UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	**Case Number 21-cr-90-PLF**
NATHANIEL DEGRAVE,	:	
	:	
Defendant.	:	

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO
DEFENDANT NATHANIEL DEGRAVE'S MOTION FOR BOND

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in opposition to the defendant's oral motion for bond made at his arraignment on March 16, 2021. The government requests that the defendant continue to be detained pending trial pursuant to 18 U.S.C. § 3142 (f)(2)(B) (Serious Risk to Obstruct Justice). The government requests that the following points and authorities, as well as any other facts, arguments, and authorities presented at the bond hearing, be considered in the Court's determination regarding pretrial detention.

I. Procedural History

On January 28, 2021, the District Court for the District of Columbia issued an arrest warrant pursuant to the filed complaint charging the defendant Nathaniel DeGrave with one felony count of Obstructing Law Enforcement Incident to Civil Disorder (in violation of 18 U.S.C. § 231(a)(3)) and two misdemeanor counts related to his unlawful and disorderly conduct at the U.S. Capitol Grounds and U.S. Capitol Building. These charges stemmed from his actions on January 6, 2021, during the timeframe a joint session of the United States Congress had convened to certify the vote count of the Electoral College of the 2020 Presidential Election.

On January 28, 2021, the defendant was arrested in the District of Nevada on the arrest warrant mentioned above. On February 3, 2021, U.S. Magistrate Judge Daniel Albregts of the District of Nevada ordered the defendant detained, finding that he was likely to obstruct justice and "would not follow any condition imposed by the court even if the court could fashion conditions to address flight risk, danger and obstruction of justice concerns."

On February 5, 2021, a federal grand jury in the District of Columbia returned a nine-count indictment charging him with various unlawful entry and disorderly conduct offenses as well as Assaulting Certain Officers, in violation of 18 U.S.C. § 111 (a felony under these facts), and Obstruction of an Official Proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) & 2 (also a felony).

On March 16, 2021, the defendant was arraigned on the above charges, and his counsel orally moved for bond, citing his lack of a criminal history and close ties to the Las Vegas community and proffering a letter from the property manager at his apartment complex. At the hearing, the Court sought clarity on whether the defendant was entitled to a detention hearing under the Bail Reform Act and thus eligible for detention. This memorandum seeks to address this point as well as provide additional factual bases justifying the defendant's continued detention.

II. Applicable Authority

The legal issue posed by the Court to the parties is whether it has legal authority to hold a detention hearing in this case, thereby rendering the defendant statutorily eligible for detention.[1] The Bail Reform Act explicitly answers this question in the affirmative. Pursuant to 18 U.S.C. § 3142(f)(2), the Court "*shall* hold a hearing to determine whether any condition or combination of

[1] The government's position, as it has been in other Capitol riot cases, is that the Bail Reform Act does not enable a detained defendant to seek reconsideration of whether a detention hearing was properly held in the first place, but rather only permits him to seek review of whether he should be detained under the § 3142(g) factors. *See* 18 U.S.C. §§ 3142(f); 3145(b) (permitting a defendant detained by a magistrate judge to move the court having original jurisdiction for "revocation or amendment of the order"). The most natural reading of § 3145(b)'s reference to "amendment or revocation" is to a detention determination: a court amends or revokes the conditions of release or detention. It does not "amend" or "revoke" a decision to proceed to a detention hearing in the first place.

conditions … will reasonably assure the appearance of such person as required and the safety of any other person and the community … upon motion of the attorney for the Government or upon the judicial officer's own motion in a case that involves a serious risk that such person will flee or a serious risk that such person will obstruct or attempt to obstruct justice[.]" *Id.* (emphasis added) (numbering and extraneous punctuation omitted). Whatever the basis for detention, the BRA's plain language does not limit the Court's consideration of the factors under § 3142(g). Indeed, exactly the opposite: section 3142(g) directs that judges "shall … take into account the available information concerning" the enumerated factors at the detention hearing.

The above provisions thus operate in two steps as follows. First, the judicial officer, based on a "proffer of what the hearing might establish," must ascertain if one of the circumstances enumerated under § 3142(f) is present to "trigger[] a detention hearing." *United States v. Singleton*, 182 F.3d 7, 9, 12 (D.C. Cir. 1999) (holding courts must use categorical approach to determine whether charged offense is a crime of violence triggering a detention hearing, and also discussing the § 3142(f)(2) triggers for detention). The D.C. Circuit has instructed that "[t]he decision whether to hold a hearing occurs based on even less information than a decision to detain or release," and that imposing a "fact-intensive analysis at an earlier stage of the case than Congress appears to have intended" would "blur [the] two distinct statutory inquiries" set forth in sections 3142(f) and (g). *See id.* at 12. In other words, the evidentiary standard to trigger a detention hearing in the first place is lower than the preponderance or clear and convincing evidentiary standards applicable at the detention hearing itself. *See id.* If the government proffers evidence sufficient to meet this lower evidentiary threshold, the Court must hold a detention hearing. *See id.*; 18 U.S.C. § 3142(f)(2).

At this second step in the process, the Court is required to consider the full panoply of factors under § 3142(g) to determine whether there are conditions of release that will reasonably assure the defendant's appearance in court and the safety of any other person and the community. *See Singleton*, 182 F.3d at 9; *see also United States v. Ailon-Ailon*, 875 F.3d 1334, 1336-37 (10th Cir. 2017) (setting forth same two-step process); *United States v. Holmes*, 438 F.Supp.2d 1340, 1341 (S.D. Fla. 2005) (reasoning that, under *Singleton*, a court "should evaluate all the factors in subsection (g) when making its detention determination . . . regardless of whether detention is sought under [§ 3142] (f)(1) or (f)(2)"); *United States v. Plata Hernandez*, 766 Fed. Appx. 651, 656 (10th Cir. 2019) ("The plain language of § 3142(f) pertains to what triggers the requirement that a detention hearing be held, not the factors that guide the detention decision.").

Judge Nichols recently came to the same conclusion in a Capitol riot case, finding that a detention hearing was appropriate under § 3142(f)(2) and considering the full range of 3142(g) factors, including the danger presented by the defendant to the community if he were released. *See United States v. Curzio*, 21-cr-41 (Minute Order dated Mar. 9, 2021).[2] Judge Nichols ultimately ordered that the defendant remain in custody pending trial.

Prior to Judge Nichols's ruling, Judge Mehta also considered the interplay between sections 3142(f)(2) and 3142(g) in another Capitol riot case, *United States v. Riley*, 21-cr-69. *See* Ex. A. He agreed with the two-step framework—i.e., that the statutory bases listed in §3142(f) serve as triggers for a detention hearing, and that once established, the Court may proceed to consider all the factors under § 3142(g) in deciding whether to detain the defendant. Judge Mehta further found that the obstruction of justice trigger for a detention hearing was subject to a lower

[2] The transcript for the defendant's bond motion hearing has not yet been issued, but this is the government's understanding of Judge Nichols's oral ruling. Once the transcript is issued, the government will supplement the record, as appropriate.

evidentiary standard than those applicable at the actual detention hearing, as the government needed only to proffer a serious risk of obstruction of justice to proceed to a detention hearing.

Judge Mehta held, however, that while the defendant's prior obstructive acts in the Capitol were compelling evidence of such a serious risk, he believed that the government was also required to proffer evidence supporting that the defendant posed a serious risk of obstruction to a *judicial* proceeding. Judge Mehta cited several examples of such evidence, such as destroying evidence, assisting others in evading police, and directing others on how to stash evidence—examples which led him, in part, to find a serious risk of obstruction and ultimately detain another Capitol riot defendant. *See United States v. Caldwell*, 21-cr-28 (D.D.C. 2021), ECF No. 75. Because the government proffered no such evidence in *Riley*, Judge Mehta ordered the defendant released. As will be discussed further below, this is not the case here, as the government has evidence of multiple obstructive acts by the defendant related to judicial proceedings sufficient to demonstrate a serious risk that he will attempt to obstruct justice in this case. *See* 18 U.S.C. § 3142(f)(2)(B).

In another Capitol riot case, *United States v. Calhoun*, 21-cr-116, Judge Friedrich found that while the magistrate judge did not err in granting a detention hearing under § 3142(f)(2), she believed that there were conditions of release that could address the Court's concerns.[3] She further found that the government must present evidence demonstrating a risk of obstructive acts tied to a judicial proceeding when relying on obstruction of justice grounds for detention.

Implicit in the statute is the ability to detain a defendant solely on obstruction of justice grounds, or on such grounds combined with flight risk and/or safety concerns. Indeed, "[b]y its plain terms, 18 U.S.C. § 3142(f)(2)(B) permits this Court to order a defendant held without bond pending trial when the Court finds by clear and convincing evidence that no condition or

[3] As above, this is the government's understanding of Judge Friedrich's oral ruling without the benefit of having reviewed the transcript.

combination of conditions will reasonably prevent the defendant from obstructing justice." *United States v. Robertson*, 608 F. Supp. 2d 89, 92 (D.D.C. 2009) (Lambreth, J.) (detaining defendant pending trial on obstruction of justice grounds after finding that "prior efforts" to obstruct justice "speaks volumes"). Nothing in § 3142's text, however, limits the Court's consideration under § 3142(g) to the underlying basis for the detention hearing. Instead, once the government has established a circumstance "triggering a detention hearing," the court "must consider the enumerated factors" in § 3142(g), including dangerousness. *Singleton*, 182 F.3d at 9; *see also United States v. Gloster*, 969 F. Supp. 92, 95 (D.D.C. 1997).

The government seeks the defendant's continued detention pursuant to 18 U.S.C. § 3142 (f)(2)(B), as he poses a serious risk to obstruct justice. Under the Bail Reform Act, the government may proceed by way of proffer. *See, e.g.*, *United States v. Smith*, 79 F.3d 1208, 1210 (D.C. Cir. 1996); *United States v. Cabrera-Ortigoza*, 196 F.R.D. 271 (S.D. Cal. 2000); *United States v. Hong Vo*, 978 F. Supp. 2d 41, 42 (D.D.C. 2013). The government further submits that because there is no condition or combination of conditions that will reasonably assure the safety of any other person and the community or the integrity of this proceeding, the defendant should remain detained.

III. Factual Background

A. The Attack on the United States Capitol on January 6, 2021

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the

House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the

Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

B. Conduct Specific to the Defendant

i. Planning and Coordination Pre-January 6

On or about January 15, 2021, law enforcement reviewed the publicly-available content for the Facebook account of Ronald Sandlin,[4] one of the individuals who traveled with the defendant, Nathaniel DeGrave ("DeGrave"), to the Capitol and was present with him therein. In one Facebook post from December 23, 2020, Sandlin posted as follows:

> Who is going to Washington D.C. on the 6th of January? I'm going to be there to show support for our president and to do my part to stop the steal and stand behind Trump when he decides to cross the rubicon.[5] If you are a patriot I believe it's your duty to be there. I see it as my civic responsibility. If you're going comment below or PM me so we can meet up.

DeGrave responded to Sandlin that he was "considering" joining him, and that he could "come to Nashville and drive there with you." In a post on December 31, 2020, Sandlin announced his plans with the defendant and Josiah Colt[6] to travel to D.C. on January 6:

> Dear Patriots, I'm organizing a caravan of patriots who are going to Washington D.C. to stand behind our president Donald J. Trump. I

[4] Sandlin was present with the defendant inside the Capitol during the riot and has been indicted on multiple charges, including Assaulting Certain Officers, in violation of 18 U.S.C. § 111, and Obstruction of an Official Proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) & 2.

[5] This phrase apparently is a reference to Julius Caesar's crossing the Rubicon River and signifies committing oneself "irrevocably to a risky or revolutionary course of action, similar to the modern phrase 'passing the point of no return.'" *See* https://en.wikipedia.org/wiki/Crossing_the_Rubicon.

[6] Colt was present with the defendant inside the Capitol building during the riot and has been indicted on multiple offenses in connection with the Capitol riot. Unlike Sandlin and DeGrave, he has not been charged with assaulting law enforcement officers and turned himself in. The government did not seek Colt's detention pending trial.

> posted about this last week and a got almost a dozen messages from people asking how they can help or expressing their wish to participate somehow. Josiah Colt, Nate DeGrave, and myself have already booked and paid for our trip to Washington D.C. but we could use your help and support! Every dollar you contribute to us is a smack in the face to Antifa. Every penny is a boot in the ass against tyranny. Every Buffalo nickel is a body slam against China. If you can't be there in person this is the next best thing. We will be documenting our journey and every contributer will get a personal thank you video shot on location in Washington D.C. and will be featured as a contributor on the video mini documentary. Share, comment, like, and hate on us in the comments.

The post also contains a link to a GoFundMe webpage[7] with Sandlin's face superimposed on that of an individual in a car holding what appears to be a semi-automatic rifle. In response to the post with the GoFundMe link described above, DeGrave posted a comment stating that "[i]t's time the American people rise and stand up for this country. We're tired of the corruption."

In response to a search warrant for DeGrave's Facebook account, Facebook returned posts and conversations in which the defendant stated that media reports stating that Joe Biden won the election were "fake news," and that President Trump had in fact won. He described media outlets such as "cnn, ny times, abc, fox, associated press" as "the fakers of the fake." When an individual confronted the defendant asking whether the media outlets were "all lying when they say Joe Biden won the election," he responded, "Correct." In the same conversation, the defendant told the individual that "[w]hen Trump wins they will say he 'stole the election'" and that "[t]his is all going according to plan. You will see." He later started posting the hashtag "#neverconcede."

More significantly, the defendant's Facebook return reflects coordination and planning for violence in D.C. on January 6. In one December 30, 2020 conversation, Sandlin wrote the defendant, "Yo sorry bro I'm going back and fourth [sic] about going some people I respect are

[7] GoFundMe is a social fundraising online platform allowing individuals to raise money for a particular cause or reason.

saying it may get dangerous" and then "Are you down for danger bro?" DeGrave responded, "Im bringing bullet proof clothing" and "yes."

The next day, on December 31, 2020, the defendant posted on Facebook asking: "Who can shoot and has excellent aim and can teach me today or tomorrow." In response to other users' comments to this post, he wrote "I want somebody special forces or ex fbi to teach me"; "I want personalized training from the best"; and "I'm open to learning all the essential skills. Whatever is necessary to survive." When a user recommended a particular person for the task and advised "he's not cheap," the defendant responded that "this is for a very patriotic cause." In a private conversation with another Facebook user that same day, DeGrave wrote that he would be in D.C. on the 6th with Sandlin and Colt, and that he wanted to "grow my army strong so probably will be making connections out there."

Beginning on December 31, 2020, DeGrave, Sandlin, and Colt began a private group chat on Facebook to plan for the 6th. They discussed "shipping guns" to Sandlin's residence in TN, where they would all meet before driving to D.C. Colt said he would try to fly with his "G43," which the government understands to refer to a Glock .43 pistol. They filled up their Amazon shopping carts with weapons and paramilitary gear to take to the Capitol. For example, the defendant stated he was "looking at a 100w laser the thing that can instantly burn paper." Sandlin responded: "Good god you want to burn these communists retinas?" The defendant replied: "I dont but would rather do that then have to shoot someone" and "would be totally possible though." To minimize his prior statements, the defendant added, "all purely self defence might I add. but will be ready." Sandlin stated he was bringing his "little pocket gun" and a knife. Later that evening, the defendant asked for Sandlin's address and then wrote that he had "about 300 worth of stuff coming to you." Sandlin appears to have reviewed the defendant's list of Amazon

purchases and then wrote: "Nate is really ready for battle hahaha." Sandlin and Colt later posted pictures of their recent purchases, including a glock holster, gas masks, and a helmet. On January 3, 2021, the defendant posted a picture of various items of clothing with skulls on them, a helmet, and a face mask on Facebook, with the following caption: "Gearing up. Only a fraction of what I have. #fbappropriate #dc #jan6 #drdeath." He also posted that he was "flying in with friends on the 6th. We're ready to do what is necessary to save the country."

On January 4, 2021, the defendant wrote Sandlin and Colt, "[w]e meet here at 10:00 a.m." and sent a screenshot of "wildprotest.com" depicting a map of the U.S. Capitol with a "Meet Here" notation in front of the building. He also forwarded them a post from the Parler application stating: "#DoNotCertify #january6th" and "#stopthestealcaravan #darktolight #thegreatawakening #DRAINTHESWAMP," followed by his own commentary, "let em try us."

On January 5, 2021, the trio arrived in D.C. and picked up a fourth individual—a female—from Reagan National Airport. That evening, Colt posted a video to his social media bearing the caption "Nate's bear mace was going off in his pocket and it started filling the van bear spray." In the video, Sandlin states that bear mace was going off in the car, and both Sandlin and Colt can be seen coughing in the video.

DeGrave, Colt, and Sandlin ultimately brought the following weapons and other items with them in a rental car from Tennessee to the D.C. metropolitan area: one Glock 43 pistol, one pocket gun, two magazines of ammunition, bear mace, gas masks, a handheld taser/stun gun, military-style vests/body armor, two helmets, an expandable baton, walkie talkies, and several knives. Colt brought a gun to a rally in Washington, D.C. on January 5. While in the Capitol on January 6, Sandlin and Colt were armed with knives, and Colt had bear mace in his backpack. The defendant carried a walkie talkie, as did Colt.

It is unclear at present whether the defendant himself was armed with a weapon inside the Capitol on January 6, though, as described above, he brought bear mace and other military-style gear to the D.C. area and ultimately stuck close to his associates who were in fact armed in the Capitol. In a selfie-style video posted to Colt's social media the morning of the riot, the defendant can be seen with Colt, Sandlin, and a female in a hotel room. Colt discusses a "debate we've been having for days now: should we carry our guns or not?" The defendant says: "for the camera's sake, we're not going to carry," which Colt repeats for the social media audience. Although the execution of the search warrant on his residence revealed a gun registered to the defendant, the government understands that the defendant did not bring his own gun to the D.C. area.

ii. Events of January 6

The defendant was dressed for violence on January 6—body armor, a helmet, and a face shield—and violence is what he sought out. As the videos described below illustrate, the defendant's goal was to obstruct the Electoral College certification proceeding. In the process, he assaulted several U.S. Capitol Police officers, which was also captured on video.

Investigators received a "selfie"-style video recorded by DeGrave, Sandlin, and Colt as an anonymous online tip. In the video, recorded on January 6 prior to the riot at the Capitol, the three are eating in a booth at a TGI Friday's. Sandlin says in the video, no less than three times, ***"freedom is paid for with blood."*** Sandlin is also heard saying:

> Alright so we have been at the protests…we were there pretty early, scoped it out…there were some scrimmages, I will upload the video later…I think a precursor of what is going to [happen] in a few hours. People are really mad…it is just a precursor to what's going to happen…Either way there is going to be violence.

A little later in the video, Sandlin states:

> What is happening to this country is absolutely horrific, absolutely horrific…we are ready to occupy the state capitol if needed to…I

> urge other patriots watching this too, to be willing to take the capitol…***if you are watching this and you are a patriot and are here, I think it is time to take the capitol and I don't say that lightly***…. I am willing to do it, I willing to go and fight for this country. Even if that means I have to sacrifice in some capacity. It is not what I want to do…

In the video, Sandlin hands the device used to record the video to Colt and DeGrave. Colt states that "they are leaving bricks everywhere. There are piles of bricks. It seems like they are encouraging people to riot, because they are leaving stacks of bricks around the city." Sandlin interrupts Colt, stating "allegedly." Colt replies: "No, there are pictures, dude…Nate, show him." DeGrave then shows a picture on his phone of what appeared to be a stack of bricks. Sandlin proceeds to ask "Nate" if he wants "to say something," at which point DeGrave responds:

> We are out here protecting the country, if shit goes down, if Pence does what we think he is going to do. Then we are here to defend this city, defend any city in this country. Let Antifa try us, we are here, we are ready. I say bring it. We are not silent anymore.

Colt then says: "The whole thing is a scam, dude. The whole election, they can't just steal an election. Like they are trying to do in Georgia last night. It is a lie." DeGrave responds: "We are sick and tired of the fucking lies. ***It is time to put an end to this once and for all***." Sandlin replies: "You either have conviction and you stand up for what you believe in or you sit down and shut the fuck up…" Towards the end of the video, Sandlin stated:

> ***If we need to occupy the capitol, we will occupy the capitol.*** You guys are driving all the way to D.C. and you are missing the rally. We have been at the rally, we went last night, we have been at the rally since six in the morning. We needed to grab a bite to eat, and like decompress because we went through a few intense moments and also regroup and plan for the next….***one o'clock is when it is all going to go down. So we are going to be there back by one o'clock when it is action time it is game time.***

These statements appear to refer to the joint session of Congress at the U.S. Capitol building that began at approximately 1:00 p.m. Eastern Standard Time (EST).

Videos posted to Colt's social media show Colt, Sandlin, and DeGrave walking down Pennsylvania Avenue towards the Capitol. Colt asks DeGrave how he feels, to which DeGrave responds, "readier than ever." In another video of Colt and DeGrave walking toward the Capitol, Colt says, "It's a historic day. To save America. Save freedom. Save the way of life that we love. Save everything that our ancestors fought for and laid down their life for." The three ultimately joined the mob and entered the Capitol building through a door to the rotunda.

Surveillance footage from the entrance to the Capitol rotunda depicts a mob outside attempting to gain entry through a door. The door's glass windows are damaged. Individuals already inside can be seen moving benches blocking the door to try to let the mob in, at which point three U.S. Capitol Police ("USCP") officers move in to stand guard in front of the door. The defendant, Sandlin, and Colt are then seen entering the area, along with approximately twenty to thirty other individuals. The USCP officers are without backup.

Sandlin approaches the officers and appears to be yelling and pointing at them. Sandlin continues to yell, and DeGrave moves to his side. Immediately thereafter, the crowd, including DeGrave and Sandlin, begins pushing the officers and slowly forces the door behind the officers open, allowing the mob outside to begin streaming in. Rather than shy away, DeGrave continues to engage and records the ongoing attack on the officers. Sandlin can be seen attempting to rip the helmet off of one of the USCP officers, an apparent attempt to expose him and render him vulnerable as the mob surrounds him.

DeGrave and Sandlin continue to engage with the crowd near the entrance, with at least one officer still trapped in the midst, until Colt taps the defendant on the shoulder and leads the two away and up nearby stairs. Around this time, Colt shouted something to the effect of "we have to get to the Senate" and "there's no turning back now, boys, we're here."

They eventually made their way to the Senate. Additional surveillance video footage from the Capitol Senate Gallery provides a view of a hallway and several sets of doors, which lead to the upper balcony of the Senate Chamber, where shortly before the Senate and the Vice President had been convened for the Electoral College vote count certification. The beginning of the video clip shows several unidentified subjects in the hallway. A USCP officer (hereinafter "USCP1") can be seen entering one of these sets of doors and is shortly joined by two other USCP officers ("USCP2" and "USCP3"). As part of their official duties, USCP1, USCP2, and USCP3 were clearing individuals out of rooms and securing the doors.

Approximately 27 seconds into the video clip, Sandlin enters the view of the security camera. Shortly thereafter, USCP2 and USCP3 move toward the second set of doors to start to usher people out, while USCP1 finishes locking the first set of doors. Sandlin can be seen walking next to USCP1 as he approaches the second set of doors, and while USCP2 is attempting to close the second set of doors. Sandlin cuts in front of USCP1 and attempts to wrestle the door away from USCP2. DeGrave then joins Sandlin in a shoving match with the USCP officers in an attempt to keep the door open. Following this assault on USCP officers, DeGrave bragged that he punched an officer "three or four times." As the three USCP officers make their way away from the crowd, DeGrave, Sandlin, and several others are observed on the video footage acting in an aggressive manner towards the officers. DeGrave puts up his fists as if to begin boxing one of the retreating USCP officers. As the USCP officer steps away, DeGrave can be seen banging his chest.

Shortly thereafter, the defendant, Sandlin, and Colt entered the now open doors and reached the upper balcony of the Senate Chamber, which members and staff of Congress and the Vice President had already evacuated. Colt handed the GoPro, which he had been carrying and using to record the riot, to DeGrave, as he prepared to jump down to the floor of the Senate Chamber.

After Colt jumped down, DeGrave was one of several individuals yelling at Colt to take documents and laptops. Shortly thereafter, the three were separated and did not meet back up until they were outside the Capitol.

iii. Post-January 6 Activities

The defendant, Sandlin, and Colt left D.C. and drove across country almost immediately after their unlawful entry into the Capitol and were well aware of the criminal nature of their actions that day. Indeed, in a Facebook group chat with DeGrave, Colt, and the female they picked up from the airport, Sandlin stated that they had left D.C. to get "to a safe spot," and that they were "at risk for serious jail time." The defendant ultimately returned to his residence in Las Vegas.

The search warrant return on the defendant's Facebook account reveals that he deleted dozens of messages related to the insurrection and his involvement in it. In other words, he destroyed evidence. He appears to have directed others to delete their private messages to him on Facebook and also directed Sandlin shortly after the riot to "untag and delete all posts." The defendant, Sandlin, and Colt downloaded an encrypted messaging application after the Capitol riot to continue talking to each other, including about potentially selling their footage of the riot so they could get rich and be interviewed on podcasts. The defendant also encouraged several individuals on Facebook to download the encrypted messaging app wickr after January 6 to communicate about the events at the Capitol.

On January 9 and 10, the defendant privately messaged with a third party about providing footage to produce a documentary. He told the third party to download and call him on wickr, and that it was "going to absolutely blow your mind what I will tell you." The defendant later stated that he would have to "talk my boy into it," "go to Idaho to get [the footage]," and that it was "with his attorney." The government understands that the defendant was referring to footage of the

insurrection within the possession of Colt, who lives in Idaho. The defendant also told the third party in relation to the proposed documentary that they would "have to go over legal matters as well as being able to provide a barrier of protection."

On January 19, 2021, the defendant conversed with an individual via Facebook Messenger regarding Sandlin's whereabouts. When asked if he had seen Sandlin, the defendant said, "No we were supposed to get breakfast but he ended up leaving early to go to another state." He added that Sandlin "[s]aid he's keeping it moving," and that he "was on ny post" and will "def[initely] get a charge." As described below, Sandlin was arrested at DeGrave's residence nine days later.

On January 24, 2021, the defendant posted on Facebook regarding litigation over the 2020 election, stating that "[c]ases were dismissed … regardless of the allegations or the evidence presented, and 100s of sworn affidavits." On this thread, he also commented that "[t]he corruption is endless."

iv. Arrest

On January 28, 2021, cell-site data for Sandlin's phone received pursuant to a search warrant led investigators in the FBI Las Vegas division to locate and visually identify Sandlin's vehicle parked outside the Las Vegas apartment complex where DeGrave was confirmed to reside. That same day, Sandlin was spotted leaving the apartment and taken into custody by the FBI. Based on the defendant's actions on January 6, 2021, a complaint and arrest warrant for DeGrave were issued on January 28, 2021, and DeGrave was arrested at his residence.

Following his arrest, law enforcement read the defendant his Miranda rights, which he waived. He then proceeded to lie to the FBI. Specifically, he stated "I was not inside the Capitol" the day of the riot. He denied being captured on security camera footage alongside Sandlin and Colt inside the Capitol, stating that "that's completely shocking to me. I though the only reason I

was here is because I was letting Ronny stay with me."

IV. Argument

There are four factors under § 3142(g) that the Court should consider and weigh in determining whether to detain a defendant pending trial: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) his history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by his release. *See* 18 U.S.C. §3142(g). As discussed in more detail above, the Court may also consider whether the defendant poses a serious flight risk or a serious risk of obstructing justice. *See* 18 U.S.C. § 3142(f)(2); *Robertson*, 608 F. Supp. 2d at 92. In consideration of these factors, the government respectfully submits that there are no conditions or combinations of conditions that can effectively ensure the safety of any other person and the community or the integrity of this proceeding.

District courts apply a de novo standard of review in evaluating a magistrate judge's detention decision. *United States v. Karni*, 298 F. Supp. 2d 129, 130 (D.D.C. 2004). Even under de novo review, the defendant has failed to proffer any reason to disturb the decision of the magistrate judge in the District of Nevada ordering the defendant detained.

A. Serious Risk of Obstruction of Justice

The government's proffered facts clearly trigger a detention hearing under 18 U.S.C. § 3142(f)(2)(B). *See, supra*, section II (citing recent oral rulings on detention in *United States v. Riley*, 21-cr-69 (D.D.C. 2021) (Mehta, J.) and *United States v. Calhoun*, 21-cr-116 (D.D.C. 2021) (Friedrich, J.)). They also show, by clear and convincing evidence, that no combination of release conditions will "reasonably prevent the defendant from obstructing justice" and thus assure the integrity of this proceeding. *See Robertson*, 608 F. Supp. 2d at 92.

Taking the Capitol by force to disrupt Electoral College vote count proceedings is the ultimate obstructionist act. This is precisely what the defendant intended to do and did do. He and his co-conspirators engaged in extensive planning and amassed weapons and paramilitary gear in advance of the insurrection on January 6. They got in a rental car and drove multiple weapons, including his co-conspirator's guns and bear mace belonging to the defendant, cross country to the D.C. area. Just days before the insurrection, the defendant asked friends for a recommendation of someone with "excellent aim" who could provide him firearms training for a "patriotic cause."

On January 4, 2021, the defendant made his intentions clear—he posted a map of the Capitol to the group chat with Colt and Sandlin stating to "meet here," as well as the hashtags "#DoNotCertify #january6th" and "stopthesteal." The defendant ascribed to his co-conspirator's calls for violence and "tak[ing] the Capitol" on January 6, which he ultimately heeded. These acts render the defendant a danger to the community and our democratic institutions.

Even after January 6, when the nation was reeling and the import of his actions should have become clear, the defendant decided that they were instead something to celebrate and publicize. As discussed above, he engaged in talks with a third party to create a documentary using footage of the insurrection to glorify his and his co-conspirators' actions and profit from them. The defendant clearly has not internalized how abhorrent his conduct was that day, despite his counsel's oral assertions at his arraignment to the contrary. And he certainly did not accept responsibility for his actions when he lied to the FBI in his Mirandized interview. There is also evidence that the defendant is simply untethered to reality, as he has stated that media outlets reporting that Joe Biden won the election are "all lying" and "fake news."

Finally, the defendant has engaged in obstructive acts relevant to *this* proceeding, which serve as an additional indicator of the likelihood that he would attempt to obstruct justice in this

case if he were released. After being charged and arrested in this case and clearly advised of his rights, he blatantly lied to the FBI. Before that, he harbored Sandlin, whom he essentially admitted to a friend was a fugitive, in his home. Furthermore, the defendant was clearly savvy and determined enough to download encrypted messaging applications to discuss the events of January 6 and encouraging others to do so, which should give this Court great concern.

The core of the Bail Reform Act is ensuring that defendants abide by orders of the Court. But the defendant does not believe in the courts' authority. In reference to the 2020 election litigation in courts across the country, he said "[t]he corruption is endless." The defendant believes that the media, both left- and right-leaning, are "all lying" to him, and that the current President has been installed through massive corruption.

For the reasons outlined in this memorandum, including his prior obstructive acts and demonstrated lack of respect for institutional processes, it is hard to see how the Court could have confidence that the defendant will not continue to engage in obstructionist behavior were he to be released, or that he will comply with the orders of this Court. The government thus submits that he poses a serious risk of obstructing justice, as well as a danger to the community, and should therefore remain detained pending trial.

B. Nature and Circumstances of the Offenses Charged

On January 6, 2021, the defendant assaulted multiple law enforcement officers attempting to protect the Capitol and members of Congress inside. His role in contributing to the chaos that day is not hyperbole—the defendant himself can be seen on surveillance footage as part of a violent crowd pushing three outnumbered officers against a door and forcing that door open, allowing the mob outside to breach the Capitol and putting law enforcement officers and members and staff of Congress at grave risk. On another occasion, the defendant tussled with an officer to keep the door

to the Senate Chamber open, later bragging that he punched an officer "three or four times." The defendant's actions thus partly enabled other rioters to commit criminal acts inside the building. Surveillance footage paints a picture of the defendant as seeking out violence at every available opportunity.

The defendant's actions prior to the riot are perhaps even more disturbing. The defendant and his co-conspirators amassed weapons and paramilitary gear, which they drove cross country to the D.C. area. Prior to the riot, he sought out firearms training and even planned to "bring[] bullet proof clothing." This is not the behavior of someone who intends only to protest peacefully. His actions leading up to the riot demonstrate planning, determination, and coordination to engage in violent conduct that day to "stop the steal" and prevent the certification of the electoral college results deeming Joe Biden the winner of the 2020 presidential election. The defendant's comment that it was "time to put an end to this once and for all," following Sandlin's calls to "occupy the Capitol" and pay for "freedom … with blood," is particularly menacing.

Chief Judge Howell recently detained a Capitol riot defendant in part because "any indication that a defendant engaged in prior planning before arriving at the Capitol, for example, by obtaining weapons or tactical gear, suggests that he was not just caught up in the frenzy of the crowd, but instead came to Washington, D.C. with the intention of causing mayhem and disrupting the democratic process," and that such "motives and steps taken in anticipation of an attack on Congress speak volumes to both the gravity of the charged offense, as a premeditated component of an attempt to halt the operation of our democratic process, and the danger a defendant poses not just to the community in which he resides, but to the American public as a whole." *United States v. Chrestman*, 21-cr-218, ECF No. 23, at 15. Such is the case here. Chief Judge Howell detained that defendant after considering "[e]vidence of coordination with other participants before, during,

or after the riot indicates that a defendant acted deliberately to amplify and assure the success of the breach of the Capitol," or "urging rioters to advance on the Capitol or to confront law enforcement," adding that the "presence of either of these factors enhances the defendant's responsibility for the destabilizing events of January 6 and thus the seriousness of his conduct." *Id.* at 15-16. Both of these factors are present here. As part of a mob, the defendant forced an exterior door open, allowing others to breach the Capitol, and before the riot, he chimed in to Sandlin's calls to "take the Capitol" on social media, stating that it was "time to put an end to this once and for all."

On January 6, the defendant combined his criminal intention to interfere with the functioning of Congress with an assault on the law enforcement officers trying to protect that function. As a result, the nature and circumstances of the charged offenses overwhelmingly weigh in favor of detention.

C. Weight of the Evidence Against the Defendant

The second factor to be considered, the weight of the evidence, also clearly favors detention. As noted above, the defendant is captured on U.S. Capitol surveillance cameras attacking law enforcement officers on at least two occasions. Videos captured by the media and on social media corroborate the identification of the defendant as the person assaulting officers dressed in tactical gear that day. His own statements on social media corroborate his obstructionist intent. This factor thus weighs in favor of detention.

D. Defendant's History and Characteristics

The Pretrial Services report reflects the defendant has three prior arrests, which the government understands related to misdemeanor offenses, and a conviction for underage possession of alcohol when he was twenty years old. While the government recognizes that the

defendant's criminal history is limited, his actions leading up to and on January 6, particularly his preparation and planning for violence, should give this Court great concern about the danger he would pose to the community if released.

Similarly, his failure to "exhibit[] any remorse for what occurred at the Capitol," apart from self-serving statements through his counsel as he moved for release from detention, provide "no evidentiary basis to assume that defendant will refrain from similar activities, if instructed, in the future." *See Chrestman*, 21-cr-218, ECF No. 23, at 28. To the contrary, the defendant sought to publicize his participation in the Capitol riot. *See*, *supra*, section III. And, as discussed above, he has engaged in obstructive acts such as deleting evidence, harboring a fugitive, lying to the FBI, and encouraging others to download encrypted messaging applications to discuss the events at the Capitol. His post-offense characteristics certainly militate in favor of detention, even if his pre-offense characteristics do not.

E. Danger to the Community

The fourth factor, the nature and seriousness of the danger to any person or the community posed by a defendant's release, also weighs in favor of the defendant's detention. The charged offenses involve assaultive conduct as part of a violent mob. He intended to obstruct the certification of the Electoral College results, and he succeeded.

The danger the defendant caused as an active member of a violent mob cannot be understated. The entry of likely hundreds of rioters into the Capitol building and their destructive actions can be attributed, at least in part, to his role in overwhelming law enforcement and forcing an exterior door of the Capitol open. His actions and statements illustrate that he is a danger to our society and a threat to the peaceful functioning of our community.

V. Conclusion

For the above reasons, the Government submits that there is clear and convincing evidence that the defendant poses a serious risk to obstruct justice and is a danger to the community, and that there is no condition or combination of conditions that will reasonably assure the safety of any other person and the community, or the integrity of this proceeding, if he were to be released. The Court should therefore deny his motion for bond.

Respectfully submitted,

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Date: March 19, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of this pleading to be served upon defense counsel, Joanne Slaight, Esq., this 19th day of March 2021.

/s/
Jessica Arco
Special Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CR No. 21-69-1
	)	Washington, D.C.
vs.	)	February 24, 2021
	)	2:02 p.m.
JORGE A. RILEY,	)	
	)	
Defendant.	)	

TRANSCRIPT OF
INITIAL APPEARANCE, ARRAIGNMENT,
AND BOND HEARING VIA ZOOM PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

COURTROOM DEPUTY: Good afternoon, Your Honor. This is Criminal Case No. 21-69, the United States of America versus Jorge Aaron Riley.

Troy Edwards for the government.

Michael Lawlor and William Brennan for the defense.

Christine Schuck on behalf of Pretrial Services.

The defendant's appearing video via videoconference for this hearing.

THE COURT: Counsel, good afternoon.

Mr. Riley, good afternoon or good morning to where you are.

Can you hear me okay, sir?

THE DEFENDANT: Yes, sir.

And my name is Jorge.

THE COURT: Okay. But your last name is Riley, correct?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right.

So I'll just refer to you as Mr. Riley, as we do here in court for defendants and then parties.

All right. So we're here today for two reasons; one, we need to have Mr. Riley arraigned, because the indictment was returned against Mr. Riley on February 3rd.

And I don't believe he's been arraigned on that indictment, so we'll do that first.

And then we will proceed to deal with the detention issue. There's been a motion filed for review of the detention order that was issued by the magistrate judge in the Eastern District of California.

So why don't we start with the arraignment. And I'll turn it over to Mr. Douyon, our Courtroom Deputy.

COURTROOM DEPUTY: And just one moment. Let me share the screen.

Mr. Riley, in Criminal Case No. -- I'm sorry, does the defense wish to waive the formal reading of the indictment?

MR. LAWLOR: We will waive a formal reading of the indictment at this time, yes.

COURTROOM DEPUTY: Okay.

Mr. Riley, in Criminal Case No. 21-69, you have been charged with the following counts:

Count 1, obstruction of an official proceeding and aiding and abetting, in violation of Title 18 United States Code Sections 1512(c)(2) and Section 2;

Count 2, entering and remaining in a restricted building or grounds, in violation of Title 18 United States Code Section 1752(a)(1);

Count 3, disorderly and disruptive conduct in a

restricted building or grounds, in violation of Title 18 United States Code Section 1752(a)(2);

Count 4, disorderly conduct in a Capitol building, in violation of Title 40 United States Code Section 5104(e)(2)(D);

And Count 5, parading, demonstrating, or picketing in a Capitol building, in violation of Title 40, United States Code Section 5104(e)(2)(G).

How do you wish to plead?

MR. LAWLOR: Your Honor, if I may, the defendant enters a plea of not guilty to each of the five charges, requests a speedy trial by jury.

THE COURT: All right. Thank you, Mr. Lawlor.

All right. So with that, the record will reflect that the defendant has entered a plea of not guilty as to each of the counts of the indictment.

All right. Let's talk about detention and Mr. Riley's bail status pending trial.

The government did move successfully before a magistrate judge to have Mr. Riley held. His counsel has since filed a motion for bond review. So that's where we are.

So why don't we start with the government, Mr. Edwards.

Look, let's just get to the part of the matter --

and what I am primarily concerned about or considering here -- and you may not have had the benefit of this, Mr. Edwards, but some of your colleagues have:

The way I read the Bail Reform Act and the way that the Bail Reform Act has been interpreted, more importantly, by the Circuit, is that a detention hearing, and, therefore, detention, is only appropriate if the government meets one of the criteria set forth in 3142(f). 3142(f) sets forth five different types of offenses that are eligible for detention and then two additional bases for additional detention, one is a serious risk that the person will flee, and a serious risk that the person will obstruct or attempt to obstruct justice, including witness intimidation or juror intimidation.

I view Section 7 -- excuse me, Section (f) as sort of a door-locking provision or unlocking provision, if you will, such that you have to satisfy one of those criteria first before we even get to the question of dangerousness, and the government's motion is largely based on dangerousness.

So as I read your memo, you have not identified a basis under (f)(1) for detention; that is, the sort of enumerated offenses clause of (f)(1), which is (f)(1). And then in (f)(2), you've sort of alluded to risk of flight.

So let me ask, Mr. Edwards: On what basis are you

seeking a detention hearing and seeking to detain under (f), under subsection (f)?

MR. EDWARDS: Your Honor, the government is moving for Mr. Riley's detention under both (f)(2)(A) and (f)(2)(B).

THE COURT: Okay.

MR. EDWARDS: The serious risk of flight and the serious risk of an obstruction of justice.

THE COURT: All right.

Let's start with the latter.

What's the basis for the latter contention that he's a serious risk, that he may obstruct or attempt to obstruct justice?

MR. EDWARDS: Yes, Your Honor.

Mr. Riley -- as the Court is aware, the statute in 3142(f)(2)(B) is disjunctive and notes that if "there is a serious risk of an obstruction of justice or" and then they provide additional examples of serious risk that would warrant having the detention hearing, such as tampering with a witness or tampering with evidence, the government's focused on that first element most importantly here, the obstruction of justice.

As the government argued in the Eastern District of California, the defendant flew over 3,000 miles while pending release in another case and stormed the

United States Capitol and made it quite clear why he did so. And he made that intent clear by posting on Facebook publicly available messages to folks, saying that -- and I'd like to quote here -- statements such as, "Do you really not get what is going to happen on the 6th?" And here, he's referring to January 6th. "I absolutely am looking forward to that. And no matter what, there is nothing that can stop it."

Then on the day of January 6th after arriving in D.C., he posts another message that says, "Today at noon, the election is being challenged."

And as he's on his way from attending what appears to be a rally, on the way to the Capitol building, even films video of a number of other individuals that he's traveling with informally to the Capitol building, and you can see that building in the foreground. And he states that, "hundreds of thousands of us are marching on the nation's capital."

And then a little closer in time to when Mr. Riley approaches the Capitol building, Mr. Riley posts another message that says, "Hey, we're storming the Capitol. What are you doing?"

And then as Mr. Riley enters the Capitol building, he takes another photo and shows himself with paint on his face and shows a number of other individuals behind him.

And you can see a bit of the background that appears to be the inside of the Capitol building and says something to the effect of, "Hey, we're storming the Capitol. What are you doing?" And then as a caption to this new photograph, they said, "Where do you think I am? I'm at the front."

THE COURT: So, Mr. Edwards, if I could interrupt you.

And maybe you're getting to it, but, you know, all of the evidence that underlies the charges which are what you have been describing based upon sort of public-available information from social media and the like, you know, certainly is strong evidence that Mr. Riley participated in the events of January 6th and entered the Capitol building on January the 6th and stayed within the confines of the Capitol. And exactly what he did while he was there may not be entire clear just yet, but it's not clear to me that any of that is evidence of likelihood that he's a serious risk to obstruct justice.

I mean, that's -- you know, you've described the elements or the conduct, which is not to say the conduct itself may not have a bearing on obstruction or risk of obstruction, but I'm not sure I see anything that's described in your papers that rises to the level of a serious risk of obstruction.

And let me just provide a counterexample. There's

a gentleman in another case, Mr. Caldwell, I don't remember the case number. But the government collected evidence that, for example, he destroyed social-media posts or erased social-media posts once he learned law enforcement was actively looking for people, he aided and abetted some of his confederates in trying to hide evidence, instructed them to drive in a certain way to evade law enforcement.

There's none of that kind of evidence here, at least none that's described. Are you aware of anything that rises to that level, Mr. Edwards?

Oh, and by the way, I should say, in Mr. Caldwell's case, I did find that there was a serious risk of obstruction and then went forward and found dangerousness.

So is there anything similar here with respect to Mr. Riley?

MR. EDWARDS: Your Honor, at this time, no.

It is -- we are continuing to investigate this case and will obviously notify the parties and the Court if we uncover that kind of evidence.

But I'd like to note that that's why I think it's important to focus on Congress's language there in 3142(f)(2)(B) in making it a disjunctive, as you note, door-opening mechanism into the 3142(g) factors. The conduct that you're describing in Mr. Caldwell's case seems

to fall into those other elements of obstructing with -- tampering with evidence or tampering with witnesses.

The government argument's here simply is that we're in that first half which is that obstruction of justice.

And the logical thread here tying the conduct that the government described in this hearing is that on January 6th, we witnessed, and millions of Americans witnessed, one of the largest obstruction efforts in the history of the United States. The purpose of a lot of the conduct of the actors, including Mr. Riley, was to obstruct an official proceeding, which was the Electoral College's certification of the 2020 presidential election.

The government's argument today is that if Mr. Riley is an individual who's willing to post publicly his intent behind those actions, fly thousands of miles while released on a pending case, conduct himself in such a manner where he states publicly in an interview and in a photo that he had already been attacked with a fire extinguisher and pepper sprayed by police but he continued forward, that is the drive behind Mr. Riley's intent to obstruct justice, and he is charged with an obstruction charge.

And so the government's argument today is that that is enough to meet this threshold of a serious risk of

obstruction of justice, because it is an argument that his criminal case pales in comparison to something so large as the presidential election.

THE COURT: By that logic, anybody that's charged with obstruction of an official proceeding, in the government's view, would satisfy (f)(2)(B), is that right, is that the position the government's taking in these cases?

MR. EDWARDS: Your Honor, the government's position here is that anyone who's charged with something like 1512(c)(2) and has the clear evidence of his intent to do so, does at least qualify or least in evidence like we're seeing here, where he admits freely in both interviews, photos, and captions in his social media that the ability and the intent to obstruct something, yes, the government's position is that in those circumstances, the government has met its lower threshold of serious risk.

And I'd note that there are a number of standards involved in 3142, as Your Honor is well aware, such as preponderance of the evidence and clear and convincing evidence when we get to risk of flight or risk of danger. Here, Congress made it clear that it was a serious risk, which appears to be a lower threshold than those two, and it's the government's position that we've met that.

THE COURT: And I would agree with you, Mr. Edwards. I think there are different evidentiary

burdens and thresholds here. I think Congress sort of carefully chose the words it meant to apply or the standards it meant to apply at each point of inquiry.

All right. So you've explained the government's position with respect to obstruction. What about with respect to flight?

MR. EDWARDS: Yes, Your Honor.

I think what's really important here in determining whether or not there is a serious risk of flight is the fact that Mr. Riley was already on release in felony charges in the State of California.

And while the government is not clear that there were conditions for him to not travel, certainly one of the default conditions of being on release in any case is not to commit further crimes.

And Mr. Riley is an individual who, although pending a felony case that -- the government can get more into those details if we, in fact, get to the (g) factors. But while pending trial in that case, he fled 3,000 miles and committed additional federal felonies.

And so it would be the government's position here that this is an individual that has displayed very recently no respect for conditions of release, and it should convince the Court here that there's not much to trust that he would trust any -- respect any conditions that the Court

implements today.

THE COURT: Okay.

All right. Mr. Edwards, thank you. That's helpful to conceptualize what the government is thinking here.

Mr. Lawlor, let's stick with subsection (f) and your response to Mr. Edwards' position.

MR. LAWLOR: Sure, Your Honor, a couple things.

Just to sort of join the Court's question about obstruction, it appears to me that government's argument is that if the defendant engages in obstructive conduct, vis-à-vis the charged crime, that's almost evidence that he will in the future engage in obstructive conduct, and I don't think that's a correct analysis. I think the government is avoiding that burden of proving by some evidence that there's -- a court should find that there's a likelihood, and it appears that the government is focused only on obstruction and not jury intimidation.

THE COURT: But you don't disagree, Mr. Lawlor, do you, that evidence of the crime, if obstructive, is relevant to --

MR. LAWLOR: It's relevant.

But what I just don't think the government is saying, well, he did it once, therefore, the Court should safely find, absent some further proof, that he will do it

again.

But let me also say before we get to that, Your Honor, the government seems to suggest that Mr. Riley, by his post, intended to obstruct justice from Jump Street, and I don't think that that's a fair reading of his texts.

So, you know, obviously I think it's important for all of to us to avoid the politics of this, understanding how hard that is. But the way I read Mr. Riley's initial traveling and his excitement to travel and what he came here to do was to engage in a rally, to protest behavior that he believed had occurred.

And, again, I don't want to get into a debate about whether or not he was right about that or was there any evidence of that, but I think the original texts where Mr. Riley is saying, hey, like the President, our former President, I believe there was some nefarious behavior vis-à-vis the election, and the President and others are coming to rally to protest what they perceive. I believe that, and, therefore, I'm going to go to Washington and join in that rally.

The government seems to be suggesting that it was Mr. Riley's intent from Jump Street to come here, break into the Capitol, and put a halt to the efforts of Congress on January 6th. I don't think that's a fair reading.

I think what's a more fair reading -- and, you

know, for purposes of this argument on release, again, I won't dispute that the government certainly has, by Mr. Riley's own videos and words, some evidence of some of these elements, at a minimum, that he entered into the Capitol, but I don't think there's any evidence that in there, while in there, he engaged in assaultive behavior or engaged in any breaking of windows or any other destruction of property in the Capitol grounds.

So what we have is evidence that Mr. Riley came here to a protest -- and, again, I think this is true of most people who engaged in illegal behavior on January 6th, I don't think most of those people came here with any idea that the Capitol grounds would be entered, lawfully or unlawfully.

I think there was a call to action by certain people, a march towards the Capitol took place, and then obviously things got out of hand there, illegal behavior took place.

But I just don't believe it's a fair reading that Mr. Riley's intent, while he was in California, was to come here and engage in illegal behavior. To the contrary, I think he came here to engage in a protest.

Now, again, if the Court says, all right, well, he went into the building, you know, I'm not sure that that even -- in and of itself rises to the level of obstruction.

And I think, you know, the government has clearly taken a position in these cases assuming -- you know, leaving aside the identification problem, let's say that the government could identify every person who trespassed -- and I'm not trying to use a loaded term here, but just to get everybody sort of on one track -- they're not seeking detention for everybody who entered the Capitol grounds that day.

It appears that they've taken a position that detention is appropriate for people who did engage in assaultive behavior, obstructive behavior, or violent behavior, even not towards others but to the Capitol grounds themselves, and there's no evidence of that with Mr. Riley.

So I don't think the government's statements that Mr. Riley -- they said he fled from his prior case 3,000 miles. I don't think that's fair. I think what he did was he traveled 3,000 miles.

THE COURT: And just to be clear, Mr. Lawlor, I want to make sure -- and he was -- where was he arrested?

Maybe Mr. Edwards can help.

I mean obviously, he was arrested somewhere in the Eastern District of California, I take it?

MR. LAWLOR: I think it might have been the 25th, Your Honor.

MR. EDWARDS: That's right.

MR. LAWLOR: That was the day of his initial --

THE COURT: No, no, not when but where. Was he at home?

MR. LAWLOR: Oh, in his home in Sacramento.

THE COURT: In his home. Okay.

MR. LAWLOR: And he was texting people saying, you know -- to the effect of, you know, I know they're coming for me. He didn't hide. He didn't run.

So to me, I'm talking about obstruction right now, but in terms risk of flight, you know, the issue is, is Mr. Riley going to show up at all future court appearances absent detention? I really don't think the government has really offered any evidence to suggest that he won't.

And I think that he will. As I said, he didn't avoid -- he didn't hide any evidence here. He didn't avoid apprehension. I think he knew that the FBI or other law enforcement personnel were coming to take him into custody for events on the 6th and he didn't flee or hide or delete stuff from his phone.

THE COURT: Okay.

All right.

MR. LAWLOR: Go ahead, Judge.

THE COURT: It's okay, Mr. Lawlor. I've got your argument.

Mr. Edwards, do you want to respond? If you want

a brief response, I'll give you that opportunity.

MR. EDWARDS: Yes, please. Thank you, Your Honor.

Just two brief things.

First -- and I'll go in order of the statute here. For 3142(f)(2)(A) -- and I'll talk a little bit about risk of flight here -- I understand that Mr. Riley was arrested in his apartment in the Eastern District of California.

That said, as was discussed at length in the hearing before the magistrate court, he has more than one failure-to-appear charges in his past, and that was discussed between defense counsel and the Court. And the paperwork was with the original defense counsel. My understanding is that defense counsel has passed on materials to the new counsel. It's not --

THE COURT: I'm sorry to interrupt, because I read the transcript, and there seemed to be some ambiguity as to what those failure-to-appears meant. You know, did they rise to the level of a Bail Reform Act violation that we're all familiar with, where he actually has a criminal conviction associated with failing to appear in court?

MR. EDWARDS: It was not my understanding that -- and I'm going to speak very clearly here to make sure I don't overstep.

It is not my understanding that it was a conviction, but my understanding was he was either arrested

or charged at first with failure to appear. Unfortunately, that's the extent of my understanding of their terminology in terms of the state court terms of art.

But it was the government's position in that court that -- might understand that a little better -- that those did count as failures to appear and the magistrate court out there understood it to mean that.

THE COURT: Ms. Schuck, are you on the line and can you hear me?

PRETRIAL SERVICES OFFICER: Yes, Your Honor. Christine Schuck, Pretrial Services.

THE COURT: Ms. Schuck, does your pretrial investigation show any arrests or charges for failing to appear in court, in federal or state, one; and then, two, any actual convictions for failing to appear in court?

PRETRIAL SERVICES OFFICER: Our office did not conduct an actual investigation.

What I am reviewing are the documents that we received from the Sacramento office, the U.S. Pretrial Office in Sacramento, California.

And on their pretrial report, it does reflect that on 9/19/2008, he was arrested on a bench warrant that was for failure to appear in regards to a 3/26/2007 arrest for DUI. He had been placed on probation for the DUI.

There was a failure-to-appear bench warrant that

was issued, it looks like here, on 2/11/2008, and he was arrested in September of 2008 for that failure to appear. The probation in that case was subsequently revoked, and he was resentenced to four days' jail.

It also looks like there was another failure to appear that was -- like I said, I'm reading this as I'm looking at it pretty quickly.

So in that March 2007 case, there were actually, it looks like, a total of three failure to appears that were issued: April 30th, 2007, April 21st, 2008, and March 2000 -- I'm sorry, not March -- May 5th, 2008. So we had three bench warrants in that case.

On September 19th, 2008, he was arrested on the bench warrants. And he was subsequently -- the probation was revoked in that DUI case, and he was dropped from the first offender program and ultimately resentenced to ten days' jail on 9/23/2008, and the case was concluded at that point.

THE COURT: Okay. Thank you, Ms. Schuck. That's actually a very helpful recitation of what I think Mr. Edwards is referring to.

PRETRIAL SERVICES OFFICER: Pretrial can also attest that according to this record, there was an additional failure to appear in 2017 related to another case that he was convicted -- he did a diversion program and it

was subsequently dismissed, but there was a failure to appear that was issued. He was arrested on 5/30/2016 for contributing to a delinquency of a minor and disorderly conduct under the influence of drugs. So it was a failure to appear that was issued on 2/15/2017 before he entered a diversion on 10/24/2017, and then the case was subsequently dismissed.

So in more recent times, there was another failure to appear that is noted on the record.

THE COURT: Okay. That's helpful.

All right. Thank you, Ms. Schuck. I appreciate that.

Mr. Edwards, why don't you go ahead.

MR. EDWARDS: Yes, Your Honor.

I don't want to belabor that point, but it's the government's submission to the Court that that Mr. Riley has demonstrated a history of failing to appear to address criminal charges, and there's -- you know, as recently as 2017, and I appreciate Pretrial's specificity in a way that I could not be.

And so it's the government's position that because of it being a lower threshold of a serious risk, the government has met that position.

And if the Court is not inclined to find that 3142(a) has been met, the government is also relying on

3142(b), and I'd like to just respond to one or two points the defense counsel brought up on the obstruction point.

The government wants to be very clear here: Mr. Riley is not similarly situated to individuals who walked inside of the Capitol and walked out.

He's correct that the government has been surgical with its request for pretrial detention. And in this case, it's the government's position that it is warranted or at least we are eligible to move forward to the hearing, because Mr. Riley posted public statements about why he was going inside of that Capitol building, made sure he was at the front line.

And then the second point that I'd like to respond to is, while the government is not putting forth an argument or evidence that there is video of Mr. Riley performing certain conduct such as assaultive behavior on officers, there is evidence, by the defendant's own statement, which the Court can choose how much weight to give that, but it is still evidence. And that evidence is that Mr. Riley immediately, after walking outside of the Capitol building, after having broken in, tells an individual, that's captured on video, everything he did inside. And there is video to at least corroborate some of the locations that he identified.

Mr. Riley describes his own conduct as including

getting into a physical shoving match with officers, getting sprayed with a fire extinguisher and pepper spray. And, in fact, he mentioned -- and this goes to obstruction of justice as well and ties into a little bit the idea of obstructing the witnesses -- he talks about going into rooms when officers or security were trying to remove legislators.

The hearing here that he's charged with obstructing was a hearing with the Electoral College vote to certify the election. It's not a far-off argument to say that the witnesses in those hearings were those legislators, and Mr. Riley is talking about going into rooms and screaming -- I apologize for my language, Your Honor -- but "Fuck you, Nancy Pelosi." And he posts messages on his Facebook that says, "Fuck Mike Pence."

Now, normally that is, of course, First Amendment, he is allowed to post certain things. But when you tie that language into his intent for why he traipsed around the Capitol building, getting into shoving matches with officers, as he describes, and then comes out and tells an interviewer, it was a mostly peaceful, physical takeover of the Capitol -- this is a quote: "We stopped the steal, because they were in there and they weren't going to stop the steal, so we stopped the steal. We took our country back. Fuck you guys."

That, Your Honor, is what sets Mr. Riley apart

from the rest of the individuals that just walked in the Capitol and walked out. It is an obstructive intent, and he executed upon that intent by flying 3,000 miles and breaking into the Capitol building.

And the government submits to Your Honor that the low threshold of serious risk of an obstruction of justice has been met.

THE COURT: All right, Mr. Edwards. Thank you.

MR. LAWLOR: Your Honor, can I respond to that point?

THE COURT: Sure, Mr. Lawlor.

MR. LAWLOR: You know, I hate to sort of splice and dice certain pieces of evidence, particularly when they're the defendant's own statements, but I do think it's noteworthy here that Mr. Riley does come out and he does describe those -- that conduct that the government has just described.

But I do not believe, in fact, I'm affirmatively offering to the Court, that that is not behavior that Mr. Riley participated in. And this may sound ridiculous and, you know, reticent to just make arguments, but I believe wholeheartedly that when Mr. Riley said "we," he wasn't saying "I did this," he meant the protesters en masse.

And so, yeah, that's not something to be cheered,

but I'm affirmatively saying that we believe the evidence here, if there was a camera on Mr. Riley's shoulder that showed exactly what he did, he did not put his hands on anybody, he did not destroy any property inside the Capitol.

In fact, after he says that, he comes out, he's being interviewed right after he's left the Capitol building, he says, you know, we did this and we did that. He also then goes on to say about his exchanges with the police. The police were -- they weren't engaging us physically. Everything was very polite between us and the police. We were having polite exchanges.

So I do believe affirmatively, Your Honor, that the evidence in this case is such that when Mr. Riley entered the building, he did not destroy property, he did not engage in a physical confrontation with any person, and that the words he used were describing the actions en masse of protestors.

And so at the end of day here, Your Honor, to sort of bring this back out to where we are, Mr. Riley is not a flight risk. He's going to appear. He doesn't have anywhere to go. He doesn't have the funds to go anywhere, Your Honor. This is a guy who lives on benefits he receives from the service in the military. He's finally got some subsidized housing, which he's potentially going to lose.

And I don't believe that -- I do agree with you,

of course -- like if he were -- if we're talking about here is someone who obstructed justice while on trial, tried to influence a juror or a witness, that kind of obstruction, of course, that's directly relevant to whether or not he intends to do that in the future.

But here, I don't think there's even evidence that what we -- what Mr. Riley himself did that day was obstructive, and I don't think there's any evidence that he's going to engage in obstructive behavior in the future. And, in fact, of course, with the Bail Reform Act, the Court can ensure -- and the issue is, are there no conditions the Court can set to ensure those things won't happen.

THE COURT: All right. Mr. Lawlor, let's -- we're not quite there yet, if we get there.

MR. EDWARDS: Your Honor, if I could just say one last point.

THE COURT: Sure. Go ahead.

MR. EDWARDS: And the only thing I wanted to respond to was the idea that there was no evidence that this, in fact, was obstructive.

The Electoral College certification process halted, the legislators were escorted rapidly out of their hearing.

This is not a trespass case. The Electoral College certification occurred later in the evening, and we

can talk about why or how -- what efforts went into doing that.

But the official proceeding was halted. That is part and parcel with the obstruction charge that he is facing. And it's the government's position here that when you combine his intent and his professed actions and the evidence showing that he was, in fact, there and inside and the success of his mission to stop the steal, that is the evidence that shows that this was a successful obstructive effort as recently as last month, and so that amounts to a serious risk of an obstruction of justice.

I understand defense counsel's point about witnesses and evidence. I just would like to point out again for Your Honor that it is a disjunctive section of the statute, and so obstruction of justice must mean something more than just tampering with evidence or witnesses.

THE COURT: Okay.

So I think this is, in some respects, a closer call than, perhaps, I had thought it would be when I came into this hearing, and, you know, Mr. Edwards has sort of provided some food for thought.

Let me just ask either side: Are you aware of any case law that would sort of expound on either of the (f)(2)(A) or (B) provisions, in particular, the (f)(2)(B) provision in terms of what that means and how it relates to

other aspects of the Bail Reform Act?

MR. EDWARDS: Your Honor, the government scoured case law -- and I apologize, I just want to note Mr. Riley is raising his hand. I don't know if the Court wants to --

MR. LAWLOR: If I could.

Mr. Riley, we see that you have your hand up. I'm going to ask the Court momentarily to permit you and I to break out and consult.

Okay. Thank you, sir.

THE COURT: All right, Mr. Edwards.

MR. EDWARDS: In terms of case law, Your Honor, the government couldn't find anything on point, but that's not much surprising, right? This is an unprecedented obstructive act, as I mentioned, possibly one of the largest in American history.

Now, that doesn't mean that we can't find analogous conduct. A lot of the case law revolves around the obstruction of witnesses or the obstruction of evidence; for example, like Mr. Caldwell that you mentioned, concealing evidence for certain cyber cases, where, you know, defendants would either intimidate witnesses by doxing them or providing their home address and names, cases like that.

You know, unfortunately, there wasn't as much case law on this first element of 3142(f)(2)(B), which is that

obstruction of justice.

THE COURT: Okay.

All right. Mr. Lawlor, you want to take a few minutes, Mr. Brennan, you all want to take a couple minutes and be put in a breakout room to talk to your client?

MR. LAWLOR: If you don't mind, that would be terrific.

THE COURT: No, I don't mind. Just take a couple seconds to meet.

MR. LAWLOR: Thank you.

(Recess from 2:40 p.m. to 2:43 p.m.)

THE COURT: Okay. Do we have everybody back? Mr. Edwards, I see you back.

Mr. Lawlor, there you are. You've changed. You were in my lower left corner. Now you're up in my upper right corner.

MR. LAWLOR: Mass confusion.

THE COURT: I think you're the one who's the risk of flight.

MR. LAWLOR: Guilty.

MR. BRENNAN: I would agree with that, Your Honor, by the way.

THE COURT: All right.

Did you want to add anything, Mr. Lawlor?

MR. LAWLOR: Yes.

So, Your Honor, the 2017 -- I just talked to Mr. Riley. And Mr. Zindell was kind enough to email me, because he was Mr. Riley's attorney in the California matter in this case. But the 2017 FTA, he was late for a status conference. He showed up at the next hearing. And that case has been going on for some time. He's made numerous appearances.

And then the 2007 DUI, he was in custody, I think a hearing got canceled.

But, Your Honor, I think if you go back and look at the totality of Mr. Riley's compliance with attending court hearings, you know, yeah, there are a couple of issues, but I believe they have explanations.

And especially this most recent case, he's been having to attend numerous hearings and has done so.

MR. EDWARDS: Your Honor, I apologize.

The only position I was going to add for the government is simply that when the statute focuses on risk of flight (audio disconnected).

THE COURT: Mr. Edwards, you've --

Mr. Edwards, you're going to have to repeat yourself, because you faded in -- you faded out, I should say. So I wasn't able to hear what you were saying and nor was the court reporter.

MR. EDWARDS: I apologize.

Can you hear me now?

THE COURT: Yes.

MR. EDWARDS: Great.

The only last piece, and I apologize for going on here, is just that when the statute focuses on risk of flight, one element of that is simply risk of nonappearance.

So it might not mean someone's running, but it also might mean someone doesn't appear for their hearing in court. And if the defense counsel's position is that one of those failures to appear was that he was detained for a new charge, like we're seeing here, that he's been detained in a new charge pending another case in California, that still constitutes nonappearance.

THE COURT: Okay.

All right. Well, as I was starting to say, I mean, I think the government's given me something to -- some more food for thought here.

But I think at the end of the day, I'm -- notwithstanding, I think, what was a thoughtful and sort of creative argument by the government in terms of how the facts of this case apply to Mr. Riley, you know, I'm still not convinced that the government gets there.

You know, 1342(f)(2)(A) speaks of a person who -- let's start with (f)(2)(B). And, again, the D.C. Circuit in a case called *Singleton*, I don't have the cite in front of

me but you all may be familiar with it, it's pretty easy to find, you know, essentially describes the factors under subsection (f) as pre-conditions to detention, and actually goes on that unless one of the factors under (f) is met, there is no ground for detention, and so -- which is why I started where I did, and the government's identified (f)(2)(A) and (f)(2)(B).

Let me start with (f)(2)(B) and the serious risk that somebody -- that the person will obstruct or attempt to obstruct justice. You know, I think there's something to be said about the government's argument that there is a charge of obstruction here. It's obstruction not in a judicial proceeding but it's an official proceeding, nonetheless.

But that said, I think the charge here is somewhat unique in terms of the nature of the conduct and the object of the conduct. And I think what (f)(2)(B) is really getting at is not just obstructive intent generally, but, rather, the risk that somebody's going to be -- obstruct or attempt to obstruct a judicial proceeding.

You know, "obstruct justice" is a legal sort of term of art, if you will, and it refers to the obstruction of judicial proceedings. And while the statute is written in the disjunctive to refer to witnesses and jurors, obstruction of justice encompasses a broader category to include the destruction of evidence, for example.

And so notwithstanding the fact that Mr. Riley is charged with and a Grand Jury found that he had entered the building, presumably with the intent to obstruct an official proceeding, it's not clear to me that that evidence by itself raises a serious risk that he's going to pose a risk, serious risk, of obstructing these proceedings or any other proceedings.

There's simply not the kind of evidence that we had, for example, in the case I was just mentioning involving another Capitol Hill defendant, Mr. Caldwell, who the government had presented evidence of destroying social-media posts, assisting others in evading police, directing others in terms of how to stash evidence. But there's just nothing like that here with Mr. Riley. And if anything, Mr. Riley seems to have simply just stayed put following the Capitol incursion and gone home, and, if anything, continued to express his opinions and his viewpoints in a public manner.

Insofar as the serious risks that he will flee, you know, again, I take the government for what it's saying in terms of Mr. Riley being on release status, and yet he came to the District of Columbia during a release status, and at least as has been alleged to have committed further offenses.

On the other hand, I take the word "will flee" in

that to mean "flight," that is, an actual effort and likelihood that someone will attempt to evade law enforcement and most concretely appear in court and not abide by the Court's orders.

And, you know, Mr. Riley, after he flew to Washington, flew back home or went back home, he traveled back home, I don't know if he flew or went through some other means. He was in his apartment when he was arrested. You know, he certainly -- there's no indicia here of -- that he has the means not to appear or avoid his court obligations.

Certainly, cases in the Circuit, although they're oftentimes reviewing the risk of flight as a preponderance-of-the-evidence issue, but, nevertheless, I think those cases are informative.

And those cases in which the Circuit has either found -- or where the Circuit has found somebody to be a risk of flight to warrant detention, you know, usually involves somebody who has foreign ties, has resources, has expressed some intent to flee. There's just none of that here.

Mr. Riley is living on -- off of VA benefits. According to his counsel, he has no passport. He's never traveled internationally.

You know, to the extent that he has not appeared

for court, and there's been some discussion about that, but none of it seems to have translated into an actual conviction, which suggests to me that there are some mitigating circumstances surrounding those failures to appear, at a minimum, I would put it this way: That the government has not convinced me and met its burden that these episodes of failing to appear really rise to the level that Mr. Riley's a serious risk that he will flee.

So ultimately, I find here that the government has not met its burden on (f)(2)(A) and (B), and so there is no basis to hold Mr. Riley under (f) -- excuse me, under 1342(g), and so I really don't get to the question of dangerousness in this case.

So let's, then, turn to conditions of release. And if not detention, Mr. Edwards, what is the government asking for in terms of conditions of release?

MR. EDWARDS: Yes, Your Honor.

First, the government would request that there be a stay-away from the District of Columbia. I understand other jurisdictions have kind of molded that in different ways. That might mean he just stays in the Eastern District of California and only appear in the District of Columbia if it's pre-approved, you know, court appearances or meetings with counsel. And I'm happy to kind of be flexible there, in our request at least.

But that's the most important stay-away, other than the standard conditions of release.

THE COURT: Okay.

So that's the extent of what the government is asking for and nothing further?

MR. EDWARDS: Your Honor, the Court's indulgence, if I could just ask for one second just to double-check that. I apologize.

THE COURT: No. It's okay.

MR. EDWARDS: I'm glad I asked. I knew I wrote down a few.

And these are a little more standard: Calling Pretrial Services once a week. Advising Pretrial Services of any travel within the U.S. outside of the Eastern District of California. No travel outside the continental United States without court approval. And just simply participating in all future proceedings as directed.

THE COURT: Okay.

All right. Mr. Lawlor or Mr. Brennan, any thoughts on that request and those requests? Any objections?

MR. LAWLOR: No. Those are all acceptable, Your Honor.

I would ask for one more, which would be, as directed by Pretrial, that Mr. Riley participate in any drug

or alcohol testing or education that they deem advisable.

THE COURT: Okay.

So let me just ask Ms. Schuck how we are going to do this as a procedural matter? How are we to advise Mr. Riley of what his conditions will be? Who will be doing the supervision? Should he be calling D.C.? Should he be calling a Probation Office in the Eastern District of California? How would this work as a practical matter?

PRETRIAL SERVICES OFFICER: Good afternoon, Your Honor. Christine Schuck, Pretrial Services.

Since the government and the Court's only requesting that he call in to Pretrial Services by a telephone, he will be supervised here locally by the Washington, D.C. office.

Pretrial Services will be doing the release order right now. I will send it to your Deputy Courtroom Clerk. He will then provide it to chambers for your review and signature and then it can be provided to counsel to provide to the defendant.

Pretrial Services would also ask that he seek mental health treatment and that he sign all required mental health releases of information that we need to be able to report compliance information to the Court.

THE COURT: Okay.

And if I were to add, as, I'll just call them

special conditions, drug treatment and testing as recommended by Pretrial, mental health treatment as recommended.

PRETRIAL SERVICES OFFICER: If Your Honor is requesting drug testing, then we're going to have to request courtesy supervision. So we will need time to request that from the Eastern District of California.

MR. LAWLOR: Your Honor, I'm actually not asking for testing.

I just thought maybe some sort of treatment -- if advised -- and it's not a drug issue even. I think maybe, as Your Honor and I have discussed many times in other cases, sometimes when someone comes into the criminal justice system, some of the resources of the Court can help them with, perhaps, ancillary issues. So I just wonder if some not necessarily drug testing, but, perhaps, of some alcohol or drug treatment might be --

THE COURT: So here's the thing, Mr. Lawlor. I'm not -- you know, I'm no expert in this area, but it seems to me that you really ought not to be doing certainly the treatment without the testing.

And if he's going to be released on -- be on release before me, if there's a concern at all about drug use --

MR. LAWLOR: It's not drug use.

Actually, Your Honor, could you hold off on this. Could I talk to Ms. Schuck and Ms. Riley and then make a request in writing?

PRETRIAL SERVICES OFFICER: Well, conditions need to be set today, Your Honor.

THE COURT: Right.

PRETRIAL SERVICES OFFICER: I mean, we can set the mental health and we can request the courtesy supervision and that way they can coordinate the mental health and the drug treatment.

THE COURT: So, Ms. Schuck, I'm going to ask that you make the request to do courtesy supervision.

You know, I think it makes the most sense to have Mr. Riley actually supervised in California by someone who's closer to him and is better prepared to address his needs and refer him to whatever court resources are available out there.

So I am going to add, as a special condition, drug testing and treatment as recommended by court supervision -- by U.S. Probation, and also mental health treatment as recommended and as needed by U.S. Probation.

I will also include a stay-away from the District of Columbia except for court -- for attending court hearings, although we won't be having any in-person hearings any time soon. And -- but, nevertheless, he has to stay

away from the District of Columbia except for court hearings and any other pre-authorized trips here.

He shall report once a week by telephone with Pretrial Services in the jurisdiction where he's located. And I think that's all everybody has asked for.

Obviously, you know, the other special conditions -- Mr. Riley, if you have any weapons, legal or otherwise, those need to be turned in. You cannot possess any kind of firearm, whether it's licensed to you or not, while you are on Pretrial Release. Is that understood, sir?

THE DEFENDANT: I don't own any, sir.

THE COURT: Okay.

And also, I know you've represented you don't passport, but if you do, that needs turned in as well.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay.

PRETRIAL SERVICES OFFICER: Your Honor, Pretrial would request that instead of being by phone weekly, that he report to the Eastern District of California as directed by them. That gives them the authority to have him report as they see fit.

THE COURT: Okay. Fine.

PRETRIAL SERVICES OFFICER: So either by phone or in person.

THE COURT: That's fine.

I'll leave it to you, Ms. Schuck, to craft the language that gives them the flexibility they think they need, in particular, given the challenges with the pandemic.

You know, no travel outside the Eastern District of California without consent of court.

Mr. Riley, is that something -- do you know, Counsel, whether Mr. Riley will have regular need or desire to travel outside the Eastern District of California?

MR. LAWLOR: Can you say that again?

THE COURT: I was just asking whether -- I'm going to put it in as a condition. If it becomes something we need to deal with it, we'll deal it with.

But right now, stay away from D.C., no travel outside the Eastern District of California absent consent of the Probation Office. No international travel without consent of the Probation Office and consent of the Court.

And then all the other standard conditions, Ms. Schuck, which we'll advise Mr. Riley of once the Pretrial Order is finalized, correct?

PRETRIAL SERVICES OFFICER: We would also ask that he report any contact with law enforcement to his supervision officer as soon as possible, and that includes any traffic stops, questioning, et cetera.

THE COURT: Okay.

So, Mr. Riley, if you have any contact with law

enforcement, you should report that immediately to your supervising officer, okay?

THE DEFENDANT: (Thumbs up.)

THE COURT: All right.

Anything else, Ms. Schuck, that we ought to add to the conditions of release?

PRETRIAL SERVICES OFFICER: No, Your Honor.

Your Honor included the no-firearms condition, if I heard you correctly?

THE COURT: Yes. No firearms, legal or otherwise.

PRETRIAL SERVICES OFFICER: Thank you, Your Honor.

THE COURT: Okay.

All right. So, Mr. Riley, you know, you will be released in short order, but I will just remind you that you have conditions of release, and if you fail to abide by those conditions of release, you know, you could be right back in front of me, and the question is going to be whether I'm going to hold you until trial. Is that understood, sir?

THE DEFENDANT: (Thumbs up.)

THE COURT: All right.

So it's important to be on your best behavior while this case is pending, and I know your lawyers will advise you of that repeatedly.

All right. So let's talk about next steps in the case.

Mr. Edwards, Mr. Lawlor, have you all talked about a next date and next steps in terms of production of discovery and the like?

MR. LAWLOR: We have not, Your Honor, so I'm going defer to Mr. Edwards here a little bit.

They've given us some discovery, so they might be in a better position to know when they're going to be able to finalize that, and we could do a status sort of in conjunction with that date.

MR. EDWARDS: Yes, Your Honor.

The government would ask that potentially, especially given Mr. Riley's release now, that the Court -- if the Court is amenable, we could ask for a day in 45 or 60 days. In that time, the government can continue to work on getting discovery produced to defense counsel. And it would just be the government's request that the Court find that the interests of justice outweigh the interests of the public and the defendant for speedy trial --

THE COURT: Okay.

MR. EDWARDS: -- to toll that date.

THE COURT: So today is February 24th.

How about let's look at mid February or actually mid -- I don't know why I said February. Mid April. How about the third week in April? Since Mr. Riley is on the West Coast, how about 1:00 p.m. on April 21st?

MR. EDWARDS: That works for the government, Your Honor.

MR. LAWLOR: Likewise, Your Honor.

THE COURT: Okay.

And, Mr. Lawlor, does your client, I don't know whether you've talked to him about this, but is he aware of his right to a speedy trial and is he agreeable to excluding time under the Speedy Trial Act?

MR. LAWLOR: He is, Your Honor, if I could just advise him.

Mr. Riley, you have a right to go to trial with, certain exceptions, to prepare to go to trial within either 70 or 90 days.

We don't have all the discovery yet. I think it's advisable so that you, Mr. Brennan, and I can talk and prepare the case and review the discovery, that we agree to toll the speedy trial clock in this case.

Is that acceptable to you?

Mr. Riley, did you hear me?

THE DEFENDANT: I said "yes, sir."

MR. LAWLOR: Oh, okay. I'm sorry.

Yes, Your Honor.

And, Your Honor, actually on that point, Mr. Brennan and I are CJA-appointed here. I think we're going to need frequent travel to the Lake Tahoe region to

meet with Mr. Riley and prepare a vigorous defense.

THE COURT: Let me tell you right now, I won't approve that unless we have --

MR. LAWLOR: Your Honor, are you going to honor this request?

THE COURT: Unless we're all going to convene there --

MR. LAWLOR: I'm in.

THE COURT: -- I may have to consider a change-of-venue motion.

Look, Mr. Riley, let me just make sure you understand what you and your lawyer have just discussed.

There is something called the Speedy Trial Act. That piece of legislation ensures that you have a right to a trial within 70 days of your first appearing in court.

Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: And in terms of how we go about calculating that time, what your lawyer and I have just discussed is that we would exclude the time between tomorrow and the next time you're in court, which is April 21st.

Do you understand that, Mr. Riley?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay.

And are you prepared to exclude the time between

now and your next court date on April 21st in calculating your speedy trial time, sir?

THE DEFENDANT: I am, Your Honor.

THE COURT: Okay.

So I do find that it is in the interests of justice, and that those interests of justice outweigh the interests of the defendant and the public in a speedy trial; and, therefore, I'll order the time be excluded under the Speedy Trial Act from tomorrow up through April the 21st.

I find that exclusion is warranted because the government has -- to afford the government time to produce discovery and for the defense to review that discovery and consult with their client and prepare a defense.

In addition, the current standing order excludes time through March the 15th under the Speedy Trial Act, and for the reasons stated in that standing order, I'll exclude time at least up through March 15th as well.

So with that, I think the only final housekeeping matter is, I think this is a first appearance in front of me, so I want to put on the record, Mr. Edwards, I want to remind you of the government's obligations under *Brady versus Maryland* to disclose any favorable information to the defense and that you're aware of that obligation and will carry it out and that you're aware of the potential consequences of failing to satisfy that obligation?

MR. EDWARDS: Yes, Your Honor. Thank you.

THE COURT: All right. Thank you, Mr. Edwards.

All right. With that, folks, is there anything else we need to take up this afternoon?

MR. EDWARDS: Not for the government.

MR. LAWLOR: No, Your Honor. Thank you for your time today.

THE COURT: All right. Thank you, everyone.

(Proceedings concluded at 3:08 p.m.)

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Please note: This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

Date:__March 18, 2021_____ /S/__William P. Zaremba_____

William P. Zaremba, RMR, CRR