and Title 18, United States Code, Section 2; is that
7 correct, Mr. Dispoto?

8 MR. DISPOTO: Yes, Your Honor.

9 So the Government's position is that a rebuttable
10 presumption applies as to risk of flight, serious risk of
11 flight or danger, and that no condition or combination of
12 conditions of release would protect the community or guarantee
13 or assure the defendant's -- reasonably assure the defendant's
14 presence in court, so I'll take that issue under advisement
15 whether or not there is a rebuttable presumption.

16 I understand the Defense position that they are
17 disputing that, but I just wanted to have that clear.

18 The second issue is: Can you tell me, Mr. Dispoto,
19 what the maximum penalties are for counts one, two, three and
20 four which Mr. Dolan is charged?

21 MR. DISPOTO: Count one is five years in prison;
22 Count II is 20, count three is 10 years, and count four is one
23 year.

24 THE COURT: All right. So five years --

25 MR. DISPOTO: I'm sorry, did you want the fines as

1 well or just the prison term?

2 THE COURT: Just prison term for purposes of
3 detention.

4 So as to count one, the maximum prison term is five
5 years; count two, the maximum prison term is 20 years; count
6 three, the maximum prison term is ten years; and count four,
7 the maximum prison term is one year; is that correct?

8 MR. DISPOTO: That's correct.

9 THE COURT: All right. And you do have the FBI agent
10 here, Agent Spence.

11 All right, so if you want to go ahead and proceed by
12 proffer.

13 MR. DISPOTO: Thank you, Judge.

14 And Your Honor, for what it is worth, the issue of
15 the presumption was addressed relative to some similarly
16 situated codefendants in the Middle District of Florida who
17 were also arrested last week and had detention hearings, and it
18 is my understanding, Judge, that the court relative to those
19 codefendants all found the presumption applied. So whatever
20 that is worth, I just present that to Your Honor.

21 THE COURT: I will say that my initial analysis seems
22 to be that the presumption does apply, but I'll hear more
23 argument on that once we get through the detention hearing.

24 MR. DISPOTO: Fine.

25 Your Honor, with the Court's permission and

1 indulgence, I would like my proffer this morning to include
2 information that is contained within the fourth superseding
3 indictment. I know Your Honor has already taken judicial
4 notice of. That document contains many allegations against
5 various defendants; but for the sake of completeness, I would
6 like to pinpoint and highlight some information contained
7 therein as it specifically relates to Mr. Dolan.

8 THE COURT: All right.

9 MR. DISPOTO: Before I do that, Judge, if the Court
10 would allow --

11 THE COURT: Hold on one second.

12 Mr. van der Veen.

13 MR. VAN DER VEEN: Judge, I didn't want to interrupt,
14 but I did want to be heard on the ability for the Assistant
15 United States Attorney to proceed on a proffer rather than
16 through the direct examination of the FBI agent.

17 THE COURT: What we do in this --

18 MR. VAN DER VEEN: I understand he would entertain
19 it, but I did want to make a record about it, if I may.

20 THE COURT: All right. I will tell you that in this
21 district, we do allow the Government to proceed by proffer, as
22 long as they have an agent with knowledge available for
23 cross-examination. So what is your position on that?

24 MR. VAN DER VEEN: Judge, my position on that is
25 although the rule does allow for it. It may be that common

1 occurrence in Your Honor's jurisdiction, in this particular
2 case and particularly, if there is a rebuttable presumption, I
3 believe the proffer is going to be a proffer of testimony that
4 one agent may have heard from another agent or may have heard
5 from somebody else. So that the information by the agent
6 himself, if he were to testify on direct, is far removed from
7 any personal knowledge at all. And so that -- my client's
8 constitutional right to confrontation of the witness will be
9 severely restricted if he can't cross-examine the testimony of
10 the agent but can only cross-examine something proffered by an
11 agent of the Government.

12 THE COURT: All right. Well, I will note your
13 objection, and overrule it. Both the case law and the statute
14 do allow the Government to proceed by proffer in this case.

15 In this case, there is an indictment issued by the
16 grand jury in the District of Columbia which is a finding of
17 probable cause as to counts one through four against Mr. Dolan.
18 And as I said, although we allow the Government to proceed by
19 proffer, we do have an agent available who can testify as to
20 any issues with the proffer.

21 So I note your objection. I overrule it, and we will
22 proceed as we normally do and as most courts do in this country
23 which is the Government proceeding by proffer with an agent
24 available to testify.

25 Go ahead, Mr. Dispoto.

1 MR. DISPOTO: Thank you.

2 Your Honor, the fourth superseding indictment that
3 has been entered in the District of Columbia alleges that
4 Mr. Dolan along with a group of several other individuals, some
5 of whom also reside in the State of Florida, traveled to
6 Washington D.C. on January 6th of 2021 with the express purpose
7 of intervening in a proceeding to be held within the United
8 States Congress that was in session for the explicit of purpose
9 of certifying the election of 2020.

10 Specifically on that date, January 6th of 2021, a
11 joint session of the United States House of Representatives and
12 the United States Senate convened in the United States Capitol
13 building for the purpose of the joint session to open, count,
14 and resolve any objections to the Electoral College vote to the
15 2020 presidential election and to certify those results.

16 At approximately 1:00 o'clock on that day, the joint
17 session convened in the Capitol building for the certification
18 of the Electoral College vote. A large crowd began to gather
19 outside of the Capitol perimeter as the joint session got under
20 way. Crowd members eventually forced their way through, up,
21 and over the Capitol Police barricades and advanced to the
22 building's exterior facade.

23 Capitol Police Officers attempted to maintain order
24 and stop the crowd from entering the Capitol building to which
25 the doors and the windows were locked or otherwise secured.

Wednesday, June 2, 2021.

1 Nonetheless, shortly after 2:00 o'clock that afternoon, crowd
2 members forced entry into the Capitol building by breaking
3 windows, ramming open doors, and assaulting Capitol Police
4 Officers. Other crowd members encouraged and otherwise
5 assisted the forced entry.

6 The crowd was not lawfully authorized to enter or
7 remain inside of the Capitol, and no crowd member submitted to
8 security screenings or reference checks by Capitol Police or
9 other security officials.

10 Shortly thereafter, members of the United States
11 house and senate chamber including the vice-president were
12 evacuated from their respective chambers. The joint session
13 was halted while the Capitol Police and other law enforcement
14 officers worked to restore order and to clear the Capitol of
15 unlawful occupants.

16 Later that evening, law enforcement regained control
17 of the Capitol. In the course of these events, over 100
18 members of law enforcement were assaulted. The Capitol
19 suffered millions of dollars in damage including broken windows
20 and doors, graffiti. And residue from pepper spray, tear gas,
21 and fire extinguishers.

22 Deployed by both crowd members who stormed the
23 Capitol and by Capitol Police Officers trying to restore order.
24 Additionally, many media members were assaulted and had cameras
25 and other news gathering equipment destroyed.

1 During the course of the investigation of this
2 matter, the defendant, names Dolan, has been identified as one
3 of the individuals who was in that crowd that day. He has also
4 been identified as a member of the Oath Keepers

5 Members and affiliates of this organization were
6 among the individuals in groups who forcibly entered the
7 Capitol on January 6. The Oath Keepers are a large but loosely
8 organized collection of individuals, some of whom are
9 associated with militias. Some members of the Oath Keepers
10 believe that the federal government has been coopted co opted
11 by a cabal of elites trying to strip American citizens of
12 theirs rights.

13 One moment, Judge.

14 At least as early as January 3rd of 2021, the
15 defendant, James Dolan, and others including some of his
16 charged codefendants including Kelly Meggs, Kenneth Harrelson,
17 and Mr. Hackett joined an invitation only encrypted messaging
18 service entitled "OK" -- and I'm quoting now, "OK FLDC Op
19 January 6."

20 Kelly Meggs wrote in that encrypted service that
21 Mr. Harrelson would serve as the ground team leader in Florida.
22 On January 4th of 2021, Mr. Harrelson and Mr. Dolan departed
23 the State of Florida together in a vehicle rented by Mr. Dolan,
24 and the two of them proceeded to travel to Washington D.C. in
25 the metropolitan area.

Wednesday, June 2, 2021.

1 Several other charged defendants who reside in
2 Florida also drove up in separate vehicles in somewhat of a
3 loose caravan formation. Those individuals include Graydon
4 Young from Tampa; Kelly Meggs and Connie Meggs from Ocala,
5 Florida; Kenneth Harrelson from Orlando; Joseph Hackett from
6 Sarasota; and William Isaacs from Kissimmee, Florida.

7 On January 4th, 2021, Mr. Harrelson and Mr. Dolan
8 departed from Florida at -- together, traveled to Washington
9 D.C. and ultimately stayed at a Hilton Garden Inn located in
10 Washington D.C. Mr. Dolan booked and paid for the room that
11 they stayed in from January 5th to January 7th of 2021.
12 January 6th of 2021, Mr. Dolan and Mr. Harrelson unlawfully
13 entered the restricted Capitol grounds.

14 At 2:35 P.M. that afternoon, nine of the individuals
15 charged in this indictment including Mr. Meggs, Mrs. Meggs,
16 Mr. Hackett, Mr. Isaacs, and others joined together to form a
17 column of stack individuals wearing Oath Keeper clothing,
18 patches, insignia, and battle gear. Together, the stack
19 maneuvered in an organized fashion up the steps on the east
20 side of the Capitol. Each member keeping at least one hand on
21 the shoulder of the other. Towards the top of the steps,
22 Mr. Harrelson and Mr. Dolan joined with the stack.
23 Surveillance video from the Capitol clearly depicts Mr. Dolan
24 present at the scene wearing an Oath Keepers shirt, sweatshirt,
25 or jacket of some kind clearly displaying the Oath Keepers

Wednesday, June 2, 2021.

1 insignia.

2 At the top of the steps, the stack joined and then
3 pushed forward alongside a mob that advanced towards the
4 Columbus Doors at the central east entrance to the Capitol
5 assaulting the officers guarding the doors, through objects and
6 sprayed chemicals towards the officers and the doors, and
7 pulled violently on the doors.

8 At 2:39 P.M., Mr. Isaacs joined the crowd and
9 forcibly pushed against one of the Columbus Doors and the law
10 enforcement officers guarding the door. Shortly thereafter,
11 the Capitol doors were breached by the mob and Mr. Isaacs
12 entered the building.

13 Shortly after the mob breached the doors, Mr. Dolan
14 along with several other alleged Oath Keeper members who
15 participated in that stack formation, including Mr. Meggs,
16 Mrs. Meggs, Mr. Harrelson, and Mr. Hackett forcibly entered the
17 Capitol. As they entered the Capitol, the group including
18 Mr. Dolan joined the larger mob in pushing past at least one
19 law enforcement officer who was trying to stop them from
20 breaching the Capitol building.

21 After they penetrated the Capitol building, Mr. Dolan
22 and other members of the stack collectively moved into an area
23 inside of the building known as the Capitol Rotunda.

24 As they navigated through the Capitol Rotunda,
25 Mr. Dolan and the others, members in the stack continued to

1 communicate with one another by keeping their hands on each
2 other's back. Much of their movement that day inside the
3 Capitol building and the Capitol grounds was recorded on
4 Capitol security video.

5 At 2:45 P.M., Mr. Dolan walked southbound out of the
6 Rotunda and toward the House of Representatives.

7 At 2:57 P.M., approximately 12 minutes later,
8 Mr. Harrelson and Mr. Dolan exited the Capitol.

9 Shortly thereafter, at approximately 4:00 o'clock
10 P.M., on January 6th, of 2021, the individuals who breached the
11 Capitol in the stack formation including Mr. Meggs, Mrs. Meggs,
12 Mr. Harrelson, Mr. Hackett, Mr. Dolan and others, gathered
13 together with an individuals identified in the fourth
14 superseding indictment as PERSON ONE and PERSON TEN
15 approximately 100 feet from the Capitol near the northeast
16 corner of the building. PERSON ONE has been identified by law
17 enforcement as being a leader of the Oath Keepers.

18 In a January 4th post, PERSON ONE stated the
19 following: "As we have done on all recent DC Ops, we will also
20 have well armed and equipped QRF," which stands for "quick
21 reaction force," teams on standby outside DC in the event of a
22 worst case scenario where the President calls us up as part of
23 the militia to assist him inside DC. We don't expect the need
24 for him to call on us for that at this time, but we stand ready
25 if he does, and we also stand ready to answer the call to serve

1 as militia any time in the future and anywhere in our future if
2 he does invoke the Insurrection Act."

3 Furthermore, Judge, PERSON ONE has been identified as
4 an individual who attended a GoToMeeting. A GoToMeeting is an
5 online meeting site that allows users to host conference calls
6 and video conferences via the internet in realtime. On
7 January 9th of 2020, PERSON ONE attended a GoToMeeting shortly
8 after the presidential election.

9 THE COURT: You said January 9th, 2021.

10 MR. DISPOTO: Sorry, 2020.

11 THE COURT: You said 2020, correct?

12 MR. DISPOTO: 2020, correct.

13 THE COURT: Okay. All right, go ahead.

14 MR. DISPOTO: Only days after the presidential
15 election of 2020, PERSON ONE told those attending the meeting,
16 "We are going to defend the President, the duly elected
17 President, and we call on him to do what needs to be done to
18 save our country because if you guys don't -- excuse me --
19 "because if you don't, guys, you are going to be in a bloody,
20 bloody civil war, and you can call it an insurrection or you
21 can call it a war or fight."

22 He also said the following: "I do not want -- excuse
23 me -- "I do want some Oath Keepers to stay on the outside and
24 to stay fully armed and prepare to go in armed, if they have
25 to. So our posture is going to be that we are posted outside

Wednesday, June 2, 2021.

1 of DC awaiting the president's orders. We hope he will give us
2 the orders. We want him to declare an insurrection and to call
3 us up as the militia."

4 Among the attendees of that online meeting in
5 addition to PERSON ONE were codefendants Mr. Meggs,
6 Mr. Harrelson, Mr. Hackett, Watkins, Kelly, and PERSON TEN.
7 These are the individuals that Mr. Dolan met up shortly after
8 leaving the Capitol Rotunda on January 6th of 2021.

9 Pursuant to legal process, the Government had
10 obtained Government surveillance footage from a hotel located
11 in Arlington, Virginia. That hotel was called the "Comfort
12 Inn," and it was used by members of the Oath Keepers on
13 January 5th to January 7th of 2021. Mr. Dolan is not believed
14 to have stayed in the Comfort Inn. Instead, he stayed at a
15 different hotel nearby. However, closed circuit TV footage
16 from January 7th, 2021, the day after the incident at the
17 Capitol on the 6th at approximately 8:40 in the morning shows
18 individuals who law enforcement believes to be Mr. Harrelson
19 and Mr. Dolan departing in an elevator within that hotel.
20 Approximately 15 minutes later, at 8:00 a.m., Mr. Dolan and
21 Mr. Harrelson are seen pushing a luggage dolly through the
22 hotel. That dolly appears to have on it rifle cases.

23 THE COURT: What date is this -- Mr. Dispoto, what
24 date is this that you are --

25 MR. DISPOTO: January 7th, January 7th of 2020.

1 THE COURT: All right. Now, Mr. van der Veen, if you
2 need to cross-examine the agent on that, you can certainly do
3 that, when your time comes, all right.

4 MR. VAN DER VEEN: Thanks, Judge. I also would just
5 make an objection as to relevance as to this portion of the
6 proffer. It's after -- my client left I think he said at 2:57.
7 It is the next day and I don't think that evidence is relevant
8 to this hearing.

9 THE COURT: I think -- I'll overrule that. I think
10 the relevance is the carrying of what appeared to be rifle
11 cases on January 7th, 2020, and that's their proffer, at this
12 point, so you can certainly test that later, if you would like.

13 MR. VAN DER VEEN: Sure, Your Honor, just before the
14 hearing, we did try to discuss this point with the Government,
15 and they don't know whether it was a rifle case or not. They
16 have no evidence of it. They have never seen it, and they
17 never recovered anything. That would be my other objection.
18 I'll get it on cross, I guess.

19 THE COURT: All right. I understand, that will be
20 overruled for now.

21 All right, go ahead, Mr. Dispoto.

22 MR. DISPOTO: Thank you, Judge.

23 Your Honor, last week, Mr. Dolan was arrested at his
24 home in Wellington, Florida; and at that time, law enforcement
25 had a search warrant authorizing the search of his residence.

1 As a result of that search warrant, law enforcement did not
2 recover any firearms or any indicia of either Oath Keeper
3 clothing or memorabilia of any kind.

4 Law enforcement did a -- interviewed several
5 neighbors of Mr. Dolan's many of whom told law enforcement that
6 they have personally seen firearms in Mr. Dolan's residence,
7 that at least one of those witnesses indicated Mr. Dolan
8 frequently carries a firearm outside of his home. And a
9 cursory search of Mr. Dolan's cellphone which was done pursuant
10 to a search warrant shows Mrs. Dolan carrying or at least
11 holding an assault style weapon.

12 Law enforcement believes, Judge, that in the five
13 intervening months between the incident of January 6th and the
14 execution of the search warrant last week, that Mr. Dolan
15 removed any evidence of firearms or affiliation with the Oath
16 Keepers from his home specifically to avoid its seizure or
17 detection by law enforcement.

18 Your Honor, among the factors that the Court is to
19 consider when deciding on whether to issue a bond in this case
20 is the weight of the evidence. In this case, Your Honor, the
21 weight of the evidence against Mr. Dolan is substantial as set
22 forth in the -- in the indictment. The defendant is a known
23 member of the Oath Keepers which is a right wing militia
24 organization. He along with others planned to use violence to
25 breach the Capitol and obstruct a congressional proceeding

1 which was designed to certify the vote of the Electoral College
2 of the 2020 presidential election.

3 The conspirators planned to storm the Capitol and
4 coordinated with a group of coconspirators who agree to serve
5 as a quick reaction force to monitor the attack at the Capitol
6 from a distance and be there to travel to the Capitol in the
7 event that they were called upon possibly while armed.

8 Video and photographic evidence clearly shows
9 Mr. Dolan was present among that group of Oath Keepers in that
10 stack formation. Mr. Dolan and his coconspirators aggressively
11 moved through the crowd and towards the entrance of the Capitol
12 in a military stack formation with their hands on shoulders of
13 the individuals in front of them. Many, not Mr. Dolan, but
14 many within the group were dressed in paramilitary gear. They
15 were outfitted in clothing that had the Oath Keepers logo on it
16 and insignia on it, as Mr. Dolan did.

17 The Capitol doors that the Oath Keepers breached were
18 significantly damaged. Multiple panes of glass were smashed
19 and a door handle was missing or broken off.

20 The stack of the Oath Keepers then congregated inside
21 of the north section of the Rotunda as seen from surveillant
22 footage. Mr. Dolan is among that group.

23 In the course of these riots, Judge, 139 law
24 enforcement officers were assaulted and the Capitol suffered
25 millions of dollars in damage. The weight of the evidence

1 against this defendant is strong. There is video evidence, as
2 I indicated, as well as photographic evidence. That evidence
3 shows that this defendant knowingly and intentionally
4 participated in a conspiracy to obstruct Government or to
5 obstruct Congress.

6 With respect to the other bond factors regarding
7 first risk of flight, Mr. Dolan lacks any ties to the
8 Washington D.C. area. He has been unemployed for the past year
9 and a half, and he has clearly displayed through his
10 association with the Oath Keepers and participation in the
11 events of the January 6th, 2021, mob. He has displayed a
12 contempt for our system of Government including our democratic
13 process; and based upon his actions, there is a substantial
14 likelihood that he will not respect an important institution
15 within that government, specifically our courts.

16 Now we are not alleging, Judge, that Mr. Dolan is a
17 flight risk to the extent that he is going to leave the
18 country; however, there is a substantial probability that he
19 will not show up in court as directed.

20 With respect to his history and his characteristics,
21 Judge, he has a history of violence and weapons use as
22 reflected in his two prior arrests. He has known access to
23 firearms, and he has a known and clear willingness to support
24 an armed overthrow of our democratic institutions.

25 Finally, Judge, turning to the nature and the

1 seriousness of the danger to any person or the community that
2 would be posed by his release, I would like, Judge, to share
3 With You an Observation that was made by Judge Lammens. Judge
4 Lammens was the judge who presided over the detention hearings
5 for Kelly Meggs and --

6 MR. VAN DER VEEN: Objection --

7 MR. DISPOTO: -- Meggs, and this took place the
8 last --

9 THE COURT: Hold on a second.

10 What is the objection?

11 MR. VAN DER VEEN: I object to any reference to any
12 other detention hearing of any other defendant. It is not
13 relevant to my client.

14 THE COURT: All right. You know, I'll overrule that,
15 and I'll decide what weight if any to give it regarding
16 whatever Judge Lammens may have said, so you can go ahead,
17 Mr. Dispoto.

18 MR. DISPOTO: Thank you.

19 Your Honor, this is what Judge Lammens said when
20 denying bond for the Meggs. "This case isn't just about
21 breaking the law, we see those cases every day. This case is
22 different, it is more. It is about challenging the very
23 existence of the law. It is about a challenge to the very
24 institution responsible for making a law while it was in the
25 process of carrying out its lawful duty. They were carrying

1 out a duty that their oath required them to fulfill. That very
2 Congress has established that one of the violations of the law
3 that this defendant is charged with is so serious that the
4 Court must presume you are a danger to the community when you
5 are charged with violating it. When the Court considers then
6 the seriousness of the charge against you and the weight of the
7 evidence, there is only one conclusion. You are a danger to
8 the community and must be detained."

9 Likewise, Your Honor, in this case, this defendant
10 participated in a concerted activity to obstruct congressional
11 proceedings. As a result, members of Congress were evacuated
12 from their respective chambers. The disruption resulted in
13 assault of more than 100 law enforcement officers, millions of
14 dollars in damage to the Capitol, and death to several
15 individuals.

16 For those reasons, Your Honor, we would ask the Court
17 to detain this defendant as well.

18 THE COURT: Let me ask you. When you were referring
19 to Judge Lammens, was he speaking of Kelly Meggs, Connie Meggs,
20 or both, do you know?

21 MR. DISPOTO: I believe it was -- give me one moment,
22 Judge.

23 I believe it was Kelly Meggs. And by the way, Kelly
24 Meggs is a male.

25 THE COURT: No, I do understand that. The reason I

1 bring it up because I know Connie Meggs has ultimately been
2 released by Judge Mehta up in the District of Columbia. Kelly
3 Meggs, the husband, is detained, from my review of the -- of
4 the docket.

5 And let me just ask you, Mr. Dispoto. I mean,
6 obviously, the allegations in this case are extremely serious.
7 What occurred was -- as alleged, is clearly terrorism. It's
8 clearly an unpatriotic attack on our country.

9 At this point, the defendant is presumed innocent
10 under our Constitution and, you know, even if defendants or
11 those accused in this case may not believe in our constitution
12 or may not want to follow it or may want to attack the
13 Government, this Court still has to follow the Constitution.

14 I'm looking at the docket in the District of Columbia
15 and in going through it, I know there were a lot of -- there
16 has been a lot of litigation about detention and release. And
17 in going through this fourth superseding indictment, the best I
18 have been able to determine is that Thomas Caldwell was
19 eventually released. Donovan Crowl was essentially released.
20 Jessica Watkins is in custody on Pretrial Detention. Sandra
21 Parker was eventually released. Bennie Parker was eventually
22 released. Graydon Young was eventually released. Laura Steele
23 was eventually released. Kelly Meggs is detained. Connie
24 Meggs was eventually released. Kenneth Harrelson who you
25 allege Mr. Dolan traveled with to DC, he is detained. Minuta,

1 Roberta Minuta is released. Joshua James is released. I'm not
2 sure what the status is on Joseph Hackett or William Isaacs.
3 So my question is this. So far, it looks like out of this
4 group, aside from Hackett and Isaacs who I don't know what
5 their status is, it looks like three have been detained and, by
6 my count -- one, two, three, four, five, six, seven, eight --
7 nine have been released albeit many with very, very strict
8 conditions of release.

9 Before I go to the Defense, what puts Mr. Dolan in
10 the category of Jessica Watkins, Kelly Meggs, or Kenneth
11 Harrelson requiring detention as opposed to in the category of
12 those others who have been released on very stringent
13 conditions?

14 MR. DISPOTO: I would submit to the Court that
15 Mr. Dolan stands more similar to Mr. Meggs and Mr. Harrelson,
16 Mr. Hackett, by virtue of the fact that this was a group of
17 individuals that traveled together from Florida and were
18 identified as being among the group of individuals that were
19 part of that stack formation. Now I'm not saying that these
20 other individuals weren't. Some of them were also part of that
21 stack formation, but Mr. Dolan traveled from Florida with
22 Mr. Harrelson along with Mr. and Mrs. Meggs who I believe
23 traveled in a separate vehicle, that they were in close contact
24 during their time in Washington D.C., and they were all part of
25 that stack formation.

1 Now Mr. Dolan -- and I don't -- I haven't reviewed
2 the transcripts yet, if they are even available, with respect
3 to those other individuals, but there is -- I'll use the word
4 "compelling" evidence, maybe not proof beyond a reasonable
5 doubt, but there is compelling evidence that Mr. Dolan has
6 access to firearms and that he specifically is currently hiding
7 those firearms from law enforcement. As I indicated and Agent
8 Spence I believe conducted those interviews, and he is
9 available for cross-examination. Neighbors who know Mr. and
10 Mrs. Meggs [sic] have told law enforcement that they are very
11 much aware and they have seen weapons in the home and Mr. Dolan
12 carrying firearms.

13 So to answer Your Honor's question, if that in
14 conjunction with his actions and his participation in close
15 concert --

16 Mr. Van der Veen, I would appreciate it if you would
17 stop shaking your head. You have been doing that throughout
18 most of the proceedings, and I find that disrespectful. You
19 will have your opportunity to argue.

20 THE COURT: Hold on, hold on. I want both Counsel to
21 control themselves.

22 Mr. Van der Veen, I do see you shaking your head and
23 reacting. I don't want you doing that here, in the hearing.
24 You will have your chance to cross-examine the agent. You will
25 have your chance to make your argument. When you make your

1 argument, I don't expect Mr. Dispoto to act like that. When he
2 is making his argument, I don't expect you to act like that.
3 Let's act as professionals and get to the essence of this case.

4 MR. DISPOTO: So, Judge, that would be my proffer to
5 the Court. I believe his close association with those
6 individuals who were detained, the fact that he traveled with
7 them, the fact that he has access to firearms all makes
8 Mr. Dolan closer to that camp than any of the other individuals
9 who were released albeit under strict conditions.

10 THE COURT: All right, thank you.

11 Okay. So how do you wish to proceed,
12 Mr. Van der Veen?

13 MR. VAN DER VEEN: Judge, I guess I have some
14 questions for the FBI agent.

15 THE COURT: All right, that's fine. Let's go ahead
16 and start with that.

17 Ken, if you will please swear in Agent Spence.

18 THE COURTROOM DEPUTY: Yes, Judge.

19 Raise your right hand.

20 JUSTIN SPENCE, GOVERNMENT WITNESS, SWORN

21 THE COURTROOM DEPUTY: State your full name for the
22 record.

23 THE WITNESS: Justin Spence, S-P-E-N-C-E.

24 THE COURT: And you are a special agent with the FBI?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: How long have you been employed in that
2 capacity?

3 THE WITNESS: A little over six years, Your Honor.

4 THE COURT: All right, thank you.

5 Go ahead, Counsel.

6 MR. VAN DER VEEN: Thanks.

7 CROSS-EXAMINATION

8 BY MR. VAN DER VEEN:

9 Q. Agent, I guess I want to start off where Mr. Dispoto left
10 off, and that's my client's close association with the people
11 that have been detained, Mr. Harrelson and Mr. Hackett and
12 Kelly Meggs; and if I can, then first ask about the Oath
13 Keepers.

14 In your six years as a FBI agent, the Oath Keepers
15 have been in existence, correct?

16 A. Yes, sir.

17 Q. In fact, the Oath Keepers have been in existence for at
18 least 12 years?

19 A. I believe so.

20 Q. More than a decade?

21 A. Yes.

22 Q. And the FBI -- and they are considered a right wing
23 fanatical group, correct?

24 A. Are you saying what the FBI has or --

25 Q. The FBI's position is and as written, I think in the

1 indictment, they are a right wing group, correct?

2 A. Yeah. They are a paramilitary organization that as
3 extremist right wing views.

4 Q. And they have been under the scope and the eye and watch of
5 the FBI almost since their inception, true?

6 A. I'm not going to comment on other FBI investigations or
7 activity.

8 Q. But I'm asking you what you know to be true, that the
9 federal government has been surveilling and investigating the
10 Oath Keepers for years and years, true?

11 A. I'm not going to comment on any other FBI investigations
12 not related to this investigation.

13 Q. Okay. Related to this investigation, from the day of the
14 election to January 6th, the federal government was keeping
15 very close eyes on the Oath Keepers, true?

16 A. They were, yes, sir.

17 Q. Okay. And in all of their investigation up until
18 January 3rd, my client has no affiliation with the Oath
19 Keepers, correct?

20 A. I think that's a fair assumption. I think it has been
21 pretty well shown that he was an active member of the Oath
22 Keepers Florida Group.

23 Q. Then let me take you to the indictment, if I could. Can
24 you tell us what is your first evidence that my client before
25 January 3rd is related to the Oath Keepers?

1 A. I believe he was active in several encrypted messaging
2 chats, conversations with other Oath Keepers members including
3 Meggs reference the January operation prior to the 3rd I think
4 all the way going back to November.

5 Q. Sure, as outlined in the indictment, correct?

6 A. Correct, but I would be --

7 Q. Are you --

8 A. -- January 2021, as you just asked me.

9 Q. Are you aware that in the indictment, my client's name
10 doesn't come up as any activity, any meeting of any kind until
11 January 3rd?

12 A. Sure.

13 Q. Okay. And nothing in your investigation shows any contact
14 with my client before January 3rd and the Oath Keepers,
15 correct?

16 A. I mean, not as of -- yeah, not that I know of personally,
17 no.

18 Q. In fact, Agent, the FBI is aware of, was watching,
19 listening to, and is well aware of, as outlined in the
20 indictment, that there were a number of encrypted meetings
21 early on in -- in December, correct?

22 A. Yes.

23 Q. In fact, on December -- as recently as December 31st, on
24 page 14 in the indictment, there was a get invited leader's
25 only meeting, true?

1 A. If that's what's written in the indictment, I'll --

2 Q. I can -- we can go by the indictment, right?

3 A. Sure.

4 Q. Okay. And beyond this indictment, you don't know anything
5 of the intricacies or specifics of the investigation?

6 A. I do related to Dolan. I don't have access to all of the
7 other coconspirators' information or their specific
8 investigations.

9 Q. And so with respect to Dolan, the first evidence in your
10 investigation or anybody's investigation is that he has no
11 prior affiliation, contact, communication or either by
12 telephone, e-mail or smokescreen [sic] with the Oath Keepers,
13 correct?

14 A. I think you meant --

15 Q. Yeah, I meant smoke signal, correct?

16 A. Yeah, not that I know of, sir.

17 Q. Okay. And so what you do know, though, is days before,
18 there was a leaders' only conference of people in the Oath
19 Keepers, correct?

20 A. Yes.

21 Q. And then there was, as mentioned in the proffer, a
22 GoToMeeting, correct?

23 A. Correct.

24 Q. On January 4th, true?

25 A. Correct.

1 Q. And my client did not participate in that either, did he?

2 A. Well, actually, I mean, with regard to the GoToMeetings,
3 there is evidence that indicates that he participated in those
4 either in encrypted chats or other group meetings all the way
5 back to November 17 of 2020. So I'm not sure what your
6 question is. Are you asking me if he is in some type of leader
7 meetings because I don't think the -- Mr. Dispoto is alleging
8 that he is a leader of Oath Keepers. It is just that he is a
9 participant, if that's what your question is.

10 Q. Mr. Dispoto co-offered that PERSON ONE had a go too meeting
11 on January 4th, where he said insightful things. Did you hear
12 him proffer that?

13 A. I did.

14 Q. In the indictment, it lists which defendants were a part of
15 that GoToMeeting, correct?

16 A. Correct.

17 Q. And my client's name is not there because he did not attend
18 a GoToMeeting, correct?

19 A. All right, I'll point you back to the indictment. If you
20 want to read specific information about your client which
21 states that your client actually participated in several
22 GoToMeetings dating all the way from November 17th, 2020,
23 including Oath Keeper channels such as Okay Florida which would
24 be Oath Keeper Florida, OK National Call which would be Oath
25 Keeper National Call, DC Plan and Call which I believe is the

1 District of Columbia Plan and Call, and Florida DC Op Planning
2 Call which I would take it as the Florida cell of Oath Keepers
3 planning the District of Columbia operation as written in the
4 indictment.

5 Q. I'm going to give you an opportunity to answer my question
6 directly, please.

7 A. Sure.

8 MR. DISPOTO: Objection.

9 BY MR. VAN DER VEEN:

10 Q. On the GoToMeeting that was proffered by Mr. Dispoto --

11 THE COURT: Hold on a second, hold on a second.

12 What is the objection, Mr. Dispoto?

13 MR. DISPOTO: Counsel has asked a question and the
14 witness just answered the question, and I'm objecting to
15 Mr. Van der Veen editorializing in his next question.

16 THE COURT: All right, I will --

17 MR. DISPOTO: Let the witness answer the question.

18 THE COURT: All right, I will sustain that. I did
19 hear the agent answer the question.

20 If you have another question, go ahead, Counsel.

21 MR. VAN DER VEEN: Sure.

22 BY MR. VAN DER VEEN:

23 Q. The January 4th GoToMeeting which was an organization
24 meeting not for leaders but to inspire people, my client was
25 not on it, correct?

1 A. I don't believe -- I don't believe he was on the
2 January 4th meeting that I know about, no, sir.

3 Q. Identify what evidence you have that my client was
4 communicating with the oath leaders before January 3rd in any
5 way, please identify that evidence.

6 MR. DISPOTO: Your Honor, once again, I'm going to
7 object. The witness already answered that question. He
8 already went through all of the encrypted chats that Mr. Dolan
9 participated in.

10 THE COURT: All right. So let's see if we can get
11 this proceeding a little bit more expeditiously.

12 Agent, I know you testified just a moment ago,
13 according to you, Mr. Dolan participated in OK Florida chats,
14 OK National calls, DC planning calls, is that correct?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: And that's going back to November 17th,
17 of what year?

18 THE WITNESS: 2020, sir.

19 THE COURT: All right. Do you have a follow-up
20 question on that, Mr. Van der Veen?

21 MR. VAN DER VEEN: Judge, I would like to know where
22 the evidence of that is. That is not in the indictment as
23 relates to my client. The first mention of my client is
24 January 3rd.

25 THE COURT: Okay. Well, I mean we, do know that an

1 indictment is to establish probable cause. Not every fact is
2 contained in an indictment in a typical criminal case.

3 But, Agent, I think the question from
4 Mr. Van der Veen is: What do you base that testimony on that
5 Mr. Dolan participated in OK Florida, OK National Call, DC
6 Planning Call going back to as far as 11/17 of '20?

7 THE WITNESS: Yes, Your Honor. So the information
8 that he was provided by Washington field office agents included
9 was not limited to several encrypted commercial messaging apps,
10 encrypted chats, and other review of monikers, cell phone
11 numbers, e-mail addresses that were related to and used by
12 Mr. Dolan with -- specifically with regard to
13 Mr. Van der Veen's question, the moniker e-mail address and
14 cellphone used by Mr. Dolan was known to be used to access a --
15 much like we are doing now, Zoom, an app called "GoToMeeting"
16 where those monikers, names, cellphone numbers associated to
17 Mr. Dolan accessed those meetings from actually November 17th,
18 2020, up until January 2nd, 2021, where it is believed that
19 they switched over to more encrypted chats, like Signal or
20 other commercial messaging applications.

21 The meetings -- as I testified, the meetings were, as
22 far as the servers or channels, were labeled as such, you know,
23 the OK Florida, OK National Call, DC planning Call, and Florida
24 DC Op Planning Chat, that was information that was provided by
25 the investigating agent in Washington field office to me prior

1 to Mr. Dolan's arrest for my investigation.

2 THE COURT: All right, thank you.

3 So your testimony is your investigation developed
4 that Mr. Dolan engaged in encrypted chats or calls?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right, thank you.

7 Go ahead, Mr. Van der Veen.

8 MR. VAN DER VEEN: Okay, if I may.

9 BY MR. VAN DER VEEN:

10 Q. You seized his cellphone phone, correct?

11 A. I did, yes, sir.

12 Q. You found no evidence of any encrypted messages there,
13 correct?

14 A. That's not true.

15 Q. Can you tell the Judge of any date or time location or
16 meetings before January 3rd that my client attended --

17 A. From --

18 Q. -- or otherwise interacted with?

19 A. All right, well --

20 MR. DISPOTO: Same objection, this is the third time
21 this question has been asked.

22 THE COURT: Hold on. Everybody is talking over
23 everybody else; and the problem is, there are questions being
24 asked by -- while the witness is talking. The witness is
25 talking while the question is being asked, and there is

1 objections. So we need to have a clear record here, and we are
2 not going to have that if we have people talking over each
3 other.

4 So I think your question, Mr. Van der Veen, was about
5 the seized phone. Was it limited to what was on the seized
6 phone or something else?

7 MR. VAN DER VEEN: I had asked another question,
8 Judge, which was can the agent tell us one involvement that my
9 client had with the Oath Keepers, date, time, and location,
10 method communication of his involvement other than January 3rd
11 with any specificity at all.

12 MR. DISPOTO: Your Honor, I'm objecting to that
13 question as being asked and answered.

14 THE COURT: All right. Mr. Van der Veen, didn't the
15 agent testify that Mr. Dolan was involved with OK Florida, OK
16 National Calls, DC Planning Calls, encrypted chats or calls
17 going back as far as November 17th, 2020?

18 MR. VAN DER VEEN: He said -- what he did, Judge, is
19 he did allege that. It is contrary to what is alleged in the
20 indictment, so I'm trying to find out exactly when he was, what
21 method of, when and where.

22 THE COURT: All right.

23 MR. VAN DER VEEN: I don't believe it is true, Judge.
24 I would like a fact to prove it is true.

25 THE COURT: I understand, he indicated encrypted

1 chats and that material was provided to him.

2 Do you have any more specifics on that, Agent?

3 THE WITNESS: Yes, Your Honor. I can only go back to
4 what I just testified to, the last couple questions -- or last
5 couple answers I gave to Mr. Van der Veen. The information
6 that was supplied, it might not be in the indictment, but it is
7 definitely criminal investigation information, law enforcement
8 investigation information and that was provided to me with
9 regard to Mr. Dolan, and that's going to be the same exact
10 information I just testified to with regard to the
11 GoToMeetings.

12 If Mr. Van der Veen has a specific question about
13 what was on the cellphone, I can also answer that.

14 THE COURT: I was going to follow up on that. I know
15 the cellphone was just recently seized, is that right?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Was it forensically analyzed yet or is
18 that still in the process?

19 THE WITNESS: It is still in process, Your Honor. It
20 was deposited down at our main evidence facility on Friday, so
21 it would be the date following the warrant; and of course
22 because of long weekend, I'm sure it is just now getting worked
23 on.

24 I did do -- like Mr. Dispoto said, I did do a cursory
25 review of it. I didn't do a deep dive into it or a forensic

1 review.

2 THE COURT: Did the cursory review show anything
3 related to the Oath Keepers or anything relevant to this
4 detention hearing?

5 THE WITNESS: The cellphone did -- like Mr. Dispoto
6 said, the cellphone did indicate at least tangentially access
7 to AR style platforms, or AR weapon family platforms with
8 regard to being in possession of Mr. Dolan's wife as far as the
9 photograph. And on the cellphone, there were a presence of
10 encrypted commercial messaging apps like Signal and things of
11 that nature on the phone. I didn't go through those. I didn't
12 want to take away from any of the forensic review.

13 THE COURT: All right. And that was seized pursuant
14 to a federal search warrant.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Okay. Mr. Van der Veen, go ahead.

17 BY MR. VAN DER VEEN:

18 Q. So believe that the conjecture of the proffer was that when
19 you executed the search warrant at my client's house, he had
20 cleaned his house of all of his weapons?

21 A. That's my belief, yes, sir.

22 Q. Cleaned his house of any and all evidence of Oath Keepers
23 and their insignia and all of that?

24 A. That's my belief, yes, sir.

25 Q. But just forgot to handle his phone and cleaning that?

1 A. Again, I don't know what is present on the applications. I
2 didn't open the applications, so I wouldn't know if there are
3 conversations on that phone. I'm not a forensic examiner so I
4 wasn't going to do something like that on scene.

5 Q. All right.

6 THE COURT: Any other questions, you have,
7 Mr. Van der Veen?

8 MR. VAN DER VEEN: I do, Judge.

9 BY MR. VAN DER VEEN:

10 Q. I want to ask if you indicated that he was not any of the
11 certainly Oath Keepers leaders meetings, correct?

12 A. I don't have that information, sir.

13 Q. He went a involved in any recruiting any Oath Keepers,
14 correct?

15 A. I don't have any of that information, sir; not to my
16 knowledge.

17 Q. He wasn't involved in any training of Oath Keepers or
18 taking training from Oath Keepers -- I'm going to break that
19 up.

20 He wasn't involved in any of the training of Oath
21 Keepers, as mentioned in the indictment.

22 A. Not to my knowledge.

23 Q. And he does not have nor did he get trained by the Oath
24 Keepers, as mentioned -- as referenced to in the indictment,
25 correct?

1 A. Not to my knowledge.

2 Q. When you saw him then at the capital building, on the
3 video, and wasted on your investigation, he didn't have any
4 weapons with him that day, correct?

5 A. Are you talking about on January 6th?

6 Q. Yes.

7 A. I didn't observe any weapons, no, sir.

8 Q. He didn't have any -- I'm sorry, go ahead.

9 A. I said but that's commonplace for what we know about how
10 they operated on January 6th. That's what the hotel was for,
11 for the storage of the weaponry.

12 Q. Okay. But he has checked in into a hotel in another state,
13 correct?

14 A. Yes, but he visited.

15 Q. He visited a hotel where there was luggage taken out, true?

16 A. Correct.

17 Q. And he had no idea what was in the luggage, true?

18 A. I don't know.

19 Q. Okay. With respect to my client staying at the Hilton, you
20 guys certainly forensically examined where he stayed, true?

21 A. I'm not sure. I didn't.

22 Q. But certainly you can represent to the Judge that nothing
23 was found in any way in the room that he stayed that would
24 indicate that he was either connected to the Oath Keepers or
25 had anything to do with weapons, true?

1 A. Within the room, no, sir.

2 Q. Okay. Now, regarding the day, my client -- and the
3 allegations in the indictment, my client did not in any way
4 damage anything in the Capitol, correct?

5 There is no evidence that he broke a window or broke
6 a door or anything of that nature, correct?

7 A. I haven't had a chance to review all of the CCT footage or
8 other video phone footage, so I can't answer that, if he did or
9 did not.

10 Q. Well, nobody has told you that, nobody that you
11 interviewed, no other agents, no U.S. Attorney told you that my
12 client did anything of that nature, true?

13 A. Correct.

14 Q. And he didn't use fire extinguishers or tear gas or pepper
15 spray or anything of that nature, correct?

16 A. No, sir.

17 Q. In fact, my client didn't even arrive or ascend the Capitol
18 stairs with the Oath Keepers, correct, he was already there, on
19 the video?

20 A. Inside or outside?

21 Q. Outside.

22 A. He was outside with other Oath Keepers and ascended the
23 stairs with the Oath Keepers.

24 Q. If the indictment reads and the video shows that my client
25 was at the top of the stairs long before the people went up,

1 and the indictment reads that at the end, he got on to the line
2 of people, is that incorrect?

3 A. No. He was up the stairs, but he was with Mr. Harrelson,
4 which is clearly shown on the video, so that's other Oath
5 Keepers. I mean, you have to be more specific with your
6 question.

7 Q. Sure. And with respect to what you see of him on the top,
8 he is not in any military gear, right?

9 A. As far as like body armor?

10 Q. Yes.

11 A. I mean, he is wearing Oath Keepers --

12 Q. Well, I'm looking at the picture of him now. Where is the
13 Oath Keepers insignia, emblem?

14 A. On his chest.

15 Q. Okay. On his chest?

16 A. Yes.

17 Q. What color was the garment he was wearing?

18 A. Black.

19 Q. And do you know whether that was his or given to him?

20 A. I have no idea.

21 Q. Okay. And with -- so you don't know whether he got that
22 that day leaving the protest to the Capitol?

23 A. Well, he was seen on the same shirt or sweatshirt or
24 whatever the case may be on January 5th, as well.

25 Q. Okay. And as far as the military equipment, helmets, gas

1 masks, he didn't have any of that.

2 A. No, he didn't have a plate barrier or helmet or gas mask.

3 Q. The amount of time that he was in the Capitol Rotunda from
4 the time he went in to the time he went out was less than ten
5 minutes, correct?

6 A. I have to review the [inaudible] analysis, as far as, you
7 know, where his phone was; but according to the video before he
8 left towards the House of Representatives, yes, sir, I believe
9 that's about right.

10 Q. Okay. No, no. From the time he entered the Capitol
11 Rotunda to the time he existed the Capitol is inside of ten
12 minutes, is that true?

13 A. The Capitol building or the Capitol itself?

14 Q. Yes, the Capitol building. He left the Capitol building at
15 2:57, according to the indictment.

16 A. Yes, sir.

17 Q. And if you do the math, his total time in there is less
18 than ten minutes, correct?

19 A. Yes, sir.

20 Q. With respect to the statements that PERSON ONE said
21 apparently on January 4th, I think we determined that my client
22 didn't hear those statements; but those types of statements,
23 you have never heard my client say either, correct?

24 A. I haven't heard your client say anything, no, sir.

25 Q. You have never seen anything written by my client, spoken

1 by my client, or even thought by my client that is in any way
2 related to the words that Mr. Dispoto co-offered to the Court.

3 A. Can you say that again, as far as what you are asking me to
4 answer what your client said or wrote.

5 Q. Yeah, sure yeah.

6 Mr. Dispoto took some time to read out of the
7 indictment what PERSON ONE said on January 4th, "it is critical
8 that all patriots who can be in DC get to DC to stand tall, to
9 support President Trump's fight to defeat the enemies, foreign
10 and domestic," he also quoted the --

11 A. Yeah, I believe PERSON ONE was kind of doing a kind of call
12 to arms to the Oath Keepers.

13 If you are asking me if Dolan --

14 Q. Correct.

15 A. -- PERSON ONE, but clearly Dolan took heed to that call of
16 arms [inaudible] other co-conspirators.

17 THE COURT: I'm sorry, I didn't hear that, you were
18 breaking up, Agent. As far as the call to arms by PERSON ONE.
19 What did you just say?

20 THE WITNESS: I said if it's -- if Mr. Van der Veen
21 is asking me if PERSON ONE wrote that or Dolan wrote that,
22 clearly PERSON ONE wrote that. And it's my believe that's a
23 call to arms for the Oath Keepers to travel to the Capitol
24 which clearly Dolan heeded along with other coconspirators. So
25 Mr. Van der Veen is asking if Mr. Dolan wrote that, no he

1 didn't, but he clearly acted on it.

2 BY MR. VAN DER VEEN:

3 Q. If I may, Agent, my question -- we have already established
4 my client didn't hear the words, true? He wasn't on the
5 meeting.

6 A. Okay. So you are asking me if his moniker was on the
7 meeting when those words were stated, is that your question?

8 Q. Sure, sure.

9 A. Okay, I don't believe the moniker was on that meeting or
10 that server channel, no, sir.

11 Q. And to be clear, that means that you have no evidence that
12 he heard the words.

13 A. No, I don't.

14 Q. And you have no evidence that he has ever spoken words that
15 like?

16 A. No, I don't.

17 Q. Now with respect to my client --

18 MR. VAN DER VEEN: I may have one or two more
19 questions, Judge, if I may.

20 THE COURT: All right.

21 BY MR. VAN DER VEEN:

22 Q. With respect to the guns of my client or lack of guns of my
23 client, when your search his place, there was no advance
24 warning, correct?

25 A. I mean, despite his knowledge --

1 MR. DISPOTO: Your Honor, I'm going to object to the
2 form of the question.

3 BY MR. VAN DER VEEN:

4 Q. He didn't know you were coming that morning to serve a
5 warrant, did he?

6 MR. DISPOTO: Objection, lack of foundation.

7 THE COURT: All right.

8 Well, let me just ask you. Agent, when you served
9 the warrant, did you have any information to believe that
10 Mr. Dolan knew you were coming to serve the warrant?

11 THE WITNESS: Specifically, no, Your Honor. But I
12 mean, he clearly saw his coconspirators getting wrapped up in
13 different investigations, including Mr. Harrelson which
14 occurred, you know, not too -- in the distant past of when
15 Mr. Dolan got arrested. So it would be my belief that yeah, he
16 for sure knew that law enforcement intervention was coming.

17 THE COURT: At some point, not necessarily that day,
18 is that your testimony?

19 THE WITNESS: Yes, Your Honor. I have no indication
20 that he knew we were coming on that specific day, but just in
21 general, that was a generalization.

22 THE COURT: All right. Go ahead, Counsel.

23 MR. VAN DER VEEN: Thanks judge.

24 BY MR. VAN DER VEEN:

25 Q. So it is your testimony that he probably knew you were

1 coming for him?

2 A. Yes, sir.

3 Q. And I didn't flee?

4 A. Correct.

5 Q. But there was no flight?

6 A. No.

7 Q. There was no flight. And when you showed up that morning,
8 he was cooperative, correct?

9 A. Yes.

10 Q. He didn't struggle.

11 A. No, sir.

12 Q. He didn't attempt to flee.

13 A. No, sir.

14 Q. And you saw no -- when you searched his home, you found no
15 evidence of plane tickets.

16 A. No, sir.

17 Q. Bus tickets.

18 A. No, sir.

19 Q. Dummy license plates.

20 A. No, sir.

21 Q. Or any indicia that he was planning on fleeing.

22 A. Correct.

23 Q. In fact, he lived in his home with his wife and 18-year-old
24 daughter.

25 A. Correct.

1 Q. Was there every day basically around the clock unless he
2 was looking for a job, right?

3 MR. DISPOTO: Objection, how would he know that?

4 THE COURT: Sustained.

5 MR. VAN DER VEEN: He was under surveillance, I
6 assuming.

7 MR. DISPOTO: You are assuming correctly, Counsel.

8 BY MR. VAN DER VEEN:

9 Q. Did you have my client under surveillance at any time?

10 A. Yes, sir.

11 Q. And that's common practice before you execute a warrant on
12 a home, you surveil the home to understand what the dangers
13 risks, and varies are correct?

14 A. That's correct.

15 Q. Now when you did search his home, you found no guns.

16 A. Is that a question or statement?

17 Q. Question.

18 A. Yes, that is correct, I didn't find any.

19 Q. No ammunition.

20 A. Correct.

21 Q. No gun safe.

22 A. Correct.

23 Q. No storage key locker where he may have moved guns to.

24 A. That, I don't know.

25 Q. Well, I'm asking you, did you find -- do you have any

1 information that a storage key of any kind was found by my
2 client, was found in my client's home, when searched?

3 A. No.

4 Q. Okay. And you have indicated that neighbors were talked to
5 and at some point in the past, he had a gun or guns?

6 A. That's correct.

7 Q. What color?

8 A. What color guns?

9 Q. Yes.

10 MR. DISPOTO: Your Honor, I'm going to object to the
11 relevance of this.

12 THE COURT: What's the relevance, Counselor?

13 MR. VAN DER VEEN: I would like -- I don't -- I would
14 like to test what the information is about what types of guns
15 he had, what types of guns were they, when were they, where
16 were they, who were the people that reported this other than
17 neighbors. I mean, there has to be some indicia of reliability
18 to the statement, and so I was going to explore that area,
19 Judge.

20 THE COURT: All right.

21 Agent, what evidence do you have that Mr. Dolan had
22 possessed guns in his yard, in his home, or elsewhere prior to
23 his arrest?

24 THE WITNESS: Sure, Your Honor. So like I previously
25 explained, the photograph with Ms. Dolan holding the AR family

1 style weapon platform in her photograph that was Mr. Dolan's
2 picture of her for her contact in addition to interviews and
3 neighborly canvass of neighbors around his neighborhood which
4 indicated that he did have AR style family weaponry including
5 either long-range optics or like mil-dot reticle optics and was
6 always known to carry a semi-automatic handgun on his person.

7 THE COURT: All right. And this came from interviews
8 with neighbors, is that correct?

9 THE WITNESS: That's correct; yes, Your Honor.

10 THE COURT: All right. Mr. Van der Veen, anything
11 else you need to follow up on?

12 MR. VAN DER VEEN: If I may.

13 BY MR. VAN DER VEEN:

14 Q. Do you know whether it was -- did they tell you that it was
15 in the days before you arrested him that they saw it?

16 A. Yeah. It was in the not so distant past prior to our
17 arrival, as far as any -- that date or time, I would have to go
18 back and review witness statements and talk to the other agents
19 that assisted with the neighborhood canvass, but it was within
20 the not so distant past of -- prior to our search and arrest
21 warrant being executed.

22 BY MR. VAN DER VEEN:

23 Q. I'm not sure what that means. Can I ask you this: Was it
24 before or after January 6th?

25 A. I don't know.

1 THE COURT: All right, any other questions, Counsel?

2 MR. VAN DER VEEN: Let me just -- I don't think so,
3 Judge, but may I check my notes.

4 THE COURT: Yes.

5 BY MR. VAN DER VEEN:

6 Q. With respect to your -- the proffered testimony of
7 January 3rd, the Court can be clear that specifically my client
8 was not a team leader from Florida, correct, that was
9 Mr. Harrelson?

10 A. Is that question for me, sir?

11 Q. Yes.

12 A. Yes. I believe Mr. Harrelson was -- or named as the leader
13 for that evolution.

14 THE COURT: So, Agent, Harrelson was allegedly the
15 team leader and Mr. Dolan drove up with Harrelson in a car that
16 Dolan rented, is that right?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: All right.

19 BY MR. VAN DER VEEN:

20 Q. And you have no information that Mr. Dolan knowing
21 Mr. Harrelson but for a short period of time?

22 A. I don't know how long they have known each other.

23 Q. Okay.

24 MR. VAN DER VEEN: Nothing further.

25 THE COURT: All right. Thank you, Mr. Van der Veen.

1 Any redirect from the Government, Mr. Dispoto?

2 MR. DISPOTO: No, Your Honor, thank you.

3 THE COURT: All right.

4 Thank you, Agent, you are excused or you are welcome
5 to stay but no more testimony is needed.

6 All right. So let me just ask Counsel, is there any
7 other witness or evidence that either side wishes to present
8 because I have hearings all this afternoon, and I want to make
9 sure there is enough time for me to hear everything, whether
10 there is any Defense witnesses or proffers or anything of that
11 nature, any argument, and I do want to go through the Pretrial
12 Services report. So I'm likely going to have to reset this to
13 tomorrow morning to conclude this hearing. I have hearings all
14 afternoon today.

15 How much more time does the Defense need?

16 MR. VAN DER VEEN: Judge, the Defense, other than
17 myself proffering in argument really, and it would basically be
18 relying heavily on the Pretrial Services report, I don't have
19 witnesses.

20 THE COURT: All right.

21 So Mr. Hutchinson, no witnesses? Mr. Dolan doesn't
22 wish to testify, his family doesn't wish to testify, is that
23 your position?

24 MR. HUTCHINSON: That's our position.

25 MR. VAN DER VEEN: I would --

1 THE COURT: Correct.

2 MR. VAN DER VEEN: I would simply proffering what
3 they would say.

4 THE COURT: All right. So here is the problem that I
5 have is that I start -- I have another hearing at 1:30, and I
6 have hearings all afternoon today, and I want to make sure I
7 give this sufficient time. Obviously, any detention matter is
8 a serious matter, especially when a defendant is being removed
9 to another district.

10 I can set this tomorrow morning at for continuation
11 and finalization and a decision at 10:00 A.M., if that works
12 for everybody. I want to make sure that everybody is
13 available.

14 Does that work for you, Mr. Dispoto?

15 MR. DISPOTO: Yes, Your Honor.

16 THE COURT: Mr. Hutchinson, does that work for you?

17 MR. HUTCHINSON: Judge, I have an in-person plea
18 tomorrow morning in state court. I know you outrank them, but
19 this was specifically set and the client traveling to be there
20 tomorrow morning.

21 THE COURT: What time?

22 MR. HUTCHINSON: 8:30, 9:00 A.M. I might be finished
23 in time.

24 THE COURT: What about you, Mr. Van der Veen, are you
25 available tomorrow morning?

1 MR. VAN DER VEEN: I'll make myself available with
2 the Court.

3 THE COURT: All right. Why don't we do this. Why
4 don't we put it on tomorrow morning at 11:00 A.M. Will that
5 give you enough time, Mr. Hutchinson?

6 MR. HUTCHINSON: More than enough time.

7 THE COURT: All right. Let's do it at 10:30, we will
8 put it on the calendar tomorrow morning. The calendar starts
9 at 10:00, but we will set this matter at 10:30 and we will go
10 ahead, and I'll hear any argument, any proffer from the
11 Defense, any argument from the -- from the Government.

12 And again, I am particularly interested -- and I will
13 go through the Pretrial Services report on the record tomorrow,
14 but I am particularly interested -- you know, I know that Judge
15 Mehta, who is a fine district judge up in DC, has this case up
16 in DC; and as I said, although Mr. Dolan is to be treated
17 individually, it always is of interest to me as to what other
18 defendants charged similarly, what has happened to them on
19 Pretrial Detention.

20 As I said, so far, I know Jessica Watkins was
21 detained; Kelly Meggs was detained; Kenneth Harrelson was
22 detained. I think I heard today that Mr. Hackett was detained.
23 I don't know, but I would be curious to find out about
24 Mr. Isaacs and Mr. Hackett. Everybody else seems to have been
25 released either at the first instance or on reconsideration

1 before Judge Mehta. And I know that on reconsideration, Judge
2 Mehta affirmed and upheld the detention of Mr. Harrelson and
3 also, I believe, Kelly Meggs. Mr. Harrelson is detained so I'm
4 curious what to know what the differences are as to where
5 Mr. Dolan fits because, obviously, the Court will apply the
6 Bail Reform Act, and the Pretrial Detention statute, as I'm
7 required to do. But I would like to hear from Counsel as to
8 especially Government Counsel as to what in Mr. Dolan's
9 Pretrial Services report or any other factors.

10 I know you argued some today, Mr. Dispoto, makes his
11 a serious risk of flight or a danger to the community, and I'm
12 frankly more focused on the danger to the community aspect
13 because obviously what happened on January 6th was just a
14 clearly a terroristic act based on the allegations in the
15 indictment and just a horrendous attack on our country and our
16 Constitution.

17 Nonetheless, Mr. Dolan is presumed innocent and the
18 issue here is whether he has to be detained as a serious risk
19 of flight or a danger to the community or whether there are
20 lesser restrictions, conditions of release that would assure
21 his appearance and that would protect the community.

22 I do note in many of the other release orders that I
23 quickly looked at, there was the high intensity supervision
24 program, home confinement, home incarceration, GPS monitoring,
25 et cetera, that were applied. And we can certainly address

1 these issues tomorrow, but I just want to let Counsel know some
2 of the things that are of importance to the Court.

3 MR. DISPOTO: Judge, I'll get some additional
4 information for Your Honor.

5 THE COURT: All right. So we will adjourn. We will
6 back in court at 10:30 on this matter. Everybody have a good
7 afternoon.

8 MR. DISPOTO: Thank you, Judge.

9 MR. VAN DER VEEN: Thank you, Judge.

10 (PROCEEDINGS ADJOURNED)

11 C-E-R-T-I-F-I-C-A-T-E

12 I hereby certify that the foregoing is
13 an accurate transcription of digitally recorded
14 proceedings in the above-entitled matter to the
15 best of my abilities.

16 **This hearing occurred during the COVID-19**
17 **pandemic and is therefore subject to the technological**
18 **limitations of reporting remotely.**

19
20 6/6/2021
21 DATE

22 /s/DIANE MILLER
23 DIANE MILLER, RMR, CRR
24 Official Court Reporter
25 United States District Court
101 South U.S. Highway 1
Fort Pierce, FL 34950
772-467-2337

<p>BY MR. VAN DER VEEN: [15] 44/7 49/8 49/21 52/8 55/16 56/8 62/1 62/20 63/2 63/23 65/7 67/12 67/21 68/4 68/18</p> <p>MR. DISPOTO: [52] 2/12 4/18 6/19 15/1 15/6 15/8 15/24 16/12 16/14 18/22 19/11 19/17 19/21 20/1 20/12 20/15 20/19 20/22 21/7 22/7 22/20 22/24 23/7 23/12 23/23 24/8 25/25 32/9 32/11 32/13 33/24 34/21 38/6 38/17 39/20 41/13 43/3 49/7 49/12 49/16 50/5 52/19 53/11 62/25 63/5 65/2 65/6 66/9 69/1 70/14 73/2 73/7</p> <p>MR. HUTCHINSON: [22] 2/16 2/24 3/2 8/10 8/16 8/21 9/18 10/7 10/9 10/20 10/25 11/2 11/13 11/15 17/13 17/15 17/21 19/1 69/23 70/16 70/21 71/5</p> <p>MR. 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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CASE NO. 21-mj-08212-BER

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON DOLAN,

Defendant.

JUNE 3, 2020.

WEST PALM BEACH, FLORIDA

PAGES 1 - 97

TRANSCRIPT OF **CONTINUED DETENTION** HEARING
BEFORE THE HONORABLE MATTHEWMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Reported By: Diane Miller, RMR, CRR, CRC
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Thursday, June 3, 2021.

P-R-O-C-E-E-D-I-N-G-S

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THE COURT: Okay, let's call the case.

THE COURTROOM DEPUTY: Yes, Judge.

Calling United States of America against Jason Dolan,
case number 21-82812-BER.

THE COURT: All right. So who do we have for the
United States this morning?

MR. DISPOTO: Good morning, Your Honor; Mark Dispoto
appearing on behalf of the United States.

THE COURT: Good morning.

Ken, can you raise that volume a little bit, it is a
little hard to hear.

MR. DISPOTO: Is it better if I don't use the
headphones?

THE COURT: I'm not sure if that's the problem. Go
ahead and try them back on, Mr. Dispoto.

Can you hear us, okay?

MR. DISPOTO: Your Honor, good morning; Mark Dispoto
appearing on behalf of the United States.

THE COURT: Okay. I think that's sufficient. If
anybody can't hear, just let me know.

All right. Who do we have here appearing in the
courtroom for the defendant?

MR. HUTCHINSON: Rick Hutchinson on behalf of
Mr. Dolan.

1 THE COURT: All right, good morning, Mr. Hutchinson.
2 Who do we have appearing by video-conference on
3 behalf of the defendant?

4 MR. VAN DER VEEN: Judge, good morning; Michael van
5 der Veen on behalf of the defendant.

6 THE COURT: All right, good morning.
7 We have Mr. Dolan here, in the courtroom. Good
8 morning, Mr. Dolan.

9 THE DEFENDANT: Good morning, Your Honor.

10 THE COURT: You are still under oath from yesterday;
11 do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. All right. So we had a Pretrial
14 Detention hearing yesterday and a removal hearing. The removal
15 hearing was concluded. The Pretrial Detention hearing has been
16 continued until today. So I know when we broke, I was going to
17 hear further from the parties, so let me just ask.

18 First of all, Mr. Dispoto, aside from argument, do
19 you have any other evidence or testimony that you wish to
20 present in support of the Government's request for Pretrial
21 Detention of the defendant?

22 MR. DISPOTO: Judge, the only other evidence that I
23 have is some additional information that I learned overnight
24 that I wanted to present to Your Honor relative to issues that
25 we were discussing yesterday including the bond status of the

1 codefendant.

2 THE COURT: Would that be by way of a proffer?

3 MR. DISPOTO: Yes.

4 THE COURT: All right. I'm having a hard time
5 hearing you. Could you try taking off the headphones and see
6 if that makes your voice a little bit louder, for some reason.

7 MR. DISPOTO: Sure. I have had trouble with those
8 headphones before. Is that better, Your Honor?

9 THE COURT: Much better.

10 So why don't we do this. Why don't I go to the
11 Government the, and I'll take this as an additional proffer.
12 Is that what the Government is seeking to propose here?

13 MR. DISPOTO: Yes, Judge; thank you.

14 THE COURT: All right, go right ahead.

15 MR. DISPOTO: Thank you, Your Honor.

16 Yesterday, the Court had inquired about the status of
17 the codefendants; and I, since yesterday, had an opportunity to
18 get some additional information in that regard which hopefully
19 will assist the Court in addressing the bond issues.

20 With respect to the codefendants, I had been informed
21 that there currently are four defendants that are detained.
22 That is Mr. Meggs, Harrelson, Watkins, and Hackett. There are
23 five defendants who were originally detained by the magistrate
24 judge but whose decision was reproached by the district court
25 judge, and bond was imposed. Those are Defendants Caldwell,

1 Crowl, Steele, Mrs. Meggs, and Defendant James. There are
2 three defendants who the Government sought detention, but bond
3 was imposed by the magistrate judge. That is the two Parkers
4 and Mr. Minuta. And finally, there are two defendants who the
5 Government did not seek detention, and that is Mr. Isaacs and
6 Mr. Young.

7 THE COURT: Mr. Isaacs and Mr. Young?

8 MR. DISPOTO: Correct.

9 THE COURT: Okay.

10 MR. DISPOTO: By way of comparison, Judge, I would
11 offer the Court the following sort of two perspectives. First,
12 the three defendants who were given a bond by the magistrate
13 judge, the two Parkers and Minuta, factually stand in a
14 significantly different posture than Mr. Dolan. Mr. Minuta
15 apparently was a half hour late arriving at the Capitol, so he
16 missed much of the group's entry into the building because he
17 arrived later. B. Parker who I think is a male remained
18 outside the Capitol the entire time. Sandra Parker was part of
19 the stack, but the only significant factual distinction between
20 her and Mr. Dolan is that there is no evidence that Sandra
21 Parker ever possessed a weapon on the Capitol or any time
22 immediately before or after. There is no evidence of her
23 association with any firearms unlike Dolan.

24 Now your Honor had asked me yesterday, you know, why
25 the Government believes Mr. Dolan falls in group of detainees

1 as opposed to those out on bond; and I addressed some of those
2 factual issues yesterday. The point that I wanted to emphasize
3 this morning by way of proffer is that clearly Mr. Dolan stands
4 most closely both before metaphorically and literally with
5 Mr. Harrelson. Not only did they travel up from Florida
6 together, but they are literally seen on the Capitol grounds
7 together both prior to the entry into the building as well as
8 shortly thereafter. And I know Your Honor had even heard some
9 testimony yesterday about the fact that Mr. Harrelson and
10 Mr. Dolan were on the steps of the Capitol before the stack
11 even ascended the Capitol steps.

12 We don't know, Judge, whether Mr. Harrelson and Dolan
13 conducted any type of surveillance or recognizance on the top
14 of the steps prior to the stack's arrival; but clearly, they
15 are on the forefront of their entry.

16 I would like, if I can, Judge, to provide the Court
17 with a photograph that has been widely disseminated in a public
18 media which shows Mr. Dolan and Mr. Harrelson in relation to
19 the stack as they entered the building. I'm going to screen
20 share this. I hope it works, Judge. If it doesn't, then I
21 will just describe for the Court, but if you will give me a
22 moment.

23 THE COURT: I will want everybody to be able to see
24 it, and then you will need to follow up and file a copy with
25 the Court.

Thursday, June 3, 2021.

1 MR. DISPOTO: That's fine.

2 Can the host allow me to screen share?

3 THE COURTROOM DEPUTY: Yes, I just did.

4 MR. DISPOTO: Okay, let me try this again.

5 THE COURT: And I do want to make sure that Defense
6 Counsel and the defendant can see as well.

7 MR. DISPOTO: Judge, is it on your screen?

8 THE COURT: No.

9 MR. DISPOTO: Okay, here we go. Let me know if you
10 can see it, Judge.

11 THE COURT: There is a photo there that I can see.
12 Can everybody else see it?

13 Mr. Hutchinson?

14 MR. HUTCHINSON: No.

15 THE COURT: I'm sorry

16 MR. HUTCHINSON: No, Your Honor.

17 THE COURT: All right. Mr. Van der Veen?

18 MR. VAN DER VEEN: I can see the photograph.

19 THE COURT: All right. Then there is something wrong
20 with the computer at the defense counsel table in the
21 courtroom. Is our IT specialist still here?

22 THE COURTROOM DEPUTY: No. I can call him, Judge.

23 THE COURT: Yeah, I want to make sure Mr. Dolan and
24 his counsel here in the courtroom can see as well.

25 MR. HUTCHINSON: While we are waiting for that,

1 Judge, I just wanted to ask real quickly -- maybe Mr. Dispoto
2 can clarify -- in pointing that the disparity between the
3 different parties that got or did not get bond, was there
4 mention yesterday that the client had a weapon?

5 THE COURT: I think the argument of the Government,
6 and I heard this yesterday, was that he was seen carrying a
7 case which the Government alleges appears to be some sort of
8 gun carrying case, I think that's the Government's position,
9 and that he had access to weapons before the search warrant and
10 that neighbors saw him. I think that's what the Government is
11 probably referring to. That's what I heard.

12 MR. HUTCHINSON: Thank you, Judge.

13 THE COURTROOM DEPUTY: Your Honor --

14 THE COURT: Ken, why don't you check his screen just
15 to make sure there is not a button or something that needs to
16 be pushed.

17 THE COURTROOM DEPUTY: No, it is not showing on any
18 of the screens.

19 THE COURT: Oh, it is not on the large screen here,
20 either.

21 All right. We have our IT specialist coming back,
22 and I just want to make sure we have this taken care of.

23 As I said, Mr. Dispoto, you will need to file this
24 very promptly with the Court. It is an exhibit, I will make it
25 Government Exhibit 1.

1 MR. DISPOTO: I will have that done today, Your
2 Honor.

3 THE COURT: All right. So we will be on break for a
4 few minutes.

5 THE COURT: The situation is, we have technology very
6 much under control when we are just doing a video-conference,
7 and when we are in the courtroom completely. On the other
8 hand, when we do this hybrid situation where we have partial
9 Zoom appearance and in-court appearance, we are still getting
10 the technology synced up. So it will just take a few minutes,
11 and I'm sure we will be ready to go.

12 (Break in the proceedings)

13 THE COURT: Can you go ahead and e-mail that
14 photograph to my clerk and also to Mr. Hutchinson and to
15 Mr. Van der Veen, and then we will have that photograph -- all
16 of us will have that and then we can proceed. Can you do that,
17 Mr. Dispoto, right now?

18 MR. DISPOTO: I can.

19 Mr. Van der Veen, can see it on the screen, right?

20 THE COURT: Okay, Mr. Van der Veen can see it.

21 MR. VAN DER VEEN: Yes.

22 THE COURT: Great, but no harm including him on the
23 e-mail as well, just to make sure --

24 MR. DISPOTO: I don't know if I need stop the share
25 at this point. If I pull up my e-mail, you all may see it. I

1 don't mind if the Court doesn't mind.

2 THE COURT: I'll tell you what, we will take just a
3 five-minute break, and I'll be back. Why don't you work all of
4 that out; and then if necessary, we can even print the
5 photograph out on a color printer and give it to Defense
6 Counsel in the courtroom.

7 MR. DISPOTO: All right. And your clerk's email is
8 your regular e-mail address or is it different?

9 THE COURT: Just send it to the
10 Matthewman@flsd.uscourts.gov.

11 MR. DISPOTO: I'm doing it right now.

12 THE COURT: All right. I will be back in just a
13 couple minutes.

14 (A brief recess was had and the proceedings resumed)

15 THE COURT: All right, we are back on the record on
16 the U.S. versus Dolan case. We are going the old-fashioned way
17 which is there is a printed copy of the photograph that the
18 Government is relying on and --

19 Does everybody have that? Do you have that, Counsel,
20 here in the courtroom?

21 MR. HUTCHINSON: Yes, Judge -- thank you -- I do and
22 Mr. Dolan has a copy as well.

23 THE COURT: All right. So the defendant has it.

24 Mr. Van der Veen, do you also have a copy?

25 MR. VAN DER VEEN: I do, Judge.

1 THE COURT: Great.

2 So is the Government seeking this photograph to be
3 introduced as Government Exhibit 1 at this hearing?

4 MR. DISPOTO: Yes, sir.

5 THE COURT: Any objection from the Defense for the
6 purposes of today's hearing?

7 MR. VAN DER VEEN: No objection, Judge.

8 THE COURT: All right, thank you.

9 So the photograph will be admitted Government's
10 Exhibit 1 for the purposes of today's hearing.

11 (Evidence identified and admitted as Government
12 Exhibit No. 1)

13 THE COURT: So go ahead with your argument or
14 proffer, Mr. Dispoto.

15 MR. DISPOTO: Thank you, Judge.

16 So directing the Court's attention to Government
17 Exhibit 1, the gentleman standing in the foreground on the left
18 in the beige cap is Mr. Dolan. As the Court can see, he is
19 wearing black sunglasses, it looks like a brown what I would
20 describe as sort of a head covering and a neck covering. He is
21 wearing a black what appears to be sweatshirt, and he is
22 holding in his right hand what appears to be a cellphone which
23 is facing either forwards or backwards, can't really tell.

24 THE COURT: Let me just -- hold on just a second. So
25 your proffer is that the person who is holding the phone up to

1 the left of the photo just to the right of the person with the
2 red hat, the person who is holding that phone up, that's
3 Mr. Dolan, that is your proffer?

4 MR. DISPOTO: Correct.

5 THE COURT: All right, go ahead.

6 MR. DISPOTO: The gentleman to his left wearing the
7 camouflage visor with his mouth agape also in a black
8 sweatshirt is Mr. Harrelson.

9 Although Your Honor cannot see in this photo, I can
10 proffer to the Court based upon other photographs observed by
11 law enforcement that Mr. Dolan's black sweatshirt contains a
12 gold emblem across the chest in a horizontal position that
13 reads "Oath Keepers." Mr. Harrelson also has some type of a
14 gold emblem which in part we see in the photograph that depicts
15 "Oath Keepers" as well.

16 Behind Mr. Dolan in a what the Government has
17 referred to as a "stack formation" are a series of individuals,
18 many of whom are wearing military gear, immediately behind
19 Mr. Dolan. I can see and I proffer to the Court, there are
20 three individuals in military gear immediately behind
21 Mr. Dolan. Behind those three individuals are at least two
22 other individuals wearing a red cap. Behind those two are
23 other individuals also in some type of camouflage and military
24 gear.

25 I would submit to the Court that this stack formation

1 that Your Honor has heard about yesterday of individuals
2 associated with the Oath Keepers including Mr. Dolan who
3 ascended the Capitol steps, met Mr. Dolan at the top and then
4 proceeded to enter the building.

5 As the Court can clearly see from this photograph, it
6 is Mr. Dolan and Mr. Harrelson that are leading these
7 individuals into the building.

8 So, Your Honor, when we talk about Mr. Dolan's
9 comparison to other defendants, I would submit to the Court
10 that he and Mr. Harrelson are very much similar in the role
11 that they took on January 6th leading this group of
12 self-proclaimed Oath Keepers into the Capitol building.

13 MR. VAN DER VEEN: Your Honor, can I ask Mr. --

14 THE COURT: Hold on a second, you will be able to --
15 you will be able to make any response that you wish to, but
16 let's just not interrupt each other.

17 Go ahead, Mr. Dispoto.

18 MR. DISPOTO: Thank you, Judge.

19 MR. VAN DER VEEN: Judge, I'm sorry, my mute was -- I
20 thought my mute was on. I wasn't interrupting Mr. Dispoto.

21 THE COURT: No, no, it wasn't you, Mr. Van der Veen,
22 it was counsel in the courtroom.

23 MR. VAN DER VEEN: Okay.

24 THE COURT: I just want to keep this -- we are having
25 enough technological issues as it is. We will do one at a

1 time, and everyone will get a chance to address the Court with
2 whatever they wish to present.

3 So go ahead, Mr. Dispoto.

4 MR. DISPOTO: So to conclude this point, we, the
5 Government believes that when Your Honor addresses the bond
6 issues and looks at the other codefendants for guidance as to
7 how the Court should apply the bond factors, we believe that
8 Mr. Dolan and Mr. Harrelson should be treated similarly based
9 upon the evidence that has been presented to the Court
10 regarding their level of culpability and their actions on
11 January 6th of 2021. Mr. Dolan -- Mr. Harrelson was detained;
12 we believe Mr. Dolan should be as well.

13 THE COURT: All right.

14 MR. DISPOTO: The second point and the final point --

15 THE COURT: Go ahead.

16 MR. DISPOTO: The second point and final point that I
17 would like to make in conclusion in my proffer has to deal with
18 an issue that we have been discussing that I received some
19 additional information on over night that I would like to
20 proffer to the court.

21 One of the issues that came up yesterday was the
22 issue of whether Mr. Dolan was aware or at least believed prior
23 to the FBI's arrival at his house that he was going to get
24 arrested. As the Court knows, it is the Government's position
25 that Mr. Dolan suspected that he was going to get arrested and

1 that in the four or so months between the time of the Capitol
2 intrusion until the time he was arrested, Mr. Dolan cleaned his
3 house of any firearms and any Oath Keeper affiliation.

4 Judge, on -- I would like the Court to consider the
5 following. On May 24th of 2021, a couple weeks ago, a media
6 site online conducted an interview of a member of the Oath
7 Keepers. We believe that that individual was Mr. Dolan. The
8 name of the outlet is the "gatewaypundit.com --

9 MR. VAN DER VEEN: Objection.

10 THE COURT: I'm sorry, I didn't get that.

11 MR. VAN DER VEEN: I would like to make an objection,
12 if I may.

13 THE COURT: Hold on, let him finish his proffer and
14 then you can respond.

15 Go ahead. You said it was a media site online.

16 MR. DISPOTO: It was an online publication, the
17 gatewaypundit.com.

18 THE COURT: The gatewaypundit.com?

19 MR. DISPOTO: It was gatewaypundit.com.

20 THE COURT: All right. And you are saying that on
21 May 24th, 2021, your proffer is that there was an online media
22 interview of an Oath Keeper, and the Government believes that
23 it was Mr. Dolan

24 MR. DISPOTO: ?Yes, and I'm prepared to proffer why
25 we believe it was Mr. Dolan. He made statements in that

1 article that is relevant to these proceedings.

2 THE COURT: All right. So I know there is an
3 objection from Mr. Van der Veen.

4 Mr. Van der Veen, what is the objection to this? At
5 this point, it is a proffer and I don't know what weight if any
6 I'll give to it; but what is your objection to it?

7 MR. VAN DER VEEN: All right, Judge, I was muted so I
8 didn't want to interrupt.

9 First of all he started by saying, "It is anonymous,
10 and we don't know who it was," first of all." Secondly, he
11 said he thinks it might be him because of the content, and he
12 found it out last night.

13 I talked -- three days ago, I talked to the AUSA in
14 charge of this in Washington and he told me of this very same
15 thing. I have watched it. There is no indication it is our
16 client in any way, and I'm not sure what in the interview that
17 he thinks is relevant to these proceedings. But if he can't
18 say it is our client or who it is, I really don't think the
19 Court should entertain it.

20 We had a lot of evidence yesterday without any
21 pinpointing to it, and I'll talk about that later; but I think
22 this is highly irregular and unreliable as evidence even in
23 this proceeding. So for those reasons, I ask that the Court
24 not entertain the article.

25 THE COURT: All right. I'm going to overrule that.

1 What I will do is I will hear the proffer, and I'll hear your
2 response to it, and I'll determine what weight, if any, to give
3 to it.

4 Mr. Dispoto, go ahead.

5 MR. DISPOTO: Thank you, Judge.

6 The article described the interviewee as a former
7 marine whom Mr. Dolan is; a member of the Oath Keepers,
8 Mr. Dolan is; an individual who was present on the steps of the
9 Capitol on January 6th of 2021, Mr. Dolan was; and photographs
10 that were provided to this outlet that ran in conjunction with
11 this article are photographs that were taken from the same
12 vantage point as Mr. Dolan, based on the evidence that the
13 Government has received through the course of this
14 investigation.

15 Now this individual said two things that I would
16 submit to the Court are relevant to these proceedings. First
17 and foremost, he stated that he believed that the Government
18 was planning to arrest him.

19 Now, I understand that by process of elimination, we
20 know that as of May 24th, many of the individuals either
21 were -- were either already detained or had already been
22 arrested and that Mr. Dolan was one of the few Oath Keepers
23 who, at that point, had not yet been arrested. You factor that
24 in conjunction with his self-identifying descriptions, and we
25 believe that was, in fact, Mr. Dolan.

Thursday, June 3, 2021.

1 Mr. Dolan also said, during this interview, that he
2 believed the Deep State actually used a magnetic unlock on the
3 Capitol doors to let people inside. Not only, Judge, would I
4 submit to the Court that that observation is not only highly
5 implausible but somewhat delusional. It does reflect a lot of
6 appreciation for the very serious conduct that members of the
7 Oath Keepers in general and Mr. Dolan in particular have
8 engaged in on that day.

9 I offer that information to further the Government's
10 belief that Mr. Dolan was well aware, prior to his arrest, that
11 it was highly probable that he was going to get arrested in
12 this case and that he took whatever steps he felt to be
13 necessary to protect his own self-interests as it relates to
14 the Government seizing evidence from his home that would tie
15 him to either firearms or his affiliation with the Oath
16 Keepers.

17 THE COURT: This article that you are referring to is
18 a written article not a video interview.

19 MR. DISPOTO: I understand it was -- from my
20 understanding of it, Judge, is that it was a video interview.
21 I don't know if the audio was posted online, but it was -- what
22 I observed was a written, for lack of better terms, summary of
23 the interview.

24 For what it is worth, Judge, I do believe -- I don't
25 want to get involved in the twit austere, but apparently an

1 audio is out there. Let me just leave it at that. So I do
2 believe it was an audio interview, but I don't know if the
3 audio was posted with the written article.

4 THE COURT: Do you know if there is any government
5 agent who has reviewed the audio and matched it up in any way
6 to Mr. Dolan?

7 MR. DISPOTO: I could find out, Judge, and I could
8 probably have an answer for you in the next few minutes.

9 THE COURT: Okay. So I understand the proffer. Let
10 me go over to Mr. Van der Veen to respond.

11 And, Mr. Van der Veen, if you have any other evidence
12 or proffer you wish to make at this time, please go ahead.

13 MR. VAN DER VEEN: Judge, I'm trying to take it in
14 the order that the Government took it in, so I'll start first
15 with -- and I think it was Your Honor's real end-of-the-day
16 analysis yesterday, nine have been released, three have been
17 held. Does my client belong with the nine or does he belong
18 with the three? And I think it is important I think that you
19 go through and see what the Government has done and said with
20 respect to the other folks.

21 The gentleman at the top, Mr. Caldwell, at the top of
22 the indictment was originally detained; he was then released.

23 On May 28th of 2021 -- it is public record -- the
24 Government filed a motion objecting to the modifications of
25 bail, and they wrote -- and I quote for the record, Judge,

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1 regarding Mr. Caldwell: "A major part of his role in the
2 conspiracy was organizing individuals who were on standby with
3 guns in a hotel across the river, conduct that this court has
4 described as among the most concerning aspects of the
5 conspiracy and for which the evidence has only strengthened
6 since Defendant Caldwell's release. Under these circumstances,
7 the Government repleads confinement to his property with
8 permission to leave for religious services and medical
9 appointments is a completely reasonable and essential level of
10 restrictiveness to insure the safety of the community."

11 And what Your Honor heard in testimony yesterday was
12 that my client had nothing to do with organizing. My client
13 had nothing to do with leadership; that my client had nothing
14 to do with training people, my client was never trained by
15 people; that the Oath Keepers association is a loose group of
16 folks from all around the country and that -- the indictment
17 reads his first involvement with Oath Keepers is January 3rd.

18 There was some talk about that he was -- his
19 screen -- a name that they said was his screen name was on
20 chats at some point in the several months beforehand. I'm
21 shocked that they didn't come in today and actually show you
22 those chats, Judge, because I think the evidence is, he was not
23 involved in chats in any way. He never said anything or did
24 anything and so that the quantum of evidence with respect to my
25 client on that very issue is critical, and I'll talk about that

1 more later when we argue.

2 But with respect to Caldwell, the leader of the band,
3 five days ago, the Government told the judge in Washington that
4 the circumstances which we are asking that he be released under
5 are appropriate for Mr. Caldwell.

6 Also in that pleading, Judge, they used another
7 photograph. On page -- and this is just the pleading from
8 May 28. They have a photograph of the rifle case and the
9 weapons that the FBI -- no weapons, the rifle case that the FBI
10 testified about yesterday. It is actually Mr. Harrelson in the
11 photograph, according to their pleading, and not my client.
12 That's the photograph, and I'll -- for the record, I will read.

13 "Surveillance video from the Comfort Inn shows what
14 appears to be Defendant Harrelson rolling what appears to be at
15 least one rifle case down a hallway towards the elevator."

16 The pleading is silent as to my client, and they
17 didn't show you any of the evidence that they said they have of
18 my client there with a rifle case.

19 With respect to Crawl, the next defendant on the
20 list, Crawl was originally detained, and then Judge Mehta
21 released him authorizing him to leave home for employment, home
22 confinement instead of home incarceration. That was on
23 May 19th.

24 Watkins -- a lot of this stuff is sealed, Judge, and
25 we did our best to get as much as we could. The Court should

1 know, on some of the sealed stuff, we can find it on Bloomberg
2 still, but Watkins was released and taken back in.

3 Judge Mehta released Parker -- both of the Parkers.

4 Young was originally detained and then released.

5 Then Laura Steele was originally detained and then
6 released by Judge Mehta. And what is important to understand
7 about Laura Steele, Judge, is she applied to the Oath Keepers,
8 had been a long time member of the Oath Keepers, served as an
9 assistant chief of High Point Police Department, that day wore
10 camouflage and a military vest and tactical gear and was in the
11 Capitol for a long period of time, differentiating those facts
12 from my client, Judge.

13 One Meggs was detained, and the difference there,
14 Judge, is the charge. Meggs got a charge of tampering with
15 documents or proceedings under 18 U.S.C. My client did not.

16 And the other one, Harrelson -- also the difference
17 is these folks have counts that my client doesn't. And so if
18 we were to look into the actions of what Judge Mehta has done,
19 Meggs and Harrelson had the extra charges of tampering with
20 documents and proceedings, and my client doesn't have that and
21 I think that's significant.

22 THE COURT: Let me just stop you there for just a
23 second because it seems to me that Harrelson and Dolan are the
24 two most closely situated, at least in what allegedly occurred.
25 But in looking at the Harrelson situation, Judge Kidd, the

1 magistrate judge in Orlando, detained Harrelson. When he got
2 to DC, he sought review or reconsideration and Judge Mehta, the
3 district judge, detained him on April 14th of 2021. So both
4 judges, both the magistrate judge in Orlando and the district
5 judge in DC detained him. Now, he was charged with a felony
6 destruction of property similar to what Mr. Dolan is charged
7 with; but according to what I could see, he was alleged to be
8 one of the leaders of the Oath Keepers. He apparently
9 testified at his Pretrial Detention hearing before Judge Kidd,
10 and there may have been some belief that he was not entirely
11 truthful. He also had a prior criminal record which I believe
12 was more pronounced. Mr. Dolan -- and we will get to that in a
13 moment, but it looks like Mr. Dolan has no prior conviction at
14 all, and the two prior charges were way back when he was either
15 a teenager or in school or very, very --

16 MR. HUTCHINSON: There is an update on this as well,
17 Judge.

18 THE COURT: All right, and we can discuss that.

19 And additionally, Harrelson had administrative
20 privileges on the Florida Signal chat and was referred to as
21 "Gator 6." So there seems to be some things that are similar,
22 but there seems to be some other issues that makes Mr.
23 Harrelson more dangerous, at least from what I can gather so
24 far, and that's what I'm trying to understand here and hear
25 from Counsel because these are tough decisions that a judge has

1 to make. I like to consider everything before making the
2 decision. It is an important decision for the Government, and
3 it is certainly important for the defendant.

4 Go ahead, Mr. Van der Veen.

5 MR. VAN DER VEEN: Thanks, Judge.

6 It seems Your Honor had a little bit more from what
7 happened to Mr. Harrelson's facts than I had, but I would -- I
8 want to point out what I gleaned from yesterday's testimony and
9 from the indictment in the differences between Mr. Harrelson
10 and my client.

11 Mr. Harrelson was known to be with the Oath Keepers
12 for a long time. Yesterday's testimony was that he was
13 identified as the head of the Florida contingency. He was the
14 leader of the Florida thing. He was on "Leaders Only"
15 December 31st GoToMeeting that my client was not. He was on a
16 number of leadership chats and meetings and organizational
17 things that my client was not on. And so when you are looking
18 at Mr. Harrelson and my client, Mr. Harrelson's connection to
19 the Oath Keepers is much longer, if you accept that my client
20 even has any connection to them and that he was in a leadership
21 position.

22 The FBI agent agreed with me that my client is not in
23 leadership. My client is not an organizer. My client didn't
24 undergo any training or give any training. He really is
25 significantly situated in his involvement.

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1 The photographs that we have seen with Mr. Harrelson
2 and a rifle case are not those photographs of my client. Was
3 my client there or not? I don't know, Judge, but I will talk
4 about them. So that's what I would say and argue about the
5 differences between my client and those that were detained, as
6 far as I know, Judge.

7 THE COURT: All right. And I understand that, I just
8 think it is important that we have some proportionality in
9 these cases and that we have a basic fairness in these cases.

10 But in looking at Government's Exhibit 1, you know,
11 first of all, I will say it seems to the Court that the
12 evidence is extremely substantial and overwhelming as to the
13 charges against Mr. Dolan. There is a grand jury indictment.
14 And I mean, this photo, according to the Government, shows him
15 leading what appears to be a pack of people.

16 MR. VAN DER VEEN: That, I object to, Judge.

17 THE COURT: But my point is, so it seems like the
18 evidence seems very substantial -- and obviously, this is
19 just -- these crimes that were alleged are just outrageous and
20 strike at the foundation of our society. Nonetheless, as I
21 said yesterday, you know, Mr. Dolan is still presumed innocent,
22 and this is a detention hearing, this isn't a trial. So why is
23 it that this Court should release Mr. Dolan on stringent
24 conditions, and what are you proposing?

25 MR. HUTCHINSON: Mike, can I make one comment

1 quickly, just about the evidence that was just discussed?

2 THE COURT: Hold on just a second.

3 I'll tell you what, Mr. Hutchinson, when
4 Mr. Van der Veen is done -- is this something based on what
5 your client told you?

6 MR. HUTCHINSON: No. It is based on the photograph
7 that you just referenced, Judge; and the only thing I was going
8 to say was there is clearly people that were in front of that
9 other group. This is like a still photo out of a video, so it
10 is impossible to tell from the video who came in first or last.

11 THE COURT: Okay. So I mean, I understand your
12 position is that -- your position, Mr. Hutchinson, is that the
13 way the picture shows, it shows Mr. Dolan at the front with
14 Mr. Harrelson and many people behind him, but it doesn't show
15 whether or not there are people in front of him that he is
16 following.

17 MR. HUTCHINSON: Judge, I'm not even sure that that's
18 Mr. Dolan. It appears that there are some people in front of
19 that line that had been identified as my client; but clearly
20 there are people standing off to the side that just came in, in
21 front of them. So to say he is leading this, it is impossible
22 to tell.

23 THE COURT: Right. Well, the Government has
24 proffered that it is Mr. Dolan. If the Defense wants to put on
25 any evidence that it is not, you can go ahead and do that. But

1 at this point, I have a photograph here, I'm looking at
2 Mr. Dolan in the courtroom, and the Government has proffered
3 that that's him. So if the Defense wants to argue that that's
4 him or not, they can certainly do that but --

5 MR. DISPOTO: Judge, may I --

6 THE COURT: -- I understand your argument.

7 So go ahead, Mr. Van der Veen.

8 MR. VAN DER VEEN: Judge Matthewman, I just wanted to
9 make one point about that. The point that was just made that
10 this is perspective, you don't see what is in front of our guys
11 is, you know, self-evident. But the argument that the
12 Government just made with the photograph is incongruent to the
13 testimony of the FBI agent yesterday. The testimony of the FBI
14 agent yesterday was that a whole group of people had gone up
15 the stairs, that my client was already there singing the
16 national anthem, and the whole group went up and -- at the very
17 end of this stacking that they allege that my client was on the
18 very end of that.

19 What you notice in the photograph is there isn't any
20 stacking formation. The stacking as described by the
21 Government and their definition of it is "people with hands on
22 one another." My client clearly doesn't have his hands on
23 anybody else in that photograph nor does anybody have their
24 hands on him. So to a certain extent, the argument with the
25 photograph today is incongruent with the testimony yesterday.

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1 But yesterday, Judge, my client was in there, by the
2 Government's evidence. I am not disputing he wasn't there
3 today. I am not arguing his guilt or innocence today, and I'm
4 not saying that's not him in the photograph. To me, it doesn't
5 matter whether it is him in that photograph or not. The
6 considerations that I think I would like the Court to consider
7 as the law as it is settled under our constitution and under
8 the case law, and under those considerations taking, you know,
9 Your Honor called it terroristic acts a couple times
10 yesterday -- and gosh, it is hard to disagree with you, but
11 taking the emotion of that aside, we need to look in the cold
12 light of day as to what the factors are here. And so if I may,
13 I'm going to briefly talk about the four and answer Your
14 Honor's question as to why my client should be released on very
15 restrictive conditions, if I may.

16 THE COURT: That will be fine. Why don't you go into
17 that; and then after that, I'll hear from the Government and we
18 will go ahead and get the matter resolved.

19 MR. VAN DER VEEN: Fundamentally, the reason why is
20 our liberty is so darned important. It's the thing that our
21 constitution wants to protect more than anything else, our
22 life, or liberty, and our property and for everybody. So my
23 client stands here with evidence by the Government but a
24 presumption of innocence. So with that presumption of
25 insurance and the need to protect his liberty during this

1 process, bail should be considered.

2 The bail needs to do two things, as Your Honor knows.
3 One is to assure his appearance in court; and the second one is
4 to make sure that the community is safe, if he is out from
5 behind bars.

6 The first one, I'm going to spend very little time on
7 it arguing. The Government has argued that he knew they were
8 coming and he didn't flee. He has had two prior brushes with
9 the law which I'll talk about shortly. He never failed to
10 appear.

11 He has 20 years in the military and followed rules
12 such as whatever Your Honor would hammer down on him, he would
13 follow them with military precision as he did orders for 20
14 years.

15 THE COURT: So let me just stop you there for a
16 second because in looking at the Pretrial Services report, it
17 does state that -- I believe that Mr. Dolan was in the United
18 States Marine Corps from 1994 to 2014, so a period of 20 years.
19 And I will tell you that I typically give a great deal of
20 respect to individuals who have served in the Armed Forces when
21 they appear before me because they are serving the their
22 country. On the other hand, it can cut the other way which is
23 he has been trained by our Armed Forces, by the Marines, and he
24 used that training allegedly to attack the Government, to
25 attack the Capitol. So I think that cuts both ways, and I

1 would like you to address that.

2 MR. VAN DER VEEN: I will address that, Judge. If I
3 may, I'll address it in a little bit --

4 THE COURT: That's fine.

5 MR. VAN DER VEEN: -- in kind of an organizational
6 argument that I have.

7 And so really, the consideration today isn't whether
8 he is a flight risk. And I offered to Your Honor on that
9 point, his wife and his daughter will tri-sign as sureties, and
10 I'll talk about that when I talk about ties to the community.

11 But, you know, looking at the nature and
12 circumstances of the offense charged including whether the
13 offense is a crime of violence or involves a minor victim, it
14 doesn't involve a minor victim, and I don't think it's
15 classified as a crime of violence. In fact, the AUSA leading
16 the charge on this case up in Washington calls it a
17 white-collar crime and defined it as such with me.

18 So the weight of the evidence -- the evidence, I
19 thought, was, you know, loose in its presentation yesterday.
20 It was, candidly, Judge, and fairly light on details, light on
21 facts and light on specificity. But we do know -- and this is
22 the last time I'm going to repeat myself on this, but it goes
23 to a couple of the factors. He wasn't a leader, wasn't an
24 organizer, wasn't long involved with the Oath Leaders [sic],
25 wasn't a trainer, wasn't a trainee, hadn't been in the key

1 chats, wasn't in leadership chats. There is no evidence that
2 he voiced any of the vitriol rhetoric about what people should
3 do if they are unhappy with the election. There are no words
4 attributed to him to any of that.

5 And what really the Government's evidence showed was
6 that since this happened, he has disassociated himself. If he
7 had an association with the Oath Keepers, he has completely
8 disassociated himself with them. They have his telephone.
9 They have him under surveillance, all yesterday's testimony,
10 there was no contact with him and the Oath Keepers, there was
11 no continuing contact. And I don't accept this as true at all,
12 but if he had guns and got rid of them, you know, that just
13 shows that he was going away from, you know, trying to continue
14 to be a danger to the community. But he certainly has
15 completely -- has no association with them at all.

16 And when you weigh the conduct, Judge, of all of
17 them, you know -- he talked about it like a sex assault case,
18 so it is not a strong argument; but, Judge, he was in there for
19 eight or nine minutes. He did not leave the Rotunda. He did
20 not destroy any property. He did not have a weapon. He didn't
21 have tear gas. He wasn't in military garb, that's in the
22 photo -- let's assume that's him in the photo. He didn't have
23 all of the other things that real Oath Keeper members had.

24 If anything, the Government alleged to you that it is
25 a loose organization and that my guy was somehow loosely

1 involved. He drove up with one of the guys and -- according to
2 them and stayed in a different hotel even, apparently, in
3 Washington D.C. So those would be my arguments on kind of the
4 weight of the evidence.

5 But the history and characteristics really are where
6 I think I can argue to Your Honor that it's one of the reasons
7 why he should be dismissed. He has no prior criminal
8 convictions. We rely heavily on the presentence report here.
9 He has no prior convictions, but when you go to the -- the
10 prior record, there are two things listed. One in Lawrence
11 Township Police Department in New Jersey where he was arrested
12 on March 29th, 1995, at the age of 18, "possession of firearm
13 at school" is what Pretrial Services wrote in here -- I think
14 they have looked at it a little bit more -- and in less than 60
15 days, Judge, the case was dismissed, okay. And the reason why
16 and I'll proffer to Your Honor was that my client was 18 years
17 old in wood shop with a pocketknife showing his wood shop
18 teacher the pocketknife and was arrested for having a knife on
19 school grounds. It wasn't something --

20 THE COURT: So the firearm reference is really a
21 knife?

22 MR. HUTCHINSON: Yes.

23 MR. VAN DER VEEN: Yes, and it falls within the
24 statutory frame. It is just part of the statute -- part of the
25 title of part of the statute.

1 THE COURT: Right; no, I understand that.

2 MR. VAN DER VEEN: Okay.

3 THE COURT: I have seen that before.

4 MR. VAN DER VEEN: I'm sorry, Judge, I missed that.

5 THE COURT: I said I've seen that before. The
6 statute often refers to firearms, knives, nunchakus, weapons,
7 you know, all of those types of things.

8 MR. VAN DER VEEN: And, Judge, logically, my client
9 wouldn't have been allowed in the military months later if
10 there was any kind of a weapon, and he certainly would not have
11 risen to the level of staff sergeant. I'll proffer that he
12 could guard -- he had the highest security clearance where he
13 could guard the President with a gun. I mean, that wouldn't
14 have happened if that was the real history.

15 THE COURT: Right.

16 And then it looks like in January 8, 2000, he was
17 arrested in Myrtle Beach, South Carolina, for assault and
18 battery.

19 MR. VAN DER VEEN: A bouncer tossed him from a bar;
20 the case was withdrawn.

21 THE COURT: Okay.

22 MR. VAN DER VEEN: And that was at the age of 23, and
23 that's it. He has been a law-abiding citizen; no convictions
24 and otherwise a law abiding citizen always fully employed
25 after. And I know the military cuts both ways, Judge, but he

1 was honorably discharged and not only was he -- he did serve
2 the country with distinction. And I will argue, to Your Honor,
3 that although he did get training, he didn't use really any of
4 his training on this day because he wasn't a leader. He wasn't
5 an organizer. He wasn't a planner. He didn't train anybody
6 and wasn't trained by anybody in the Oath Keepers. But also,
7 he didn't do anything, like he didn't do -- you know, there
8 was no, like, training karate-wise that he used or any, you
9 know, surveillance techniques that he used or any
10 counterintelligence stuff, you know, all of those things.

11 Not having the distinction of serving in the
12 military, I don't know all that the training is, but my client
13 went to the top of the stairs, sang the National Anthem, and
14 went in with a wave of people for nine minutes and came out.
15 It really wasn't capturing all of his military training in kind
16 of that way, Judge, and so I would argue that balancing that
17 the service to the country and the distinction of rising
18 through the ranks as an enlisted man rather than an officer and
19 getting to staff sergeant and being honorably discharged weighs
20 more than any training that he may have used on that day.

21 But I would argue to Your Honor, he is going to
22 follow your orders. Whatever Judge Matthewman tells him to do,
23 he is going to do it. That can be easily verifiable, if Your
24 Honor puts him on a house arrest, puts him on electronic
25 monitoring, monitors anything he wants, cellphones, computers,

1 or not allow him to use them. I mean, there are all kinds of
2 things, I think, Your Honor -- and I'll get to that in a little
3 bit.

4 But the ties to the community, he has been a husband
5 for a long time. He has been a father for 18 years. He is
6 enormously devoted to his family, and the tie to his community
7 is very strong. It is not a tie to DC, but it is a tie to a
8 community and a community in this country.

9 He has a passport, he can surrender it; but he is not
10 leaving the community, Judge. He is not leaving his wife, he
11 is not leaving his daughter, and those are ties enough. And
12 they have each offered to signature sign a bond assuring his
13 following your orders. That's how much they believe that he
14 won't be a danger to anybody, that he will do exactly what Your
15 Honor tells him to do. He will report.

16 THE COURT: When you say "they," you are referring to
17 his wife?

18 MR. VAN DER VEEN: And 18-year-old daughter.

19 THE COURT: Oh, the daughter is an adult?

20 MR. VAN DER VEEN: Yes, just turned 18.

21 THE COURT: Okay. Let me ask you, the address at
22 13957 Astor Avenue, Wellington, Florida 33414 listed in
23 Pretrial Services report, does Mr. Dolan own that with his wife
24 or is that rented?

25 MR. VAN DER VEEN: I believe it is rented, Judge.

1 THE COURT: Is that -- Counsel, is it rented or
2 owned, do you know, in the courtroom?

3 MR. HUTCHINSON: It is rented.

4 THE COURT: It is rented, okay.

5 Do they own any real property? Do you know if they
6 own any real property?

7 MR. VAN DER VEEN: No, Judge, he doesn't; and it is
8 interesting how those arguments go two ways. But my client
9 doesn't have any resources to go anywhere. He doesn't have any
10 resources to buy munitions. You know, the Government hasn't
11 really said what his danger to the community is. You know, I
12 think they are clearly intimating their concern that he is
13 going to get out, go organize with a bunch of people, go locate
14 guns that he has stashed somewhere, and attack the community.
15 I don't think that that's a realistic consideration. I don't
16 think it's based in fact. I don't think it is based in the
17 history of my client's life. And more importantly, he doesn't
18 have the wherewithal to do that. He does not have the
19 financial resources to mount any kind of a danger to the
20 community. He doesn't have money to flee.

21 MR. HUTCHINSON: He also --

22 THE COURT: Hold on; hold on, one at a time,
23 Mr. Hutchinson, I'll let you go in such a second, all right.

24 Mr. Van der Veen, go ahead.

25 MR. VAN DER VEEN: His physical condition isn't

1 super. He did have a hip replacement 18 months ago, progress
2 on that hasn't been great. He does, as a result of his
3 service, have a problem with his gut which is treated.

4 He depends right now on a disability payment and a
5 pension where if Your Honor holds him during the pendency of
6 this, those benefits will be cut off and cut off to his family,
7 so you know, another consequence of losing his liberty. If the
8 Court wasn't aware of it, I just wanted to point it out.

9 With respect to continuing on his history and
10 characteristics, he was always employed until disabled; and if
11 he can get working again, he is going to. So that brings us
12 to -- if I can, Judge, I think although he rents the home, he
13 has been there six years, a substantial period of time.

14 And then nature and seriousness of danger to the
15 community, you know, it has to be, you know, clear and
16 convincing evidence I think is the standard that the Court
17 really needs to view this in. Even when talking about if Your
18 Honor accepts that it's a rebuttal presumption, you know, which
19 I argue against, I think the Court disagreed with me just
20 yesterday, but even so, it is clear and convincing evidence,
21 and it hasn't been, Judge. And I probably annoyed folks
22 yesterday really trying to drill down on the evidence because I
23 wanted to know, you know, what chats do you think he was on and
24 when did he say it because I don't think it's true, and Your
25 Honor didn't get them.

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1 You know, what gun case was he close to? How close
2 to it was he this? Was he touching it? Was he wheeling it?
3 And then I find in my research last night that the photograph
4 is really of Harrelson wheeling a gun case and my client not
5 even in and around the photograph in any way.

6 And then I thought they would come in today and
7 really drill down and tell Your Honor when these neighbors --
8 which neighbors they were that saw him with a gun in what
9 decade or what century. Was it in the 1900s or the 2000s?

10 The Court is devoid in the proffer and in the
11 testimony of any real bearing or timeframe in which Your Honor
12 could, you know, consider the evidence with any kind of weight
13 is the way I would argue that, Judge, because, you know, the
14 devil is really in the details. And we are weighing him as to
15 the other nine that were released under the conditions, you
16 know, I think those -- the devil in those details are important
17 carrying the day, if you are going to go for detention.

18 So certainly, Judge, in conclusion -- so in
19 conclusion, he is not similarly situated. And the folks that
20 Judge Mehta has been releasing after detention up in Washington
21 D.C., clearly my client is much more in that grouping.

22 It talks about the security. You know, one other
23 thing, Judge, when I'm talking to the gentleman at the AUSA's
24 office that runs this thing, you know, we talked a lot about
25 the case in a conversation, and he -- you know, and we talked

1 about all kinds of things that Your Honor as a defense lawyer
2 knows; and he said to me, "You know, Mike, if the guy pleads
3 guilty, we will agree to let him out on house arrest," and
4 that's not the purpose of detention. The purpose of detention
5 is not to hold a hammer with the cost of liberty over somebody
6 to do something in the pretrial phases of the case, and so my
7 client -- the number one guy --

8 MR. DISPOTO: Excuse me, Your Honor, I object.

9 MR. VAN DER VEEN: -- on the indictment --

10 THE COURT: Hold on just a second.

11 What is the objection, Mr. Dispoto?

12 MR. DISPOTO: Your Honor, I apologize, I'm a few
13 seconds late because I was on mute.

14 Your Honor, I object to references that
15 Mr. Van der Veen has had with Government attorneys from DC.
16 Whatever conversations he may or may not have had are not
17 relevant to these proceedings and the issues that are before
18 the Court.

19 From what I understand, Mr. Van der Veen has spoke to
20 Mr. Nestler one time, and he keeps making reference to
21 characterizations Mr. Nestler has made regarding this case and
22 other conversations between the two of them that have any -- no
23 bearing on any of the bond issues before this Court.

24 THE COURT: All right. And I'll do the same with
25 your objection as I did with his, I'll allow him to proceed and

1 I'll decide what weight, if any, to give it.

2 And I will say this, prosecutors don't decide whether
3 somebody gets released or not, the court decides. So
4 regardless of whether he said that or not, it is my decision,
5 and the court's decision to decide whether a defendant is
6 detained or released, but I'll note your objection,
7 Mr. Dispoto.

8 Go ahead, Mr. Van der Veen.

9 MR. VAN DER VEEN: My point wasn't that it affected
10 the Court in any way, Judge. My point was that what Jeffrey
11 Nestler, who is leading this up in Washington, told me is a
12 view on what the Government's position is for detention. I did
13 tell Mr. --

14 MR. DISPOTO: Excuse me, I object. I am representing
15 the Government's position on bond, it is not Mr. Nestler. He
16 is not here. He is not handling these proceedings, so that's
17 why I say, with all due respect, Mr. Van der Veen, your
18 reference to your conversations with him are not relevant.

19 THE COURT: All right. Mr. Dispoto, I understand
20 your objection, and it is overruled for the purposes of hearing
21 the proffer, the argument from Mr. Van der Veen.

22 Again, I hear a lot of things at these hearings and I
23 decide what weight if any to give them. It is not particularly
24 probative to me what the prosecutor up in DC may or may not
25 have said about whether Mr. Dolan should or shouldn't be

1 released. Frankly, I have heard the argument from Mr. Dispoto
2 on behalf of the Government and, you know, he has presented the
3 Government's position here, and that's what I'll rely on.

4 Go ahead, Mr. van der Veen.

5 MR. VAN DER VEEN: Okay, Judge, then I'll just say I
6 understand the ruling, that's fine. But I do think that it's
7 important for the Court to consider how not only Judge Mehta
8 but how the Government has treated the number one man indicted
9 in this, the one they call the "leader of the band," and that
10 was that confinement to his property with permission to leave
11 for religious services and medical appointments is completely
12 reasonable and is an essential level of restrictiveness to
13 insure the safety of the community. I would argue that my
14 client is at the bottom of the indictment, and that logic
15 applies to him as well.

16 And so I really appreciate the Court's time. I have
17 tried to not miss anything because this is so incredibly
18 important to my client and to his family, and I think really to
19 the constitution. And so for those reasons, Judge, I ask that
20 you release him on home confinement with the mirrored
21 conditions of the other nine that have been released: That he
22 not have firearms, that he not associate himself with the Oath
23 Keepers in any way, that he not communicate with any
24 codefendants, that he check in with Pretrial Services as
25 required, that he appear in court, and there was one more --

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1 I'm looking at the Laura Steele one -- GPS monitoring. And I
2 would ask for those very restrictive, I would argue they are
3 enough to insure reasonably the safety of the community.

4 Thank you, Judge.

5 THE COURT: Thank you, Mr. Van der Veen.

6 Mr. Hutchinson, I know you have been sitting with
7 Mr. Dolan. Do you have anything further briefly that you would
8 wish to assert?

9 MR. HUTCHINSON: Very briefly, Judge.

10 The arthritic condition which caused the first hip
11 replacement about a year and a half ago had problems. He is in
12 pain as he sits here. It is in both of his hips, and he
13 actually needs to have the other hip replaced. He is in the
14 process of having that looked at and literally. So the Court
15 knows, while he was there, it happened in that long format that
16 he had the hip replaced. Not only that, but the Court has seen
17 a lot of photos of people inside of the Capitol, some of them
18 were elderly with canes or walkers, et cetera. I mean, I'm not
19 in any way characterizing what occurred as insignificant at
20 all. What I'm saying is it certainly wasn't all armed people,
21 and there were a lot of people that had gone to a rally and
22 were caught up and went inside.

23 THE COURT: All right, thank you. So let me go to
24 the Government.

25 MR. VAN DER VEEN: Judge, I forgot one thing, Judge,

1 if I may. I'm so sorry.

2 THE COURT: All right, Mr. Van der Veen, go ahead.

3 MR. VAN DER VEEN: I'll paint myself like this,
4 pretrial Services recommends it. A highly experienced Pretrial
5 Services agent looked at this and then his supervisor looked at
6 this. They investigated thoroughly, very thoroughly; and their
7 clear recommendation is and those are the conditions that I
8 would suggest that the Court follow, follow the Pretrial
9 Services recommendation which was carefully thought out and
10 planned and to have all of those restrictions.

11 Thank you.

12 THE COURT: Thank you. I did note that in the
13 Pretrial Services report. Their recommendation is for release
14 on strict conditions.

15 All right. So, Mr. Dispoto, I'll give you the last
16 word.

17 MR. DISPOTO: Thank you, Judge.

18 Your Honor, while I'm loathe to turn this into a mini
19 trial or to overwhelm the Court with all of the evidence that
20 the Government has, it is incumbent upon me to address a few of
21 the points Mr. Van der Veen raised to make sure that the record
22 is clear and to correct misstatements that he may have made.

23 Your Honor, over 30 minutes ago, I had e-mailed to
24 Your Honor's email address as well as to your courtroom deputy
25 what I would like to present to the Court as Government Exhibit

1 2. Did you want -- did Your Honor receive that?

2 THE COURT: I have not. I will have my courtroom
3 deputy check. Did you send that to the other Counsel?

4 MR. DISPOTO: No, I just sent it to you and to Ken
5 because I was hoping he would print up hard copies and he would
6 present them to Counsel, at this juncture since now it is my
7 opportunity to address that exhibit. I can move on to other
8 matters. I wanted to address briefly while your courtroom
9 deputy prints it out, if he is able to do so.

10 THE COURT: Let me see, hold on one second.

11 THE COURTROOM DEPUTY: Let me see if it is in the
12 efile. No, I don't have it.

13 THE COURT: We don't have it. Did you send it as an
14 attachment?

15 MR. DISPOTO: Let me -- I sent it at 11:42 a.m. to
16 Your Honor and to kenzuniga@flsd.uscourts.gov with an
17 attachment entitled "photo two."

18 THE COURT: Ken, why don't you look on your email,
19 see if that came through.

20 THE COURTROOM DEPUTY: I don't have it.

21 MR. DISPOTO: I'll resend it right now.

22 THE COURT: All right, why don't you do this. Why
23 don't you send it to everybody. Is this the only additional
24 exhibit you are seeking to introduce?

25 MR. DISPOTO: Yes, Your Honor.

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1 THE COURT: All right. We will take a short break.

2 MR. DISPOTO: I can do it right now, unless you want
3 to do a break otherwise. I mean, I can do it right now.

4 THE COURT: Go ahead and send it, let me see if it
5 comes through.

6 MR. DISPOTO: That's fine. While we wait, I can move
7 on to a few other matters I want to address, and I can come
8 back to this once it is received.

9 THE COURT: All right, go ahead.

10 MR. DISPOTO: Your Honor, with respect to the
11 question that the Court had asked at the conclusion of my
12 proffer, initially, you had asked if any government agents had
13 listened to the audio interview of Mr. Dolan by that -- that
14 online outlet, and I have been told that the voice has been
15 purposely altered to conceal the identity of the person who was
16 interviewed. So we were not able -- we were not able to
17 positively identify his voice.

18 THE COURT: Okay.

19 MR. DISPOTO: With respect to -- Mr. Van der Veen has
20 made quite a bit of his argument based on Mr. Caldwell, and the
21 inference that Mr. Van der Veen wants Your Honor to draw is
22 that since Mr. Caldwell is listed first in the indictment, that
23 somehow that means he is regarded, as I believe in Mr. Van der
24 Veen's words, the king of the band or head of the band,
25 something like that. I would ask the Court not to draw any

1 inferences by the order in which these defendants are listed in
2 the indictment. The order does not say anything about their
3 level of culpability and no such inference should be drawn.

4 The fact remains relative to Mr. Caldwell, the
5 Government sought detention on Mr. Caldwell; and Mr. Caldwell
6 was originally detained by the magistrate judge. It was the
7 district court on appeal that overturned that. At no point did
8 we join in any efforts to have Mr. Caldwell released. There
9 may have been discussions about conditions of bond that the
10 Government was requesting, if the court was designed -- or
11 inclined to release Mr. Caldwell, but any suggestion that we
12 joined in any efforts to have Mr. Caldwell released are flatly
13 falsed.

14 MR. VAN DER VEEN: Your Honor --

15 THE COURT: Your position is that the DC circuit
16 ordered him released.

17 MR. DISPOTO: Correct. It was on appeal from the
18 magistrate judge's order of detention.

19 THE COURT: Well, was it by Judge Mehta or was it the
20 appellate court?

21 MR. DISPOTO: No, I think believe it is Judge Mehta.

22 THE COURT: All right, go ahead.

23 MR. DISPOTO: Hold on, Judge.

24 Yes and --

25 THE COURT: All right, I think the picture has come

1 through.

2 MR. DISPOTO: Has Your Honor received that email that
3 I just sent?

4 THE COURT: Yeah, I believe --

5 MR. DISPOTO: Has that email gone through yet?

6 THE COURT: Yes. I believe my courtroom deputy has
7 received it.

8 Ken, how long will it take you to print some copies?

9 THE COURTROOM DEPUTY: I printed, I just need to go
10 get it.

11 THE COURT: All right. We will just -- my courtroom
12 deputy will go and get those photos and we will see in it gets
13 admitted or not and what we do with it.

14 Go ahead, Ken.

15 Do you have any other argument, Mr. Dispoto?

16 MR. DISPOTO: I'll wait for the photos. I want to
17 address -- there are two photos on one page. I just want to
18 address those two photos, as they relate to Mr. Van der Veen's
19 arguments, and wrap up very briefly thereafter.

20 THE COURT: Okay, so we are going to take a short
21 break; and once we have that photo -- it is two photos on one
22 page, is that correct?

23 MR. DISPOTO: Correct, Your Honor. Thank you.

24 THE COURT: All right. So we will be in recess for a
25 couple minutes, while we get that photo.

1 Do you have that there, Ken?

2 THE COURTROOM DEPUTY: Yes.

3 THE COURT: All right, great.

4 (Recess was had and the proceedings resumed)

5 THE COURT: All right, everybody, please be seated.

6 Let's go ahead and continue on the Dolan case and

7 hopefully we can get this concluded at this point.

8 Ken, what time is my afternoon hearing?

9 THE COURTROOM DEPUTY: At 2:00 p.m.

10 THE COURT: I normally give my staff a lunch break,
11 but let's see if we can get this matter resolved as quickly as
12 possible.

13 So Mr. Dispoto, I did receive the photograph. I
14 assume you are moving to introduce this as Government
15 Exhibit 2?

16 (Evidence identified as Government Exhibit No. 2)

17 MR. DISPOTO: Yes, Your Honor.

18 THE COURT: All right, so for the purposes of today's
19 hearing, Mr. Van der Veen, I know you have a copy of it there,
20 any objection?

21 MR. VAN DER VEEN: Judge, I do have an objection or a
22 point to make about it, at the very least.

23 THE COURT: All right. Well, if you have an
24 objection, what is the objection, authenticity or you just want
25 to argue relevance or something else?

1 MR. VAN DER VEEN: No. This picture is contradictory
2 to the FBI agent's testimony yesterday.

3 THE COURT: Okay. Well, I'll tell you what, I'm
4 going to go ahead and admit, and you can argue against it and
5 I'll decide it like with other evidence what weight, if any, to
6 give it.

7 (Evidence admitted as Government Exhibit No. 2)

8 MR. VAN DER VEEN: Okay, of course.

9 THE COURT: So go ahead, Mr. Dispoto, what is this
10 Government's 2.

11 MR. DISPOTO: Thank you --

12 What's happening -- sorry, Judge, I'm having video
13 issue.

14 All right. Thank you, Judge, I think I'll be done in
15 five minutes. I appreciate the Court's indulgence.

16 Your Honor, Mr. Van der Veen, you know, continues
17 through his argument to attempt to disassociate Mr. Dolan with
18 the Oath Keeper. I'm presenting Government Exhibit 2,
19 specifically the first photograph which depicts Mr. Dolan
20 standing on the steps of the Capitol wearing a black sweatshirt
21 that clearly indicates an association or affiliation with the
22 Oath Keepers. He is depicted under the yellow -- I'm sorry,
23 under the red arrow.

24 For context, Judge, and just so the Court understands
25 who else is depicted in this photograph, to his right in the

1 yellow is Ms. Watkins.

2 THE COURT: You mean the yellow arrow?

3 MR. DISPOTO: The yellow arrow.

4 The blue arrow is Kelly Meggs, and the green arrow is
5 Connie Meggs, and the individual immediately in the front --
6 slightly in front of Mr. Dolan and to his left, that would be
7 Joe Hackett. So I just showed that photograph just so there is
8 no misunderstanding with respect to Mr. Dolan wearing the Oath
9 Keepers sweatshirt.

10 THE COURT: All right, fine thank you.

11 MR. DISPOTO: With respect to the second photograph,
12 Judge, Mr. Van der Veen said several times during his
13 presentation that there was no evidence that Mr. Dolan is
14 depicted anywhere near the firearms that the Government
15 believes were being removed by Mr. Harrelson and Mr. Dolan the
16 day after the Capitol riots. This photograph, Judge, is the
17 government's belief -- and Mr. Van der Veen certainly may not
18 agree with who that person is, but I am proffering to the Court
19 the Government believes that individual who is pushing the
20 dolly that contains the firearm cases is Mr. Dolan.
21 Mr. Harrelson is pulling that dolly with his right hand.

22 I'll further note, Judge, and I believe this was part
23 of the Government's proffer yesterday, that Mr. Dolan's cell
24 site data puts him in the area of this hotel which was located
25 in the state of Virginia at the time that this surveillance

1 photograph was taken. Obviously, there was no was pinpoint GPS
2 monitoring going on, but the general cell site data puts him in
3 the area of this hotel on this day.

4 With that said, Judge, that concludes my factual
5 proffer. I have made most of my arguments yesterday, so I'm
6 not going to repeat them, but I would simply like to point out
7 the following observation --

8 I'm sorry, Mr. Van der Veen did you have an
9 objection? Did you want me to --

10 THE COURT: No, I don't think -- I think he was just
11 moving, Mr. Dispoto.

12 MR. DISPOTO: Judge, in conclusion, I just want to
13 share with the Court the following sort of assessment and
14 observations.

15 Mr. Dolan through his attorney has continued, during
16 the course of these proceedings, to what I would describe as
17 downplaying his -- Mr. Dolan's behavior. Mr. Van der Veen has
18 pointed out on several occasions that Mr. Dolan was inside of
19 the Capitol for all but nine minutes. I would submit to the
20 Court, it was more like 12. But quite frankly, Judge, it
21 doesn't matter whether he was in there for nine minutes or 12
22 minutes or 20 minutes or more, it doesn't matter.

23 Unlike many people --

24 THE COURT: Mr. Dispoto, let me just.

25 MR. DISPOTO: Yes.

1 THE COURT: On that point you have me, the alleged
2 behavior is outrageous, there is no doubt; and the evidence is
3 very substantial, so you have me on that point.

4 MR. DISPOTO: Okay. Well, I was going further it,
5 but I have you on it, Judge, I'll just conclude. Thank you
6 very much.

7 THE COURT: All right, thank you.

8 Mr. Van der Veen, anything else you want to respond
9 to.

10 MR. VAN DER VEEN: Just very briefly, Judge.

11 First with respect to -- I may continue to take it in
12 the order he ended, with respect to Thomas Caldwell, it is not
13 just that Thomas Caldwell is at the top of the indictment and
14 that every U.S. Attorney's Office that I know of always puts
15 the top guy at the top of the indictment, but, Judge, they say
16 it in their pleading. They say in their pleading that he is
17 the man organizing all of the weapons. And that was May 28th,
18 just last week and they said that home confinement was fine for
19 Mr. Caldwell. And I think that that's part of the analysis
20 that Your Honor wanted to see, how were other people who were
21 released situated here.

22 And I'm not downplaying -- first of all, I said that
23 my client was in there for less than ten minutes, under the
24 Government's theory. I'm not confessing for my client. I
25 haven't even had a chance to talk to my client in a really kind

1 of confidential personal way. What I'm telling you is that the
2 Government's theory is that he was in there for less than ten
3 minutes. That was the FBI agent's testimony yesterday.

4 And I agree with you, Judge, there is nothing soft
5 about what happened here. And you know, the Government has put
6 on a great prima facie case for Your Honor, after a grand jury
7 investigated saying my client is likely there. That's not my
8 argument at all.

9 My argument is that my client's liberty rights while
10 presumed innocent under the law and the constitution and then
11 the law as developed for detention, he is eligible for release
12 under strict circumstances. And I don't want to offend the
13 Court or this proceeding to suggest that in any way this is not
14 serious, it wasn't heinous, all of that; but that's not, I
15 think, the controlling issue here.

16 With respect to the photograph that they just put up
17 and where they have an arrow saying that that's Jason Dolan, I
18 would like everybody to look at that very closely and look at
19 that time in comparison with the photograph that they used in
20 their pleading.

21 First, the -- in this photograph that they used in
22 their pleading, I think I can see something that looks like
23 either a rifle case, a bow and arrow case, a large violin case.
24 I frankly can't tell what it is in there. It could be a case
25 of anything. But what I do know is that in the photograph that

1 they just sent you, Judge, there is no rifle case in the
2 photograph, one; but two, and most importantly, yesterday on
3 cross-examination, I asked the FBI agent about the insignia.
4 They show you the top photograph where it is very clear that
5 there is a brand new sweatshirt with the insignia or the words
6 "Oath Keepers" on it. It is not their insignia. It is on that
7 body that he says is my client is a brand new sweatshirt with
8 the words "Oath Keepers" not their insignia. He is addressed
9 completely differently than everybody around him, completely
10 differently I think which shows his level of involvement with
11 the Oath Keepers.

12 But finally, the FBI agent testified. I said, "Did
13 you ever see any other insignia of Oath Keepers at all?"

14 And he said, "Yes, the next day in the hotel, he was
15 wearing the same sweatshirt with -- the black sweatshirt and
16 the insignia on it." That was his testimony. That's not true.

17 In this photograph, the person's whose face you can't
18 see but are telling to tell Your Honor that's Mr. Dolan is not
19 as described yesterday by the FBI agent. And so when I asked
20 Your Honor to weigh the details of what the FBI agent said, it
21 is the devil is in the details. You know, it -- he said he was
22 wearing the same shirt. If this is him, then it is incongruent
23 and inconsistent with the testimony. If we believe what the
24 testimony was, then this isn't the photograph of my client.
25 And so that it's weight that I would argue, Your Honor.

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1 But I really want the Court to focus on this right
2 here, and I'll end right here. This is my client's life, and
3 he is not going to be any kind of a danger to the community.
4 Your Honor does have reasonable steps to take to preserve and
5 protect the community and his appearance in court.

6 Thanks, Judge Matthewman, I appreciate it.

7 THE COURT: All right, thank you, Mr. Van der Veen.

8 All right. I'm ready to decide the issue and rule at
9 this point.

10 Mr. Dispoto, I think I lost your photo there for a
11 second. Are you still there?

12 MR. DISPOTO: Yes, Judge, I'm here.

13 THE COURT: Okay, I just wanted to make sure you were
14 still with us. I thought I saw it go black for a second.

15 MR. DISPOTO: I'm here; sorry, Judge.

16 THE COURT: All right, no problem.

17 So the Government is seeking Pretrial Detention of
18 Jason Dolan to hold him no bond pending the outcome of the case
19 which has been lodged against him in the District of Columbia.
20 An indictment has been returned, specifically a fourth
21 superseding indictment charging Mr. Dolan with four counts, and
22 we have discussed those counts.

23 Now the first issue is whether or not a rebuttable
24 presumption applies in this case, and I do find that a
25 rebuttable presumption does apply in this case under Section

1 3142(e)(3)(C). The presumption arises if the offense -- and
2 here, that would be felony destruction of property under
3 Section 1361 is listed in Section 2332b(g)(5)(B) and carries a
4 maximum term of I am preempt of ten years or more. So at a
5 minimum on that, on that ground, the rebuttable presumption
6 does apply in this case.

7 Now that's not the be all and end all of the case
8 however, because the rebuttable presumption is just that, it's
9 rebuttable.

10 The policy underlying the Bail Reform Act is to
11 permit release under the least restrictive condition compatible
12 with assuring the future appearance of the defendant. And
13 that's stated in *United States versus Price*, 773 Fed. 2d 1526
14 at page 1527, and that's an Eleventh Circuit case from 1985.

15 Now when the United States seeks to detain a criminal
16 defendant pending trial, as they are here, based on his status
17 as a flight risk, a serious flight risk, it must prove by a
18 preponderance of the evidence that no condition or set of
19 conditions will reasonably assure his presence at trial. That
20 is stated in *United States v. Medina*, M-E-D-I-N-A, at 775 Fed.
21 2d, 1398, page 1402, Eleventh Circuit 1985.

22 Now by contrast where the Government seeks to detain
23 a defendant based on a contention that he is a danger to the
24 community, it must show by clear and convincing evidence that
25 no condition or combination of conditions will reasonably

1 assure the safety of the community. That's also mentioned in
2 *United States v. Medina*. However, here, where there is a
3 rebuttal presumption which arises, there is a rebuttable
4 presumption that the person is both a flight risk and a danger
5 to the community.

6 Now once the statutory presumptions are raised, the
7 rebuttal presumption, the defendant carries the burden of
8 production to come forward with evidence to rebut the
9 presumption or presumptions, and that's *United States v.*
10 *Quartermaine*, Q-U-A-R-T-E-R-M-A-I-N-E, 913 Fed. 2d, 910, page
11 916, Eleventh Circuit, 1990. However, this obligation to come
12 forward with evidence does not shift to the defendant the
13 Government's burden of persuasion. And in that -- in
14 *Quartermaine*, they cite *United States v. King* for that
15 proposition, 849 Fed. 2d 485, 488, which is an Eleventh Circuit
16 1988 case.

17 So the way it appears in our law, in our case law and
18 in the statute is that in a presumption case, the defendant
19 bears the burden of producing evidence to suggest that he is
20 not dangerous and/or that he is not likely to flee if released.
21 That's *Quartermaine*, 913 Fed. 2d at 916 quoting *United States*
22 *versus Hertato*, 779 Fed. 2d, 1467, 1479, Eleventh Circuit 1985.
23 And in presumption cases, as here, the presumption becomes
24 evidence to be considered along with other evidence listed in
25 the Bail Reform Act or information as indicative of risk of

1 flight or danger to the community. And that's *Quartermaine* 913
2 Fed. 2d at 916.

3 And then finally, the presumption of detention does
4 not alter the defendant's underlying presumption of innocence
5 which is stated at 18 U.S.C. Section 3142(j). And I deal with
6 these detention issues quite often, and they are very important
7 and that's why I know we have spent a lot of time on this, I
8 think both sides, I think Mr. Dispoto, I think Mr. Van der
9 Veen, Counsel, Mr. Hutchinson, you have all done a good job
10 here in elucidating the issues that the Court needs to deal
11 with and needs to address.

12 I'm going to first start off with risk of flight, and
13 I do find that the defendant has sufficiently rebutted the risk
14 of flight. I do not find the defendant is a serious risk of
15 flight. I do think that there are conditions or combinations
16 of conditions of release which would reasonably assure the
17 defendant's appearance in court. We are talking here about a
18 defendant who is a United States citizen. He resides in the
19 Southern District of Florida, in Wellington. He has been
20 residing at that location for approximately six years. He
21 resides with his wife and his adult 18-year-old daughter.

22 I have heard no indications of any evidence that he
23 was planning to flee or that he had an escape bag referred to
24 by different names where he had fake passports or
25 identifications or anything ready to flee. I have heard really

1 no evidence that he was planning to flee or would flee.

2 As I said, he did 20 years in the Marines. He served
3 his country honorably during that period of time, and I think
4 the Court certainly gives him credit for that.

5 So I do not find that he is a serious risker of
6 flight or nonappearance, and I find the defendant has
7 sufficiently rebutted that and that the Government has not
8 proven by a preponderance of the evidence that he is a serious
9 risk of flight for a number of reasons, and those are some of
10 the reasons, but there are many others as well.

11 There was evidence that the Government -- again, a
12 lot of the evidence I heard cuts both ways. There was evidence
13 that the Government put on that he well knew that the agents
14 would eventually about coming to arrest him. I don't doubt
15 that. I mean, this has been in the media. A lot of the Oath
16 Keepers have been arrested. A lot of affiliated individuals
17 have been arrested. I have no doubt that he knew he was -- the
18 FBI would be coming to his residence at some point.

19 It cuts both ways. On the one hand, he could have
20 fled if he wanted to at that point. He didn't. On the other
21 hand, he could have gotten rid of firearms, as the Government
22 argues, and he could have gotten rid of Oath Keeper garb which
23 the Government argues. I don't have any direct evidence of
24 that but certainly the disposition of any weapons can be viewed
25 as either trying to get rid of unfavorable evidence or it could

1 also be viewed as he has had enough with Oath Keeper nonsense,
2 and he is going to try to change -- change his ways going
3 forward. The same thing could be said of the Oath Keepers
4 garb. I think that evidence does cut both ways. I don't see
5 any strong evidence of trying to obstruct or destroy potential
6 evidence. So I have considered all of that.

7 I think the real rub here is whether or not the
8 defendant is a danger -- whether or not the defendant is a
9 danger to the community if he were to be released, and that is
10 interesting because when you look at the pictures of
11 Mr. Dolan -- the Government has proffered Exhibits 1 and 2 --
12 certainly inside of the Capitol and on the steps of the
13 Capitol, that's a very dangerous scary sight. What occurred
14 and what is alleged was just reprehensible and should never
15 happen in a free democratic country.

16 And even though perhaps some of those participants
17 don't want to honor the Constitution and don't want to follow
18 the laws, this court honors the Constitution and follows the
19 laws even when I am confronted with defendants who may not
20 believe that is the case.

21 In looking at danger, I look at a lot of factors, one
22 of the very first things I look at is the defendant's criminal
23 record if any. Mr. Dolan has no criminal record to speak of.
24 The prior arrests really are of no consequence to me. One was
25 a knife incident, when he was in high school in shop class,

1 which was dismissed; and the other was an assault and battery
2 which resulted in a nonconviction, something to do in a bar
3 incident. Neither of those really carry much weight. What
4 does carry a lot of weight is that he has absolutely no
5 convictions whatsoever whether violent or otherwise.

6 I also see no mental health issues. I see no drug
7 addiction issues. I see none of those issues.

8 He does have a wife and a daughter who apparently are
9 standing behind him, and I think that's commendable, and he is
10 lucky for that.

11 When I go through this, clearly the nature of the
12 insignia stand offense poses a risk of danger, but I don't
13 think the nature of the instant offense can be the only thing
14 that the Court deals with here. I have to look at the other
15 surrounding factors. And I am going to give a lot of weight to
16 the fact that he was a 20-year marine veteran, that he served
17 his country honorably, that his wife and adult daughter are
18 here, and I am going to deny the Government's request for
19 Pretrial Detention.

20 I'm going to find that the defendant has sufficiently
21 rebutted the rebuttable presumption, that the Government has
22 not established by clear and convincing evidence that he is a
23 danger to the community. I am going to order release on very,
24 very strict conditions very similar to what many of the other
25 defendants -- the majority of the other defendants have been

1 released in this case.

2 And I will state that I very carefully considered his
3 relationship with Mr. Harrelson because Mr. Harrelson is
4 detained, and I know that the allegation the Government
5 proffered is that Mr. Dolan and Mr. Harrelson traveled together
6 from South Florida up to DC, that Mr. Dolan rented a car and
7 that Mr. Dolan paid for the room; but, when I look at the
8 Harrelson situation, I see some real differences. One is that
9 it was alleged that Mr. Harrelson was a leader of the Oath
10 Keepers, and I really haven't seen that alleged as to Mr. Dolan
11 or proven.

12 Moreover, Mr. Harrelson took what I considered a very
13 unusual step of testifying at a Pretrial Detention hearing. I
14 have been doing this at a long, long time, and that is
15 extremely rare, and I believe that the court found that some of
16 his testimony was perhaps quite questionable or untruthful.

17 Additionally, he has a more significant prior
18 criminal history than Mr. Dolan, and he had administrative
19 privileges on the Florida Signal chat as Gator 6 which does not
20 apply to Mr. Dolan. And I do find that although there are
21 some similarities, there are also some major differentials.

22 So what I'm going to do is I'm going to order the
23 defendant released, first of all, on a 100,000-dollar personal
24 surety bond that's a significant bond that will have to be
25 signed by him, his wife, his adult daughter, and I'll have to

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1 speak to them to make sure they are agreeable to do that and
2 they know what they are getting into by that because if
3 Mr. Dolan were to flee or violate of the conditions of his
4 release, the Government could come after both his wife, his
5 daughter, and him for up to \$100,000 in any real or personal
6 property. And it would be a pretty despicable husband who
7 would put his wife and adult daughter in such a circumstance.
8 I don't think Mr. Dolan would do that.

9 So my conditions of release are 100,000-dollar
10 personal surety bond signed by the defendant, his wife, and
11 adult daughter.

12 Mr. Dolan, where is your passport?

13 THE DEFENDANT: I don't know if the FBI took or not.

14 THE COURT: Mr. Hutchinson, can you put the
15 microphone put the microphone closer to Mr. Dolan. I need to
16 ask him a few questions.

17 I believe, Mr. Dolan, your daughter said she has the
18 passport, correct?

19 UNIDENTIFIED SPEAKER: The wife.

20 THE DEFENDANT: She does look young.

21 THE COURT: So the passport will be turned into
22 Pretrial Services today. The Pretrial Services officer is here
23 tray, and the passport will be vended today.

24 Mr. Dolan, while you are on release, you are not
25 allowed to apply for, seek, or obtain any passports,

1 replacement passports, or travel documents; do you understand
2 that?

3 THE DEFENDANT: Absolutely.

4 THE COURT: You are to report to Pretrial Services as
5 directed. They will tell you when and how to report whether in
6 person or not.

7 You are to actively seek full-time employment; but if
8 you obtain full-time employment, it has to be approved by U.S.
9 Probation.

10 You are to avoid all contact with victims or
11 witnesses. You can have no contact whatsoever with any Oath
12 Keeper or anybody who participated in this incident; do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I'm also going to require that you
16 have -- and when I say "no contact with victims or witnesses,"
17 your attorney is permitted to have contact with any alleged
18 victims or witnesses in order to prepare your case. That's a
19 constitutional right you have. So if your attorney or your
20 attorney's investigator wishes to make contact and they can do
21 that ethically and professionally, they can do that. You
22 yourself cannot. And "contact" includes encrypted chats, it
23 includes texts, emails, phone calls, carrier pigeons, anything
24 at all; do you understand that?

25 THE DEFENDANT: Yes, absolutely, Your Honor.

1 THE COURT: All right. I'm also going to state that
2 you can have no firearms in your residence, in your possession,
3 custody, or control. Under federal law, "firearms" includes
4 bullets, ammunitions, guns, pistols, shotguns, rifles, anything
5 at all. None of that can be in your residence.

6 I'm also going to place you in the Special Offender
7 Unit in U.S. Probation. It is referred to as "SOU." you will
8 be supervised by James Pierce, an experienced probation
9 officer.

10 I'm also going to require location monitoring, GPS;
11 and, at this point, in light of the fact that the defendant has
12 brought on counsel to represent him, I'll require the defendant
13 to pay the cost of the GPS.

14 I'm going to impose home incarceration which, in
15 effect, is jail at your residence, at this point. You can go
16 out for medical emergency reasons or for medical treatment.
17 You will need to clear that with U.S. Probation. You will be
18 strictly supervised. If you need to extend that, right now,
19 you can probably speak with your counsel by Zoom or phone or
20 whatever else.

21 You're computer, you will be able to have no
22 encryption software on any phones, computers, or devices in
23 your residence; do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If I find out that you are using any type

1 of encryption device, if you are communicating with Oath
2 Keepers, if you are doing anything that is in any way illegal,
3 contemptuous, I will not hesitate and I'm sure that the court
4 in DC will not hesitate to revoke your bond conditions and have
5 you incarcerated; do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You will be restricted to the Southern
8 District of Florida. You can only leave the Southern District
9 of Florida with Probation approval, and you can only go
10 there -- leave to go DC, District of Columbia, for court. Now
11 much of that is being done remotely, so when it is done
12 remotely, you will stay here. When you do have to leave to
13 actually attend court in person at some point for your trial or
14 otherwise, then you would be permitted to go to the District of
15 Columbia.

16 So Special Offender Unit; location monitoring which
17 is GPS; and the Special Offender Unit is a very high level of
18 supervision by very experienced probation officer, and
19 Mr. Pearce has been here a long time and he is a very good and
20 respected probation officer; home incarceration which, in
21 effect, is jail at your residence. You can leave for medical
22 purposes, emergency medical purposes orb medical treatment.
23 You are confined to the Southern District of Florida. You are
24 allowed to go to DC only for court. No encryption software on
25 your computer.

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1 If, at some point down the road, you need to try and
2 modify any of those conditions, you can certainly file a
3 motion, your lawyer can file a motion with the court; but, as
4 of right now, I want to make sure we get you settled and
5 stable, and we will see where we go or the court will see where
6 you go after that point.

7 That all being said, Mr. Dispoto, I know you wanted
8 Pretrial Detention, I have denied that. But as far as the
9 conditions of release, are there any other conditions of
10 release that the Government would be requesting that I impose
11 on Mr. Dolan?

12 MR. DISPOTO: No other conditions of release, Judge.
13 We just have one request relative to Your Honor's order today.

14 THE COURT: Okay. I'll get you that in just a
15 second.

16 Mr. Van der Veen, as far as the conditions of
17 release, are there any clarifications or anything else that you
18 need to address?

19 MR. VAN DER VEEN: Judge, the only thing that I would
20 ask, Your Honor, could he have one visit with his lawyer?
21 Given the posture of this case and my communications with the
22 Government, a meeting with my client in person would be really
23 important; and from an economic standpoint, for me to go there
24 versus him to come to me is a world's difference.

25 THE COURT: All right. Are you going to be his

1 permanent counsel in the DC case?

2 MR. VAN DER VEEN: Yes.

3 THE COURT: All right. So at this point, I will
4 state that I will allow an in-person meeting between Mr. Dolan
5 and Mr. Van der Veen; however, I would think that that would
6 have to be approved by U.S. Probation, and it would be solely
7 for that purpose. I don't know if that can be accomplished
8 when you are going to a court hearing or not.

9 When would you want to meet with him?

10 MR. VAN DER VEEN: As soon as possible, Judge. I
11 mean, I would like to meet with him as soon as possible. Let
12 me talk to him. If I can't meet with him next week by him
13 coming up, maybe I have just have to bite the bullet and fly
14 down.

15 THE COURT: All right. I'll reserve on that for now.
16 I understand and I certainly think that Mr. Dolan has the right
17 to consult personally with his counsel; however, there may be
18 some other litigation going on and perhaps that's best left to
19 Judge mate that up in the DC court. So I'll reserve on that
20 either for me to resolve or perhaps if Judge Mehta wishes to
21 handle that, he could resolve that.

22 All right. Anything else, Mr. Van der Veen?

23 MR. VAN DER VEEN: No, thank you, Judge.

24 THE COURT: Mr. Hutchinson, anything else you needed
25 to address?

1 MR. HUTCHINSON: Judge, what are you going to do
2 about my condition as CJA?

3 THE COURT: No, you will be -- at this point, you
4 know, I left you on. I was not the one who appointed you. I
5 know Judge Reinhart appointed you, and then Mr. Van der Veen
6 came on; but in the interest of judicial an attorney economy
7 and really to provide a smooth operation of this hearing and to
8 provide effective assistance to Mr. Dolan, I kept you on. But
9 you will be terminated as of today, as far as CJA counsel.

10 MR. HUTCHINSON: Yes, sir.

11 THE COURT: But I appreciate your assistance to the
12 Court, and I'm sure Mr. Dolan and Mr. Van der Veen appreciate
13 it as well.

14 As I said, it is an unusual situation; but to me, I
15 didn't want to put form over substance, and I wanted to make
16 sure that while Mr. Dolan was in the courtroom, he had
17 effective assistance of counsel and then also that while
18 Mr. Van der Veen was appearing by video conference, there was
19 sufficient consultation, so I did it for that. But as far as
20 once you are concluded today, Mr. Hutchinson, your
21 representation will be concluded as court-appointed counsel
22 with thanks from the Court.

23 MR. HUTCHINSON: Thank you, Your Honor. I appreciate
24 it.

25 THE COURT: All right. Now I am going to have to

1 hear from the wife and daughter; and I know, Mr. Dispoto, you
2 have a request to make, but let me just do that so I don't
3 forget, and then I'll go to you, Mr. Dispoto.

4 If the wife and daughter could please come up to the
5 podium.

6 MR. HUTCHINSON: At the podium, Judge?

7 THE COURT: I need them at a microphone.

8 THE COURTROOM DEPUTY: Table.

9 MR. HUTCHINSON: One moment.

10 THE COURT: One other point, on the computer
11 encryption, in order to enforce that, Probation needs a
12 computer search requirement, and I will order that, that they
13 be permitted to search the computer in order to make sure that
14 there is no encryption. Do you have any objection to that,
15 Mr. Van der Veen?

16 MR. VAN DER VEEN: No, Judge.

17 THE COURT: All right, thank you.

18 All right. So, Ma'am --

19 MRS. DOLAN: I'm sorry.

20 THE COURT: That's okay, that's fine.

21 MR. HUTCHINSON: Judge, the client was asking, as far
22 as the search, they are searching to see if there are
23 encryption devices it?

24 THE COURT: Yes, that's correct.

25 MR. HUTCHINSON: They are not going to be on

1 searching for --

2 THE COURT: Well, they will search to see if there
3 are encryption devices on there. They are not going to do a
4 forensic search of the computer, correct?

5 UNIDENTIFIED SPEAKER: That's correct, Your Honor.

6 THE COURT: It is to make sure that there are no
7 encryption devices to be able to enforce my requirement,
8 otherwise there would be no way for me to know if there were
9 any encryption. But it is not a -- it is not a wholesale
10 warrantless search.

11 MR. HUTCHINSON: That's what I was asking, Judge.
12 Thank you.

13 THE COURT: Okay.

14 All right. So let me speak first to Mr. Dolan's
15 wife. Would you raise your right hand please.

16 Go ahead, Ken.

17 NOOR RITA DOLAN, DEFENSE WITNESS, SWORN

18 DIRECT EXAMINATION

19 THE COURTROOM DEPUTY: State your full name.

20 MRS. DOLAN: My full name is Noor Rita Dolan.

21 THE COURT: Spell your first name.

22 MRS. DOLAN: N-O-O-R then space R-I-T-A.

23 THE COURT: Noor, N-O-O-R space R-I-T-A, Dolan.

24 MRS. DOLAN: Correct.

25 THE COURT: All right, ma'am.

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EXAMINATION

1
2 BY THE COURT:

3 Q. Do you reside with Jason Dolan?

4 A. Yes, I do, Your Honor.

5 Q. Is that at the address in Wellington?

6 A. Yes, Your Honor.

7 Q. You are his legal wife?

8 A. Yes, I am.

9 Q. How long have you been married?

10 A. Almost 18 -- 19 years, I'm sorry.

11 Q. Okay. So you have been married 19 years.

12 So let me ask you. I have required a lot of
13 conditions of release including a 100,000-dollar personal
14 surety bond to be co-signed by you. Do you understand that by
15 signing that, if your husband were to flee, leave the
16 jurisdiction, not show up in court, violate his conditions of
17 release, the Government could come after you personally for up
18 to \$100,000 of any real or personal property that you own?

19 A. Yes, Your Honor.

20 Q. Knowing that, are you still willing to cosign the bond?

21 A. Yes, Your Honor.

22 Q. Will you do everything to insure that Mr. Dolan, your
23 husband, follows all of the conditions of release? I know you
24 have been sitting here listening to them.

25 A. Yes, Your Honor.

1 Q. If he is not, will you notify Probation?

2 A. Definitely, Your Honor.

3 THE COURT: All right, I'll approve you as a
4 cosigner.

5 And then, let me speak to the daughter next.

6 Good morning, ma'am.

7 MISS DOLAN:

8 THE COURT: Ken, please swear her in.

9 CORINNE DOLAN, DEFENSE WITNESS, SWORN

10 THE COURTROOM DEPUTY: State your full name and spell
11 your full name for the record

12 MISS C. DOLAN: Corrine, C-O-R-I-N-N-E, Dolan,
13 D-O-L-A-N.

14 EXAMINATION

15 BY THE COURT:

16 Q. All right, ma'am. How old are you?

17 A. I'm 18.

18 Q. All right. And you are obviously the daughter of the
19 defendant in this case, Jason Dolan?

20 A. Yes, so I'm told.

21 Q. Yes, okay. All right, now same questions to you. Do you
22 live at home at the same Wellington address?

23 A. Yes.

24 Q. All right. Are you willing to cosign the 100,000-dollar
25 personal surety bond?

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1 A. Yes.

2 Q. And I know you are young, you just became an adult, but the
3 Government could come after you for up to \$100,000 in any real
4 or personal property that you own if Mr. Dolan were to flee,
5 fail to appear, violate his conditions of release; do you
6 understand that?

7 A. Yes.

8 Q. Nonetheless, are you still willing to cosign that bond?

9 A. Yes, sir.

10 THE COURT: All right, I'll go ahead and approve
11 Corinne Dolan also as a cosigner.

12 Do any of either of have any questions for the Court
13 about the obligations that you are undertaking today?

14 MRS. DOLAN: The only question I have is if that if
15 like say if I have to go to work, sometime my husband have to
16 pick my daughter up. She have her permit, but she doesn't
17 actually have a license to drive yet. Can he drive her to
18 school because --

19 THE COURT: No, he is not allowed --

20 MRS. DOLAN: I just wanted to make clear.

21 THE COURT: At this point, he is not allowed to leave
22 the residence.

23 MRS. DOLAN: All right, that's fine. I'll make some
24 arrangement or myself.

25 THE COURT: That doesn't -- it is possible that down

1 the road that might be changed or loosened; but for now, that's
2 a requirement, a strict requirement that he is on home
3 incarceration. You will have to make other arrangements for
4 your --

5 MRS. DOLAN: Okay. Yes, Your Honor.

6 THE COURT: -- your daughter.

7 All right, any other questions that you have, ma'am?

8 MRS. DOLAN: No, that's it.

9 THE COURT: All right, thank you. You all can have a
10 seat.

11 MRS. DOLAN: Thank you.

12 THE COURT: All right. So those would be my
13 conditions of release.

14 Let me turn to Government, Mr. Dispoto, I know you
15 had wanted to raise an issue.

16 MR. DISPOTO: Yes, Judge. Before I do that, may I
17 ask the Court, does the Court want to give Mrs. Dolan any
18 cautionary instructions relative to her access to firearms?
19 Obviously, this Court is not prohibiting her from having
20 access, but her access could cause Mr. Dolan some issues. So
21 does the Court want to address that with her?

22 THE COURT: Yes, that's a good point.

23 Mrs. Dolan and Corinne Dolan, both of you, no
24 firearms, weapons of any kind are allowed in the residence
25 whatsoever, whether you live there or not. So if you,

1 yourself, have a firearm, it cannot be in there. There can be
2 no firearms, bullets, guns, ammunition whatsoever in the
3 residence, while Mr. Dolan is on these restrictions on pretrial
4 release. So do you understand that both of you.

5 MRS. DOLAN: Yes, Your Honor.

6 THE COURT: They are both nodding yes.

7 So regardless of whether or not Mrs. Dolan or Corinne
8 Dolan may or may not have the ability or right to have a
9 firearm, they are not allowed to bring any firearms into the
10 residence.

11 I also want to clarify one thing. There can be no
12 Oath Keepers or anybody affiliated with them or anybody who
13 participated in the incident at the Capitol coming to the house
14 to visit Mr. Dolan. That is another condition.

15 All right. Mr. Dispoto, anything else that you
16 wanted to raise?

17 I think we lost -- I think we got Mr. Dispoto frozen
18 there for a moment, so we are going to have to wait until he
19 comes back. It looks like we just lost him, so he will be back
20 in a second. I love technology when it works.

21 (Pause in the proceedings)

22 THE COURT: Ken, are you able to call him and try to
23 find out what is going on here?

24 MR. HUTCHINSON: We still lost Mr. Dispoto.

25 THE COURT: He is trying to get back on.

1 MR. HUTCHINSON: Thank you, Judge.

2 MR. DISPOTO: Judge, I'm so sorry, I lost my internet
3 connection at the worse time.

4 THE COURT: I thought you got mad at me and just
5 left.

6 MR. DISPOTO: I am sorry, Judge.

7 THE COURT: That's all right, Mr. Dispoto. We did
8 lose you and the last thing, I don't know if you heard, but
9 there was an issue that I indicated that Probation's ability to
10 look at the defendant's computer devices to make -- is to make
11 sure there is no encryption or anti-encryption or any other
12 type of encryption-type material on there. It is not a
13 wholesale warrantless search. And then I also stated that no
14 Oath Keepers or people who are in any way involved with the
15 incident at the Capitol are permitted to visit him at his
16 residence as well. So I don't know if you heard that last
17 part.

18 MR. DISPOTO: Okay. I did not, but thank you, Judge.

19 THE COURT: And one other thing I will add is when
20 Mr. Dolan is released, he is required to go directly home and
21 stay there and not leave until Probation contacts him and comes
22 and puts on the GPS monitor, number one. Number two, when he
23 is released, he is immediately required to call the probation
24 officer and let him know that he has been released and he is on
25 his way to his home.

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1 All right, so Mr. Dispoto, let me turn to you.

2 MR. DISPOTO: Yes, Judge, thank you.

3 We would ask the Court to stay its order today until
4 Monday to give the United States Attorney's Office in
5 Washington an opportunity to consider whether to file an appeal
6 of this Court's decision to Judge Mehta.

7 THE COURT: Let me address that because that is in
8 our local rules under Southern District of Florida Rule Four,
9 Review and Appeal. And regarding the Government appeal of a
10 release order, at the conclusion of a hearing pursuant to 18
11 United States Code 3142 in which a magistrate judge has entered
12 an order granting pretrial release, the Government would make
13 an ore tenus motion that the magistrate judge exercise
14 discretion to stay the release order for a reasonable time to
15 allow the Government to pursue a review or appeal of the
16 release order in accordance with the 18 United States Code
17 3145. If a stay is ordered pursuant to this rule, the clerk of
18 the court is directed to obtain the tape recording or cassette
19 immediately after the hearing and deliver the cassettes or
20 tapes promptly to the appropriate court reporter so that an
21 expedited transcript can be delivered to the district judge
22 within 48 hours prior to the hearing at which the release order
23 is entered. The United States Attorney's Office is to pay the
24 court reporter's charges.

25 So let me just be clear, Mr. Dispoto, you are asking

1 for a short stay for the U.S. Attorney's Office to determine if
2 they will appeal, is that right?

3 MR. DISPOTO: Correct.

4 THE COURT: All right. I'm not inclined to do that
5 through Monday. Today is Thursday, if there is extenuating
6 circumstances, I'll reconsider it. I would rather that the
7 U.S. Attorney's Office decide that by tomorrow. Do you think
8 there is any chance that they can do that?

9 It is one thing -- it's one thing to make the
10 decision to appeal; and if they do decide to appeal, then
11 certainly I would enter a stay reasonable period of time for
12 Judge Mehta to address the issue because in these removal
13 matters, I have had so many of them over the years, the appeal
14 would go to Judge Mehta in the DC court.

15 So at this point, you are just asking for a short
16 stay to allow the U.S. Attorney's Office to decide whether they
17 will or will not appeal?

18 MR. DISPOTO: Correct.

19 THE COURT: Why don't we do this. At this point,
20 I'll give -- I'll stay it until 4:00 o'clock tomorrow. If by
21 some chance that there is good cause as to why you cannot make
22 that determination by 4:00 o'clock tomorrow, you can file a
23 motion. I'll reconsider it. If necessary, I can set a hearing
24 down, but I would think that with all of the cases that have
25 gone on before, it's not as if Mr. Dolan is the first one

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1 arrested in this indictment. He is one of the tail end. They
2 probably have a pretty good perspective of what their position
3 should be, and I know they have to discuss it and evaluate it
4 and perhaps speak it to appellate counsel, whatever they want
5 to do. But I would really -- since it is Thursday, I would
6 rather not put it over until Monday, unless it is absolutely
7 necessary.

8 So what I would ask you, Mr. Dispoto, I'll stay it
9 until 4:00 o'clock tomorrow, and I would ask that you please
10 advice opposing Counsel and the Court whether or not the
11 Government wishes to appeal. If for some reason you have very
12 good cause to ask for more time to make that decision, just
13 file a motion, speak to the other side, and I'll quickly
14 address that issue, and I may each schedule a quick hearing on
15 that, although it might be difficult to bring the defendant
16 into -- into court. I want to be fair to the Government here
17 as far as the stay, but I also want to be fair to the
18 defendant. So would 4:00 o'clock tomorrow give you enough
19 time, Mr. Dispoto?

20 MR. DISPOTO: I believe so, Judge. I will
21 communicate further with Counsel from DC. We will do our best
22 to make it work by tomorrow at 4:00.

23 THE COURT: Okay. And Mr. van der Veen, anything you
24 want to address on that? I know you probably oppose the stay,
25 but our local rules provide for it. Usually, it is a stay

1 where the prosecutor says we are going to appeal, and then it
2 is a different sort of different situation, in this case,
3 Mr. Dispoto is not the prosecutor handling the case. I'm sure
4 the ultimate call will be made by the prosecutor in DC. I
5 don't any harm in giving them until 4:00 o'clock tomorrow. It
6 is allowed for in our local rules. And I think, in our efforts
7 trying to be fair to both sides, I think it is consistent
8 with what I have done.

9 So what is your position on that, Mr. Van der Veen?

10 MR. VAN DER VEEN: I object, Judge, and I understand
11 your ruling.

12 THE COURT: Okay. All right. So what we will do
13 then, I have ordered him release. The release will be stayed
14 until 4:00 p.m. tomorrow.

15 Mr. Dispoto, if you get a decision earlier than 4:00
16 tomorrow, please file a motion or notice with the Court so I
17 can deal with that appropriately. If the U.S. Attorney's
18 Office decides not to appeal, then I'll want to make sure that
19 Mr. Dolan gets out for the weekend.

20 If they do decide to -- if they do decide to appeal,
21 then I want to have to address a reasonable stay that's
22 authorized under our local rules and just keep in mind that a
23 transcript has to be prepared as well.

24 MR. DISPOTO: Okay. Will do, Judge, thank you.

25 THE COURT: Hold on one moment.

1 THE COURTROOM DEPUTY: There are no cassettes.

2 THE COURT: And also in the past, there were often
3 cassette tapes made of these recordings. It is not done that
4 way anymore, so there are no cassettes. In the past, I know
5 that copies of cassette recordings could be made available for
6 appellate review, that doesn't exist anymore under our current
7 DAR system. So it has to be a transcript that gets produced.
8 So if you are going to be filing a motion to stay it longer
9 than 4:00 tomorrow, then the clerk is going to have to have
10 those transcripts prepared, and the U.S. Attorney's Office is
11 going to have to pay for the cost of those transcripts.

12 MR. DISPOTO: Okay, very well, Judge; thank you so
13 much.

14 THE COURT: Thank you, Mr. Dispoto.

15 All right. Mr. Van der Veen, anything else we need
16 to address?

17 MR. VAN DER VEEN: No, Judge; thank you for the
18 Court's time.

19 THE COURT: All right. And Mr. Hutchinson, in light
20 of the appeal, I'll leave you on through tomorrow, just in the
21 event anything needs to be addressed tomorrow that would
22 require Mr. Dolan's presence. So I'll extend your appointment
23 through tomorrow, all right?

24 MR. HUTCHINSON: Yes, sir.

25 THE COURT: All right. Anything else from either

1 side?

2 Hearing nothing, everybody have a good afternoon, and
3 we will see where we go from here.

4 Thank you.

5 THE COURTROOM DEPUTY: All rise, court in recess.

6 (PROCEEDINGS ADJOURNED)

7 C-E-R-T-I-F-I-C-A-T-E

8 I hereby certify that the foregoing is
9 an accurate transcription of digitally recorded
10 proceedings in the above-entitled matter to the
11 best of my abilities.

12 **This hearing occurred during the COVID-19**
13 **pandemic and is therefore subject to the technological**
14 **limitations of reporting remotely.**

15
16 6/8/2021
DATE

17 /s/DIANE MILLER
DIANE MILLER, RMR, CRR
Official Court Reporter
United States District Court
101 South U.S. Highway 1
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Thursday, June 3, 2021.

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Information obtained from the following website:

<https://www.thegatewaypundit.com/2021/05/huge-exclusive-us-capitol-doors-jan-6-magnetically-locked-someone-inside-capitol-security-release>

Title of Article:

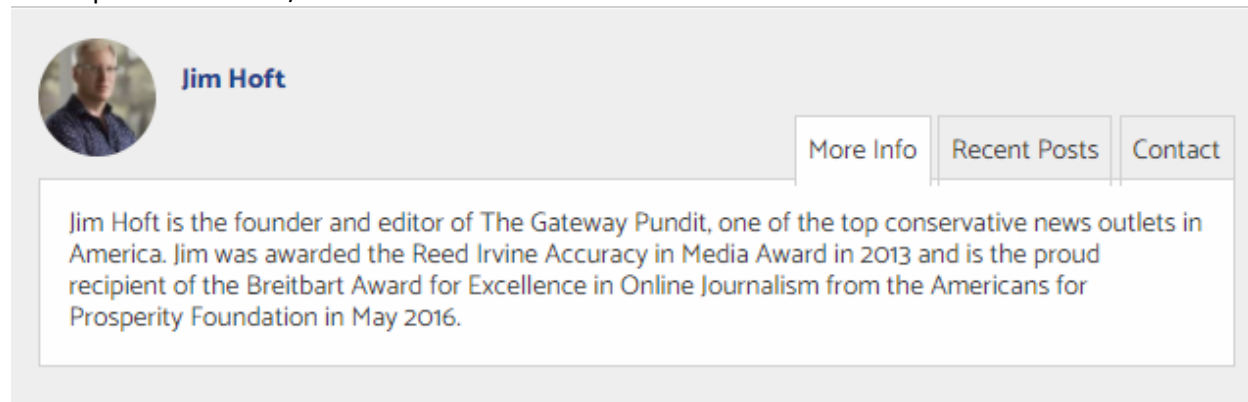
EXCLUSIVE: US Capitol Doors on Jan. 6 Were Magnetically Locked – Someone Inside Capitol Security Had to Release the Lock to Open the Doors (VIDEO)

By Jim Hoft

Published May 24, 2021 at 8:00am

2713 Comments

-lock-open-doors-video/



The image shows a profile card for Jim Hoft. On the left is a circular profile picture of a man with glasses. To the right of the picture is the name "Jim Hoft" in blue text. Further right are three buttons: "More Info", "Recent Posts", and "Contact". Below this header is a white box containing a bio: "Jim Hoft is the founder and editor of The Gateway Pundit, one of the top conservative news outlets in America. Jim was awarded the Reed Irvine Accuracy in Media Award in 2013 and is the proud recipient of the Breitbart Award for Excellence in Online Journalism from the Americans for Prosperity Foundation in May 2016."

Information from the article:

"This man wanted to remain anonymous. We spoke with Attorney Kellye Sorell about his story. He believes the government is planning to arrest him."

"According to this American patriot, who is a US Marine veteran who worked overseas at a US Embassy, the doors on the US Capitol are electronically controlled magnetic locked doors. And someone inside the security booth at the US Capitol opened the doors!"

"UPDATE– We received this from a reader on magnetic doors. A fire alarm set off from the inside — which did not happen — can also unlock the doors.

Information on magnetic locks. Magnetic locks are strong. But according to safety, mag locked doors must have an egress option in case of fire or emergency exit. Therefore there are 2 options to allow mag locked doors to open. One is fire alarm. If fire alarm goes off, mag locks will unlock if wired correctly. The second option is a REX sensor. (Request to exit). Rex sensor is an interior ceiling mounted (normally) proximity sensor.

Both of these options involve someone on the inside."

Transcribed from audio- listed on article website.

"Here is what we were told.

Retired Marine: We're on the top level now – about 15 feet from the doors just before they opened up. People are yelling and screaming. Everyone's cheering, all kind of stuff. It's chaotic. But we're just kind of there. And then all of the sudden the doors open up from the inside. I have a picture taken about two seconds before the doors opened. And then I have a picture taken about six seconds later and the doors were open.

Jim Hoft: And they were not opened from the outside?

Retired Marine: They were opened from the inside. Now one of the stories I read recently was that some Marine, some Marine Major, went inside and managed to run around and open up the doors. And I think that was on your website, as well. But here's what I can tell you about magnetic locks. If a door is locked by a mag lock it cannot be opened from the outside or the inside unless the person controlling that door opens that door by turning off the magnetic lock which those doors according to the photos I took are equipped with.

Jim Hoft: Holy cow! That's really big news there!

Retired Marine: Now these magnetic locks, I worked in the American embassy overseas. They are very, very strong.

Jim Hoft: I'm sure and they, you would think at the US Capitol they would have top security there.

Retired Marine: Now to give you an idea how strong they are, you could tie a chain to the handlebars of the door and tie it onto a truck. And you can take off with the truck and it is probably going to rip the door handles off but it is not going to open that door. The only way those doors can be opened if they want to be opened is from inside a security booth that is also equipped with a magnetic lock.

Jim Hoft: Has this ever been reported?

Retired Marine: Not that I've heard of.

Jim Hoft: Oh my God, this is really big!

Retired Marine: If those magnetic locks had been engaged, in other words, if Capitol Police did not want people opening that door. Now I can understand they might say, "We had police outside so we didn't want to engage them." If they did not want those magnetic locks open, there is NOTHING, nothing, no person, no group of people, no hundreds of people who could have opened those doors. No one. Unless the Capitol Police wanted those doors open. As soon as those doors were open, I was lifted off my feet. There was a forward momentum."

Video Transcript: Length: 10:35. beginning image - split screen magnetic doors in both side by side images, with large camera seen to left side of screen and yellow flag and an American flag on right side of screen. Areas of magnetic door locking system highlighted in red box.

"The Gateway Pundit altered the voice quality at the request of this witness."

{Time markers are approximates, and this is not a perfect transcription}

Retired Marine: Do you know the infamous stack video where they say the Oath Keepers moved in a military manner up the steps to breach the Capitol.

Jim Hoft (probable): Umm I'm sorry, yea, and it was all propaganda

RM: Correct. So, I was up on the steps with another member of Oath Keepers {marker 0:19} and what had end up happening is we didn't know where anybody was...

JH: Oh Ok.

RM: alright so I am on the steps with only one other member of Oath Keepers, and we actually at this point we see other Oath Keepers down at the bottom of the steps and we just raise our hands and kid of wave at them and they see us, and at this point everybody is starting to sing the national anthem..{marker 0:46}

JH: Ok

RM: you know the Star Spangled Banner, and umm they see us and we wave and they start moving up the steps in a line to come meet up with us {marker 1:00}, and that's where you have the infamous stack video.

JH: Right, there it is..

RM: So, they move up to our position, and I call it position, cause [its] where we were standing. and once they get to us we all kind of wind up on the stairs and everybody is singing the national anthem, nobody, nobody, has any intention of pushing through or trying...**JH:** Uh HuH... **RM:** to breach {marker 1:28} or go into the Capitol.

JH: Well it looks like you guys are, Uh, I remember watching this video now, and it looks like everybody is looking out away from the Capitol, they're not looking inside the Capitol. [**RM's** voice unintelligible garbled RM and JH talking at same time] like they want to get in..

RM: Correct, because we are all singing the national anthem.

JH: Right and waving Trump flags and American Flags, and that video, [ss] that video incriminates no one, Right,

RM: that is correct

JH: there is no illegal activity going on in that video, in fact what it does is it shows a peaceful group of people,{marker 2:01} large group, singing the anthem waving American Flags, looking away from the Capitol., so that's amazing.

RM: so, what's interesting for that video most people show the stack video where they are all walking up..

JH: Yeah..

RM: But they cut it, what they don't show is them all lining up on the steps {marker 2:21} turning and facing out away from the Capitol [unintelligible]..singing the National Anthem.

JH: Uh Huh...yea..

RM: Um Again, at that point there's never any intention to go into the Capitol, there was no preplanned...

JH: Yea...Right, and there never was a preplanned operation as far as you know. Correct? {marker 2:42}

RM: As far as I know there was never any preplanned, intention, operation, criteria, to go into the Capitol.

JH: Right, or even mention, I mean..**RM:** No.. **JH:** I..yea it's just ahh, I mean it's just outrageous, and we know today that the media is like consistently about this whole event... So anyway, I see this video now, Um, tell me what happens.

RM: So BBC actually showed the whole video where they came up and wound up on the steps, umm my wife had found it, but there was nothing after that I have ever seen on another news organization or anything else. **JH:** oh ok..**RM:** it was just what we saw was the BBC video **JH:** OK **RM:** which showed everybody just lining up on the steps staring out and singing the national anthem. {marker 3:33}

JH: OK

RM: Alright so everybody is standing on the steps, right

JH: Right

RM: Umm, at that point a whole lot of people surrounding us started cheering saying "Oath Keepers, Oath Keepers, Oath Keepers" and you know everybody was raising their hands going.."yeaaaa"you know..**JH:** Yea..**RM:** it was a pretty chaotic event, umm but they started screaming "Oath Keepers" **JH:** Right.. **RM:** and so I, I don't know who it was or who from the group or whoever it was but at some point when everybody was yelling and screaming "Oath Keepers" somebody decided to turn and go, start going up the stairs a little further. **JH:** Oh ok.. **RM:** closer to the doors of you know the entrance.

JH: right

RM: now mind you {marker 4:26}, so we do that we walk up, now were again on the group of 15

people, Oath Keepers, are sitting on top, of that,[unintelligible] you know, about 15 ft away from the doors.

JH/RM??: Uh Huh

RM: Now I don't know how familiar you are with magnetic locks {marker 4:47}.. have you ever heard of them?

JH: Uhh no not really no [somewhat garbled]

RM: alright so this is it's a little important to the story because I am familiar with them, I am a 20 year US Marine Veteran, I am retired and I worked in the US embassy , I had top secret SCI which is a Secrete Compartmentalized Information Clearance, **JH:** Uh Huh.. **RM:** I was cleared to carry firearms around presidents and dignitaries, it doesn't matter. Umm I had a very in-depth investigation done into me, so here's the interesting part, and, and again Kelly can send you this picture, or these pictures, if you are interested. And she's actually done a little more research into it because I told her about it too. Umm so we're sitting up, we're on the top level now {marker 5:46} there's probably 10 of us or 15, or however many were with us. um on that top level about 15 feet from the doors just before they open up.

JH OK

RM alright so everybody is sitting there people are yelling and screaming, everybody is cheering, all kinds of stuff its chaotic but were just kind of there you know and all of a sudden the doors open up from the inside. **JH:** OK **RM:** I have a picture taken about 2 seconds before the doors open and then I have a picture taken about 6 seconds later and the doors were open .

JH: Right,{marker6:24} and they were not open from the outside

RM: They were open from the inside

JH: Ok

RM: Now, one of the stories I read recently was that some Marine, some marine major went inside managed to run around and open up the doors

JH: OK

RM: {marker 6:40} well, and I think that was on your website as well,

JH:OK

RM: um but here's what I can tell you about magnetic locks,

JH: alright

RM: {marker 6:51} if a door is locked with a mag lock they cannot be opened from the outside or the inside

JH: right

RM: um, unless the person controlling that door opens that door by turning off the magnetic lock.

JH: Sure

RM: which those doors, according to the photos I took are equipped with.

JH: holy cow, that's really big news there

RM: now these magnetic locks, I worked in the American embassy overseas, they are very very strong.

JH: {marker 7:29} yea I'm sure and they, this is the US Capitol, you would think that they would have top security there, with something like that

RM: yea so, now to give you an idea how strong they are, you could tie a chain to the handlebars of the door and tie it onto a truck. you can take off with the truck and it is probably going to rip the door handles off but it is not going to open that door.

JH: wow that's amazing..

RM: The only way those doors can be opened if they want to be opened is from inside a security booth that is also equipped with a magnetic lock

JH: ahh ok

RM: so there's no way..

JH: has this ever been recorded/reported (difficult to understand)

RM: not that I've heard of

JH: Oh my God, this is really big

RM: now if you look at any photos of people filing...

JH: do we, do we, do you think Kelly can send me that photo

RM: she probably could

JH: Ok, I'm going to ask her for that for sure

RM: yea, so, if, anybody

JH: uh huh

RM: {marker 8:33} if those magnetic locks have been engaged, in other words if the capitol police did not want people opening that door, now I can understand they might say well we have police outside so we didn't want to engage them, but if they did not want those magnetic locks open,-(a bit garbled) it's a

flip of a switch, there is nothing, nothing on this earth that could have opened that door, no person, no group of people, no hundreds of people, no thousands of people, that could have opened those doors.

JH: right, right.

RM: nobody could have opened those doors

JH: That is really a ?big story? (garbled/talking over each other)

RM: unless the capitol police wanted those doors open.

JH: right right, OK

RM: alright so,

JH: so the doors open and then you ah, you walked in with uh, (talking over each other) ...

RM: (difficult to understand) now we're all, there's not us only, I mean there's thousands of people on that top shelf, when the doors open I was actually lifted off my feet for about a second or two, because when the doors opened the people that were there just pushed forward all at once as soon as those doors were open it was just a forward momentum.

JH: Yea, that's how, that's how people got crushed actually, the one woman who uh...

RM: yea I uhm, I saved a woman's life from being crushed probably 10 min before that... I saw an old woman and a walker walk up to the steps.

JH: oh my God

RM: I actually helped walk her up, with her husband, and I said " I don't think you want to be to up here because its just too chaotic," umm, but they wanted to be up there and they went all the way to the top- a woman and a walker and her husband, and they had to be in their 70's.

JH: Oh my God, and you know what it was so cold that day too.

RM: it was, there were so people there of all walks and stripes, I saw more Vietnamese people there than I think I've ever seen in my life.

JH: right, right