

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

RICHARD BARNETT,

Defendant.

Case No. 21-cr-0038 (CRC)

**DEFENDANT RICHARD BARNETT'S MOTION FOR MODIFICATION OF BAIL TO
PLACE DEFENDANT ON CONDITIONAL RELEASE PENDING TRIAL**

Defendant, Richard Barnett, by and through undersigned counsel, respectfully moves this Court, pursuant to the Bail Reform Act of 1984, 18 U.S.C. 3141 et seq., to release the defendant on personal recognizance. Alternatively, if the Court is not amenable to release defendant on personal recognizance, defendant moves this court to release defendant into the third-party custody of his wife, and commit him to the supervision of a High Intensity Supervision Program (HISP) with GPS monitoring by local Pretrial Services. The defendant states the following in support of this request.

I. PREAMBLE

America is divided. Her citizenry is more distrustful of government than ever before. Brother has turned against brother. Fathers have turned against sons. Sisters who once embraced, now see each other as mortal enemies. Pleas for equal treatment under the law are met with accusations of false equivalence. Citizens ask for tolerance with one breath and move to smite those with opposing viewpoints the very next breath. Disinformation abounds. Peace is no longer given a chance. Common ground is out of sight. Our Constitution -an inspired document, drafted during times like these, foreseeing times like these- can only save us.

Judges- the public face of justice, must work harder than ever to ensure that the principles of judicial integrity and objectivity consistently overpower the human inclination toward activism in their courts. When decisions rendered contravene statutory law, legislative intent, and/or controlling precedent- reviewing courts are uniquely positioned to right the wrong. By doing so, they ensure the integrity of our system of justice and enforceability of our Constitutionally protected rights.

The presumption against pretrial detention is very strong. The law is clear: only in a very limited set of circumstances is pretrial detention acceptable. The courts, therefore, must act swiftly and decisively to overturn pretrial detention orders granted in circumstances, such as here, where the government has objectively failed to overcome the Bail Reform Act's presumption against pretrial detention as a matter of law.

II. MOTION FOR BAIL MODIFICATION

Mr. Barnett now moves to revoke the January 29, 2021, ORDER OF DETENTION PENDING TRIAL (Doc. # 16), for the following reasons:

- I. This Court's finding that no Condition or Combination of Conditions will Reasonably Assure Mr. Barnett's Required Appearance, the Safety of any Other Person and the Community was incorrectly decided because:
 - a. Dangerousness was Not Proven by Clear and Convincing Evidence Under the Meaning of the Bail Reform Act and Contravenes Precedent;
 - b. The Conclusion that Richard Barnett possessed a Dangerous Weapon is Unsupported by the Facts of This Case;
 - c. The Offense Charged Does Not Qualify for Detention and is therefore Illegal;
 - d. The Government's Inability to Show of an Ongoing or Future Threat Diminishes its Ability to Prove Dangerousness Under the Meaning of the Bail Reform Act;
 - e. The Government's Did Not Prove Risk of Flight by a Preponderance of the Evidence;

- f. Detention is Illegal because the Government has Not Proven Risk of Flight;
 - g. Richard Barnett Offered Sufficient Evidence to Rebut the Bail Reform Act's Presumption Against Pretrial Detention;
- II. The Court's Finding that there is No Combination of Conditions as to the Proving of Risk of Flight by a Preponderance was Based on Facts Procured in Violation of the Fourth (4th), Fifth (5th), and Sixth (6th) Amendments of the United States Constitution;
 - III. The Fourth Amendment's Reasonable Expectation of Privacy Against Warrantless Searches Contravenes the Notion that a Negative Inference Can be Inferred from a Private Citizen's Refusal to Be Electronically Tracked by the Government;
 - IV. No Negative Inference Should be Inferred from Wearing a Protective Mask;
 - V. Government Agent's Violated Richard Barnett's Fifth Amendment Rights Against Self Incrimination and Sixth Amendment Right to Counsel.

Each of these points are addressed as separate arguments in the Law and Argument section.

See Section VI, *infra*.

III. INTRODUCTION

1. The events that took place on January 6, 2021, did not occur in a vacuum. On May 25, 2020, the world watched as George Floyd was murdered by the government on national television. Immediately thereafter, protest broke out across the United States. People simply had enough, and for a moment, the entire world agreed that Black Lives Mattered more than ever before. The reaction to Mr. Floyd's death was almost universal- abject horror combined with the reality that change needed to happen- now. Scores of people from all walks of life cried, sang, prayed, hugged, screamed, and mourned together. As powerful speeches, inspirational protests, and meaningful dialogue began to take center stage, people on both sides began to listen in ways they never had before. Out of tragedy, something very beautiful began to take place. Change was coming- and it would happen through us.

2. One side complained that they have been abused, under-hired, over-policed, unfairly targeted, mass incarcerated, and murdered by the government, for hundreds of years,

simply for the color of their skin. Explaining further that their reality of daily existence involves having to perpetually rebut presumptions of suspicion, criminality, poverty, drug use, and old-fashioned racism. And despite strict adherence to the American's Dream's Rules for Success, elite colleges, medical schools, and financial institutions, do much to exclude them, little to understand them, and just about everything to keep them out. Change had been promised by many, delivered by none, and it the time had come to make it happen.

3. The other side began to listen, consider, empathize, process, and understand, many for the first time- the unfairness of it all. And while in no way equivocating their experience to the horrors of racism, they too began to complain how they have been ridiculed and exploited for generations by America's ruling class. And that as members of the non-college educated working poor, they struggle to pay bills, have no savings, are crippled with debt, and are increasingly silenced. Explaining further, how they cannot come to understand how they have been scapegoated for the racist actions of the smug, elitist, condescending members of America's ruling class that despises them, and has made them the constant butt of jokes about needing to shop at Walmart because they are poor- and how they carry a great deal of shame because of it. Both sides realized, for a moment, that they were not enemies.

4. Political protests exploded across the United States at a level not seen in a generation. The previously unimaginable ability to plan, gather, and deploy multitudes of protestors to a specific location in real time was executed flawlessly, graduating from grassroots pop ups with limited, yet understandable displays of violent political protests- to highly organized, para-military-styled assaults on government institutions. As the weeks progressed, the influx of militant anti-government groups, whose sole purpose was to destabilize peaceful protest and incite violence against government, became an obvious reality. The vandalization of public and private

buildings, firebombing of police stations and government buildings, and creation of militarized autonomous zones in cities, are but a few of the darker manifestations of political protest in 2020.

5. Not lost on us, is the recognition that the majority of people protesting at these events were good, well-intentioned-persons, who desired to exercise their rights to peacefully yet vigorously protest the government in the strongest terms possible. Equally not lost on us is the government's proclivity to grab power in the name of combating extremism and violence, at the expense of our constitutionally protected rights, such as when the government gave itself the ability to conduct secret searches of private property without having to give notice to the owner under Section 213 of The Patriot Act.¹ The National Security Agency's 2001-2007 mass warrantless surveillance of United States Citizens, under the Foreign Intelligence Surveillance Act of 1978.² And the creation of the PRISM surveillance program, under which Google and other internet technology companies turn over your communications to the NSA under Section 702 of the FISA Amendments Act of 2008.³ All in the name of combating extremism without a warrant issued upon probable cause.

6. In response to this concerning expansion of the scope of government power, and because the scope of protected speech and protected groups is growing at rapid pace, federal courts have consistently denied government motions for pretrial detention in situations where the government has failed to overcome the presumption against pretrial detention. And in cases involving political protest, even where people have been arrested for violent crimes, federal courts

¹ See ACLU, *Surveillance Under the USA/Patriot Act*, available at, <https://www.aclu.org/other/surveillance-under-usapatriot-act> (visited last on April 1, 2021).

² See JAMES RISEN AND ERIC LICHTBLAU, *Bush Lets U.S. Spy on Callers Without Courts*, December 16, 2005, available at, <https://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html> (visited last on March 29, 2021).

³ See Section 702 of Public Law 110-261 known as the FISA Amendments Act of 2008.

have been even more respectful of constitutional safeguards in their denial of motions for pretrial detention.

7. For example, Elizabeth Ann Duke, member of the radical and extremely violent M19 terrorist group, materially participated in the bombing of the United States Capitol's Senate Chamber on November 7, 1983. Despite being charged with multiple crimes related to domestic terrorism, including the possession of stolen explosives, possession of instruments of forgery, and falsified identification documents - *Elizabeth Duke was released on bail. (See United States v. Elizabeth Duke, Case No. 2:58-cr-00222 (MSG); Criminal Docket: ECF Document No. 69, (filed June 20, 1985) attached hereto Exhibit A (1)).* A review of the Criminal Docket sheet for Elizabeth Duke highlights that the Court ordered the following: "Bail Hearing re: Courts Bench Opinion, Court grants bail but under specific conditions, filed." (See attached hereto **Exhibit A (1)** at p. 2 of 7, Criminal Docket: ECF Document No. 69, at **Entry 14**, dated Jul 24, 1985 (filed June 20, 1985) attached hereto **Exhibit A (1)**). Those specific conditions encompassed "Bond in the sum of \$300,000 - surety Real Estate with attached agreement of bail, filed." (See **Exhibit A (1)** at p. 3 of 7 (filed July 31, 1985). Elizabeth Duke's case shows how powerful the presumption against pretrial detention applies even to a defendant, accused of bombing the Capitol Building.

8. Another example of the strength of the presumption against pretrial detention is the *Robinson* case. (See *United States v. Robinson*, Order Setting Conditions of Release, Case #: 0-20-cr-00181 (PJS) (BRT), ECF Doc.#: 12 attached hereto as **Exhibit B**). On May 28, 2020, the U.S District of Minnesota granted pretrial release to Dylan Shakespeare Robinson despite his material participation in a nationally televised coordinated attack on Minnesota's 3rd Precinct, where after breaching the doors, the interior was set ablaze with officers still inside. (See *United States v.*

Robinson, Order Setting Conditions of Release, Case #: 0-20-cr-00181 (PJS) (BRT), ECF Doc.#: 12 attached hereto as **Exhibit B**).

9. Further demonstrating the strength of the presumption of pretrial release is the Second Circuit affirming Defendant's pretrial bond on the *Mattis* Case. *See U.S. v. Mattis*, 963 F.3d 285 (2d Cir. 2020). On May 30, 2020, Utooj Rahman and Colinford Mattis firebombed an NYPD vehicle parked on a Brooklyn, New York street. *Id.* Defendants Rahman and Mattis were subsequently charged with several violent felonies and faced over forty years in jail if convicted. Even so, the Eastern District of New York granted bond, and the Second Circuit Court of Appeals affirmed. (*See United States v. Mattis*, 963 F.3d 285 (2d Cir. 2020) attached hereto as **Exhibit C**).⁴

10. Overall, the *Duke-Robinson-Mattis*, line of cases, in conjunction with the recent March 26, 2021, D.C. Circuit's decision in *United States v. Munchel*, No. 1:21-cr-0018-1, underscore the continued enforceability of the Bail Reform Act's presumption against pretrial detention. *Id.*; *United States v. Munchel*, No. 1:21-cr-0018-1, 1:21-cr-0018-2, consolidated with Case #: 21-3011 at p. 10 (D.C. Cir., March 26, 2021) attached hereto as **Exhibit D**; *See also* Section V, Legal Standard, *infra*. Especially, during circumstances where in can be reasonably inferred that a person's actions arise from an ardent desire to openly criticize the actions of government.

IV. STATEMENT OF FACTS

11. Richard Barnett is a sixty-year-old United States Citizen with no criminal record. Mr. Barnett has been in a committed relationship with his life partner Tammy Newburn for over twenty years. Richard lives with wife Tammy and daughter Ashlee, whom both depend on him

⁴ The *Mattis* Court synopsis is as follows: "The United States District Court for the Eastern District of New York, Steven M. Gold, United States Magistrate Judge, released defendants on bail. The District Court, Margo K. Brodie, J., affirmed. United States appealed. **Holding:** The Court of Appeals, Hall, Circuit Judge, held that releasing defendants on \$250,000 bond was not clearly erroneous. Affirmed." *See* attached hereto as **Exhibit C**, *United States v. Mattis*, 963 F.3d 285 (2d Cir. 2020).

for financial support. Richard is a gainfully employed retired fire fighter who is beloved in his community. He spent the first part of his life in Memphis Tennessee and has been living in Western Arkansas for the past twenty-five-years. Richard's ties to his community are strong. He has personal relationships with members of the local business community, law enforcement, friends, and family. He has no warrant history and has never forged or altered his identification. He agreed to surrender his passport to probation after being granted pretrial release by the Western District of Arkansas. Nothing about his past or current history supports the conclusion that he is dangerous to anyone, a risk of flight, and/or incapable of complying with court-imposed restrictions designed to assure his return to court and protect the community from future harm.

12. There are three groups of people that entered and left the Capitol on January 6, 2021. Group One is comprised of the people who showed up to exercise their constitutionally protected rights to participate in political protest and went home absent any controversy. Group Two is comprised of the people who showed up to incite insurrection and thwart the confirmation process, and did so by materially participating in an attack on the Capitol by committing acts of violence to property and personnel. Group Three is comprised of the people who showed up to participate in political protest, yet ended up inside the Capitol despite having no premeditated intent to do so – nor did they commit acts of violence to property or persons.

13. Richard Barnett is a member of Group Three, where he freely admits that, like many other Americans, he believes the November 2020 Presidential Election was incorrectly decided. It is undisputed that he set out for Washington, D.C. to participate in political protest, in solidarity with other people who share his views, absent knowledge or suspicion of planned violence, or personal intent to be violent in any way. Mr. Barnett has never run from the fact that he ended up inside the Capitol. He has never denied the fact that he sat in Speaker Pelosi's chair, put his feet

up on the Speaker's desk, and smiled for the reporter's camera. Nor is he denying the fact that he removed an envelope from Speaker Pelosi's office. Richard Barnett freely admits that these things happened, and argues that the law mandates his release from pretrial detention, nonetheless. At no time did he assault anyone, make threats to anyone, or destroy any property.

14. Upon information and belief Richard walked over to the Capitol at some point after President Trump's speech along with the other protesters and stood. The Capitol doors opened, throngs of people pushed, and Richard, who was approximately thirty yards from the door, was swept inside with a mass wave of people. He could not turn against the crowd, and after a certain point, he witnessed a woman getting trampled. He helped such woman get up, and felt the force of the crowd, knocking him to the ground. It was impossible to go against the tidal wave of people, all moving all in the same direction. Soon thereafter, looking for a restroom, he wandered in Speaker Pelosi's office, along with an Associated Press reporter and several other reporters. He did not break the door to get into the room. It was open and there was no sign on the door. The reporter invited Richard to take a picture at the Speaker's desk, and told Richard "act natural."⁵ Richard was asked to leave at some point, and he did not object. He did not destroy any property;

⁵ At this juncture, the defense will set forth these facts as only for the purposes of assuming *arguendo* that all the statements made during such custodial interrogation are true. The main reason such statements are addressed herein, is that these statements have now been the subject of two separate bond proceedings. Now that these statements have been, *inter alia*, reasons denying his pretrial bond, the defense is dutybound to address what was actually said during this custodial interrogation, and the difference is this time, we will provide the actual context of such statement. (wherein Richard first mentions, upon information and belief, that he was in Pelosi's office with a Reporter)); (See, eg, Custodial Interrogation Video at 1 hour, 10 minutes, 45 seconds expressing:

Question [From - Reporter]: Can I take your picture?

Answer: Yes

Q: "Act Natural"

... [Richard, thereafter stated] "he asked me for my name and I gave it to him.").

Richard Barnett hereby reserves his rights to challenge the admissibility of such statements given while he was subject to a custodial interrogation.

indeed, he told others NOT to do so.⁶ Before leaving, he realized that he was bleeding, and had bled on an envelope on Speaker Pelosi's desk. Upon further information and belief, he then removed the envelope for sanitary reasons, left twenty-seven-cents as compensation, and in an act of protest, wrote a note that said "WE WILL NOT BACK DOWN." (See Government's Exhibit 4, attached hereto as **Exhibit G**).

15. As set forth during Richard's two prior bond hearings, Richard contacted his local Sherriff shortly after discovering that his picture had made international headlines. Richard arrived home during the late afternoon of January 7, 2021, and immediately set an appointment to surrender the following morning at 10:00 A.M. The next morning, without any controversy, Richard surrendered himself. Immediately upon being subject to a custodial interrogation, Richard invoked his Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel, but was interrogated for almost two hours by two government agents, nonetheless.⁷

16. Richard explained to agents that between the time of his leaving the Capitol and arriving back to home,⁸ a series of threats had already been made against his family, including specific threats to his wife, Tammy Newburn. Richard stated to the FBI that he turned off location monitoring services on his phone and drove home concerned for his family. Richard understood that he would be surrendering the next day, and out of an abundance of caution, entrusted his firearms to a responsible friend, instructed his family to pack and be prepared to evacuate if the threats against them elevated to the point of impending danger, and informed law enforcement who were already aware of the developing situation.⁹

⁶ See Custodial Interrogation Video at 106:00 (involving Richard telling people "Don't break the furniture, we are mad at people not history.")

⁷ See Custodial Interrogation Video (involving Richard invoking, on at least three separate times, his Fifth and Sixth Amendment rights to counsel and against self-incrimination).

⁸ The drive from Washington, D.C., to Richard's home in Arkansas is over sixteen hours long.

⁹ See Custodial Interrogation Video at 22:00 (involving Richard's informing agents of threats corresponding reasons for packing.)

17. Respectfully, these are the actions of a rationale, responsible, husband and father, taking anticipatory measures to protect his family from harm, under incredible pressure, during a once in a lifetime circumstance. The government, however, has spun these facts out-of-control, and completely out-of-context, all in a continued effort to cast Richard in the worst possible light. Unquestionably, the government will do the same to this Court in its opposition. In the past, the Government has wanted the Courts to believe that Richard Barnett is a radical-domestic-terrorist who actively evaded capture, when he in fact he negotiated his surrender before a warrant was ever issued for his arrest.

18. The government is betting that a combination of politics, disdain for Trump supporters, and fears stemming from what took place at the Capitol, will provoke a reaction so strong that it overrides constitutional rules and simple logic. And to achieve its end, the government will stop at nothing to perfect its cocktail of mischaracterization of truth and invention of fact, in an effort to continue Richard Barnett's unjustifiable and illegal pretrial detention. This Court must resist the temptation to consume its cocktail, because it is nothing more than a covert attempt to violate constitutional protections by overzealous prosecutors.

19. The law mandates Richard Barnett's release, because the government has not proven by a preponderance of the evidence that Richard Barnett poses a risk of flight, and the government has not proven by clear and convincing evidence that Mr. Barnett poses a danger to the community. Moreover, the offenses charged do not qualify for detention. Without question, a combination of conditions, including GPS monitoring, will reasonably ensure his appearance in court, and the safety of the community. Because the events that took place at the Capitol on January 6, 2021, are unique to that day and not indicative of a future event, Richard poses no ongoing fear or threat.

20. The Western District of Arkansas's decision to grant Richard release was properly decided and requires deference under the meaning of the Federal Magistrates Act. This Court's original decision to grant the government's motion for pretrial detention, is out of line with relevant legal precedent, and is violative of the United States Constitution.

V. PROCEDURAL HISTORY

21. On January 15, 2021, after hours of testimony, and the calling of multiple witnesses, Honorable Erin L. Wiedemann, the Chief Magistrate Judge of the United States District Court Western District of Arkansas (W.D. Ark.), deemed Richard Barnett eligible for pretrial release under a combination of the following conditions:

- a. Mr. Barnett was released on a \$5,000.00 (Five Thousand Dollar) unsecured bond into the custody of Tammy Newburn, a third-party custodian;
- b. Mr. Barnett needed to submit to the supervision of pretrial services;
- c. Mr. Barnett would be subject to home incarceration; and
- d. Mr. Barnett would be subject to location monitoring services.

22. This combination of conditions that the United States District Court Western District of Arkansas imposed on Mr. Barnett was deemed sufficiently appropriate to ensure the safety of community members while simultaneously assuring Barnett's return to court, in conformance with 18 U.S.C. § 3142 and 28 U.S.C. § 631-39, under which magistrate judges are "authorized by law" with "the power to... issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial . . .". § 636(2)(2).

23. The W.D. Ark. Court issued an order on January 15, 2021 expressing the following:

At the conclusion of the detention hearing on this date, the Court determined that the Defendant *should be released on bond*. The Government *moved for a three-day stay of the release order* to allow it file an appeal under 18 U.S.C. § 3145(a). **The motion is DENIED**, as the Court believes that the very restrictive conditions of release imposed, including home incarceration and location

monitoring, will ensure that the Defendant will not pose a flight risk or danger pending any appeal, and that the Defendant can easily be taken back into custody should the release order be overturned.

....

IT IS SO ORDERED this 15th day of January, 2021.

(See Criminal Complaint, Government's Statement of Facts and Jan. 15, 2021 Order, ECF Doc. 17, 21-cr-0038 (CRC), attached hereto as **Exhibit F**).

24. However, hours later, on the evening of January 15, 2021, the government filed a Motion for Emergency Stay and Review of release order (ECF Docket Entry No. 5). The government argued that Richard Barnett was subject to detention pursuant to 18 U.S.C. § 3142(f)(1)(e) because he was charged with a felony involving a dangerous weapon. Specifically, that he entered and occupied an office inside the United States Capitol restricted for use by a congresswoman while carrying (but not using or brandishing) an inoperable stun gun/combo collapsible cane clipped to his belt.

25. Then on January 28, 2021, Chief Judge Beryl A. Howell of this Court conducted a *de novo* review of the W.D Ark.'s decision to deny the government's application for pretrial detention and applied the following four factors set out in 18 USC § 3142(g), to the facts of Barnett's case, and made the following corresponding conclusions:

- (a) The nature and circumstances of the offense charged;
- (b) The weight of the evidence against the Richard Barnett;
- (c) The history and characteristics of Mr. Barnett; and
- (d) The nature and seriousness of the danger to any person or the community that would be posed by the Barnett's release.

26. Judge Howell then overruled the W.D Ark.'s ruling in its entirety, despite no material change in fact, despite the government's inability to demonstrate risk of flight by a preponderance of the evidence, despite the government's failing to demonstrate dangerousness by clear and convincing evidence, despite the proving up of a detention qualifying offense, and

despite the production of a plethora of evidence clearly demonstrating why he is eligible for pretrial release. Richard Barnett remains illegally detained as of the date of this motion in dangerous prison conditions and without ready access to counsel to assist in his defense.

VI. LEGAL STANDARD REGARDING PRETRIAL DETENTION

27. In a detailed decision issued March 26, 2021, the *Munchel* Court, highlighted how “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Munchel*, No. 1:21-cr-0018-1, 1:21-cr-0018-2, *consolidated with 21-3011* (D.C. Cir., at p. 10 (decided March 26, 2021) attached hereto as **Exhibit D**) (*citing United States v. Salerno*, 481 U.S. 739, 755 (1987)).

28. The Bail Reform Act of 1984 authorizes the detention of defendants awaiting trial on a federal offense only under certain, limited circumstances. 18 U.S.C. § 3142(f). Specifically, the court “shall order” a defendant detained before trial if it “finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” *United States v. Munchel*, No. 1:21-cr-0018-1 (*citing* 18 U.S.C. § 3142(e)); *see also* 18 U.S.C. § 3142(f). “In common parlance, the relevant inquiry is whether the defendant is a ‘flight risk’ or a ‘danger to the community.’ ” *Id.* (*quoting United States v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019)). First, the government may seek a defendant's pre-trial detention if the charged offenses fall into any of five enumerated categories. 18 U.S.C. § 3142(f)(1). Those categories include:

- a. A crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
- b. An offense for which the maximum sentence is life imprisonment or death;

- c. An offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act ... the Controlled Substances Import and Export Act ... or 46 U.S.C. § 705;
- d. Any felony if [the person charged] has been convicted of two or more offenses described in [§§ 3142(f)(1)(A)–(C)], or two or more State or local offenses that would have been offenses described in §§ 3142(f)(1)(A)–(C)] if a circumstance giving rise to federal jurisdiction had existed, or a combination of such offenses; or
- e. Any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device⁴ ... or any other dangerous weapon. (*See United States v. Chansley*, No. 21-CR-3 (RCL), 2021 WL 861079, at (D.D.C. Mar. 8, 2021)).

29. The government may seek detention or the court may *sua sponte* hold a detention hearing to determine whether pre-trial detention is appropriate—if the case involves “a serious risk” that the defendant will flee or “will or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.” 18 U.S.C. § 3142(f)(2); *United States v. Chansley*, No. 21-CR-3 (RCL), 2021 WL 861079, at 5 (D.D.C. Mar. 8, 2021).

30. There are two types of situations in which the Bail Reform Act establishes a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community. 18 U.S.C. § 3142(e). First, a rebuttable presumption arises if the judicial officer finds that (a) the person has been convicted of certain listed federal offenses, including a “crime of violence,” or similar state offenses, (b) that offense was committed while the person was on release pending trial for another offense, and (c) not more than five years has elapsed since the date of conviction of that offense or the release from imprisonment, whichever is later. 18 U.S.C. § 3142(e)(2).

31. Where there is no rebuttable presumption of detention, the court instead must consider the following factors to determine whether there are conditions that would reasonably assure the defendant's appearance and the public's safety:

1. the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of Section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
2. the weight of the evidence against the person;
3. the history and characteristics of the person, such as character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, drug or alcohol abuse, criminal history, and warrant history;
4. whether, at the time of arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, state, or local law; and
5. the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(g)(1) – (4); *See also United States v. Chansley*, No. 21-CR-3 (RCL), 2021.

32. As the *Munchel* Court highlighted:

To justify detention on the basis of dangerousness, the government must prove by “clear and convincing evidence” that “no condition or combination of conditions will reasonably assure the safety of any other person and the community.” *Id.* § 3142(f). Thus, a defendant's detention based on dangerousness accords with due process only insofar as the district court determines that the defendant's history, characteristics, and alleged criminal conduct make clear that he or she poses a concrete, prospective threat to public safety.

United States v. Munchel, No. 1:21-cr-0018-1 at p. 11.

33. In citing *Salerno*, the *Munchel* Court explained how:

the Supreme Court rejected a challenge to this preventive detention scheme as repugnant to due process and the presumption of innocence, holding that “[w]hen the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community, we believe that,

consistent with the Due Process Clause, a court may disable the arrestee from executing that threat.

U.S. v. Munchel, No. 1:21-cr-0018-1 at p. 11 (quoting *United States v. Salerno*, 481 U.S. 739, 751 (1987) (emphasis added)).

34. If the Bail Reform Act authorizes pre-trial detention, the judicial officer must hold a hearing to determine whether there are conditions of release that would reasonably assure the appearance of the defendant as required and the safety of any other person and the community. *See* § 3142(f). If the judicial officer finds that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community,” the judicial officer *shall* order the person detained pending trial. § 3142(e)(1). A finding that no condition or combination of conditions would reasonably assure the safety of any other person and the community must be supported by clear and convincing evidence. § 3142(f). And a finding that no conditions would reasonably assure the defendant's appearance as required must be supported by a preponderance of the evidence. *United States v. Xulam*, 84 F.3d 441, 442 (D.C. Cir. 1996).

VII. ARGUMENTS

A. **THE COURT’S FINDING THAT THERE IS NO COMBINATION OF CONDITIONS IS BASED UPON AN INSUFFICIENT EVIDENCE OF DANGEROUSNESS BY CLEAR AND CONVINCING EVIDENCE.**

The Western District of Arkansas’s decision (hereafter referred to as “W.D. Ark.’s decision”) to grant Richard Barnett’s release is objective proof that (1) the government was unable to prove by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community. And additional objective proof of that fact that (2) the government was unable to prove by a preponderance of the evidence that no conditions would reasonably assure the defendant’s appearance.

The Federal Magistrate's Act, 28 U.S.C §631-639 grants Magistrate Judges the power to issue orders of a defendant's release or detention under Title 18, U.S.C § 3142. Section 636(b)(1)(a) of the Federal Magistrate's Act explicitly authorizes a magistrate judge to either grant pretrial release or inflict pretrial detention. As such, the correct standard of review is a clearly erroneous one, which requires a district court judge to consider whether there is (1) evidence to support that finding, and (2) after reviewing the entirety of evidence, is left with the definite and firm conviction that a mistake has been committed. *Matter of the Search of Information Associated with [redacted]@mac.com that is Stored at Premises Controlled by Apple, Inc.* 13 F. Supp. 3d 157, (D.D.C. 2014).

The Chief Magistrate Judge of Arkansas's determination that Richard Barnett is not a flight risk and that he is not dangerous, is, in and of itself, sufficient grounds for release. The determination that a combination of conditions does exist under the meaning of the Bail Reform Act is supported by precedent, reasonable application of case law, and fact- and therefore, negates the notion that a mistake of any kind has been committed, which in turn means the clearly and erroneous standard has not been met.

In its decision to grant the government's motion for pretrial detention, Judge Howell analyzed the W.D. Ark.'s decision under a *de novo* review standard with zero deference to (1) the Chief Magistrate Judge of the Western District of Arkansas's factual findings or determination, and (2) a line of decisions made by the Supreme Court of the United States, District Court of Appeals, Second Circuit Court of Appeals, D.C. District Court, during which defendant's objectively accused of far more dangerous actions, during protests, have consistently granted pretrial release.

Judge Howell justified her decision via an improper amalgamation of (1) unconstitutional burden shifting; (2) criminalization of generic law-abiding conduct; (3) conflation of general events vs specific conduct; (4) improper conversion of unfounded allegations into a criminal history; (5) material and intentional misrepresentation of statements made outside of the presence of counsel (6) meritless “guilt by association” attempts to ascribe Mr. Barnett with extremism; (7) mischaracterization of a walking stick as a dangerous weapon; and (8) conclusions regarding future danger absent the presence of any specific articulatable threat.

In justifying its decision in favor of pretrial detention the Court improperly conflates the general events that took place on January 6, 2021, with personal conduct attributable to Mr. Barnett. For example, the court states:

What happened that day (January 6, 2021) at this U.S. Capitol is criminal activity that is destined to go down in the history books of this country, of hundreds of Americans using force and violence against their own government to disrupt what we have been most proud of: A peaceful and Democratic transition of power...members of Congress were forced to flee... the media was forced to hide... visible reminders of the January 6th riot (abound)... Just yesterday, the Department of Homeland Security issued a National Terrorism Advisory System Bulletin, indicating a heightened risk of violence from ideologically motivated, violent extremists who are emboldened by the January 6th Capitol attack...

The court then goes on to explain how the:

government has presented overwhelming evidence that...Richard Barnett, enthusiastically participated in this act of assaulting the Capitol... The government has presented evidence... of (Barnett) carrying a weapon...on his belt inside the Capitol. He not only entered the Capitol without authority but he strutted into the Office of the Speaker of the U.S. House of Representatives, Nancy Pelosi, sat behind her desk and had pictures of himself, smiling and seemingly enjoying himself.

....

The government described his conduct as brazen. And I would agree that is an accurate description. He felt so entitled, he put his feet on her desk. He felt so entitled, he picked up her mail and walked off with a piece of mail. He felt so entitled that the government has pictures of (him) showing off, holding the mail he took from Nancy Pelosi's office when he reached outside the Capitol... Wow-- brazen, entitled, dangerous...The nature and circumstances of the offense clearly weigh in favor of pretrial detention.¹⁰

Indeed, the events that took place at the U.S. Capitol on January 6, 2021, are historical. But what relevance is there in mentioning that hundreds of Americans descended upon the Capitol using force against their own government, if no specific allegation of violence is attributable to Richard Barnett? **The answer is none.** What weight should be given to members of the media being forced to hide, when it was a member of the Associated Press inside Speaker Pelosi's office with Richard Barnett that invited him to pose and look natural for their now infamous picture? **The answer is none.** What nexus is there between Richard Barnett and the National Terrorism Advisory System Bulletin, indicating a heightened risk of violence from ideologically motivated, violent extremists, when there is no evidence of any kind connecting Barnett to violent extremism? **The answer is none.**

In justifying its decision to overrule the W.D. Ark., Judge Howell concluded that the "government has presented overwhelming evidence that...Richard Barnett, enthusiastically participated in this act of assaulting the Capitol... (he) carried a weapon on his belt inside the Capitol...He not only entered the Capitol without authority but he strutted into the Office of the Speaker of the U.S. House of Representatives, Nancy Pelosi, sat behind her desk and had pictures of himself, smiling and seemingly enjoying himself." See January 28, 2021, Pretrial Detention

¹⁰ See January 28, 2021, Pretrial Detention Hearing Transcript at p. 31-35 attached hereto as **Exhibit H**.

Hearing Transcript attached hereto as **Exhibit H**. The court goes on to describe Barnett's conduct as "brazen" and "entitled," and talks about the fact that Barnett removed a single piece of mail and then actually quotes a defense to the crime to which he has been charged, "I did not steal it. . . I bled on it [and]. . . put a quarter on her desk. . .". *Id.* Assuming arguendo, that the totality of these allegations is true, the D.C. Circuit's decision in *U.S. v. Munchel*, which ruled on facts almost identical to Richard Barnett's, is devastating to any finding that Richard Barnett should be detained pretrial under a finding of dangerousness.

Unlike *Munchel*, Richard Barnett did not wear battle dress uniform, a tactical vest, or go into the Senate Chamber with zip ties; clearly this is a plus one factor in favor of Barnett. Whereas, similar to the facts in *Munchel*, Barnett's (1) history and characteristics, (2) the nature and seriousness or his alleged crimes, and (3) an utter government failure to identify a specific articulatable threat to the community, also compels release and careful consideration. It should be noted, that as stated above, the allegation is that Barnett's alleged weapon was "on his belt while inside the Capitol," which clearly means he did not brandish or use it.

There is no legal or logical authority leading to the facile conclusion that allegedly "strutting" (to describe nefariously walking) into someone else's office with a collapsed walking stick attached to one's belt that was not then capable of being used as a stun gun (due to the absence of batteries) nor was it so used, while someone looking cloaked in entitlement- plus sitting behind someone else's desk, while apparently enjoying oneself, constitute sufficient facts for the proving up dangerousness by clear and convincing evidence under the meaning of the Bail Reform Act.

B. THE COURT’S FINDING THAT THERE IS NO COMBINATION OF CONDITIONS FOR SETTING BAIL CONTRAVENES LEGAL PRECEDENT AS TO THE PROVING OF “DANGEROUSNESS” BY CLEAR AND CONVINCING EVIDENCE.

That the Court’s ruling is entirely out of line with legal precedent is demonstrated by the fact that persons accused of far more egregious crimes under analogous circumstances have consistently been released because of the strength of the Bail Reform Act’s presumption against pretrial detention. As previously noted, a prime example is Elizabeth Ann Duke, a member of the radical and extremely violent M19 terrorist group, who materially participated in the bombing of the United States Capitol’s Senate Chamber on November 7, 1983. Despite being charged with multiple crimes related to domestic terrorism, including the possession of stolen explosives, possession of instruments of forgery, and falsified identification documents- Elizabeth Duke was released on bail during a time that the Bail Reform Act did not even exist. (*See United States v. Elizabeth Duke*, Case No. 2:58-cr-00222 (MSG); Criminal Docket: ECF Document No. 69, (filed June 20, 1985) attached hereto **Exhibit A (1)**).

Inexplicably, on June 17, 2009, President Obama’s Department of Justice, under the leadership of Attorney General Eric Holder, moved to have Elizabeth Duke’s indictment dismissed- despite fact that she jumped bail and successfully evaded capture for twenty-five-years.¹¹ All this court need do is look to the FBI’s current Top 10 List of Most Wanted Domestic Terrorist to verify the fact Elizabeth Duke is still wanted by the FBI.¹² Be that as it may, the Department of Justice’s oral motion to dismiss the indictment without stating any reasons and quash the arrest warrant against Elizabeth Duke¹³ was granted by United States Magistrate Judge Deborah Robinson on June 17, 2009,¹⁴ which stated in relevant part:

¹¹ See attached hereto **Exhibit A (2)**: FBI Most Wanted Poster of Elizabeth Duke.

¹² See attached hereto **Exhibit A (5)**: FBI’s Most Wanted List of Domestic Terrorists.

¹³ See attached hereto **Exhibit A (4)**: Elizabeth Duke Quashed Arrest Warrant

¹⁴ See attached hereto **Exhibit A (3)**: Order to Dismiss Indictment & Quash Arrest Warrant.

Upon consideration of the government's oral motion, to Dismiss the Indictment and Quash Arrest Warrant and the record herein, for the reasons set forth in the government's motion and for good cause shown on this 17th day of June 2009, ORDERED that the case is dismissed...arrest warrant quashed... and the United States Marshals Service cancel and withdraw the warrant from the NCIC database.

(See *United States v. Elizabeth Duke*, Case No. 2:58-cr-00222 (MSG), attached hereto **Exhibit A (3)**).¹⁵

Another prime example of the strength of the presumption against pretrial detention, as explained above is the very recent case of *United States v. Robinson*, where on May 28, 2020, Dylan Shakespeare Robinson was granted pretrial release by the U.S District of Minnesota despite materially participating in a nationally televised coordinated attack on Minnesota's 3rd Precinct, where after breaching the doors, the interior was set ablaze with officers still inside.¹⁶ (See *United States v. Robinson*, Order Setting Conditions of Release, Case #: 0-20-cr-00181 (PJS) (BRT), ECF Doc.#: 12 attached hereto as **Exhibit B**).

Another prime example is the incident that occurred on May 30, 2020, where Utooj Rahman and Colinford Mattis firebombed an NYPD vehicle parked on a Brooklyn, New York street, without regard for the safety of thousands of protesters and police. Rahman and Mattis were subsequently charged with several violent felonies and faced over forty years in jail if convicted. Even so, the Eastern District of New York granted bond, and the Second Circuit Court of Appeals affirmed.¹⁷ (See *United States v. Mattis*, 963 F.3d 285 (2d Cir. 2020), attached hereto

¹⁵ See attached hereto **Exhibit A (6)**: Inexplicably, then-Chief Judge now Attorney General Merrick Garland sanctioned this unlawful dismissal of an indictment of this indicted terrorist by a Magistrate Judge by dismissing a judicial misconduct complaint against the Magistrate Judge for signing the order as an Article III judge and for stating it was based upon reasons given by DOJ when, in fact, NO reasons were given: See also <https://nlpc.org/2021/02/20/merrick-garland-must-address-his-role-in-dropping-charges-against-capitol-bomber/>

¹⁶ *U.S. v. Robinson*, Order Setting Conditions of Release (ECF Document No. 12 July 14, 2020).

¹⁷ *United States v. Mattis*, 963 F.3d 285 (2d Cir. 2020).

as **Exhibit C**). Defendants Rahman and Mattis were subsequently charged with several violent felonies, and nonetheless release on pretrial bond.

More relevant precedent for pretrial release are the orders issued to Barnett's fellow Capitol protesters. *Compare United States v. Chrestman*, 2021 WL 765662 (D.D.C February 26, 2021), slip op. at 1-2 (ordering detention ordered for Proud Boy defendant who brandished an axe handle; wore a tactical vest, a hard helmet and a gas mask; toppled the metal barriers used by police to hold back the crowd; was on front lines and threatened a police officer, "You shoot and I'll take your fucking ass out"; encouraged others to interfere with police officers' arrest of a protester; and used his axe handle to prevent police from closing barriers to Capitol building); *compare with United States v. Cua*, 2021 WL 918255 (D.D.C. March 10, 2021), slip op. at 1 (ordering detention not justified for defendant who previously called for execution of elected officials and "glorified violent protest," and who on January 6, 2021, walked through Capitol building twirling a black baton, attempted to open office doors in the Capitol, thrice shoved aside a police officer to enter the Senate Chamber, sat "atop the Senate dais in the chair previously occupied by former Vice President Mike Pence, with his feet up on. . . the desk," and photographed senators' papers in the chamber); *Compare to United States v. Hunter Ehmke*, 21-cr-29 (TSC) (ordering release for defendant who broke window of Capitol building and did not cease when ordered to do so by police officer); *United States v. Jones*, 21-mj-76 (ZMF) (releasing defendant because government did not seek detention, even though the defendant was alleged to have violently broken the glass doorway to House chamber; (*United States v. Gossjankowski*, 21-cr-123 (PLF) (releasing defendant because government did not request detention for defendant who activated taser in Capitol multiple times); *United States v. Miller*, 21-cr-75 (RDM) (releasing defendant because detention not justified for defendant who discharged fire extinguisher onto police officers and used a crowd barrier fence as

a ladder to scale the Capitol building walls); *United States v. Powell*, 21-cr-179 (RCL) (holding detention not justified despite presumption of detention for crime of violence for defendant who used a battering ram to break a window of the Capitol, climbed in, came back out, used bullhorn to direct others inside with what seemed to be detailed knowledge of the floor plan, and exhorted others to break another window); *United States v. Leffingwell*, 21-cr-5 (ABJ) (releasing defendant because government did not request detention of defendant who repeatedly punched a police officer at Capitol with a closed fist and breached line of officers attempting to keep people out of the building); *United States v. Biggs*, 21-mj-126 (RMM) (releasing defendant because detention not justified for Proud Boy defendant who posted plans on social media before attack, was at front of crowd who breached and entered Capitol building within 20 seconds of breach, and communicated with other Proud Boy members with walkie-talkies during riot); *United States v. Capsel*, 21-mj-122 (RMM) (holding detention not justified for defendant captured on video physically fighting National Guardsmen who were attempting to hold a boundary, and who did not desist until he was sprayed with pepper spray); *United States v. Colt*, 21-cr-74 (TFH) (releasing defendant because government did not request detention of defendant wearing assault gear who scaled the wall of the Senate chamber, later proclaimed on social media that he was the first person to sit in former Vice President Pence's chair, and called Speaker Pelosi a "traitor"); *United States v. DeCarlo/Ochs*, 21-cr-73 (BAH) (releasing defendant because government did not request detention for Proud Boy organizers who planned and fundraised for the riot, one of whom had Proud Boys name tattooed on his body, who posted their obstructionist intent on social media, defaced the Capitol building with the words, "Murder the Media," and took flexicuffs from the Capitol); *United States v. Cudd*, 21-mj-68 (TNM) (releasing defendant because government did not request detention for defendant who livestreamed video from inside Capitol building stating that to gain entrance "we just pushed,

pushed, and pushed, and yelled go and yelled charge,” and said “fuck yes, I am proud of my actions, I fucking charged the Capitol today with patriots today. Hell, yes, I am proud of my actions,” and later told a new station, “Yes, I would absolutely do it again”).

Overall, the *Duke-Robinson-Mattis-Munchel*, line of cases, clearly establish the continued enforceability of the Bail Reform Act’s presumption against pretrial detention. *Id.*; *See also* Section III, Introduction, *supra*. Especially, during circumstances where it can be reasonably inferred that a person’s actions arise from an ardent desire to openly criticize the actions of government. The Court’s granting of the government’s motion for against pretrial release, when viewed in light of the *Duke-Robinson-Mattis-Munchel*, is grossly unjust because the objective facts regarding Richard Barnett’s personal history, and lack of criminal record have counted for nothing. While a meritless concoction of unfounded allegations was weighed against him despite the fact that he was never arrested or given the opportunity to confront his alleged accuser in court. These unfounded allegations are then intentionally comingled with the violent actions of others, to suggest that Richard Barnett was violent, incited violence, planned violence, is violent, lead violence, when in fact there is no evidence of violence whatsoever.¹⁸

The fact that Richard Barnett, a sixty-year-old responsible gun owner with no criminal history, left his home in Arkansas and traveled to Washington, D.C. for the specific purpose of peacefully exercising his First Amendment rights to openly criticize government alongside concerned citizens with like-minded views on an important day is not even considered in the Court’s analysis. In the January 28th decision denying Barnett bond the court tells a story about violence and the disruption of constitutional function, armed troops in the streets, fencing and

¹⁸ (See D.C. Hearing Transcript at p.37, attached hereto as **Exhibit H** (explaining that “These incidents are troubling, not because he got arrested, not because he may have engaged in criminal conduct or not, they’re troubling because they suggest provocative behavior while armed.”)).

barbed wire. *See* D.C. Hearing Transcript attached hereto as **Exhibit H**. The court then highlights a National Terrorism Advisory indicating a high risk of violence from ideologically motivated, violent extremist. *Id.* And then, one sentence later, we are told that the government has presented overwhelming evidence that Richard Barnett enthusiastically participated in this act of assaulting the Capitol.¹⁹ This is a lie, unsupported by the facts of this case, that is designed to cast Richard Barnett as a violent extremist, when he is instead a God fearing, U.S.A. loving American that walked into Speaker Pelosi's previously opened-door, put his feet up on the desk, and left a protest note quoting Tom Petty's "I won't back down."

If the government wants to debate the nuances of mass trespassing, fine. If the government wants to see if it can get Richard Barnett from a Base Offense Level 14 to a Base Level Offense 22, premised upon the alleged fact that he had a dangerous weapon in the form of a walking stick allegedly capable of being a stun gun, but was in fact purposefully disarmed, they must fail. But what this Court should not allow the government to do is bootstrap Richard's non-violent conduct to those who were violent. Nor should this Court allow him to be unjustly associated with extremism, terrorism, and conspiracy of any kind.

Moreover, even if all the allegations in this case were accepted as true, his release is still demanded under the *Duke-Robinson-Mattis-Munchel* line of cases. This line of cases applies because the justified protests that exploded across this country, especially after the murder of George Floyd, generated counter protests in response, and then a cycle of protests, that grew in terms of regularity, popularity, and violence- which then culminated on January 6, 2021 at the Capitol. And while the reasons for each protest are very different, the fact remains, that these protests are connected, to the extent where a stream of protests is easily identifiable. Moreover,

¹⁹ (*See* January 28, 2021 Bail Hearing Transcript at p. 33-34, attached hereto as **Exhibit H**).

and analogous to cases where a corporation does business in many states, the same groups, led by the same organizers, and financed by the same donors, further demonstrate the interconnectedness, of these events. As such, the way protesters are treated in Federal Courts across the land qualifies as persuasive authority.

For instance, when the U.S. District Court for the District of Minnesota, grants bond after Dylan Robinson firebombs a police station with officers inside, during a protest. And then the Eastern District of New York grants bond after Utooj Rahman and Colinford Mattis firebomb the NYPD during a protest. The logical conclusion is that bond is the standard in these situations. Moreover, the D.C. District Court's history of granting bond in cases where defendants blew up the Capitol and in in these January 6, 2021, Capitol riot related cases involving far more egregious offenses. The fact that Richard Barnett is detained for crimes far less egregious, simply cannot be justified.

C. THE COURT'S FINDING OF DANGEROUSNESS PURSUANT TO THE "POSSESSION OF A DANGEROUS WEAPON" IS UNSUPPORTED BY THE FACTS OF THIS CASE.

The count of entering Capitol grounds with a dangerous weapon is by far the most serious crime to which Richard Barnett is charged. Mr. Barnett's "dangerous weapon" charge and further allegations opposing bond all stem from the fact that he purchased a Zap Hike 'n Strike Walking Stick just after Christmas, in December of 2020, at Bass Pro Shop.

Bass Pro Shop's website describes the device as:

- (1) a walking stick,
- (2) a stun gun, and
- (3) a flashlight.

See Bass Pro Shops Description of Stun Gun Walking Stick, (available at <https://www.basspro.com/shop/en/personal-security-products-hike-n-strike-950-000-volt-stun-gun-hiking-stick>, last visited March 30, 2021).

In order for the stun gun or flashlight functions to actually work, three (3) lithium CR123A batteries must be installed. Absent these batteries, the device is *effectively* reduced to a walking stick. This clearly begs the question: *Were the batteries installed, and was this device seen on Richard even operable at the time?* The answer is unequivocally **no**.

Richard Barnett is a responsible gun owner who will testify that he purchased the walking stick stun gun legally in Arkansas to bring to Washington, D.C, because it is legal to carry a stun gun or walking stick in Washington, D.C. He will also testify that the stun gun function of his walking stick was disarmed before January 6, 2021, thus converting the multiuse device into a nothing more than a collapsible walking stick.

There is no manifesto, no plan, no recording of him brandishing this multiuse device in a way that is consistent with stunning anyone. The item is a multi-purpose tool, converted to be less dangerous, not more. Mr. Barnett understood that he was going to be on his feet for multiple hours during the January 6th protests. A retractable walking stick, therefore, is a perfectly legitimate accessory to help alleviate the physical burden stemming from foreseeable hours of standing, marching, and protesting. It is reasonable to infer that a sixty-year-old responsible gun owner, with zero criminal history would intentionally disarm the walking stick's stun gun function out of an abundance of caution. Because sixty-year-old responsible gun owners with zero criminal history do not wake up one day and decide to become violent criminals. Therefore, drawing the worst possible inference, absent any corroborating behavior or criminal history, does not rise to the level of establishing dangerousness by clear and convincing evidence.

The government has also gone to great lengths to criminalize the perfectly legitimate and legal behavior surrounding Mr. Barnett's December 2020 purchase at an Arkansas Bass Pro Shop. The governments allegations', however, are speculative at best, or intentionally misleading at

worst. Either way, these allegations were cleverly designed to cast Richard in the most dangerous light possible. The government's theory that the purchase of two cans of pepper spray equates to indicia of premeditative intent for an assault on the United States Capitol has not been corroborated by a modicum of direct or circumstantial evidence. On the contrary, evidence available at the time of arrest indicates that Barnett purchased the two cans of pepper spray for his wife and daughter's personal protection, and gifted them said pepper-sprays shortly after purchase. **At no point in time did he bring pepper spray to the rally.**

Mr. Barnett certainly does not concede that he carried a dangerous weapon. For the sake of argument, however, accepting the allegation as true, the threshold to qualify as a crime of violence is not met, because while the possibility of violence may be present, there is no inherent risk of violence arising from the crime of entering Capitol grounds with a dangerous weapon. *United States v. Singleton*, 182 F.3d 7 (D.C. Cir. 1999); *United States v. Chimurenga*, 760 F.2d 400, 404 (2d. Cir. 1985); *United States v. Munchel*, No. 1:21-cr-0018-1.

Put differently, the government has not charged Richard Barnett with any offense that has an element of the use or attempted use of force against any person or property of another. Nor has the government charged Mr. Barnett with a felony that by its nature, (arson, assault, burglary, etc...) involves a substantial risk that force against a person or property of another may be used in the course of committing the offense. To be clear, nowhere in the government's papers or the court's analysis is there a single specific reference to Richard Barnett pushing an officer, breaking a door, using a stun gun, waving a walking stick, or doing anything to suggest that he was actually violent. Furthermore, of the thousands of videos and pictures taken at the Capitol on January 6, 2021, and their subsequent circulation across the world, there is not a single one showing Richard

Barnett participating in an act of violence. Not a single one showing him using his walking stick in any menacing way.

Yet, this so-called evidence is somehow *the* “smoking gun”, upon which the United States Government and the media has built its case, and a major justification for pretrial detention. Associating the peaceful conduct of Richard Barnett to the violence that took place at the Capitol on January 6, 2021, absent any reasonable showing of specific articulatable facts where Barnett was actually violent, or threatened violence, is not sufficient justification to support the Court’s conclusion that the nature and circumstances of the offenses charged do not weigh in favor of finding that no condition or combination of conditions will reasonably assure Mr. Barnett’s appearance or safety of the community.

D. THE GOVERNMENT’S INABILITY TO SHOW AN ONGOING OR FUTURE THREAT DIMINISHES ITS ABILITY TO PROVE DANGEROUSNESS UNDER THE MEANING OF THE BAIL REFORM ACT.

The events that took place at the Capitol on January 6, 2021, are unique to that day and not indicative of a future ongoing danger or threat. For instance, the “Stop the Steal” rally, referred the belief that the November 2020 United States Presidential Election was at best incorrectly decided and at worst stolen from the people, by a government conspiring against the people, and that if enough people showed up to express their belief about this wrongdoing- Joe Biden would not be confirmed as the 46th President of The United States. Clearly, that did not happen and any worry over Biden’s confirmation moot, as he is now our President. Therefore, the argument that an ongoing future threat abides is diminished to the extent that it does not meet the threshold of clear and convincing evidence.

The government has failed to prove dangerousness by clear and convincing evidence because it has not identified at least one specific articulable threat to the safety on any individual

or community stemming from Richard Barnett's prospective release on bail. Neither has there been an adequate demonstration that the crimes under which he has been charged qualify as violent under the meaning of the Bail Reform Act. Nor has there been any indication that his lack of criminal history, home life, employment history, community ties, or the fact that he self-surrendered were properly balanced against the allegations to which he has been charged.

When one, first, analyses the totality of circumstance of Barnett's case, under the lens of precedent set forth in the *Duke-Robinson-Mattis-Munchel, et al.*, line of cases; and second, applies said precedent to the facts of this case, then the only logical, reasonable, and justifiable conclusion is that Richard Barnett must be released without delay. *See United States v. Munchel*, No. 21-3010 (D.C. Cir. 2021); *U.S. v. Mattis*, 963 F.3d 285 (2020); *U.S. v. Robinson*, *Order Setting Conditions of Release* (ECF Document No. 12, July, 14, 2020); *United States v. Singleton*, 182 F.3d 7 (D.C. Cir. 1999); *United States v. Chimurenga*, 760 F.2d 400, 404 (2d. Cir. 1985); *United States v. Salerno*, 481 U.S. 739; *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007); *United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988); *United States v. Xulamn*, 84 F.3d 441 (DC Circuit 1996).

In light of the above, there must be no delay in Richard Barnett's release.

E. THE COURT'S FINDING THAT THERE IS NO COMBINATION OF CONDITIONS AS TO THE PROVING OF RISK OF FLIGHT BY A PREPONDERANCE IS UNSUPPORTED BY THE FACT THAT BARNETT EASILY MEETS HIS BURDEN OF PRODUCTION IN THIS CASE.

In assessing the government's ability to demonstrate risk of flight by a preponderance of the evidence, and by doing so justify pretrial detention, federal courts have historically looked to the arrestee's criminal record or lack thereof, evidence of falsifying a passport, community ties, employment history, residence history, relationship to community, family history, presence of extraordinarily serious charges, likelihood of conviction, and inclination to contemplate flight.

The application of relevant law to the abovementioned facts leads to one glaring conclusion- the government has not proven by a preponderance of the evidence that Richard Barnett is a flight risk. Truly, this analysis should stop here and a decision favoring Barnett rendered for the government's failure to prove up of risk of flight by a preponderance, because the facts regarding his personal history as laid out in Section 10 meet his burden of production.

Deeply troubling however, is the following: (1) the government's attempt to overcome the litany of objective truths demonstrating the complete and utter lack of facts supporting any cognizable theory of flight; and (2) the Court's acquiescence to the government's flawed and unsettling conclusions. Deeply troubling because the statements obtained were the result of a custodial interrogation outside of the presence of counsel, and in violation of Richard Barnett's Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel.²⁰ Deeply troubling because the government has grossly distorted the Fourth Amendment's protection against warrantless searches in such a way that now, a person's refusal to be electronically tracked via their cellphone now serves as justification for pretrial detention.

F. THE COURT'S FINDING THAT THERE IS NO COMBINATION OF CONDITIONS AS TO THE PROVING OF RISK OF FLIGHT BY A PREPONDERANCE WAS BASED ON FACTS PROCURED IN VIOLATION OF THE 4TH, 5TH, AND 6TH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

In its Memorandum in Support of Pretrial Detention²¹, the government argues that the nature and circumstances of the offense charged, weigh in favor of detention, and sums up with the following statement:

In sum, the defendant traveled from Arkansas to D.C., carried a dangerous weapon into the U.S. Capitol during a riot obstructing official proceedings, brazenly occupied Speaker Pelosi's office, and took her mail, then bragged about it to members of the media before

²⁰ Richard Barnett reserves his rights, defenses, and protections under *US v Miranda*, 384 U.S. 436.

²¹ See Government's Memorandum in Support of Pretrial Detention, Case #: 21-cr-0038 (CRC), filed as ECF Docket Entry No. 12).

turning off location services and paying cash to avoid detection as he fled D.C. Accordingly, the nature and circumstances of the offense weigh heavily in favor of detention.

The government has argued and the court accepted a rule which, if not overturned, states that turning off a cell phone's location services or using cash to travel instead of electronic currency, can and will be used against you in a detention hearing, to the extent where the presumption of innocence along with the presumption against pretrial detention, can be dispensed with for not letting the government track your movements. And if one is said to "brazenly" commit a non-violent trespass misdemeanor, then somehow that misdemeanor is characterized as showing dangerousness. *See* January 28, 2021, Pretrial Detention Hearing Transcript pp. 31-35 attached as **Exhibit D.**

G. THE FOURTH AMENDMENT'S REASONABLE EXPECTATION OF PRIVACY AGAINST WARRANTLESS SEARCHES CONTRAVENES THE NOTION THAT A NEGATIVE INFERENCE CAN BE INFERRED FROM A PRIVATE CITIZEN'S REFUSAL TO BE ELECTRONICALLY TRACKED BY THE GOVERNMENT.

In essence, the government has created a rule where a negative inference can be inferred from a private citizen's refusal to be tracked by the government or its agents. This rule is unconstitutional as it shifts the government's burden of needing to obtain a search warrant supported by probable cause, on to the citizen who must successfully rebut a negative inference or face pretrial detention. This is a dangerous leap on to a slope so slippery that if action is not taken, here now, our Fourth Amendment will be irreparably damaged to the extent where it is no longer recognizable.

The Fourth Amendment of the United States Constitution, amongst other things, secures the people's right to be secure in their persons, houses, papers, and effects, against warrantless searches and seizures. In the context of the Internet Age, the Fourth Amendment's ambit, without

question, encompasses a reasonable expectation of privacy against warrantless tracking by the government or its agents. A person's reasonable expectation of privacy is normally at its highest point when they are inside their home with the doors locked. That same person's expectation of privacy diminishes when they drive their car, to the extent that they implicitly consent to the search of items in plain view and containers within their immediate grabbable area. However, the warrant requirement continues to apply to the trunk of their car absent a very limited set of circumstances.

A private cellular phone is analogous the threshold of a home with a locked front door and the locked trunk of a car, in that the Fourth Amendment provides a reasonable expectation against warrantless searches of the phone itself and the movement of the person carrying it.²² This applies whether the government employs its own surveillance technology or leverages the technology of a wireless carrier. Either way, an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through cell phone location information. *See Riley v. California*, 573 U.S. 373 (2014) (determining that neither the need for officer safety nor the threat of the destruction of evidence dispense with the warrant requirement for cell phones); *See also Carpenter v. United States*, 138 S.Ct. 2206, 201 L.Ed.2d 507 (2020).

Richard was identified as the person sitting at Speaker Pelosi's desk on January 6, 2021.²³ This is the first opportunity government had to obtain a search warrant based on probable cause. The line of thinking goes like this: *There is Richard Barnett of Arkansas, let's obtain a search warrant so we can track him down.* Unfortunately for the government, it either could not prove probable cause, or just never tried to obtain a warrant. Twenty hours later, however, an arrest

²² *See United States v. Jones*, 565 U.S. 400, 410 (2012) (plurality opinion) (holding Government searched a car by attaching a GPS device to the car); *Bond v. United States*, 529 U.S. 334, 337 (2000) (concluding Border Patrol agent searched a bag by squeezing it); *See also Arizona v. Hicks*, 480 U.S. 321, 324–25 (1987) (holding officer searched stereo equipment by moving it so that the officer could view concealed serial numbers).

²³ Available at, <https://lawandcrime.com/2020-election/arkansas-man-identifies-himself-as-trump-supporter-who-sat-in-pelosis-office-claims-he-left-her-a-quarter/> (last visited March 29, 2021).

warrant (not a search warrant) was issued for Richard Barnett by Magistrate Judge G. Michael Harvey January 7, 2021, at 7:49 PM, EST.²⁴

Be that as it may, Mr. Barnett had already arrived home, contacted the authorities, and negotiated his surrender by the time the arrest warrant was issued.²⁵ Shortly after his January 8, 2021 surrender at 10:00 AM, Barnett stated to government agents that it was hard to travel straight back from D.C., say goodbye to his family and surrender the next day, to which the officer responded yes that is “part of the reason why we pushed (your surrender) off until this morning”.²⁶ Six hours later, at 4:31PM, CST a search warrant issued for Barnett’s phone and home, and was subsequently executed approximately 45 minutes later, at 5:15 PM.

At no point did exigent circumstances arise. At no point did Richard waive his 4th Amendment right to privacy. Because of this, the burden was on the government to obtain a search warrant based on probable cause to track Richard. The government did not obtain a search warrant. *See* FN 17, *supra* (citing *United States v. Jones*, 565 U.S. 400, 410 (2012) (plurality opinion) (holding Government searched a car by attaching a GPS device to the car); *Bond v. United States*, 529 U.S. 334, 337 (2000) (concluding Border Patrol agent searched a bag by squeezing it); *See also Arizona v. Hicks*, 480 U.S. 321, 324–25 (1987) (holding officer searched stereo equipment by moving it so that the officer could view concealed serial numbers). With Richard, the FBI therefore “searched” the phone within the meaning of the Fourth Amendment. *See Florida v. Jardines*, 569 U.S. 1 at 5 (2013) And because the FBI conducted the search without a warrant, the search was unconstitutional. *See Vernonia Sch. Dist.*, 515 U.S. 646 at 653 (1995).

²⁴ *See* Arrest Warrant ECF Doc.#: 1 attached hereto as **Exhibit F**.

²⁵ *See* p.142 of the W.D. Ark. Detention Hearing Transcript, Tammy Newburn discussing Barnett’s arrival; *see also* p. 59 of Special Agent Willett discussing his January 8th interview with Mr. Barnett.

²⁶ *See* January 8, 2021 interrogation video, at the Five (5) minute mark. It should be noted that such recording was never individually produced, in its entirety, but portions, taken out of context, were used against Barnett in the D.C.C. ruling in favor of detention. Such Recording will gladly be made available to the Court upon request for purposes of Barnett’s instant application for bond and preserving suppression issues.

The notion that, Richard, a man who freely admits that he set out for Washington, D.C. to participate in political protest premised on the idea that the election was stolen from the people by the government- somehow consented to be tracked by a government that he very obviously does not trust, is devoid of logic, inconsistent with the presumption of innocence, and entirely unsupported by the facts of this case. The fact that the government weaponized a perfectly legitimate and constitutionally protected desire not to be tracked to the extent that it weighed heavily in favor of pretrial detention, is offensive the most basic sensibilities of the Fourth Amendment, and must be rejected in the strongest possible terms.

It is against all liberty interests to imply that an American citizen is obligated to keep his cell phone's location monitoring services turned on, in order to avoid a negative inference so strong that may lead to pretrial detention. We also object to the government suggesting an equally powerful negative inference will be inferred for using cash to travel instead electronic currency. These grave mischaracterizations of perfectly legal behavior undercut a free person's right not to be tracked, searched, monitored, supervised, or looked-after by the prying eyes of an overly intrusive paternalistic government. These ideas are anti-American, constitutionally repugnant, and have no place in a free democratic society.²⁷

H. NO NEGATIVE INFERENCE SHOULD BE INFERRED FROM RICHARD WEARING A MASK DURING A TIME THIS NATION IS UNDER A PANDEMIC AND CRISIS.

According to the Center for Disease Control's guidelines, masks "should be worn any time you are traveling."²⁸ After leaving an event where he was crowded alongside thousands of

²⁷ See How America's surveillance networks helped the FBI catch the Capitol mob. Available at, <https://www.washingtonpost.com/technology/2021/04/02/capitol-siege-arrests-technology-fbi-privacy/> (last visited on April 4, 2021)

²⁸ Available at, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html> (last visited on March 29, 2021).

strangers, Richard Barnett covered his face and headed home to see his family. Not only is his behavior legal, it is actually recommended by the C.D.C. Despite this, the government has drawn the worst possible inference and the court has agreed that the only reason a sixty-year-old gainfully employed man cloaked in the presumption of innocence with no criminal history to speak of, would wear a mask while traveling to see his family after possibly attending a super-spreader event during a pandemic, is to avoid capture by police that were not yet looking to arrest him.

I. DETENTION IS ILLEGAL AS GOVERNMENT HAS NOT PROVEN RISK OF FLIGHT

Under the Bail Reform Act, when government seeks pretrial detention of individual on ground that he poses risk of flight, standard it must prove this risk by a preponderance of evidence. 18 U.S.C.A. § 3142(c). The Bail Reform Act does not permit detention on the basis of dangerous in the absence of risk of flight, obstruction of justice, or an indictment for the offense enumerated in 18 U.S.C § 3142(f); *United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988); *United States v. Xulamn*, 84 F.3d 441 (DC Circuit 1996).

Similar to the facts in *Friedman*, here the government contends that Richard Barnett presents a serious risk of flight because of the nature of the charges against him, the strength of the government's case, and the long sentence Barnett may receive. *United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988). The *Friedman* court reversed a decision in favor of pretrial detention, because the defendant had strong family and community ties, a 25-year work history, no prior criminal record. Objectively, the threat that someone accused of child pornography (*Friedman's* charges) could reoffend presents an element of serious danger, be that as it may, preponderance factors such as community ties, a 25-year work history, no prior criminal record, were enough to overcome detention. In reliance upon the abovementioned arguments and facts, Richard Barnett should be released under the precedent set out in *Friedman*. Furthermore, the above argued and

referenced *Duke-Robinson-Mattis-Munchel* line of cases illustrate indicate a strong history of enforcing the Bail Reform Act's presumption against pretrial detention in far more egregious circumstances.

Therefore, this Court's finding with regarding risk of flight is clearly erroneous because the factual predicates justifying its decision in favor of pretrial detention are clearly insufficient, but rather, the objective application of relevant case law to the abovementioned facts unequivocally demonstrates the Court's failure to consider the totality of circumstances in this case. As such, the government's conclusion that no condition or combination of conditions will reasonably assure Barnett's appearance or the safety of the community should be reversed.

J. GOVERNMENT AGENTS VIOLATED RICHARD BARNETT'S FIFTH AMENDMENT RIGHTS AGAINST SELF INCRIMINATION AND SIXTH AMENDMENT RIGHT TO COUNSEL.

The government introduced statements at the detention hearings and in its papers with the full knowledge that they were the product of an illegal custodial interrogation. Custody is demonstrated by the fact that Barnett negotiated an agreement to surrender the previous night, and did in fact surrender the following morning. Furthermore, after initial introductions were made, government agents made clear that Barnett would be moved from Benton to a federal facility in Washington County where he would eventually see a judge, which clearly means that he was not free to terminate the encounter and/or leave the Benton County Sheriff's Office. Custody, therefore is established.

This interrogation was violative of Barnett's Fifth and Sixth Amendments because he invoked his right to remain silent and right to counsel more than once while in custody. The government will surely argue that Barnett waived or volunteered his statements, but that could not be further from the truth. Now, Mr. Barnett does not present like Atticus Finch, neither is he a polished articulate Washington, D.C. academic. His invocation, therefore, must be judged under

a standard of reasonableness consistent with men of his age, education, and life experience. Thus “no comment” indicates an invocation of the Fifth Amendment, and “Gee- I really should speak to my lawyer...,” indicative of a Sixth Amendment right to counsel.²⁹

Upon hearing an invocation, government agents are immediately supposed to stop questioning the accused. That is, however, not what happened here. Instead, these highly trained government agents, fluent in the interrogation arts of persuasion, deception, sensemaking, the Reid Technique, the Scharff Technique, Pride-and-ego-down, cognitive interviewing, linguistic cues, eye tracking, and reality monitoring- simply switched gears.³⁰ During the times Mr. Barnett invokes or attempts to invoke, you will see Special Agent Willett recoil, rethink, reassess, recalibrate, and reengage. Special Agent Willett is on the phone texting. He looks at his phone and then leaves and reenters several times. Look at how Willett recalibrates and reengages at the one-hour-mark. None of this is happenstance, all of this is intentional, and all of this is wrong. None of Richard Barnett’s statements are voluntary.

Over the course of the next almost two hours, this sophisticated duo of government agents purposefully camouflages questions designed to illicit incriminating information with small talk, in a deliberate effort to get Mr. Barnett to waive his rights against self-incrimination and to counsel, without him knowing or understanding what he is doing. These agents deploy various manipulation tactics, and trickery, to lull an unsuspecting high-school-educated sixty-year-old man with and no criminal record or legal training into a fall sense of friendship for the specific purpose

²⁹ See Justice Sotomayor’s Dissent in *Berghuis v Thompkins*, 560 U.S 370 (citing *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602) (Explaining that even when warnings have been administered and a suspect has not affirmatively invoked his rights, statements made in custodial interrogation may not be admitted as part of the prosecution’s case in chief “unless and until” the prosecution demonstrates that an individual “knowingly and intelligently waived his rights.”).

³⁰ See FBI Interrogation Techniques: *A Review of the Science* (September 2016), available at, <https://www.fbi.gov/file-repository/hig-report-interrogation-a-review-of-the-science-september-2016.Pdf/view#:~:text=This%20report%20was%20prepared%20by,the%20science%20related%20to%20interrogation> (last visited March 31, 2021).

of getting him to confess- with the full knowledge that his Fifth and Sixth Amendment rights have been invoked, which in turn means all of these statements are subject to suppression, none of them should have been weighed against him, and this Court erred in letting that happen.

Troubling, however, is the fact that Mr. Barnett made, at minimum, 20 exculpatory statements to the government. Statements that when examined in the totality of circumstances appear to be logical, rational, easily verifiable, and entirely consistent with a sixty-year-old man, cloaked in the presumption of innocence, with no criminal history whatsoever. Why then was every single one of these exculpatory statements omitted by the government in its papers? One on hand, it is certainly possible that the government overlooked them. On the other hand, it is more likely that the government wanted to cast Richard Barnett in the worst possible light out of sheer commitment to punish him pretrial for his non-violent and “brazen” trespass.³¹

In addition to omitting every exculpatory statement in its papers and arguments to the court, the government then proceeds to cherry-pick a small group of statements, twist them out of context, repurpose, then, weaponized them, and launch them against Mr. Barnett with devastating effect. Guns have nothing to do with this case. Even so, the government and the court have artfully used Richard Barnett’s lawful ownership of them as indicia of radicalism, and his removal of them from his home as means to justify his pretrial detention. The government’s duplicitousness is as follows:

³¹ In a press account of Mr. Barnett’s case, Clark Neily, vice president for Criminal Justice at the [CATO Institute](https://www.ktbs.com/news/arkansas/infamous-capitol-riot-suspect-richard-barnett-says-hes-being-treated-unfairly-and-lashes-out-in/article_30c2d992-7d90-11eb-9ed7-efb51db60703.html) added that “unfairly holding a defendant before trial is not a legal form of punishment for any defendant -- that only comes after their day in court. You don't leave somebody locked up pending trial simply because the public thinks they deserve it....”, available at, https://www.ktbs.com/news/arkansas/infamous-capitol-riot-suspect-richard-barnett-says-hes-being-treated-unfairly-and-lashes-out-in/article_30c2d992-7d90-11eb-9ed7-efb51db60703.html

While being interrogated outside the presence of counsel, and when discussing the impending danger to his family, government agents admit they already know about the threats and exhibit what appears to be some level of professional concern. Barnett explained to them that he started to become aware of an impending threat to his family while traveling home via threats on social media and on the Internet, so he began to think through how he could protect them as any concerned husband and father would. The possibility of danger graduated to impending danger when he realized that he had was being doxed,³² which is to say that as a consequence of his infamous picture, there was in fact, a concerted effort to gather and publish Personally Identifiable Information (PII) on the Internet for the specific purpose of locating his home so his family could be attacked. Threats began to pour in from all corners of the Internet. Knowing full well that he was surrendering the next morning, he instructed his family to pack up and make preparations, because he wanted them to hide in the event that his home address was identified. Having reason to believe that the location of his prior home had been obtained, and that the people who currently live there were being harassed, Richard Barnett decided that the safest and most effective way to protect his family was to:

- (1) Alert friends and family about the threat,
- (2) Instruct the members of his family to pack up and prepare to flee if necessary, and
- (3) Contact a friend, who he knows to be a responsible gun owner, and entrust his firearms to said friend.

See FN 5 at p. 9, *supra*; *See also* January 8, 2020, Interrogation Video between the 20:00-24:00 minute marks.

The government twist, turns, and converts Richard Barnett's perfectly legal and highly responsible actions into indicia of criminality. First, it is suggested that Barnett is dangerous simply because he is gun owner. Second, the Court relies upon a government concocted false

³² *See* attached hereto **Exhibit I**: Homeland Security's Explanation of "Doxxing."

narrative regarding two incidents involving a man with a gun at a two separate Arkansas protests that is alleged to be Richard Barnett, despite knowing Richard was never charged, for any gun offense, the Court improperly inculcates Richard. Third, the Court then calls these unproven incidents “troubling” and weighs these incidents against him in favor of pretrial detention. Fourth, the Court then reverse comingles these unfounded allegations with a “heightened risk of violence from ideologically motivated extremists ... emboldened by the January 6th Capitol attack and might target elected officials in government facilities...” and in doing so, concocts elements of Barnett’s dangerousness where none exist.

The Court then attacks Tammy Newburn, Richard Barnett’s common-law-wife of 20 years. Ms. Newburn is discredited as a witness, the veracity of her testimony is called into question, and she is deemed to be an unworthy third-party-custodian- despite the fact that she is a loving mother who has done nothing wrong and has every reason to make sure the Mr. Barnett complies with reasonable conditions of bail. Richard’s ability to comply with a combination of conditions is diminished, which of course, weighs in favor of pretrial detention.

Ms. Newburn’s 20-year relationship with the defendant plainly shows her loyalty to him, and her actions to help clear up the house of evidence, put stuff under a dog crate in her trunk, dissembling at the hearing about her activities, to my mind, raises significant questions about her ability to be a trustworthy third-party custodian to ensure the defendant’s compliance with any release conditions.

See January 28, 2021, Pretrial Detention Hearing Transcript at p. 39.

The government does not provide proper context about the very real, and extremely concerning ongoing danger to Richard and Tammy’s family. The government does not communicate the very real fact that they have been doxed, or that several organized groups have made death threats against them. Worst of all, no explanation whatsoever, is proffered regarding Richard’s decision to pack his family up and turn over his firearms to a responsible friend- all in

the name of avoiding conflict. The narrative has been proffered by the government and accepted by the court that Richard is an armed and dangerous extremist, prone to violence and hungry for conflict. The truth, however, is that he avoided conflict by packing up his family. The truth, however, is that he avoided violence by securing his firearms at another location. The truth, however, is that this falls in line with his behavior at the Capitol, when before going there, he disarmed the walking stick's stun gun function out of an abundance of caution. Yet- the narrative the government has proffered, and the court accepted, is one of fabrication and lies.

It cannot, and must not, be used as evidence supporting risk of flight or dangerousness. Nor should it be weighed against the nature and circumstances of the offense, or his ability to comply with a combination on conditions- because it is nothing more than a deliberate effort to cast a sixty-year-old American citizen, entitled to the presumption of innocence, in the most dangerous light possible.

K. THE GOVERNMENT HAS NOT PROFFERED SUFFICIENT FACTS SUPPORTING THE CONCLUSION THAT NO CONDITION OR COMBINATION OF CONDITIONS CAN REASONABLY ASSURE RICHARD BARNETT'S APPEARANCE OR THE SAFETY OF THE COMMUNITY.

The government's argument in favor of pretrial detention is unsupported by facts demonstrative of risk of flight or danger to the community. Richard Barnett's personal history, community ties, and lack of criminal history are more than sufficient proof to rebut any presumption of detention, or notion that he is a flight risk of any kind. Furthermore, the statements weaponized by the government against Barnett were deviously and grossly taken out of context and a product of clear violations of his Fifth and Sixth Amendment rights.

The government's argument that nature and circumstances of the offense charged weigh in favor of pretrial detention contravenes a litany of case law under which federal courts have consistently enforced the Bail Reform Act's presumption against pretrial detention in favor of

defendant's that have been charged with far worse crimes under far worse circumstances. The governments weaponization of perfectly legal conduct is deeply troubling on a multitude of levels. Specifically, the notion that a negative inference strong enough to result in pretrial detention can be drawn from private citizen's decision to either accidentally or purposefully turn off their cell phone location services under circumstances in which the government has not obtained a search warrant based upon probable cause, without question triggers the Fourth Amendment's protection against unwarranted government intrusion in the form of electronic tracking. As such, the negative inferences drawn from Richard Barnett's trip home must be dispensed with, without delay, as they represent an illegal and gross intrusion by the government into the lives of a United States Citizen cloaked with the presumption of innocence, shielded by the presumption against pretrial detention, and protected by the Constitution of these great United States of America.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, and any others which may appear in our reply brief at a full hearing on this matter, and any others this Court deems just and proper, defendant through counsel, respectfully requests that he be released on personal recognizance. If that request is denied, defendant requests as an alternative, that he be released on Third Party Custody and placed into the High Intensive Supervision Program of the Pretrial Services Agency conditioned on reasonable conditions including but not limited to electronic monitoring, work release and curfew.

DATED: APRIL 5, 2021

Respectfully Submitted,

/s/ **Joseph D. McBride, Esq.**

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EXHIBIT LIST

Exhibit A: United States v. Elizabeth Duke, Case No. 2:58-cr-00222 (MSG)

- (1) Criminal Docket: ECF Document No. 69, (filed June 20, 1985)
- (2) FBI Most Wanted Poster of Elizabeth Duke
- (3) Order to Dismiss Indictment & Quash Arrest Warrant
- (4) Elizabeth Duke Quashed Arrest Warrant
- (5) FBI's Most Wanted List of Domestic Terrorists
- (6) Chief Judge Merrick Garland's January 25, 2014, Dismissal of Complaint Alleging that the June 17, 2009, Magistrate's Dismissal of Elizabeth Duke's Indictment was Unlawful

Exhibit B: *United States v. Robinson*, Order Setting Conditions of Release, DATE
Case #: 0-20-cr-00181 (PJS) (BRT), ECF Doc.#: 12

Exhibit C: *United States v. Mattis*, 963 F.3d 285 (2d Cir. 2020)

Exhibit D: *United States v. Munchel* D.C.Cir. No. 1:21-cr-0018-1 (March 26, 2021)

Exhibit E: Western District of Arkansas Bail Hearing Transcript, January 15, 2021

Exhibit F: Richard Barnett's Arrest Warrant ECF Doc.#:1

Exhibit G: Picture of Richard Barnett at Speaker Pelosi's Desk

Exhibit H: D.C. District Court Bail Hearing Transcript, January 15, 2021

Exhibit I: Department of Homeland Security's Explanation of Doxxing

EXHIBIT A(1)

I. CHARGES	ORIGINAL COUNTS	DISMISS	GUILTY
18:1028(a)(5) Unlawful possession of U.S. Identification. Ct. 12	1	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18:371 Conspiracy to possess destructive devices not registered as required. Ct. 1	1.1	<input type="checkbox"/>	<input type="checkbox"/>
26:5861(d) Unlawful possession of firearms & destructive devices Cts. 2,3,4, 5	3 4	<input type="checkbox"/>	<input type="checkbox"/>
18:842(j) Unlawful storage of explosives. Cts.-5,6,7- 6,7,8, 9	3 3	<input type="checkbox"/>	<input type="checkbox"/>
18:842(h) Storage & concealment of stolen explosives. Ct.-8- 9 10	1 1	<input type="checkbox"/>	<input type="checkbox"/>
18:1028(a)(3)& Unlawful possession of 5 or more false identification documents. Ct.-9- 10 11	1 1	<input type="checkbox"/>	<input type="checkbox"/>
42:408(g)(3) Possession of counterfeit social security cards. Ct.-12 15	1 1	<input type="checkbox"/>	<input type="checkbox"/>
18:2 Aiding and abetting. Cts. 2 thru 10- 12 15	9 11	<input type="checkbox"/>	<input type="checkbox"/>
18:1028(a)(5) Unlawful possession of document-making implement. Ct. 11	1	<input type="checkbox"/>	<input type="checkbox"/>

INTERVAL ONE	END ONE AND OR BEGIN TWO (OR RESTART PERIOD TO TRIAL)	END INTERVAL TWO
KEY DATE	KEY DATE	KEY DATE
EARLIEST OF	APPLICABLE	APPLICABLE
1st appears with or waives counsel	ARRAIGNMENT	1st Trial Ended
RE TRIAL	2nd Trial Began	DISPOSITION DATE
SENTENCE DATE	PTD	FINAL CHARGES DISMISSED

Search Warrant	Issued	DATE	INITIAL/NO	III. MAGISTRATE	INITIAL/NO	OUTCOME:
Summons	Served	5/28/85	EEN/13AC	INITIAL APPEARANCE DATE	5/24/85	DISMISSED
Arrest Warrant Issued	5/28/85	EEN/13AC	PRELIMINARY EXAMINATION	Date	5/28/85	HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
COMPLAINT	5/28/85	EEN/13AC	REMOVAL OR HEARING	Date Held		HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
Date of Arrest	5/23/85	OFFENSE (In Complaint)	18 U.S.C. 2, 3, 371, 842(i)(1)(2), 842(j), 842(h), 1028(a)(3), 26 U.S.C. § 5861(d); Conspiracy, aiding, abetting; shipping, or transporting explosives in interstate commerce;			

ATTORNEYS	U.S. Attorney or Asst	KARL LUNKENHEIMER, AUSA	DEFENSE	1 <input type="checkbox"/> CJA	2 <input checked="" type="checkbox"/> Ret	3 <input type="checkbox"/> Waive	4 <input type="checkbox"/> Self	5 <input type="checkbox"/> Non / Other	6 <input type="checkbox"/> PD	7 <input type="checkbox"/> CD	Susan V. Tipograph, Esquire(local rules 11 and 13 Flood, Holmes & Tipograph sent 5-31-85) 120 Duane Street New York, New York 10007 (212) 608-6240	Judith Holmes, Esq. (27) 120 Duane St., #400 New York, NY 10007	Alan Ellis, Esq. (56) Suite 315, 1420 Walnut St. Phila., Pa. 19102 (for Albert Vale, Kathleen Vale, Dr. Mary Weir - Sureties)	APPEALS FEE PAYMENTS
FINE AND RESTITUTION PAYMENTS														
Docket Entries Begin On Reverse Side														
USA v. Richard Barnett Exhibits EXH0003														

OPTIONAL: Show last names of defendants
V. PROCEEDINGS

5/24/85 INITIAL APPEARANCE: Counsel, Susan V. Tipograph, Esquire, retained, not present. Defendant held without bail pending a detention hearing to be held before Judge Naythons on 5/28/85 at 1:30 P.M. Magistrate's tape of hearing of 5/24/85, RAP-35-19, FILED.

5/28/85 PRETRIAL DETENTION HEARING: Atty, S. Tipograph, Esq. retained & present; Probable cause found; defendant held for pre trial detention w/o bail; Tape No. EEN-85-43 filed; EEN

5-30-85 Appearance of Susan V. Tipograph, Esq. for deft, filed.

5-30-85 Bail status sheet dtd. 5-24-85 re: deft held without bail, filed. RAP

5-30-85 GOVT'S MOTION FOR A DETENTION HEARING, CERTIFICATE OF SERVICE, FILED.

5-30-85 TEMPORARY PRETRIAL DETENTION ORDER POWERS, MAG. THAT THE HEARING ON DETENTION IS CONTINUED UNTIL 5-28-85 AT 1:30 PM BEFORE THE HONORABLE EDWIN E. NAYTHONS; EACH DEFT IS REMANDED TO CUSTODY OF U.S. MARSHAL, ETC., FILED. RAP

5-30-85 5-31-85 entered 5-30-85 copies mailed.

5-30-85 FINDINGS OF FACT NAYTHONS, MAG. AND ORDER THAT DEFTS ARE COMMITTED TO CUSTODY OF THE ATTORNEY GENERAL OR HIS DESIGNATED REPRESENTATIVE FOR CONFINEMENT, ETC., FILED. EEN

5-31-85 5-31-85 entered & copies mailed.

5-31-85 MOTION AND ORDER THAT THE FBI TAKE AND PRESERVE SAMPLES OF ALL EXPLOSIVES, ETC. FILED. EEN

6-3-85 6-3-85 entered 5-31-85 copies mailed.

6-3-85 Warrant returned "on 5-28-85 executed" with affidavit of Gregory J. Auld, S/A-FBI, filed.

1985

- Jun. 20 True Bill.

1 " 20 Records transferred from Mag. 85-0388-M-1 to this case, filed.

2 Jul. 1 Bail Status Sheet dated 7/1/85 re: Deft. is detained; PLEA: NOT GUILTY AS TO CTS. 1 thru 10, filed. RAP

- " 3 Letter dated 7/2/85 from Karl k Lunkenheimer, AUSA re: request for transcript of arraignments of Deft on 7/1/85, etc, filed. (85-222-1)

3 " 10 DEFT'S MOTION FOR REVOCATION OF DETENTION ORDER, MEMORANDUM, CERT. OF SERVICE, FILED.

4 " 10 Deft's index to exhibit A submitted with motion for revocation of detention order, filed.

5 " 11 ORDER DATED 7/10/85 THAT THE U.S. MARSHAL ALLOW CONFERENCES BETWEEN THE DEFT. AND DEFENSE WITNESSES IN THE PRESENCE OF DEFENSE COUNSEL WITH CERTAIN CONDITIONS, ETC., FILED. LP

- " 11 7/11/85 entered & copies mailed.

- " 11 Transcript of 7/1/85 re: Arraignment, filed. (85-222-01)

6 " 12 Govt's response in opposition to Deft's motion for revocation of detention Order, Memorandum, Cert. of Service, filed.

7 " 12 Bail Hearing, filed.

8 " 15 GOVT'S MOTION TO REQUIRE DEFTS TO FURNISH HANDWRITING EXEMPLARS, MEMORANDUM OF LAW IN SUPPORT, CERTIFICATE OF SERVICE, FILED.

9 " 16 Bail Hearing of 7-15-85, filed.

10 " 16 Bail Hearing of 7-16-85, filed.

-- " 17 Transcript of 5-28-85, filed (85-00222-01)

CONTINUED

DATE	PROCEEDINGS (continued)		V. EXCLUDABLE DELA			
			(a)	(b)	(c)	(d)
1985	(Document No.)					
11 Jul. 19	Bail hearing of 7/18/85 re: Witnesses sworn, filed.					
12 " 19	DEFT'S OMNIBUS PRE-TRIAL MOTION, MEMORANDUM, CERT. OF SERVICE, FILED.					
-- " 22	ORDER THAT EXCLUDABLE TIME BE COMPUTED FROM THE DATE OF FILING OF DEFTS' MOTION FOR OMNIBUS PRETRIAL RELIEF, AND GOVT'S MOTION FOR ELIZABETH ANN DUKE'S HANDWRITING EXEMPLARS, FILED. 7/23/85 entered & copies mailed. (85-222-01) LP/CLK					
13 " 23	Bail Hearing of 7/22/85 re: Counsel argument to the Court - C.A.V., filed.					
14 " 24	Bail Hearing re: Courts Bench Opinion, Court grants bail but under specific conditions, filed.					
15 " 24	RELEASE ORDER POLLAK, J., THAT DEFT. ELIZABETH ANN DUKE IS RELEASE FROM PRETRIAL DETENTION WITH TERMS AND CONDITIONS, ETC., FILED. LP					
- " 24	7/24/85 entered & copies mailed.					
- " 24	Tape of Hearing of 7/1/85, filed. (M.T. 85-20) RAP					
16 " 25	ORDER DATED 7-24-85 THAT DEFTS' MOTIONS FOR EXTENSION OF TIME IN WHICH TO FILE PRETRIAL MOTIONS ARE GRANTED. DEFTS SHALL FILE ALL PRETRIAL MOTIONS ON OR BEFORE 9-4-85. (85-222-1) LP					
17 " 25	Deft's answer to Govt's motion to require deft. to furnish handwriting exemplars, Memorandum, Cert. of Service, filed.					
- " 26	Letter dated 7/23/85 from K. Lunkenheimer, AUSA TO Mag. Powers re: request testimony of the hearing of 5/24/85 to be transcribed at the Govt's expense, filed. (85-222-01)					
18 " 30	ORDER DATED 7/29/85 THAT AS A PREDICATE TO THE TAKING EFFECT OF THE RELEASE ORDER DATED 7/24/85, MS. VALE AND DR. WEIR SIGNIFY THEIR UNDERSTANDING OF AN ADHERENCE TO THE RELEASE ORDER THROUGH SIGNED, SWORN SUBSCRIPTIONS, IT IS ORDERED THAT THE SAME SUBSCRIPTION BE REQUIRED OF MR. VALE SINCE HE ALSO IS ASSIGNED CERTAIN DUTIES BY AND UNDER THE RELEASE ORDER, FILED. LP					
- " 30	7/30/85 entered & copies mailed.					
19 " 31	ORDER DATED 7/29/85 THAT THE CLERK ACCEPT NOTARIZED AFFIDAVITS OF SURETY IN LIEU OF REQUIRING THE PERSONAL APPEARANCE IN THIS DISTRICT OF EACH PERSON NAMED ON THE DEED OF EACH PROPERTY POSTED AS SECURITY FOR THE RELEASE ORDER OF THIS COURT DATED 7/24/85, FILED. LP					
- " 31	7/31/85 entered & copies mailed.					
- " 31	Bond in the sum of \$300,000 - surety Real Estate with attached agreement of bail, filed.					
- Aug. 7	Transcript of 5/24/85, filed. (85-222-01)					
20 " 9	ORDER THAT PARAGRAPH 6a OF THE ORDER OF 7/26/85 IS AMENDED TO READ: "WHEN MS. DUKE ENTERS THE MARSHAL'S AREA, AND BEFORE SHE IS PERMITTED INTO THE CELLBLOCK, THE MARSHAL IS PERMITTED TO SEARCH ANYTHING WHICH SHE IS CARRYING AND TO PAT HER DOWN, AND IS SUBJECT TO A STRIP SEARCH, MS. DUKE WILL NOT BE SUBJECTED TO A BODY CAVITY SEARCH, THIS ORDER REMAINS IN EFFECT UNTIL FURTHER ORDER OF THE COURT, FILED. JK					
- " 9	8/9/85 entered & copies mailed.					
21 " 9	Hearing re: Paragraph 6a of the order of 7/26/85 is amended, filed.					

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

USA v. Richard Barnett Case No. 21-cr-0038 (CRC)

DATE	PROCEEDINGS (continued)		V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
1985	(Document No.)					
- Aug. 19	Appearance of Judith Holmes, Esq., filed. (85-222-01)					
22 " 21	Govt's Notice of Appeal, Cert. of Service, filed. (copies to: USCA, H. Maguigan, Esq., J. Staniels, Judge Pollak, pre-trial, D. Spitz)					
23 " 21	Copy of Clerk's Notice to USCA, filed.					
- " 21	DEFTS' JOINT MOTION FOR ADDITIONAL DISCOVERY AND FOR CONTINUANCE OF HEARING ON PRE-TRIAL MOTIONS, CERT. OF SERVICE, FILED.					
24 " 22	Transcript of 7/12/85, filed.					
25 " 22	Transcript of 7/24/85, filed.					
26 " 22	ORDER THAT EXCLUDABLE TIME BE COMPUTED FROM THE DATE OF FILING OF GOVT'S NOTICE OF APPEAL FROM THE COURT ORDER ENTERED ON 7/24/85, RELEASING THE DEFT. FROM CUSTODY UNDER CERTAIN CONDITIONS, FILED. LP/CLK 8/22/85 entered & copies mailed.					
27 " 26	ORDER DATED 8/23/85 THAT THE LETTER OF 8/20/85, WITH ITS SUPPORT- ING AFFIDAVITS, BE FILED BY THE CLERK AS A PART OF THE RECORD; IT IS FURTHER DIRECTED THAT THE CLERK'S OFFICE DISREGARD DOCKET ENTRY 12, WHICH PURPORTS TO BE AN ENTRY OF APPEARANCE BY MS. HOLMES, FILED. LP 8/26/85 entered & copies mailed.					
28 " 26	Letter dated 8/20/85 from Judith L. Holmes, Esq., with supporting affidavits re: request modifications of conditions of release, filed.					
29 " 26	Transcript of 7/15/85, filed.					
30 " 26	Transcript of 7/16/85, filed.					
31 " 26	DEFT'S MOTION FOR APPOINTMENT OF COUNSEL, MEMORANDUM, CERT. OF SERVICE, AFFIDAVIT IN SUPPORT, FILED.					
32 " 29	Transcript of 7/18/85, filed.					
-- " 29	Govt's response to Defts' joint motion for additional discovery and for continuance of hearing on pre-trial motions, Cert. of Service, filed. (85-222-01)					
33 " 29	Govt's joint response and memorandum re: deft's motion for appointment of counsel, Cert. of Service, filed.					
34 " 29	Govt's rebuttal to Deft's answer to Govt's motion to require deft to furnish handwriting exemplars, Memorandum, Cert. of Service, filed.					
35 " 30	Govt's answer to Deft's omnibus pre-trial motion, Cert. of Service, filed.					
36 " 30	Copy of Transcript Purchase Order, filed.					
37 Sept. 4	REPORT OF SPEEDY TRIAL ACT DELAY, THAT THE APPEAL BY THE GOVT. RE: ORDER BY THE COURT ENTERED ON 7/24/85, RELEASING THE DEFT. FROM CUSTODY WAS REASON FOR DELAY, ETC., FILED. LP/CLK 0/4/85 entered & copies mailed.					
38 " 18	DEFT'S APPLICATION FOR ORDER TO SHOW CAUSE WHY THE RELEASE ORDER SHOULD NOT BE MODIFIED, MEMORANDUM, CERT. OF SERVICE, FILED.					
39 " 20	DEFT'S MOTION FOR A CONTINUANCE, MEMORANDUM, CERT. OF SERVICE, FILED.					
40 " 20	Deft's supplemental memorandum in support of Deft's request for discovery, Cert. of Service, filed.					
CONTINUED						

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

DUKE, ELIZABETH ANN v. Richard Barnett Case No. 21-cr-0038 (DC) 00222 0

Yr. Docket No. De

DATE	PROCEEDINGS (continued)		V. EXCLUDABLE DELA			
			(a)	(b)	(c)	(d)
1985	(Document No.)					
41 Sep. 25	Govt's response to Deft's application for order to show cause why the release order should not be modified, Cert. of Service, filed.					
-- " 25	Govt's supplemental memorandum in opposition to Defts' discovery requests, Cert. of Service, filed.					
-- " 30	Hearing of 9/26/85 re: Defts' motion for hearing pretrial motions continued to 10/15/85, motion for additional discovery denied as moot, Deft's order to show cause - Denied, filed. (85-222-01)					
-- " 30	ORDER DATED 9/27/85 THAT DEFTS' MOTION FOR A CONTINUANCE OF HEARINGS ON PRE-TRIAL MOTIONS IS GRANTED, HEARINGS SHALL BEGIN ON 10/15/85, DEFTS' MOTION FOR ADDITIONAL DISCOVERY IS DENIED AS MOOT, AND DUKE'S MOTION FOR AN ORDER TO SHOW CAUSE WHY THE RELEASE ORDER SHOULD NOT BE MODIFIED IS DENIED, FILED. LP 10/1/85 entered & copies mailed. (85-222-01)					
42 Oct. 2	Signed Statements of Leslie Love Engle, Esq., Edmond A. Tiryak, Esq., Judith Brown Chomsky, Esq. and Theodore M. Lieverman, Esq. accepting responsibilities delegated by the release order of 7/24/85, filed.					
43 " 2	DEFT'S MOTION FOR MODIFICATION, FOR OCTOBER 4 -6, 1985 OF RELEASE ORDER, CERT. OF SERVICE, FILED.					
(42) " 3	ORDER DATED 10/2/85 THAT THE RELEASE ORDER OF 7/24/85 IS MODIFIED IN THAT THE PORTION OF PARAGRAPH 16 PERTAINING TO "COMPANY OF HER ATTORNEY" IS AMENDED, ETC., FILED. LP 10/3/85 entered & copies mailed.					
(43) " 3	ORDER DATED 10/2/85 THAT THE RELEASE ORDER OF 7/24/85 IS MODIFIED IN THAT, FOR THE WEEKEND OF OCTOBER 4-6, 1985, PARAGRAPH 16 IS AMENDED, ETC., FILED. LP 10/3/85 entered & copies mailed.					
44 " 3	ORDER THAT THE ORDER OF 7/26/85 PROVIDING FOR JOINT MEETINGS OF DEFTS AND ATTORNEY IS MODIFIED IN THAT THE REQUIREMENTS OF PARAGRAPH 6(b) ARE AMENDED TO PROVIDE THAT ON 10/3/85 MS. DUKE WILL BE ACCOMPANIED BY ONLY ONE OF HER LAWYERS, HOLLY MAGUIGAN, ESQ., FILED. LP 10/3/85 entered & copies mailed.					
45 " 3	ORDER THAT THE RELEASE ORDER OF 7/24/85 IS MODIFIED IN THAT PARAGRAPH 17 IS AMENDED TO PROVIDE THAT HOLLY MAGUIGAN, ESQ. ET AL. MAY SATISFY THE REPORTING REQUIREMENT IMPOSED THEREIN BY TELEPHONE CALL TO THE APPROPRIATE AGENCY DURING THE SPECIFIED TIME PERIODS, FILED. LP 10/3/85 entered & copies mailed.					
46 " 3	Copy of appointment of and authority to pay court appointed counsel pursuant to CJA 20, filed.					
47 " 7	DEFT'S MOTION FOR MODIFICATION OF RELEASE ORDER, CERT. OF SERVICE, FILED.					
48 " 7	DEFT'S EX PARTE APPLICATION FOR LEAVE TO HIRE A HANDWRITING EXPERT, FILED.					
49 " 7	DEFT'S EX PARTE APPLICATION FOR LEAVE TO HIRE AN INVESTIGATOR, FILED.					
50 " 8	Transcript of 7/22/85, filed.					
-- " 9	RECORD COMPLETE FOR PURPOSES OF APPEAL.					
-- " 10	Pretrial conference of 10/9/85 re: hearing on motions set for 10/28/85, filed. (85-222-01)					

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

USA v. Richard Barnett Case No. 21-cr-0038 (CRC)

DATE		PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
1985		(Document No.)				
-- Oct. 10		Superseding Indictment, filed.				
(47) " 11		ORDER DATED 10/10/85 THAT THE RELEASE ORDER OF 7/24/85 IS MODIFIED IN THAT PARAGRAPH 16 IS AMENDED TO PROVIDE THAT THE PORTION OF PARAGRAPH 16 PERTAINING TO "COMPANY OF HER ATTORNEYS" IS AMENDED, ETC., FILED. LP				
		10/11/85 entered & copies mailed.				
51 " 15		GOVT'S MOTION & ORDER THAT A BENCH WARRANT BE ISSUED FOR ARREST OF DEFT; BAIL TO BE ENTERED IN PRETRIAL DETENTION, FILED. Warrant exit LP				
		10-15-85 entered and copies mailed				
52 " 15		GOVT'S MOTION TO REVOKE RELEASE ORDER AND ITS MODIFICATIONS, MEMORANDUM, CERT. OF SERVICE, FILED.				
53 " 15		ORDER THAT THE RELEASE ORDER OF 7/24/85 AND THE SUBSEQUENT MODIFICATIONS TO THAT ORDER ARE REVOKED AND DEFT. IS ORDERED HELD IN PRETRIAL DETENTION, FILED. LP				
		10/15/85 entered & copies mailed.				
54 " 15		Hearing re: Govt's motion to revoke bail, Deft. failed to report to P.T.S. or the U.S. Marshal over the week end, Court Grants motion, filed.				
55 " 15		GOVT'S MOTION TO FORFEIT BAIL, MEMORANDUM, CERT. OF SERVICE, FILED.				
(48) " 16		ORDER DATED 10/10/85 THAT DEFENSE COUNSEL IS AUTHORIZED TO RETAIN A HANDWRITING EXPERT, DEFENSE IS AUTHORIZED TO EXPEND THE SUM OF \$1500.00 WITHOUT FURTHER ORDER OF THE COURT, FILED. LP				
		10/16/85 entered & copies mailed.				
(49) " 16		ORDER DATED 10/10/85 THAT THE DEFENSE COUNSEL IS AUTHORIZED TO RETAIN AN INVESTIGATOR, DEFENSE IS AUTHORIZED TO EXPEND THE SUM OF \$1500.00 WITHOUT FURTHER ORDER OF THE COURT, FILED. LP				
		10/16/85 entered & copies mailed.				
56 " 25		Appearance of Alan Ellis, Esq. for Sureties, filed.				
57 " 25		Sureties' response to motion to forfeit bail, Cert. of Service, filed.				
58 " 25		Govt's memorandum in opposition to Defts' pretrial suppression motions, Cert. of Service, filed.				
59 " 25		Transcript of 10/15/85, filed.				
-- " 28		Transcript of 9/26/85, filed. (85-222-01)				
60 " 28		GOVT'S MOTION FOR ENTRY OF JUDGMENT OF DEFAULT UNDER RULE 46(e)(3), MEMORANDUM, CERT. OF SERVICE, FILED.				
-- " 29		Hearing of 10/28/85 re: Deft. not appearing bail to be forfeited, counsel to file submissions within 10 days and a hearing will be set on 11/15/85, filed. (85-222-01)				
61 " 30		REPORT OF SPEEDY TRIAL ACT DELAY DATED 10/28/85 THAT DEFT. FAILED TO APPEAR FOR A HEARING ON 10/28/85, FILED. LP/CLK				
		10/30/85 entered & copies mailed.				
-- Nov. 4		Transcript of 10/4/85, filed. (85-222-01)				
(60) " 5		ORDER THAT THE PRINCIPAL AND DEFT. AND THE SURETIES, MARY A. WEIR AND KATHLEEN WEIR VALE, APPEAR ON 11/19/85 AT 9:30 A.M. IN COURTROOM 13B, TO SHOW CAUSE WHY ENTRY OF JUDGMENT OF DEFAULT ON THE BAIL BOND SHOULD NOT BE ORDERED, FILED. LP				
		11/6/85 entered & copies mailed.				
-- " 7		Transcript of 11/4/85, filed. (85-222-01)				
CONTINUED						

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

DUKE, ELIZABETH ANN

USA v. Richard Barnett Case No. 21-cr-00388 (RC)

00222

02

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
<u>1985</u>	(Document No.)				
(55) Nov. 12	ORDER DATED 11/11/85 THAT THE GOVT'S MOTION TO FORFEIT BAIL IS GRANTED, FILED. LP				
62 " 20	11/13/85 entered & copies mailed.				
63 Dec. 2	Govt's reply brief in support of motion to enter Judgment of Default pursuant to Rule 46(e)(3), Cert. of Service, filed.				
64 " 9	Certified copy of Order from USCA, that Appellant's motion to Dismiss appeal as moot is Granted, filed. (85-1521)				
65 " 18	Hearing re: Medical condition of Deft., filed.				
	Bail Hearing re: Govt's motion to forfeit bail by sureties, Mr. Ellis moves for the admission of Gerald Goldstein and Van G. Hilley, for the purpose of representation of the sureties, Courts Bench Opinion - Bail shall be forfeited Judgment of Default, filed.				
66 " 19	ORDER DATED 12/18/85 THAT THE GOVT'S MOTION FOR ENTRY OF JUDGMENT OF DEFAULT IS GRANTED, AND JUDGMENT IS ENTERED IN FAVOR OF THE U.S. AND AGAINST THE PRINCIPAL, ELIZABETH ANN DUKE, IN THE AMOUNT OF \$300,000, AND AGAINST THE SURETIES, MARY A. WEIR, KATHLEEN WEIR VALE, AND ALBERT VALE, JOINTLY AND SEVERALLY UP TO THE AMOUNT OF \$300,000, TO THE EXTENT THAT SUCH SUM IS RECOVERABLE FROM THE EQUITY POSSESSED BY EACH SUCH SURETY IN HER OR HIS HOME IN SAN ANTONIO, FILED. LP				
<u>1986</u>	12/19/85 entered & copies mailed.				
67 Jan. 9	Transcript of 12/18/85, filed.				
-- Nov. 13	MOTION & ORDER THAT THE SUPERSEDING INDICTMENT BE DISMISSED, FILED. PBS				
	11/13/86 entered & copies mailed.				
-- " 13	Second Superseding Indictment, filed.				
68 " 13	MOTION & ORDER FOR BENCH WARRANT, FILED. Warrant Exit. PBS				
<u>1988</u>	Preventive Detention.				
-- Feb. 23	GOVT'S EX PARTE MOTION TO TRANSFER EVIDENCE TO THE JOINT CUSTODY OF THE U.S. ATTORNEY FOR DISTRICT OF COLUMBIA AND THE F.B.I., FILED. (FILED UNDER SEAL) (85-222-01)				
-- " 24	ORDER DATED 2/24/88, FILED. (SEALED & IMPOUNDED) (85-222-01) 2/24/88 entered & copies mailed.				
<u>2012</u>					
69 MAY 15	ORDER AS TO ELIZABETH ANN DUKE REASSIGNING CASE TO THE HONORABLE MITCHELL S. GOLDBERG. Signed by the Honorable J. Curtis Joyner on 5/15/2012. 5/15/2012 Entered and copies forwarded to AUSA. (ap).				

EXHIBIT A(2)



WANTED BY THE FBI

ELIZABETH ANNA DUKE

Unlawful Possession of United States Identification; Conspiracy; Unlawful Storage of Explosives; Unlawful Possession of Firearms and Destructive Devices; Storage and Concealment of Stolen Explosives; Unlawful Possession of Five or More False Identification Documents; Possession of Counterfeit Social Security Cards; Aiding and Abetting; Unlawful Possession of Document-Making Implement



Photograph taken in 1985



DESCRIPTION

Aliases: Betty Ann Duke, Elizabeth Ann Duke, Betty Weir, "Betty Ann"

Date(s) of Birth Used: November 25, 1940, April 20, 1941

Place of Birth: Beeville, Texas

Hair: Brown (May now be gray)

Eyes: Blue

Height: 5'6"

Weight: 120 pounds

Sex: Female

Race: White

Occupation: Teacher, Philanthropist

Nationality: American

Scars and Marks: Duke has pin holes on the front of her earlobes due to a genetic condition.

NCIC: W502404799

REWARD

The FBI is offering a reward of up to \$50,000 for information leading directly to the arrest and conviction of Elizabeth Anna Duke.

REMARKS

Duke is known to speak fluent Spanish. She has ties to Texas and is known to travel in the northern United States near the Canadian border.

CAUTION

Elizabeth Anna Duke is wanted for her alleged involvement in a series of criminal activities during the late 1970's and early 1980's. She was allegedly a member of the radical group known as the May 19th Communist Organization which advocated communism and the violent overthrow of the United States Government. Duke was arrested in Bucks County, Pennsylvania, in May of 1985 for her alleged participation in this group, but was released on bail. She later fled the jurisdiction and has been a fugitive since October of 1985. A federal arrest warrant was issued for Duke in the Eastern District of Pennsylvania on November 13, 1986, charging her with the aforementioned federal charges.

SHOULD BE CONSIDERED ARMED AND DANGEROUS AND AN ESCAPE RISK

If you have any information concerning this person, please contact your local FBI office or the nearest American Embassy or Consulate.

USA v. Richard Barnett Exhibits EXH0011

Field Office: Philadelphia

EXHIBIT A(3)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

ELIZABETH DUKE,

Defendant.

:
:
:
:
:
:

Criminal No. 88-00145 (DAR)

FILED

JUN 17 2009

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT


ORDER

Upon consideration of the government's oral Motion to Dismiss Indictment and Quash Arrest Warrant and the record herein, for the reasons set forth in the government's motion and for good cause shown, it is this 17th day of June 2009,

ORDERED that the above case is dismissed without prejudice, and it is

FURTHER ORDERED that the arrest warrant issued for the defendant in this case is hereby quashed, and it is

FURTHER ORDERED that the United States Marshals Service cancel and/or withdraw the warrant from the NCIC data base.


DEBORAH A. ROBINSON

United States District Court Judge

EXHIBIT A(4)

WARRANT FOR ARREST

CO-180
NEW 1/88

United States District Court		DISTRICT OF COLUMBIA	
UNITED STATES OF AMERICA v. ELIZABETH DUKE DOB: 11/25/40		DOCKET NO. CR88-0145-07	MAGISTRATE CASE NO.
WARRANT ISSUED ON THE BASIS OF: <input type="checkbox"/> Indictment <input type="checkbox"/> Information <input checked="" type="checkbox"/> Order of Court <input type="checkbox"/> Complaint		NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED ELIZABETH DUKE (UNKNOWN)	
TO: ANY UNITED STATES MARSHAL OR ANY AUTHORIZED LAW ENFORCEMENT OFFICER		DISTRICT OF ARREST JUN 22 2009	
		CITY NANCY MAYER WHITTINGTON, CLERK U.S. DISTRICT COURT	
YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the nearest available magistrate to answer to the charge(s) listed below.			
DESCRIPTION OF CHARGES			
<p>FAILURE TO APPEAR FOR ARRAIGNMENT BEFORE JUDGE HAROLD H. GREENE ON MAY 25, 1988 in the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>AND</p> <p>Malicious damage of U.S. Property by means of fire and explosives, and aiding and abetting an act to be done.</p> <p>QUASHED</p> <p>Deborah A. Robinson United States Magistrate Judge 6/22/09</p> <p>RECORDED JUN 3 1988 JUL 1 1988</p>			
IN VIOLATION OF	UNITED STATES CODE TITLE 18	SECTION 844(f), 2(a) & (b)	
BAIL FIXED BY COURT HOLD WITHOUT BOND	OTHER CONDITIONS OF RELEASE		
ORDERED BY Judge Harold H. Greene	SIGNATURE (JUDGE ¹ /U.S. MAGISTRATE) <i>[Signature]</i>		DATE May 25, 1988
CLERK OF COURT JAMES F. DAVEY	(BY) DEPUTY CLERK <i>[Signature]</i> RETURN		DATE ISSUED June 02, 1988
This warrant was received and executed with the arrest of the above-named person.			
DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER	
DATE EXECUTED			

¹United States Judge or Judge of a State Court of Record

EXHIBIT A(5)

USA v. Richard Barnett Case No. 21-cr-0038 (CRC)



JOSEPH MAHMOUD DIBEE



LEO FREDERICK BURT



JOSEPHINE SUNSHINE
OVERAKER



ELIZABETH ANNA DUKE



DONNA JOAN BORUP



CATHERINE MARIE
KERKOW



ISHMAIL MUSLIM ALI



JOSE ESPINOSA
CABALLERO



EDUARDO GUERRA
JIMENEZ



AMBROSE HENRY
MONTFORT

**Domestic Terrorism | Federal
Bureau of Investigation**

USA v. Richard Barnett Exhibits EXH0017

fbi.gov

EXHIBIT A(6)

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90035
DC-13-90036

A Charge of Judicial
Misconduct or Disability

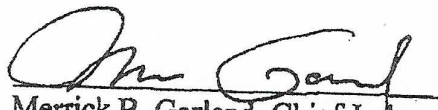
Before: GARLAND, Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein, filed against a magistrate judge and a judge of the United States District Court for the District of Columbia, it is

ORDERED that the complaint be dismissed for the reasons stated in the attached Memorandum. See 28 U.S.C. § 352(b)(1)(A)(ii) and (iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B) and (D).

The Clerk is directed to send copies of this Order and accompanying Memorandum to the complainant, the subject judges, and the Judicial Conference Committee on Judicial Conduct and Disability. See 28 U.S.C. § 352(b); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(g)(2).


Merrick B. Garland, Chief Judge
District of Columbia Circuit

Date: 1-15-2014

Exhibit "G"

MEMORANDUM

The complainant alleges that a magistrate judge and judge of the United States District Court for the District of Columbia engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. For the following reasons, the allegations do not warrant action against the subject judges.

The complainant alleges that the magistrate judge “(i) falsified the record, (ii) exceeded [the judge’s] jurisdiction and (iii) impersonated an Article III judge in dismissing the Indictment.” These allegations arise out of the magistrate judge’s 2009 dismissal, at the request of the United States Attorney, of a dormant criminal indictment that had remained outstanding since 1988 and in which the complainant played no role whatsoever. The complainant also objects to the magistrate’s denial of the complainant’s motion to intervene in those proceedings. Because those allegations are “directly related to the merits of a decision or procedural ruling,” the complaint against the magistrate judge “must be dismissed.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B); *See* 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant also asserts that the subject district court judge was “repeatedly made aware of this malfeasance of [the magistrate judge], failed to take any action and sought to obfuscate and cover-up further inquiry into” the allegations against the magistrate judge. The district judge sent the complainant a detailed letter that reasonably explained the judge’s finding that there was no malfeasance on the part of the magistrate

-2-

judge and hence no warrant for further action. Because the allegations “lack[] sufficient evidence to raise an inference that misconduct has occurred” on the part of either the magistrate or the district judge, the complaint against the district judge must also be dismissed. *Id.* 11(c)(1)(D).¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 18(a), the complainant may file a petition for review by the Judicial Council for the District of Columbia Circuit. Any petition must be filed in the Office of the Clerk of the Court of Appeals within 35 days of the date of the Clerk's letter transmitting the dismissal Order and this Memorandum. *Id.* R. 18(b).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

ELIZABETH DUKE,

Defendant.

Criminal No. 88-00145 (DAR)

FILED

JUN 17 2009

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

Upon consideration of the government's oral Motion to Dismiss Indictment and Quash Arrest Warrant and the record herein, for the reasons set forth in the government's motion and for good cause shown, it is this 17th day of June 2009,

ORDERED that the above case is dismissed without prejudice, and it is

FURTHER ORDERED that the arrest warrant issued for the defendant in this case is hereby quashed, and it is

FURTHER ORDERED that the United States Marshals Service cancel and/or withdraw the warrant from the NCIC data base.

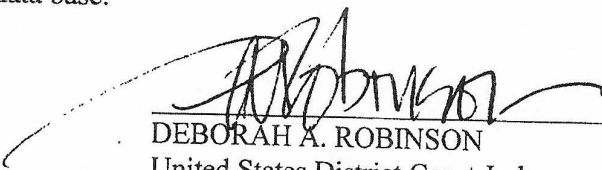

DEBORAH A. ROBINSON
United States District Court Judge

Exhibit "B"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELIZABETH DUKE,

Defendant.

CR No. 88-0145

Washington, D.C.

Tuesday, June 17, 2009

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE DEBORAH A. ROBINSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

M. JEFFREY BEATRICE, ESQ.
U.S. Attorney's Office
555 Fourth Street, NW
Room 4104
Washington, DC 20530
(202) 353-8831

Transcribed By:

BRYAN A. WAYNE, RPR, CRR
Official Court Reporter
U.S. Courthouse, Room 4704-A
333 Constitution Avenue, NW
Washington, DC 20001
(202) 354-3186

Exhibit "E"

Proceedings electronically recorded and transcribed.

P R O C E E D I N G S

THE DEPUTY CLERK: Criminal case No. 88-145,
Elizabeth Duke. For the government, Mr. Beatrice.

THE COURT: Mr. Beatrice.

MR. BEATRICE: Thank you, Your Honor. We would orally
move to dismiss this case at this time, dismiss the indictment
and also to quash the warrant, and we will submit a proposed
order today, Your Honor.

THE COURT: Very well. Thank you, Mr. Beatrice.

(Proceedings adjourned.)

EXHIBIT B

UNITED STATES DISTRICT COURT

for the

District of Minnesota

United States of America,

v.

Dylan Shakespeare Robinson

Defendant

Case No. 0864 0:20-00401M-001

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant’s release is subject to these conditions:

- (1)

The defendant must not violate any federal, state, or local law while on release.
- (2)

The defendant must cooperate in the collection of a DNA sample if it is authorized by 42 U.S.C. § 14135a.¹
- (3)

The defendant must advise the court or the pretrial services office or supervising officer in writing before making any change of residence or telephone number.
- (4)

The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the Court may impose.
The defendant must appear at _____
on _____.

If blank, defendant will be notified of next appearance.
- (5)

The defendant must sign an appearance bond, if ordered.

¹ The Director of the FBI is required by law to promptly expunge from the index described in 42 USC Section 14132(a), the analysis of the DNA sample collected from this Defendant upon receipt by the Attorney General of a certified copy of a final court order establishing: 1) that no indictment was returned, or 2) that the charges giving rise to this Order Setting Conditions of Release were dismissed, or 3) that Defendant was acquitted of the charges giving rise to this Order setting Conditions of Release. In the event any of the foregoing occur, Defendant or his or her Attorney should submit a proposed Order to the Court specifying which of the foregoing events occurred, and sufficient information regarding his or her identity and the charges giving rise to this Order Setting Conditions of Release to enable the FBI to match the Order to the DNA sample to be expunged. To accomplish the expungement, once the Order is entered, the Defendant or his or her Attorney must send a certified copy of the Order to:

Federal Bureau of Investigation
Laboratory Division
2501 Investigation Parkway
Quantico, VA 22135
Attn: Federal Convicted Offender Program Manager

More information is available at: www.fbi.gov/about-us/lab/biometric-analysis/codis/codis_expungement

ADDITIONAL CONDITIONS OF RELEASE

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

- ☐ (6) The defendant is placed in the custody of:
Person or organization _____
Address (Only if above is an organization) _____
City and State _____
Tel No. (if organization) _____

Who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed: _____

Custodian or ProxyDate

- ☒ (7) The defendant must:
- ☒ (a) submit to supervision by and report for supervision to the U.S. Probation and Pretrial Services Office as directed and ensure your supervising officer has a means to reach you.

☐ (b) continue or actively seek employment.

☐ (c) continue or start an education program.

☐ (d) surrender any passport, Green Card, Visa, Advanced Parole Document, Refugee Travel Permit/Reentry Document, or other foreign travel document to Probation and Pretrial Services as directed.

☐ (e) not obtain a passport, Green Card, Visa, Advanced Parole Document, Refugee Travel Permit/Reentry Document, or other foreign travel document.

☒ (f) abide by the following restrictions on personal association, residence, or travel:
Travel is restricted to the District of Minnesota unless approved in advance by the U.S. Probation Officer

☐ (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including:

☒ (h) get medical or psychiatric treatment: The defendant shall complete a mental health assessment and follow the directives of the U.S. Probation Officer.

☐ (i) return to custody each _____ at _____ o'clock after being released at _____ o'clock for employment, schooling, or the following purpose(s):

ADDITIONAL CONDITIONS OF RELEASE

- ☒ (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary, and observe the rules and regulations of that facility.
- ☒ (k) not possess a firearm, destructive device, or other weapon.
- ☒ (l) not use alcohol ☒ at all ☐ excessively.
- ☒ (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.
- ☒ (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.
- ☒ (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.
- ☒ (p) participate in one of the following location restriction programs and comply with its requirements as directed.
 - ☐ (i) **Curfew.** You are restricted to your residence every day
 - ☐ from _____ to _____ or
 - ☐ as directed by the pretrial services officer, or
 - ☒ (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or
 - ☐ (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lockdown at your residence except for medical necessities and court appearances or other activities specifically approved by the court.

ADDITIONAL CONDITIONS OF RELEASE

- ☐ (q) submit to location monitoring as directed by the pretrial services office or supervising officer and comply with all of the program requirements and instructions provided.
 - ☐ you must pay all or part of the cost of the program based upon your ability to pay as determined by the pretrial services office or supervising officer.
- ☒ (r) report as soon as possible, to the pretrial services office or supervising officer every contact with law enforcement personnel, including arrests, questioning, or traffic stops.
- ☒ (s) Comply with Crow Wing County, Minnesota, Probation requirements.

ADVICE OF PENALTIES AND SANCTIONS

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (*i.e.*, in addition to) any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

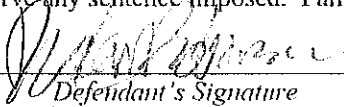
If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) An offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more - you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) An offense punishable by imprisonment for a term of five years or more, but less than fifteen years - you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) Any other felony - you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) A misdemeanor - you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

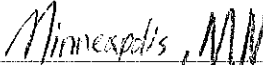
A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of the Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.


Defendant's Signature

7/14/20


City and State

AO 199C (Rev. 09-08) Advice of Penalties

Dylan Shakespeare Robinson

Directions to the United States Marshal

- ☒ The defendant is ORDERED released after processing.
- ☐ The United States Marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date:

July 14, 2020



Judicial Officer's Signature

U.S. Magistrate Judge Kate M. Menendez

Printed Name and Title

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

EXHIBIT C

United States v. Mattis, 963 F.3d 285 (2020)

963 F.3d 285

United States Court of Appeals, Second Circuit.**UNITED STATES** of America, Plaintiff-Appellant,
v.Colinford **MATTIS**, Urooj
Rahman, Defendants-Appellees.

Docket No. 20-1713

|

August Term, 2019

|

Argued: June 23, **2020**

|

Decided: June 30, **2020****Synopsis**

Background: Defendants were charged with throwing a Molotov cocktail into an unoccupied police vehicle. The **United States** District Court for the Eastern District of New York, **Steven M. Gold**, **United States** Magistrate Judge, released defendants on bail. The District Court, **Margo K. Brodie**, J., affirmed. **United States** appealed.

[Holding:] The Court of Appeals, **Hall**, Circuit Judge, held that releasing defendants on \$250,000 bond was not clearly erroneous.

Affirmed.

Newman, Senior Circuit Judge, dissented and filed opinion.

Procedural Posture(s): Appellate Review; Bail or Custody Motion.

West Headnotes (11)

[1] Bail 🔑 Presumptions and burden of proof

Presumption in favor of pre-trial detention that no condition or combination of conditions will reasonably assure the safety of the community may be rebutted by the defendant, who bears a

limited burden of production by coming forward with evidence that he does not pose a danger to the community. 18 U.S.C.A. § 3142(e)(3).

4 Cases that cite this headnote

[2] Bail 🔑 Presumptions and burden of proof

Once a defendant has met his burden of production of evidence that he does not pose a danger to the community, the presumption favoring pre-trial detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court. 18 U.S.C.A. § 3142(e)(3).

4 Cases that cite this headnote

[3] Bail 🔑 Presumptions and burden of proof

Even in a presumption case favoring pre-trial detention, the government retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community. 18 U.S.C.A. § 3142(e)(3).

2 Cases that cite this headnote

[4] Criminal Law 🔑 Bail

As a rule, Court of Appeals applies deferential review to a district court's bail determination and will not reverse except for clear error.

1 Cases that cite this headnote

[5] Criminal Law 🔑 Bail

The clear error standard for review of decision on pre-trial detention applies not only to the factual predicates underlying the district court's decision, but also to its overall assessment, based on those predicate facts, as to the risk of flight or danger presented by defendant's release. 18 U.S.C.A. § 3142(e)(3).

2 Cases that cite this headnote

United States v. Mattis, 963 F.3d 285 (2020)

[6] Criminal Law 🔑 Interlocutory, Collateral, and Supplementary Proceedings and Questions**Criminal Law** 🔑 Bail

The determination that a package of bail conditions will protect the public from a purportedly dangerous defendant is a mixed question of law and fact which is reviewed for clear error.



1 Cases that cite this headnote

[7] Criminal Law 🔑 Bail

Court of Appeals will find clear error in determination that a package of bail conditions will protect the public from a purportedly dangerous defendant only where, on the entire evidence, Court is left with the definite and firm conviction that a mistake has been committed.

4 Cases that cite this headnote

[8] Bail 🔑 Right to Release on Bail**Bail** 🔑 Evidence

Releasing defendants on \$250,000 bond was not clearly erroneous in prosecution for throwing Molotov cocktail into unoccupied police vehicle during nationwide protests of police brutality; bond condition left multiple family members and friends liable if the defendants violated any condition of release, including home detention, neither defendant had a prior criminal record, both defendants had engaged in responsible careers, were dedicated to caring for their families, and had deep ties to the community, they did not engage in extensive surreptitious planning, and nothing indicated that the defendants were likely to engage in similar acts outside the context of that particular night or that they intended to harm people.  18 U.S.C.A. §§ 3142(e)(3),  3142(g).

1 Cases that cite this headnote



[9] Criminal Law 🔑 Questions of Fact and Findings

The “clearly erroneous” standard does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently.

[10] Criminal Law 🔑 Questions of Fact and Findings

Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous, even when the district court's findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts.

[11] Bail 🔑 Presumptions and burden of proof

Once a defendant meets his limited burden of production by coming forward with evidence that he does not pose a danger to the community or a risk of flight, the presumption favoring pre-trial detention becomes merely one of the factors to be considered among those weighed by the district court.  18 U.S.C.A. §§ 3142(e)(3),  3142(g).

1 Cases that cite this headnote

*286 Appeal from the **United States** District Court for the Eastern District of New York, No. 20-403No. 20-403 – Margo K. Brodie, *Judge*.

Attorneys and Law Firms

David K. Kessler (Kevin Trowel, Assistant **United States** Attorneys on the brief), for Richard P. Donoghue, **United States** Attorney, Eastern District of New York, Brooklyn, NY, for Appellant.

United States v. Mattis, 963 F.3d 285 (2020)

Sabrina P. Shroff, Law Offices of Sabrina P. Shroff, New York, NY, for Appellee **Mattis**.

Paul L. Shechtman (Margaret E. Lynaugh on the brief), Bracewell LLP, New York, NY, for Appellee Rahman.

Brian A. Jacobs, Morvillo Abramowitz, Grand Iason & Anello PC, New York, NY, Edward Y. Kim, Krieger Kim & Lewin LLP, New York, NY for Amici Curiae Former Federal Prosecutors (joined by Joshua L. Dratel, Dratel & Lewis, P.C., New York, NY for National Association of Criminal Defense Lawyers), in support of Appellees.

Before: Newman, Hall, and Lynch, Circuit Judges.

Opinion

Judge Newman dissents in a separate opinion.

Peter W. Hall, Circuit Judge:

*287 The **United States** appeals from a June 1, 2020 order of the **United States** District Court for the Eastern District of New York (Brodie, J.), affirming Magistrate Judge Steven M. Gold's release of Colinford **Mattis** and Urooj Rahman on bail pending trial.

On May 30, 2020, the defendants-appellees were arrested following an incident in which defendant Rahman allegedly threw a Molotov cocktail into an unoccupied police vehicle and **Mattis** allegedly acted as the getaway driver.¹ Magistrate Judge Gold ordered each defendant released on \$250,000 bond with conditions. The government appealed and Judge Brodie affirmed. On June 5, 2020, a panel of this Court granted the government's motion to stay the release order pending resolution of this appeal.

The government contends that the district court clearly erred by not explicitly stating it considered the statutory presumption favoring detention that arises in this case and by ultimately granting release. For the reasons that follow, we affirm the determination of the district court.

I.

According to a complaint filed by the government, in the early morning of May 30, 2020, amidst city and nationwide protests against police brutality, **Mattis** and Rahman were driving around Brooklyn in **Mattis's** vehicle. At one point, Rahman exited the vehicle and threw a lit Molotov cocktail into an unoccupied and previously vandalized police vehicle. Rahman then returned to the vehicle, which **Mattis** was driving, and the pair fled. The government also offered evidence that, earlier that evening, Rahman attempted to distribute Molotov cocktails to other individuals. Shortly after the pair fled, the defendants were apprehended and taken into custody by the New York Police Department. During the arrest of the defendants, the police officers observed in plain view in **Mattis's** vehicle items that could be used to build a Molotov cocktail, including a lighter, a beer bottle filled with toilet paper and a liquid suspected to be gasoline, and a gasoline tank. The government thereafter filed a complaint charging defendants with violating 18 U.S.C. § 844(i), which prohibits “maliciously damag[ing] or destroy[ing], or attempt[ing] to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce.” **Mattis** and Rahman were then brought before Magistrate Judge Gold for a detention hearing.

Pursuant to 18 U.S.C. § 3154(1), Pretrial Services collected information pertaining to **Mattis** and Rahman, their risks of flight, and the danger that their releases would pose to another person or the community. The Pretrial Services officers assigned to **Mattis** and Rahman each recommended that the defendants be released on bond co-signed by financially responsible suretors with additional conditions imposed. These conditions included the defendants surrendering all travel documents, being subject to random home and employment visits, and being subject to home detention with location monitoring.

Colinford **Mattis** appeared via video conference for the hearing before Magistrate Judge Gold on June 1, 2020. **Mattis's** counsel emphasized that after a “detailed interview” with **Mattis**, the Pretrial Services *288 officer concluded that the proposed bail package would reasonably assure the safety of the community and **Mattis's** return to court. Gov't App. 18. **Mattis's** counsel also described **Mattis's** close family ties, including his three foster children, two of

United States v. Mattis, 963 F.3d 285 (2020)

whom he is in the process of adopting. Numerous suretors volunteered in support of **Mattis**, including his brother, sisters, and close friends.

The government argued in those proceedings that despite the recommendation of Pretrial Services the bail conditions were inadequate because they assumed **Mattis** would act in a rational manner. The government contended that “Colinford **Mattis** has not demonstrated himself to be a rational person[,]” because **Mattis** was willing to risk his career and the advantage of his education by participating in this crime. Gov’t App. 24. As counsel for the government explained:

[I]t is difficult for me, frankly, to comprehend how somebody in his position with his background would do what he did and I have great difficulty understanding how we can make any assumption about how a bail package like the one that was suggested by Ms. Shroff is actually going to protect the public and is going to ensure that he is going to return to court as required.

Gov’t App. 26. During questioning by the magistrate judge, the government conceded that its claim that **Mattis** was irrational and would not comply with the bail conditions was based solely on the facts of the crime.

THE COURT: When you say that you question his rationality, I understand the argument and I don’t mean to belittle what happened ... I just want to make sure that I am understanding the scope of your argument and asking you whether there are other aspects of his background or the government’s information about him that you’re prepared to put on this record other than his behavior on the night in question that demonstrates his lack of attention to incentives, rewards and punishment.

MR. RICHARDSON: Not at this time, Your Honor.

Gov’t App. 27. In concluding his argument to the court, counsel for the government emphasized: “I do not believe that he can rebut the presumption that he is a danger to the community and a danger of flight.” Gov’t App. 27.

Mattis’s attorney responded, “I believe that the bail package completely addresses any concerns at all and I fairly rebutted this presumption.” Gov’t App. 27.

After considering the arguments, the magistrate judge rejected the government’s contention that **Mattis** is irrational and therefore not entitled to bail:

I ... believe that one night of behavior is not a basis to reject someone’s ability to make rational decisions and that home detention assured by the plaintiff and the well-being of his entire family and several high earning colleagues and friends should be an adequate deterrent for further danger to the community even assuming the accuracy of every allegation of the government in its complaint.

Gov’t App. 27–28. The magistrate judge set bond in the amount of \$250,000 and imposed the conditions listed in the Pretrial Services report, which include home detention and a requirement that **Mattis** wear a GPS location monitor.

On the same day, Urooj Rahman also appeared via video conference for a bail hearing before Magistrate Judge Gold. As with **Mattis**, Pretrial Services recommended home confinement with GPS monitoring and a \$250,000 bond. Numerous family members and friends volunteered to ***289** be suretors for Rahman, and the government argued that the bail package was insufficient to rebut the presumption that Rahman is a danger to the community and a risk of flight. Before the court, Rahman’s attorney described Rahman’s work as a public interest lawyer. Her attorney also pointed out her family ties, which include living with and being responsible for the care of her mother whose health is declining. He argued that Rahman is unlikely to commit another crime: “this is her first arrest. She ... has no history of substance abuse or any other risk factor that would suggest any propensity for future criminality or failure to abide by the Court’s instructions. Ms. Rahman also comes from a tight, solid and law abiding family.” Gov’t App. 48–49. In response, the government argued that Rahman’s previously

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spotless record weighed in favor of denying bail: “[T]his defendant, who had so much to lose, threw that Molotov cocktail anyhow.” Gov’t App. 55.

In concluding his argument before the magistrate judge, Rahman’s attorney raised the additional consideration of coronavirus spreading in the Metropolitan Detention Center, where Rahman was confined. Gov’t App. 55–56 (“The people in federal custody [have] ... six times the rate of infection [of] the U.S. population.”). The magistrate judge, having reviewed the Pretrial Services report and the list of suretors and having considered the arguments made by the government and the defense during the video conference, explained:

It’s not an easy case. The conduct of the defendant is extremely grave at least as alleged by the government, but I do take into account the fact that the defendant does not have a prior record and that she has a number, a large number of responsible suretors who are ready to vouch for her.

Gov’t App 56. The magistrate judge ruled that the Rahman could be released subject to a \$250,000 bond and the conditions recommended in the Pretrial Services report, including home confinement and a requirement that she wear a GPS monitoring device.

The government appealed Magistrate Judge Gold’s orders of release to the district court. In a hearing before Judge Brodie, the government again argued that the defendants’ backgrounds made them more, rather than less, dangerous: “these aren’t people with nothing to lose They have education, they have a future, they have careers, and they were willing to throw that all away” Gov’t App. 73.

Judge Brodie considered the government’s argument and asked Rahman’s defense counsel why Rahman is not a danger to the community. Noting that she was aware that Rahman had no criminal record and her work representing individuals in housing court, Judge Brodie questioned what made Rahman commit the charged crime, “and what has changed since that day that would prevent her from doing so in the future?” Gov’t

App. 78. Rahman’s counsel responded that the experience of Rahman’s arrest had been “tremendously eye opening” and the conditions of her bail mean that “[e]verything she does now affects her family’s financial [security], and it affects her ... mother’s health and ability to continue living her life.” Gov’t App. 79.

Responding to the same question from Judge Brodie, **Mattis’s** defense counsel emphasized the restrictions of the bail conditions and **Mattis’s** close family ties:

[H]is family works as moral suasion for him. He lives in the same home as his sister Lyriss, who is on the line, and can confirm to the Court she will do everything that is asked of her to make sure that Colin abides by the conditions set *290 by this bond. Not only that, he will be under strict Pretrial Services supervision and, of course, he will have an attorney who is dogged in her own perseverance to make sure her client complies with all of the conditions set by this court. It is the conditions itself that ameliorates the danger.

Gov’t App. 84–85.

Reviewing the magistrate judge’s orders de novo, Judge Brodie found the bail conditions set by Magistrate Judge Gold to be sufficient. Judge Brodie explained that the seriousness of the offense and the strength of the evidence against the defendants cut against release, but that these factors were outweighed by the history and characteristics of the defendants and their ties to their communities.

[B]ased on the ... the fact that they have no prior criminal history, the fact that they were both employed ... the fact that they both live at the same address for almost their entire life ..., the fact that Mr. **Mattis** has foster children at

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home that he's responsible for, and that Ms. Rahman has her own mother that she is responsible for, and based on the bail conditions set by Judge Gold, I find that all of the factors weigh in favor of release

Gov't App. 86.





In sum, Pretrial Services, Magistrate Judge Gold, and Judge Brodie all concluded, notwithstanding the acknowledged seriousness of the charged offense, that bail is appropriate for both Rahman and **Mattis** based on the absence of any criminal records and on their family obligations, their ties to the community and the number of suretors who support them.


Following hearings before Magistrate Judge Gold and Judge Brodie, **Mattis** and Rahman were each released on bonds executed in the amount of \$250,000 secured by multiple family members and friends, and subject to a number of conditions, including home detention (to be enforced by location monitoring) with certain limited exceptions for travel outside of the home within only New York City or Long Island. Under the conditions of release, **Mattis** and Rahman are also prohibited from having contact with each other except in the presence of counsel.

On June 2, the government filed an emergency motion to stay the district court's order to release **Mattis** and Rahman, arguing that irreparable harm would result from the defendants' release. After oral arguments on June 5, a panel of this Court granted the government's motion and ordered that this appeal be heard on an expedited basis. Pursuant to that order, **Mattis** and Rahman were remanded into custody and are currently being held at the Metropolitan Detention Center in Brooklyn.


II.

[1] [2] [3] A district court is instructed to order the pre-trial detention of a defendant if, after a hearing, the judge “finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.”

 18 U.S.C. § 3142(e)(1). The parties agree, given the nature of the crimes charged, that there is a presumption that “no condition or combination of conditions will reasonably assure ... the safety of the community,” which applies to the courts’ consideration of the orders before us.  18 U.S.C. § 3142(e)(3). This presumption may be rebutted by the defendant, who “bears a limited burden of production ... by coming forward with evidence that he does not pose a danger to the community.”  *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001). “Once a defendant has met his *291 burden of production ... the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court. Even in a presumption case, the government retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community.”  *Id.*

In making its determination as to whether a defendant poses a danger to the community, the district court must consider the following factors set forth in  18 U.S.C. § 3142(g):

- (1) the nature and the circumstances of the offense charged...;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including [his] character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and ...
- (4) the nature and seriousness of the danger to any person or to the community that would be posed by the person's release.

See also  *Mercedes*, 254 F.3d at 436 (“To determine whether the presumption[] of dangerousness ... [is] rebutted, the district court considers” the above factors.).

The government makes two arguments on appeal. First, it contends the district court erred by failing to address the statutory presumption that “no condition or combination

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of conditions will reasonably assure ... the safety of the community.” 18 U.S.C. § 3142(e)(3). Second, the government argues that the district court clearly erred when it found that the bail conditions were sufficient to assure the safety of the community and when it found that the statutory factors to be considered weigh in favor of the defendants’ detention.

[4] [5] [6] [7] “As a rule, we apply deferential review to a district court’s [bail determination] and will not reverse except for clear error.” *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007); see also *United States v. LaFontaine*, 210 F.3d 125, 130 (2d Cir. 2000) (“We review the district court’s determination that a package of bail conditions will prevent danger to the community for clear error.”). The clear error standard applies not only to the factual predicates underlying the district court’s decision, but “also to its overall assessment, based on those predicate facts, as to the risk of flight or danger presented by defendant’s release.” *United States v. Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004). That is, “[t]he determination that a package of bail conditions will protect the public from a purportedly dangerous defendant is a mixed question of law and fact which we review for clear error.” *United States v. Ferranti*, 66 F.3d 540, 542 (2d Cir. 1995) (citations omitted); but see *United States v. Shakur*, 817 F.2d 189, 197 (2d Cir. 1987) (“[T]he court’s ultimate finding may be subject to plenary review if it rests on a predicate finding which reflects a misperception of a legal rule applicable to the particular factor involved.”). We will find clear error only where, “on the entire evidence[,] we are left with the definite and firm conviction that a mistake has been committed.” *Sabhnani*, 493 F.3d at 75 (quotation marks omitted).

III.

There is no question that the evidence before the district court demonstrated that the crimes charged are serious and the defendants’ conduct on the night of their arrests could well have resulted in significantly *292 more harm than it did. By affirming the district court’s order to release the defendants on the conditions imposed, we do not seek to minimize the severity of the offense. Rather, we recognize the constraints on our appellate review and the fact that the


gravity of an offense is not the only factor to be considered by the district court in deciding whether the conditions of release are adequate to ensure the defendants will not flee and do not constitute a continuing threat to the community.




We do not find persuasive the government’s first argument that, because the district court did not refer explicitly to the presumption during the bail hearing, the court must have failed to address the statutory presumption against releasing the defendants. At oral argument before this panel, the government conceded that its argument for why and how the presumption should apply was presented to the district court in its memorandum advocating detention. The government does not contest that the district court examined the § 3142(g) factors—the precise factors that we have said must be considered to determine whether the presumption is rebutted.


See *Mercedes*, 254 F.3d at 436. It is clear from the record, moreover, that the district court grappled with why it should be persuaded that there is adequate assurance the defendants will not engage in this sort of “reckless, ... violent” activity again in light of the dangerous nature of the charged offense, which gives rise to the presumption against release. Gov’t App. 78.

In addition, the burden on the defendants is one of production, not persuasion, and it is clear from the record that the defendants produced evidence from which the district court could infer that they do not pose a danger to the community. As we have repeatedly noted, albeit in a somewhat different context, we do not require “robotic incantations” by district court judges in order to hold that the obligation to consider statutory factors has been satisfied. See e.g., *United States v. Cavera*, 550 F.3d 180, 193 (2d Cir. 2008) (*en banc*); cf. *Xiao Ji Chen v. U.S. Dep’t. of Justice*, 471 F.3d 315, 336 n.17 (2d Cir. 2006) (explaining that an immigration judge “need not engage in robotic incantations to make clear that he has considered and rejected a petitioner’s proffered explanation.” (internal quotation marks omitted)). We thus decline to create such an obligation here, where it is clear and undisputed that the magistrate judge and district court judge, both of whom are well-experienced, (1) had before them the government’s papers pointing out that the presumption applied, (2) considered each of the factors that would bear on whether the presumption in favor of detention was rebutted, and (3) were not required by law to make explicit factual

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findings, cf.  *United States v. Chimurenga*, 760 F.2d 400, 406 (2d Cir. 1985) (“[T]he [Bail Reform] Act requires the court to make factual findings only in the event of a detention order, and not when there is a release order.” (citations omitted)).

[8] [9] [10] The government's second argument—that the district court clearly erred in granting the defendants bail—presents a closer question, but it is an argument we ultimately reject. In order to reverse on these grounds, we must not only conclude that the government showed, by clear and convincing evidence, that **Mattis** and Rahman present a danger to the community that could not be mitigated by the conditions of release, but also we must be left with a “definite and firm conviction” that it was a mistake for the district court to hold otherwise. See  *Sabhnani*, 493 F.3d at 75 (citation omitted). We cannot do so on this record. The clearly erroneous standard *293 “plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently.”  *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). “Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. This is so even when the district court's findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts.”  *Id.* at 574, 105 S.Ct. 1504 (citations omitted).² It is not proper, therefore, to inquire as to whether or not we may have decided the bail motion differently were we deciding it in the first instance, as our review is limited to whether the district court committed error in reaching its determination.

In deciding whether the defendants should be released or detained, the district court carefully weighed the facts and evidence before it, including the Pretrial Services reports, which were prepared after extensive interviews with each defendant, and the arguments by both defendants and the government. The district court considered each of the factors set forth in  18 U.S.C. § 3142(g), explaining that, while the first two factors weigh against release because the crime was violent, reckless, and lawless, and the government's evidence is strong, release was warranted on balance. This determination was based not only on the defendants' strong ties to their communities and lack of criminal histories—

the government has submitted no evidence indicating the defendants have ever engaged in activity similar to the charged conduct—but also on the finding that the bond condition provided “sufficient moral suasion” to ensure compliance with the conditions of release. Gov't App. 91. The bond condition notably leaves multiple family members and friends of each defendant liable for a quarter million dollars if the defendants violate any condition of release, including their home detention.

The government's position that the district court committed clear error in granting bail essentially boils down to an argument that the charged criminal conduct is so extreme and aberrant that it represents the new normal for the defendants, such that no set of conditions could reasonably assure the safety of the community. The acts alleged were indisputably dangerous and may have posed a serious risk to individuals in the surrounding areas. As a threshold matter, however, we must observe that the entire system for determining bail is premised on the belief that, at least to some extent, all criminal acts are aberrant. The very reason that Congress directed district courts to consider factors beyond just the severity of the offense is the recognition that an individual is more than the crime of which that individual has been accused.

In seeking to minimize consideration of the positive factors the district court weighed in favor of release, the government asserts that these factors existed before the crime and that it is therefore error to reason that these factors may provide a deterrent to future criminal conduct. Even putting aside that the district *294 court was *mandated* to consider factors in addition to the facts of the crimes the defendants are charged with having committed, the district court made clear that the “moral suasion” on which it rested part of its decision was different than that which existed before the criminal action took place. Gov't App. 91. Though **Mattis** and Rahman both had responsibilities to their families and communities before they were charged with this offense, the financial futures of their families and friends were not dependent on their compliance with the law and the other conditions of their release. Now that this associational dependence and the resulting moral obligations are front and center in any behavioral calculus the defendants will undertake, the district court was certainly allowed to consider the effects on the defendants of these changes that have come about as a result of the bond conditions imposed.

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Nor was it clear error for the district court to put the weight it apparently did on the defendants' characteristics and positive past histories. We are aware of no case where the fact that, prior to the offense charged, the defendants lived lives fully in accordance with the law, dedicated those lives to societal betterment, and were employed in a profession that values ethics somehow militates *against* granting bail. If now a defendant's life history and characteristics can support detention, on the one hand, because that history demonstrates the defendant engaged in bad acts, and on the other hand, because the history is so spotless and impressive that the defendant should have "known better," the inquiry into a defendant's background may well become meaningless. We decline to endorse such a "heads I win, tails you lose" zero-sum analysis.

Indeed, our prior caselaw is persuasive that the district court did not clearly err in granting defendants' motions to be released on bail, and this case stands in stark contrast to those cases where we have held a district court clearly erred by releasing defendants. In *United States v. Chimurenga*, for example, we concluded that the district court did not clearly err in ordering defendant Chimurenga released on bail.

760 F.2d at 406. The defendant, who had no criminal record and had been working on a doctorate at Harvard in public policy, was charged with conspiracy to commit armed robbery. *Id. at 402*. The government alleged that Chimurenga was the leader of a group connected to an armed robbery in New York that resulted in the death of an armored truck guard and two police officers. *Id.* At the bail hearing, the government presented strong evidence showing Chimurenga's involvement in the conspiracy. *Id.* Before the district court Chimurenga submitted evidence from his friends and family, including letters indicating their belief that he was not a flight risk, and testimony about Chimurenga's "strong sense of family" and their willingness to post money for bond in the amount of \$500,000 as bail. *Id. at 402–03*. The district court ordered Chimurenga released pending trial.

Id. at 403. On appeal from that decision, we concluded that the district court's determination "that the government failed to demonstrate by clear and convincing evidence that Chimurenga was a danger to the community" was not clearly

erroneous, declining to overrule the "experienced judgment" of the district court. *Id. at 405*.





[11] Here, a number of these same factors exist. Neither defendant had a prior criminal record. As the Pretrial Services reports confirmed, both defendants had engaged in responsible careers and are dedicated to caring for their families. Both demonstrated they had deep ties to the community, and both had friends and family explain that they were willing to post \$250,000 bonds as bail, for which they would be jointly and severally liable if defendants left their homes in a non-approved manner (a likely predicate to engaging in the type of conduct that may harm the community). And the facts here are arguably more favorable to these defendants' release than in *Chimurenga*. Unlike *Chimurenga*, there is no evidence that these defendants were members of an organized criminal or terrorist organization, who plotted over a period of time to engage in revolutionary acts. Although, as our dissenting colleague points out, their activities cannot be characterized as impulsive or momentary, neither did they engage in extensive surreptitious planning; their actions were undertaken during a massive public protest, in which emotions ran high. There is no indication that the defendants are likely to engage in similar acts outside the context of that particular night. Unlike Chimurenga, who faced evidence that he advised co-conspirators "how to kill armored truck guards," *id. at 402*, here, there is no evidence that the defendants intended to harm people. While evidence was presented that their actions could have endangered individuals, there are no allegations that anybody was injured by their actions and no evidence was presented that they encouraged others to hurt people or that they themselves intended bodily harm to others.³

Cases in which we have found clear error offer a useful foil to our reaching that determination here. In *United States v. Ferranti*, for example, we held that the district court clearly erred in granting defendant's motion to be released on bail. *66 F.3d at 544*. There, Ferranti was indicted on charges of (1) conspiracy to commit arson and arson resulting in death based on his involvement in a deadly arson of an *occupied* apartment building in which a firefighter died, (2) witness tampering in relation to the arson, (3) mail fraud, and

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(4) possession of a firearm by a convicted felon based on his possession of a loaded gun in a public place. Evidence was also presented to the district court that Ferranti (1) terrorized his tenants (including using a large dog to evict tenants), (2) threatened a mortgagee to whom Ferranti owed money (the mortgagee was later shot in the neck by an unidentified man; he survived), (3) attempted to murder a criminal associate, and (4) ordered the murder of a tenants' rights activist (the activist's body was found dismembered, and Ferranti allegedly later claimed credit for mutilating the corpse).

Our search has revealed no case where we have found that a district court clearly erred when it decided to release a defendant on bail in circumstances analogous to those here.

See  *Mercedes*, 254 F.3d at 436-38 (holding that district court clearly erred in granting defendants' pretrial release where defendants were charged with conspiracy *296 to commit armed robbery and possession of a weapon in connection with that offense and where the government proffered evidence that one of the defendants had twice been convicted of possession of a weapon and had previously violated the conditions of a prior release, another defendant had a history of domestic violence, and the final defendant was not a U.S. citizen and was released on a \$200,000 bond secured by only a \$5,000 cash deposit and therefore was a flight risk);  *United States v. Jimenez*, 104 F.3d 354 (2d Cir. 1996) (reversing the order of the district court releasing defendant from pretrial detention where the defendant was previously convicted of criminal sale of a controlled substance, indicted for conspiracy to murder in aid of racketeering activity and attempted murder in aid of racketeering, and the government presented evidence that the defendant was a member of a violent criminal organization);  *United States v. Millan*, 4 F.3d 1038, 1046-47, 1049 (2d Cir. 1993) (reversing the order of the district court releasing defendants from pretrial detention where both defendants presented a high risk of flight and where one of the defendants had multiple prior convictions, including criminally negligent homicide for shooting his wife, and the other defendant had allegedly "ordered numerous shootings, beatings, and a contract murder, and had issued threats against the families of witnesses who testified adversely to him at trial");  *United States v. Dono*, 275 F. App'x 35, 37 (2d Cir. 2008) (summary order) (holding that the district court clearly erred in granting

the release of defendants from pretrial detention where the defendants were charged with assault and where the government proffered evidence that the defendants were alleged members of an organized crime family, had violently beat two individuals (including "attempting to or actually putting the barrel of a handgun in a victim's mouth"), and had threatened future physical harm to the victims and their families).

In light of the above, while we would not necessarily have reached the same conclusion as the judges below, we cannot say that the district court committed clear error. The conditions of release contain provisions that impede defendants' ability to engage in criminal activity, and the evidence to which the government points us and which we have otherwise gleaned from the record is inadequate to leave us with a firm conviction that the district court erred in finding those conditions sufficient to assure public safety.

* * *

For the foregoing reasons, we AFFIRM the order of the district court and VACATE the stay previously entered in this matter.

Jon O. Newman, Circuit Judge, dissenting:

On the night of May 29 in Brooklyn, Appellee Urooj Rahman got out of a car driven by Appellee Colinford **Mattis**, lit an explosive device known as a Molotov cocktail, and tossed it through the broken window of an unoccupied police car, setting the console on fire. Parked where people were nearby, she attempted to distribute bombs to a bystander and others for their use. She then left the scene in **Mattis's** car, which contained one completed bomb and components for making more bombs. Their thinking was expressed by Rahman on a videotape, about an hour before the crime: "The only way they hear us is through violence." The majority's decision to affirm the release of these Appellees from pretrial detention subjects the community to an unacceptable risk of danger. I respectfully dissent.

***297 1. Clear Error**

The Appellees were arrested for bombing a New York City police department vehicle during a protest sparked by the

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death of George Floyd, an African-American who died after a Minneapolis police officer placed his knee on Floyd's neck for several minutes. A Magistrate Judge found, and a District Judge agreed on review, that the conditions of bail release proposed by the Defendants would "reasonably assure ... the safety of ... the community." 18 U.S.C. § 3142(e)(1). That finding is reviewed for "clear error," *United States v. Ferranti*, 66 F.3d 540, 542 (2d Cir. 1995),¹ which the Supreme Court has instructed occurs when a reviewing court has " 'the definite and firm conviction that a mistake has been committed,' " *Anderson v. Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985) (quoting *298 *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)).² I have that definite and firm conviction. Here's why:

A judicial officer must detain an arrested person before trial if the officer finds "that no ... combination of conditions will reasonably assure ... the safety of ... the community." 18 U.S.C. § 3142(e)(1). The facts to support such a finding must be supported by "by clear and convincing evidence." *Id.* § 3142(f)(2)(B). In determining whether conditions of release will reasonably assure the safety of the community, the judicial officer is required to consider four factors: the "nature and circumstances of the offense" including whether it involves an "explosive" or "destructive device," *id.* § 3142(g)(1), "the weight of the evidence," *id.* § 3142(g)(2), "the history and characteristics of the person," *id.* § 3142(g)(3), and "the nature and seriousness of the danger to ... the community that would be posed by the person's release," *id.* § 3142(g)(4). Only the third factor favors these Appellees;³ the first, second, and fourth factors strongly support detention.

Preliminarily, I note that the motions panel, which stayed the release order pending a ruling by the merits panel, pointedly noted that the stay factors to be considered "most critically" were "the likelihood of success and irreparable injury to the movant absent a stay." *United States v. Mattis*, No. 20-1713 (2d Cir. June 5, 2020) (order granting stay pending appeal). Because the injury to the Appellees from granting a stay, their return to custody, was irreparable, the

motions panel, viewing the same record now before this merits panel, obviously thought the Government had shown not only a likelihood of success, but a likelihood sufficiently substantial to outweigh the Appellees' injury. Although that panel's interim assessment of the merits is not binding on this panel, cf. *Belbacha v. Bush*, 520 F.3d 452 (D.C. Cir. 2008) (denial of preliminary relief not law of the case), it gives me a significant reason to believe that my dissenting view is correct.

The crime in this case was no "spur of the moment" action, as might occur, for example, if marching in the protest, either of the Appellees had seen a Molotov cocktail accidentally dropped on the sidewalk, *299 picked it up, and, without careful thought, immediately threw it into a police car. Such a serious act, though wrongful, might be said to be a momentary lapse of judgment on the part of someone emotionally caught up in the outrage over the event that provoked the protest.

But Rahman's act, assisted by *Mattis*, was carried out after deliberation, planning, and procurement of bomb components, occurring in an interval of at least one hour. Around midnight, she was videotaped walking out of a neighborhood convenience store where she reportedly purchased supplies,⁴ and around 1 a.m. she was videotaped throwing the lighted bomb. Although her target was property, people nearby were put at risk. She also compounded her wrongdoing by offering bombs to others, whose targets she could anticipate might well have been bystanders. And the presence of one assembled bomb and bomb components in the car, including a can of gasoline, show that she and *Mattis* were prepared to continue their criminal conduct.

Rahman and *Mattis* are both lawyers, age 31 and 32, respectively. Their counsel contended that their actions were aberrant, and that the chances of their doing a similar act again is unimaginable. In my view, it was unimaginable, before the event, that they would have acted as they did. But we now know that they were susceptible to being provoked to take seriously dangerous actions that night, and they remain a risk to being provoked again to take additional dangerous actions.

I do not contend that it is certain they will act dangerously if released. I do not even say it is highly likely. I do say that the risk of their doing so is unacceptable, a risk no community

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should be asked to bear. That risk creates a danger to the community.

Their lawyers argue that two circumstances render the risk of their future dangerous conduct insufficient to warrant pretrial detention. The first is the shock they experienced by being arrested and placed briefly in jail. The second is the inhibiting effect of awareness that any criminal conduct would be a breach of their bond, subjecting their families to severe financial hardship.

These circumstances might somewhat reduce the risk of a future act of violence. But these Appellees have shown that the prospect of serious adverse consequences like the end of their legal careers, in addition to a substantial prison term, did not deter them from taking dangerous action about which they had ample time to deliberate. I have little doubt that, while sitting in jail the past few weeks, they believe they will not take dangerous action again. The issue, however, is whether there is an unacceptable risk that, despite their likely current **state** of mind, some future event will again stir their outrage and provoke them to take action that risks injury and perhaps even death to members of the community.

As for the bond conditions, our Court has at least twice ruled that, although bonds secured by family members and other sureties sufficed to deter flight, they did not assure the safety of the community. See **United States v. Mercedes**, 254 F.3d 433, 436-37 (2d Cir. 2001)⁵; **United States v. Rodriguez**, 950 F.2d 85, 89 (2d Cir. 1991). Lawyers willing to risk an end to their legal careers are not likely to be ***300** deterred from dangerous action by financial loss to family and friends resulting from violation of their bonds.⁶ And we have noted that electronic monitoring devices “can be circumvented” and “rendered inoperative.” **United States v. Orena**, 986 F.2d 628, 632 (2d Cir. 1993).

2. The Statutory Presumption

Federal law provides that when, as in this case, a judicial officer finds probable cause to believe that a person violated any of a group of statutes including **18 U.S.C. § 844(i)**, “it shall be presumed” that “no ... combination of conditions will reasonably assure ... the safety of the community.” See

18 U.S.C. § 3142(e)(3)(C).⁷ That presumption “reflects Congress’s substantive judgment that particular classes of offenders should ordinarily be detained prior to trial.”

United States v. Stone, 608 F.3d 939, 945 (6th Cir. 2010). It “represents Congressional findings that certain offenders ... are likely to continue to engage in criminal conduct undeterred either by the pendency of charges against them or by the imposition of monetary bond or other release conditions.” **United States v. Dominguez**, 783 F.2d 702, 707 (7th Cir. 1986).

The presumption is subject to rebuttal, placing on a defendant a burden of production to “com[e] forward with evidence that he does not pose a danger to the community.” See

Mercedes, 254 F.3d at 436. Even if the Appellees’ conditions of bail release satisfied their burden of production, we have ruled that “the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court.” **Id.** at 436;

United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986).⁸

Although neither judicial officer in this case mentioned this presumption in their decisions, it is reasonable to assume that they were aware of a statutory provision applicable to the case before them, which the Government had called to their attention. ***301** Their bail release rulings may be considered an implicit finding that the Appellees had satisfied their burden of production, although an explicit finding to that effect would have been helpful. See **id.** (trial judge “should have made more detailed findings”).

But it is not reasonable to assume that the judicial officers were familiar with the entirety of Second Circuit case law or even decisions of this Court like **Mercedes** applicable to their task in this case. No particular words needed to be expressed or written, but some explicit indication was required, not to acknowledge the existence of the presumption, but to show awareness of, and compliance with, the obligation required by this Court to “consider” the rebutted presumption among the factors to be “weighed” in determining whether release of the Appellees would pose a danger to the community. **Mercedes**, 254 F.3d at

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436.⁹ Although the judicial officers explicitly referred to the four statutory factors of 18 U.S.C. § 3142(g), outlined above, required to be considered in determining whether a defendant's release will pose a danger to the community, there is no indication that they "weighed" the presumption among these statutory factors. Even if we do not reverse for clear

error, we should remand to oblige the District Court to comply with its *Mercedes* obligation.

All Citations

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Footnotes

1 A Molotov cocktail is an incendiary device that consists of a glass bottle filled with a flammable liquid and an ignition source that is lit before releasing the bottle.

2 We recognize that a bail determination, which involves mixed questions of law and fact, may not be an obvious case in which to apply the traditional "clear error" framework cited in *Anderson*. We think this framework is appropriate here, however, not only because we have applied it in the past in evaluating whether the district court has erred in making a bail determination, but also because we read the government's argument to challenge the way the district court weighed the evidence. See, e.g., *United States v. Baig*, 536 F. App'x 91 (2d Cir. 2013) (summary order).

3 While we acknowledge that *Chimurenga* is different from the instant case in that the statutory presumption in favor of detention applies here and did not in *Chimurenga*, this does not alter our analysis in a material way. As we explained in *United States v. Mercedes*, once a defendant meets his limited burden of production—"by coming forward with evidence that he does not pose a danger to the community or a risk of flight"—the presumption favoring detention becomes merely one of the factors "to be considered among those weighed by the district court." 254 F.3d at 436. Thus, concluding that the defendants have produced evidence before the district court from which the district court could find that they do not pose a danger to the community and are not a flight risk, the presumption becomes merely one additional factor that was not considered in *Chimurenga*. The burden of persuasion remains on the government, even in a presumption case. *Mercedes*, 254 F.3d at 436.

1 I accept *Ferranti* as binding precedent of this Circuit that a District Court's determination that the conditions of the pretrial release of a defendant will reasonably assure the safety of the community is reviewed for clear error, but pause to observe that this standard of review is subject to some doubt. The distinction between a finding of fact, reviewed for clear error, and a ruling on a point of law, reviewed *de novo*, sometimes requires careful consideration. See *Antilles Steamship Co. v. Members of the American Hull Insurance Syndicate*, 733 F.2d 195, 202 (2d Cir. 1984) (Newman, J., concurring). That the determination concerns a prediction about the future does not insulate it from clear error review. See, e.g., *In re Jackson*, 593 F.3d 171, 178 (2d Cir. 2010) (finding of future earnings); *National Market Share, Inc. v. Sterling National Bank*, 392 F.3d 520, 529 (2d Cir. 2004) (finding of future viability of a business).

Clear error review, at least in some contexts, applies not only to what will occur in the future but also the degree of likelihood that something will occur. See *Hui Lin Huang v. Holder*, 677 F.3d 130, 134 (2d Cir. 2012) (Immigration Judge's finding of likelihood of future persecution for purposes of an asylum claim reviewed for

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clear error by Board of Immigration Appeals); [En Hui Huang v. Attorney General](#), 620 F.3d 372, 382-83 (3d Cir. 2010) (same).

A determination that conditions of pretrial release will reasonably assure the safety of the community, or a reciprocal determination that such conditions will not reasonably protect the community from danger, involves three components. The first concerns the reasonableness of the requisite assurance of safety or risk of danger. Determining reasonableness is usually a legal determination for a court, *see, e.g.*, [Maryland v. King](#), 569 U.S. 435, 448, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013) (reasonableness of scope and manner of execution of warrantless search); [Lore v. City of Syracuse](#), 670 F.3d 127, 161 (2d Cir. 2012) (reasonableness of public official's belief that action was lawful), although the reasonableness of an alleged tortfeasor's conduct is regularly submitted to a jury as if it were a factual issue. The second is the likelihood that safety will be protected or that danger will ensue. The third is the extent of safety that the community is entitled to enjoy or the extent of danger from which the community is entitled to be protected. The safety need not be guaranteed, but the danger must be more than trivial.

In the asylum context, "persecution," unlike safety or danger, has a well developed meaning, *see* [Ivanishvili v. U.S. DOJ](#), 433 F.3d 332, 341 (2d Cir. 2006) (persecution is "infliction of suffering or harm upon those who differ on the basis of a protected statutory ground"), so an Immigration Judge's fact-finding concerns only whether it will occur and how likely is its occurrence. However, the combination of the three components of the bail release determination, especially the one concerning reasonableness, makes that determination arguably an issue of law, or perhaps the application of a legal standard--reasonable assurance of community safety--to the fact of what will happen and the likelihood of its happening. Perhaps that is why [Ferranti](#) called the determination "a mixed question of fact and law," [66 F.3d at 542](#), to which, in other contexts, the standard of review depends on whether "answering it entails primarily legal or factual work." [U.S. Bank National Ass'n v. Village at Lakeridge, LLC](#), — U.S. —, 138 S. Ct. 960, 967, 200 L.Ed.2d 218 (2018).


- 2 This appeal differs from review of the many cases where a bench trial judge, or a judge hearing a pretrial matter, has made findings of fact after hearing witnesses and assessing their credibility. In such cases, we are properly cautious in reviewing for clear error on a cold record. In this case, there were no witnesses at the hearings before the Magistrate Judge or the District Judge, there was no issue of credibility, and the Appellees did not contest, at this stage of the case, the facts presented by the Government, notably the facts of their conduct, which are shown on videotape and a photograph.
- 3 An amicus curiae brief filed by a group of able lawyers, identifying themselves as "Former Federal Prosecutors," many of whom are also current defense lawyers, contends that the Government improperly urged the judicial officers to disregard the commendably favorable aspects of the Appellees' backgrounds because those aspects existed before the charged offenses. Br. for Amicus Curiae at 4-6. The brief has been joined by The National Association of Defense Lawyers. The amicus' argument overstates the Government's contention. Rather than argue that the Appellees' backgrounds should be disregarded, the Government legitimately contended that in this case, those backgrounds, which obviously existed prior to the charged offenses, did not deter the Appellees and would not "provide moral suasion against future criminal conduct," Br. for Appellant at 12. The Government acknowledged that the Appellees' backgrounds "are certainly relevant to the analysis" of the bail release factors requiring consideration, *id.* at 19, but contended that their familial relationships "do not rebut the statutory presumption that they pose a danger to the community," Reply Br. for Appellant at 12.
- 4 See Nicole Hong & William K. Rashbaum, *The 2 Lawyers, the Anti-Police Protests and the Molotov Cocktail Attack*, N.Y. Times, June 7, 2020.



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5 In  *Mercedes*, one of the defendants this Court returned to jail, like the Appellees, had no criminal record, was employed, and had strong ties to his sureties.  254 F.3d at 437.





6 The majority sees a “heads I win, tails you lose” analysis “[i]f now a defendant’s life history and characteristics can support detention, on the one hand, because that history demonstrates the defendant engaged in bad acts, and, on the other hand, because the history is so spotless and impressive that the defendant should have ‘known better.’ ” Maj. Op. at 294. But the life history of these Appellees is not what “demonstrates” that either had “engaged in bad acts.” Their conduct on the night of May 29 demonstrates their bad acts. And their impressive history is not what creates the risk of future dangerous activity; it is their willingness to risk their legal careers that provides a considerable basis to apprehend future misconduct upon provocation.

7 The full text reads:

“Subject to rebuttal by the person, it shall be presumed that no condition or combination of circumstances will reasonably assure ... the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed ... an offense listed in  section 2332b(g)(5)(B) of title 18, *United States Code*, for which a maximum term of imprisonment of 10 years or more is prescribed.”

 18 U.S.C. § 3142(e)(3)(C). One of the offenses listed in subsection 2332b(g)(5)(B) is  18 U.S.C. § 844(i), with which the Appellees are charged.

8 Considering the risk of flight, to which the statutory presumption also applies in certain circumstances, in addition to risk of danger to the community, this Court has instructed that “[a] judicial officer conducting a detention hearing should, even after a defendant has come forward with rebuttal evidence, continue to give the presumption of flight some weight by keeping in mind that Congress has found that these offenders pose special risks of flight, and that ‘a strong probability arises’ that no form of conditional release will be adequate to secure their appearance.”  *Martir*, 782 F.2d at 1144 (quoting S. Rep. No. 225 at 19, 98th Cong., 1st Sess. (1984)).

9 The bail statute requires written findings of fact for a detention order, see  18 U.S.C. § 3142(i), but imposes no similar requirement for a release order,  *id.* § 3142(h), as this Court has noted. See  *United States v. Chimurenga*, 760 F.2d 400, 406 (2d Cir. 1985). But the judicially created obligation in  *Mercedes* has nothing to do with findings of fact, and proper appellate review is best achieved when judicial officers provide at least some indication that they have complied with this requirement.

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EXHIBIT D

United States v. Munchel, --- F.3d ---- (2021)

2021 WL 1149196

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United States Court of Appeals,
District of Columbia Circuit.

UNITED STATES of America, Appellee

v.

Eric Gavelek MUNCHEL, Appellant

No. 21-3010

|

Consolidated with 21-3011

|

Decided March 26, 2021

On Appeal of Pretrial Detention Orders (No. 1:21-cr-00118-1) (No. 1:21-cr-00118-2)

Attorneys and Law Firms[A. J. Kramer](#), Federal Public Defender, and Sandra G. Roland, Assistant Federal Public Defender, were on appellant Eric Munchel's Memorandum of Law and Fact.[Gregory S. Smith](#), Washington, DC, appointed by the court, was on appellant Lisa Eisenhart's Memorandum of Law and Fact.[Elizabeth Trosman](#) and [Elizabeth H. Danello](#), Assistant U.S. Attorneys, were on appellee's Memorandum of Law and Fact.Before: [Rogers](#), [Wilkins](#) and [Katsas](#), Circuit Judges.**Opinion**Opinion concurring in part and dissenting in part filed by Circuit Judge [Katsas](#).[Wilkins](#), Circuit Judge:

*1 We consider an appeal of a pretrial detention order issued after a Magistrate Judge had previously ordered the two appellants released pursuant to a lengthy set of stringent conditions. For the reasons stated below, we remand for the District Court to consider anew the government's motion for detention.

I.

The facts, as found by the District Court, and as observed in a 50-minute video of much of the incident at the heart of the case, are as follows.

Eric Munchel and his mother, Lisa Eisenhart, participated in the January 6, 2021 incident at the Capitol. Munchel is a thirty-year-old resident of Nashville, Tennessee. He previously worked as a waiter and has twice been convicted for misdemeanor possession of marijuana in Georgia state courts. See [United States v. Munchel](#), No. 1:21-CR-118-RCL, 2021 WL 620236, at *1 (D.D.C. Feb. 17, 2021). Eisenhart is a fifty-seven-year-old resident of Woodstock, Georgia. She has been employed as a nurse for approximately thirty years and has no prior criminal history. [Id.](#); Eisenhart Mem. at 13.

On January 6, Eisenhart and Munchel attended President Trump's "Stop the Steal" rally to protest the election results. Both wore tactical vests and Munchel had a taser, holstered on his hip. Munchel also wore his iPhone, mounted on his tactical vest, and used it to take a video of some of the day's events. Following the rally, Eisenhart and Munchel marched towards the Capitol. See [Munchel](#), 2021 WL 620236, at *2–3. As they approached the Capitol, they milled around outside and talked with others. They met members of the Oath Keepers militia and Munchel bumped fists with one of them. [Id.](#) at *2; Video at 11:56–12:05.

At some point while Munchel and Eisenhart were standing around, someone yelled out "they broke the line up there" and people began saying "let's go in." Eisenhart told Munchel they should go in, but she added, "[w]e're going straight to federal prison if we go in there with weapons." Video at 12:28–12:40. Munchel responded that he would not go into the Capitol, and Eisenhart suggested that they put "em" in their backpacks. *Id.* Munchel and Eisenhart then moved across the crowd to an area where a backpack was stowed and Munchel stashed a fanny pack in the backpack. See [Munchel](#), 2021 WL 620236, at *2; Video at 16:00–16:25. Munchel contends that the only weapon in the fanny pack was a pocketknife; the government suggests that other weapons could have been

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[their-freedoms-8ht5m0j70](#) (attached to the Gov't Suppl. Mem. at 26). Munchel told the newspaper:

We wanted to show that we're willing to rise up, band together and fight if necessary. Same as our forefathers, who established this country in 1776.... It was a kind of flexing of muscles. ... The intentions of going in were not to fight the police. The point of getting inside the building is to show them that we can, and we will.

Id.

Later, Munchel and Eisenhart returned to Tennessee, and Eisenhart continued on to her home in Georgia. The FBI posted bulletins on the internet and in the media with photos of Munchel and Eisenhart from January 6, asking for the public's help in identifying them. On the morning of January 10, FBI agents executed a search warrant at Munchel's apartment. The agents found the tactical vest Munchel wore at the Capitol, zip ties, firearms, and a large quantity of loaded magazines. Munchel was licensed to possess those weapons. *See* [Munchel](#), 2021 WL 620236, at *3. Soon after learning about the search, Munchel turned himself in. *Id.* at *4; Munchel Mem. at 15. Munchel also made arrangements for his attorney to give his iPhone to the FBI. Munchel Mem. at 15. Once Eisenhart learned she was the target of a federal investigation, she spoke to a local FBI agent every day to determine whether there was a warrant for her arrest, and when the warrant issued, she self-surrendered. *See* [Munchel](#), 2021 WL 620236, at *4, *7; Eisenhart Mem. at 3.


*3 Munchel and Eisenhart were charged in a complaint with unlawful entry, violent entry, civil disorder, and conspiracy. *See* Complaint, [United States v. Munchel](#), No. 1:21-CR-118-RCL, 2021 WL 620236, ECF No. 1 (D.D.C. Feb. 17, 2021). Munchel and Eisenhart had pretrial detention hearings before Magistrate Judge Jeffrey Frensley in the Middle District of Tennessee. Magistrate Judge Frensley concluded that neither Munchel nor Eisenhart were flight


risks nor posed a danger to the community and issued release orders for both appellants with various conditions, including home detention, GPS monitoring, refraining from possessing firearms or dangerous weapons, and supervision by Pretrial Services. *See* Jan. 22, 2021 Transcript ("Munchel Tr.") at 181, 186–89 (included in Munchel Suppl.); Jan. 25, 2021 Transcript ("Eisenhart Tr.") at 163, 164–66 (attached to Eisenhart Mem.).




Magistrate Judge Frensley briefly stayed both of his release orders, *id.* at 171; Munchel Tr. at 198–99, and the government promptly appealed both orders to the United States District Court for the District of Columbia. Chief Judge Beryl A. Howell stayed both release orders pending appeal, *see* Stay Orders, ECF Nos. 4, 7, and ordered both appellants to be transported to D.C., *see* Transport Orders, ECF Nos. 5, 9. COVID-19-related complications slowed the appellants' transport to D.C. *See* Status Report, ECF No. 18. While their transports were pending, Eisenhart moved to rescind the stay or to conduct an immediate review of her detention, which Munchel joined. *See* ECF Nos. 14, 15, 27. Additionally, the government filed motions seeking review of Judge Frensley's release orders. *See* ECF Nos. 3, 6. In the meantime, Munchel and Eisenhart were detained.²

Subsequently, on February 12, a grand jury sitting in the District of Columbia returned an indictment charging Munchel and Eisenhart with obstruction of an official proceeding; Munchel with unlawful entry while armed with a dangerous weapon, and violent entry while armed with a dangerous weapon; and Eisenhart with aiding and abetting unlawful entry while armed with a dangerous weapon, and aiding and abetting violent entry while armed with a dangerous weapon. *See* Indictment, ECF No. 21; [Munchel](#), 2021 WL 620236, at *7. On February 17, the District Court arraigned Munchel and Eisenhart on the indictment and the government made an oral motion for pretrial detention. *See* *id.* at *4. During the detention hearing in the District Court, the government proceeded by proffer rather than calling live witnesses. In addition to what had been presented to Magistrate Judge Frensley, the government introduced the 50-minute videotape into evidence and proffered that after January 6, Munchel was in contact with a suspected member of the Proud Boys and was told that he was too "hot" after

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he expressed interest in joining the group.  *Id.* at *6; Tr. of Dist. Ct. Detention Hr'g at 51.


Following the detention hearing, the District Court ordered both Munchel and Eisenhart to be detained pending trial, denied as moot Munchel and Eisenhart's motions seeking to rescind the stay of Judge Frensey's orders, and denied as moot the government's motion seeking review of Judge Frensey's orders. *See* Detention Orders, ECF Nos. 25, 26; *see also* ECF No. 27. The District Court concluded that both Munchel and Eisenhart were eligible for detention because they were charged with felonies while carrying a dangerous weapon, explaining that the indictment alleges that Munchel carried a dangerous weapon (the taser) and that Eisenhart aided and abetted Munchel and therefore she was liable as if she were the principal. *See*  *Munchel*, 2021 WL 620236, at *5, *7.



*4 Applying *de novo* review, the District Court determined that appellants were not flight risks but that detention was appropriate on the basis of dangerousness.  *Id.* at *5–8. The District Court concluded that appellants' history and characteristics weighed against detention but that the nature and circumstances of the charged offenses, the weight of the evidence, and the potential danger appellants pose to the community weighed in favor of detention.  *Id.* The District Court further determined that neither appellant was likely to be deterred by release conditions.  *Id.* at *7, *8.



Munchel and Eisenhart timely appealed. They contend that the District Court erred in not deferring to Magistrate Judge Frensey's factual findings as to their dangerousness. They also contend that the District Court inappropriately relied on a finding that they were unlikely to abide by release conditions to detain them, because that factor is applicable only to revocation of pretrial release. They also argue that the charged offenses do not authorize detention, claiming that felonies involving possession of a weapon, rather than use, do not qualify for detention and, relatedly, that Munchel's taser is not a “dangerous weapon” within the meaning of the statute. Munchel and Eisenhart also object that several other defendants who participated in the insurrection have been released before trial, arguing that the conduct of those defendants is indistinguishable (or even worse) than their conduct on January 6. Finally, they contend that the District


Court's determinations in support of detention were clearly erroneous.

II.

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”  *United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

The Bail Reform Act of 1984 authorizes one of those carefully limited exceptions by providing that the court “shall order” a defendant detained before trial if it “finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.”  18 U.S.C. § 3142(e). “In common parlance, the relevant inquiry is whether the defendant is a ‘flight risk’ or a ‘danger to the community.’”  *United States v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019). Here, the District Court held that both Munchel and Eisenhart should be detained on the basis of dangerousness.

In assessing whether pretrial detention is warranted for dangerousness, the district court considers four statutory factors: (1) “the nature and circumstances of the offense charged,” (2) “the weight of the evidence against the person,” (3) “the history and characteristics of the person,” and (4) “the nature and seriousness of the danger to any person or the community that would be posed by the person's release.”  18 U.S.C. § 3142(g)(1)–(4). To justify detention on the basis of dangerousness, the government must prove by “clear and convincing evidence” that “no condition or combination of conditions will reasonably assure the safety of any other person and the community.”  *Id.* § 3142(f). Thus, a defendant's detention based on dangerousness accords with due process only insofar as the district court determines that the defendant's history, characteristics, and alleged criminal conduct make clear that he or she poses a concrete, prospective threat to public safety.

In  *Salerno*, the Supreme Court rejected a challenge to this preventive detention scheme as repugnant to due process

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and the presumption of innocence, holding that “[w]hen the Government proves by clear and convincing evidence that an arrestee *presents an identified and articulable threat* to an individual or the community, we believe that, consistent with the Due Process Clause, a court may disable the arrestee *from executing that threat.*” 481 U.S. at 751, 107 S.Ct. 2095 (emphasis added).

III.

*5 We can readily dispatch with some of the appellants’ arguments.

First, we conclude that we need not reach appellants’ contention that the District Court erred in not deferring to Magistrate Judge Frensey’s factual findings as to their dangerousness. The statute concerning review of a Magistrate Judge’s release order says nothing about the standard of the district court’s review, *see* 18 U.S.C. § 3145(a), and we have not squarely decided the issue.³ We need not break new ground in this case, because as the appellants maintain in their briefing, Munchel Reply Mem. 8, n.3, the government submitted substantial additional evidence to the district judge that had not been presented to the Magistrate Judge, including the 50-minute iPhone video, a partial transcript of the video, and several videos from Capitol CCTV.⁴ As a result, this was not an instance where the District Court made its dangerousness finding based on the same record as was before the Magistrate Judge. Here, the situation was more akin to a new hearing, and as such, the issue before the District Court was not really whether to defer (or not) to a finding made by the Magistrate Judge on the same evidentiary record. Thus, we conclude that the issue complained of by appellants is not squarely before us in this appeal and we see no need to reach it.

Second, we reject the argument that the District Court inappropriately relied on a finding that appellants were unlikely to abide by release conditions to detain them, because that factor is applicable only to revocation of pretrial release. The District Court’s finding as to appellants’ potential compliance is relevant to the ultimate determination of “whether there are conditions of release that will reasonably assure ... the safety of any other person and the community.”

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

*6 Third, we reject Munchel and Eisenhart’s arguments that the charged offenses do not authorize detention. Under 18 U.S.C. § 3142(f)(1)(E), detention is permitted if the case involves “any felony ... that involves the *possession* or use of a ... dangerous weapon.” (emphasis added). Two of the charges in the indictment meet this description: Count Two—entering a restricted building “with intent to impede and disrupt the orderly conduct of Government business ... while armed with a dangerous weapon,” in violation of 18 U.S.C. § 1752(a)(1) and (a)(2) and 18 U.S.C. § 2 (aiding and abetting charge for Eisenhart); and Count Three—violent entry or disorderly conduct, again “while armed with a dangerous weapon,” in violation of 40 U.S.C. § 5104(e)(1) and (e)(2) and 18 U.S.C. § 2. Indictment, ECF No. 21 at 2. The Bail Reform Act thus explicitly authorizes detention when a defendant is charged with committing certain felonies while possessing a dangerous weapon, as is alleged in this indictment.⁵

IV.

That leaves us with Munchel and Eisenhart’s final two arguments: (1) that the District Court’s determinations in support of detention were clearly erroneous; and (2) that several other defendants who participated in the insurrection

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have been released before trial, even though the conduct of those defendants is indistinguishable (or even worse) than their conduct on January 6. The first challenges the District Court's finding that no condition or combination of conditions of release could reasonably assure the safety of the community while these appellants await trial. Appellants did not raise the latter argument below, so we decline to pass on it in the first instance and without the benefit of full briefing.

A.

We review the District Court's dangerousness determinations for clear error. *United States v. Smith*, 79 F.3d 1208, 1209 (D.C. Cir. 1996); *United States v. Simpkins*, 826 F.2d 94, 96 (D.C. Cir. 1987). “A finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948); see also *United States v. Celis*, 608 F.3d 818, 843 (D.C. Cir. 2010). If, upon reviewing the record, it does not appear that the District Court considered substantial countervailing evidence that supported release when analyzing the detention factors, we sometimes remand for reconsideration rather than reverse. See *United States v. Nwokoro*, 651 F.3d 108, 110 (D.C. Cir. 2011) (remanding where the “district court [did not] demonstrate that it considered many of the facts apparent from the record before it”).


*7 In this case, the District Court found that because Munchel has limited criminal history and Eisenhart has none, their history and characteristics weighed against a finding that no conditions of release would protect the community. *Munchel*, 2021 WL 620236, at *6, *8. However, the District Court found that the nature and circumstances of the charged offenses, weight of the evidence, and danger to the community factors all weighed in favor of finding that no conditions of release would protect the community. *Id.* at *5–7 (Munchel) ⁶, *7–8 (Eisenhart). The crux of the District Court's reasoning was that “the grand jury alleged that [the appellants] used force to subvert a democratic election


and arrest the peaceful transfer of power. Such conduct threatens the republic itself. ... Indeed, few offenses are more threatening to our way of life.” *Id.* at *5. Furthermore, because in media interviews Munchel showed no remorse and indicated that he would “undertake such actions again,” while Eisenhart stated that she would rather “fight” and “die” than “live under oppression,” the District Court found that both appellants were a danger to the republic and unlikely to abide by conditions of release. *Id.* at *6, *8 (quoting Pullman, *supra*). Nevertheless, we conclude that the District Court did not demonstrate that it adequately considered, in light of all the record evidence, whether Munchel and Eisenhart present an identified and articulable threat to the community. Accordingly, we remand for further factfinding. *Cf. Nwokoro*, 651 F.3d at 111–12.



B.


The crux of the constitutional justification for preventive detention under the Bail Reform Act is that “[w]hen the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community, ... a court may disable the arrestee from executing that threat.” *Salerno*, 481 U.S. at 751, 107 S.Ct. 2095. Therefore, to order a defendant preventatively detained, a court must identify an articulable threat posed by the defendant to an individual or the community. The threat need not be of physical violence, and may extend to “non-physical harms such as corrupting a union.” *United States v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988) (quoting S. REP. NO. 98–225, at 3 (1984), as reprinted in 1984 U.S.C.C.A.N. 3182, 3195–96). But it must be clearly identified. See *Salerno*, 481 U.S. at 750, 107 S.Ct. 2095 (noting that the Act applies in “narrow circumstances” where “the Government musters convincing proof that the arrestee, already indicted or held to answer for a serious crime, presents a demonstrable danger to the community”); *cf.* *Tortora*, 922 F.2d at 894 (Breyer, C.J., concurring) (reversing an order of release where the district court failed to “carefully analyze[] the danger [the defendant] posed”). Detention cannot be based on a finding that the defendant is unlikely to comply with conditions of release absent the requisite finding of dangerousness or risk of flight;

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otherwise the scope of detention would extend beyond the limits set by Congress. As we observed of the Bail Reform Act of 1966, “[t]he law requires reasonable assurance[,] but does not demand absolute certainty” that a defendant will comply with release conditions because a stricter regime “would be only a disguised way of compelling commitment in advance of judgment.”  *United States v. Alston*, 420 F.2d 176, 178 (D.C. Cir. 1969).

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

*8 Here, the District Court did not adequately demonstrate that it considered whether Munchel and Eisenhart posed an articulable threat to the community in view of their conduct on January 6, and the particular circumstances of January 6. The District Court based its dangerousness determination on a finding that “Munchel’s alleged conduct indicates that he is willing to use force to promote his political ends,” and that “[s]uch conduct poses a clear risk to the community.”  *Munchel*, 2021 WL 620236, at *6. In making this determination, however, the Court did not explain how it reached that conclusion notwithstanding the countervailing finding that “the record contains no evidence indicating that, while inside the Capitol, Munchel or Eisenhart vandalized any property or physically harmed any person,”  *id.* at *3, and the absence of any record evidence that either Munchel or Eisenhart committed any violence on January 6. That Munchel and Eisenhart assaulted no one on January 6; that they did not enter the Capitol by force;

and that they vandalized no property are all factors that weigh against a finding that either pose a threat of “using force to promote [their] political ends,” and that the District Court should consider on remand. If, in light of the lack of evidence that Munchel or Eisenhart committed violence on January 6, the District Court finds that they do not in fact pose a threat of committing violence in the future, the District Court should consider this finding in making its dangerousness determination. In our view, those who actually assaulted police officers and broke through windows, doors, and barricades, and those who aided, conspired with, planned, or coordinated such actions, are in a different category of dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way. See  *Simpkins*, 826 F.2d at 96 (“[W]here the future misconduct that is anticipated concerns violent criminal activity, no issue arises concerning the outer limits of the meaning of ‘danger to the community,’ an issue that would otherwise require a legal interpretation of the applicable standard.” (internal quotation and alteration omitted)). And while the District Court stated that it was not satisfied that either appellant would comply with release conditions, that finding, as noted above, does not obviate a proper dangerousness determination to justify detention.

The District Court also failed to demonstrate that it considered the specific circumstances that made it possible, on January 6, for Munchel and Eisenhart to threaten the peaceful transfer of power. The appellants had a unique opportunity to obstruct democracy on January 6 because of the electoral college vote tally taking place that day, and the concurrently scheduled rallies and protests. Thus, Munchel and Eisenhart were able to attempt to obstruct the electoral college vote by entering the Capitol together with a large group of people who had gathered at the Capitol in protest that day. Because Munchel and Eisenhart did not vandalize any property or commit violence, the presence of the group was critical to their ability to obstruct the vote and to cause danger to the community. Without it, Munchel and Eisenhart—two individuals who did not engage in any violence and who were not involved in planning or coordinating the activities—seemingly would have posed little threat. The District Court found that appellants were a danger to “act against Congress” in the future, but there was no explanation of how the appellants would be capable of doing so now that the


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specific circumstances of January 6 have passed. This, too, is a factor that the District Court should consider on remand.

C.

Finally, Munchel and Eisenhart argue that the government's proffer of dangerousness should be weighed against the fact that the government did not seek detention of defendants who admitted they pushed through the police barricades and defendants charged with punching officers, breaking windows, discharging tasers at officers, and with planning and fundraising for the riot. *See* Munchel Reply Mem. at 9–12. Appellants did not raise this claim before the District Court and the government did not substantively respond to it on appeal because Appellants raised it for the first time in Munchel's reply. Whatever potential persuasiveness the government's failure to seek detention in another case carries in the abstract, every such decision by the government is highly dependent on the specific facts and circumstances of each case, which are not fully before us. In addition, those facts and circumstances are best evaluated by the District Court in the first instance, and it should do so should appellants raise the issue upon remand.






* * * *

It cannot be gainsaid that the violent breach of the Capitol on January 6 was a grave danger to our democracy, and that those who participated could rightly be subject to detention to safeguard the community. *Cf.*  *Salerno*, 481 U.S. at 748, 107 S.Ct. 2095 (“[I]n times of war or insurrection, when society's interest is at its peak, the Government may detain individuals whom the government believes to be dangerous.” (citations omitted)). But we have a grave constitutional obligation to ensure that the facts and circumstances of each case warrant this exceptional treatment. Accordingly, we conclude that the appropriate resolution of this case is to remand the detention orders for reconsideration forthwith of the government's oral motion for pretrial detention.

*9 *So ordered.*

Katsas, Circuit Judge, concurring in part and dissenting in part:



These appeals present the question whether Eric Munchel and his mother, Lisa Eisenhart, may be detained pending trial for their participation in the riot at the United States Capitol on January 6, 2021. The answer to that question does not turn on any generalized, backward-looking assessment of the rioters or the riot, as the district court erroneously suggested. Instead, it turns on a specific, forward-looking assessment of whether Munchel and Eisenhart as individuals currently pose an unmitigable threat to public safety. My colleagues and I agree on this critical point about the governing legal standard in these appeals. We also agree that the district court failed to justify the detention of Munchel and Eisenhart on the record before it. But whereas my colleagues remand for a do-over, I would reverse outright.¹

The Bail Reform Act permits pretrial detention in only “carefully defined circumstances.”  *United States v. Simpkins*, 826 F.2d 94, 95–96 (D.C. Cir. 1987). To support detention, a court must find that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.”  18 U.S.C. § 3142(e)(1). In assessing public safety and flight risk, courts must consider four factors: (1) “the nature and circumstances of the offense charged,” (2) “the weight of the evidence against the person,” (3) “the history and characteristics of the person,” and (4) “the nature and seriousness of the danger to any person or the community that would be posed by the person's release.”  *Id.* § 3142(g). For the public-safety determination, the government must prove all relevant facts “by clear and convincing evidence,”  *id.* § 3142(f)(2), and we review all relevant findings for clear error,  *United States v. Smith*, 79 F.3d 1208, 1209 (D.C. Cir. 1996).







In this case, a magistrate judge concluded that neither Munchel nor Eisenhart is a flight risk and that neither would pose a safety risk if subjected to conditions including home detention, GPS monitoring, a ban on possessing firearms, a ban on travel to Washington, D.C., and supervision by the U.S. Pretrial and Probation Services System. Munchel Mag. Tr. at 177, 181, 185–89; Eisenhart Mag. Tr. at 152, 163,


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164–66. The district court agreed that Munchel and Eisenhart do not present a flight risk, but found that no combination of release conditions would reasonably ensure public safety.

 *United States v. Munchel*, No. 1:21-CR-118-RCL, 2021 WL 620236, at *1, *5, *7 (D.D.C. Feb. 17, 2021). The court found that all but one of the subsidiary statutory factors weigh in favor of detention.  *Id.* at *5–8.


***10** In my view, the district court clearly erred in finding that the government satisfied its burden to prove an unmitigable threat to public safety by clear and convincing evidence. The court's errors infected both its assessment of the individual factors and its ultimate determination that Munchel and Eisenhart must be detained.

The first factor looks to both the “nature” and “circumstances” of the “charged” offense: “the former refers to the generic offense while the latter encompasses the manner in which the defendant committed it.”  *United States v. Singleton*, 182 F.3d 7, 12 (D.C. Cir. 1999). Munchel and Eisenhart have been charged with obstructing an official proceeding, *see*  18 U.S.C. § 1512(c)(2); entering a restricted building unlawfully or with the intent to impede government business, *see id.* § 1752(a)(1)–(2), (b); carrying a dangerous weapon on the Capitol grounds, *see*  40 U.S.C. § 5104(e)(1); and entering the Capitol with the intent to disrupt official business, *see*  *id.* § 5104(e)(2). The district court described the charged offenses as “grave,” asserted that “few offenses are more threatening to our way of life,” and quoted at length from George Washington's Farewell Address.  *Munchel*, 2021 WL 620236, at *5–7. But none of the charged offenses is a Class A or Class B felony, *see*  18 U.S.C. § 3559(a), none carries a mandatory minimum sentence, and none gives rise to a rebuttable presumption of detention.

The district court was primarily concerned with how Munchel and Eisenhart committed their offenses. In addition to the descriptions noted above, the court asserted that their conduct showed “a flagrant disregard for the rule of law”—and indeed “threatens the republic itself.”  *Munchel*, 2021 WL 620236, at *5–6. The court described Munchel as “willing to use force to promote his political ends” and as “[s]torming the

Capitol to disrupt the counting of electoral votes.”  *Id.* at *6. Further, it found that Munchel's entering the Capitol “carried great potential for violence” because he was “armed with a taser,” “carried plastic handcuffs,” and “threatened to ‘break’ anyone who vandalized the Capitol.”  *Id.* But as the court itself acknowledged, “[t]he record contains no evidence indicating that, while inside the Capitol, Munchel or Eisenhart vandalized any property or physically harmed any person.”  *Id.* at *3.

A video recorded by Munchel—documenting what he and his mother did on January 6—confirms the more benign assessment. The video shows the following: Munchel and Eisenhart did not organize the election protest or the ensuing march to the Capitol, hatched no advance plan to enter the Capitol, and acted in concert with no other protestors. Nor did they assault any police officers or remove any barricades in order to breach Capitol security. They decided to enter the Capitol only after others had already done so forcibly. By the time they made their way to the building, police were making no attempt to stop or even discourage protestors from entering. To go inside, Munchel and Eisenhart walked through an open door. While there, they attempted neither violence nor vandalism. They searched for no Members of Congress, and they harassed no police officers. They found plastic handcuffs by chance, but never threatened to use them. Munchel's threat to “break” anyone who vandalized the Capitol was intended to prevent destruction and was addressed to no one in particular. *See* Munchel iPhone Video at 43:41. For ten to twelve minutes, Munchel and Eisenhart wandered the halls of the Capitol, with Eisenhart leading the way and Munchel asking his mother what her plan was. At one point, they entered the Senate gallery. At another, as they entered what appears to be a hallway of offices, Munchel told his mother that “[w]e don't want to get stuck in here, this is not a place for us,” which caused her to turn around. *Id.* at 42:11–14. Munchel and Eisenhart voluntarily left the building—while many other protestors remained and before the police began to restore order. Their misconduct was serious, but it hardly threatened to topple the Republic. Nor, for that matter, did it reveal an unmitigable propensity for future violence.

***11** Turning to the second factor, the district court found that the “weight of the evidence” supported pretrial detention.  *Munchel*, 2021 WL 620236, at *6, *8. The video in

United States v. Munchel, --- F.3d ---- (2021)

this case documents exactly what Munchel and Eisenhart did inside the Capitol. It forecloses any contention that pretrial detention is inappropriate because of uncertainty about whether the alleged conduct occurred. But as explained above, the conduct does not show that Munchel and Eisenhart pose an unmitigable future threat to public safety. The second factor thus moves the needle neither one way nor the other.

The district court next found that the defendants' "history and characteristics" do not support detention. See [Munchel, 2021 WL 620236, at *6, *8](#). The government fails to challenge that finding—and for good reason. Munchel maintained employment until his arrest, has no history of violence, has no prior felony convictions, and is not a member of any anti-government or militia group. He has two prior misdemeanor convictions for possession of marijuana, which are both more than five years old, and there was no proof that he has ever failed to comply with any probation conditions imposed as a result. Munchel Mag. Tr. at 174–75. Eisenhart is 57 years old, has been a nurse for three decades, and has no criminal history. Both appellants voluntarily surrendered to the FBI. Munchel took affirmative steps to preserve the evidence in his cellphone and arranged to provide it to the government. *Id.* at 176. Before her arrest warrant had even issued, Eisenhart established daily contact with the FBI so that she could turn herself in as soon as it did. Eisenhart Mag. Tr. at 152. The third factor thus cuts strongly in favor of release.

In evaluating the "nature and seriousness" of any danger, the district court highlighted statements that Munchel and Eisenhart made to the media on January 7. Munchel said that "[t]he point of getting inside the building is to show them that we can, and we will," [Munchel, 2021 WL 620236, at *6](#), while Eisenhart, invoking the American Revolution, said that she would "rather die and would rather fight" than "live under oppression," [id. at *8](#). To the district court, these statements indicated that the defendants pose "a clear danger to our republic" and that Eisenhart is a "would-be martyr." [Id. at *6, *8](#). But the defendants' actual conduct belied their rhetorical bravado. During the chaos of the Capitol riot, Munchel and Eisenhart had ample opportunity to fight, yet neither of them did. Munchel lawfully possessed several firearms in his home, but he took none into the Capitol. Munchel Mag. Tr. at 179, 182. Indeed, before entering the Capitol, Munchel and Eisenhart stashed a knife inside a

backpack that they left outside, precisely for fear of ending up in "federal prison." See [Munchel, 2021 WL 620236, at *2](#).

Moreover, even if their comments indicate some willingness to engage in future protests or disruption, the Bail Reform Act permits detention only to prevent an "identified and articulable threat to an individual or the community."


[United States v. Salerno, 481 U.S. 739, 751, 107 S.Ct. 2095, 95 L.Ed.2d 697 \(1987\)](#). Here, the district court identified one such threat—that Munchel and Eisenhart would attempt "to stop or delay the peaceful transfer of power." [Munchel, 2021 WL 620236, at *6, *8](#). But the transition has come and gone, and that threat has long passed. In the district court, the government warned of an upcoming protest scheduled for March 4. But that protest never materialized, and the government produced no evidence that Munchel and Eisenhart had been involved in its planning before their arrest. The government's gesturing towards the possibility of their joining future protests falls well short of any "identified and articulable threat." [Salerno, 481 U.S. at 751, 107 S.Ct. 2095](#).

*12 After evaluating the four statutory factors, the district court turned to the ultimate question in the case—whether no release conditions would reasonably ensure public safety. The court worried that a "determined defendant" could "cut off an ankle monitor, ignore travel restrictions, elude a third-party custodian, unlawfully rearm, and endanger his community."


[Munchel, 2021 WL 620236, at *7](#). The court found that Munchel was such a defendant given his "brazen actions in front of hundreds of law enforcement officers" and his media comments. [Id.](#) It found that Eisenhart also qualified, because of her supposed "willingness to die for her cause." [Id. at *8](#).






Yet the record shows otherwise. As explained above, Munchel and Eisenhart chose to trespass—not to engage in violence, much less fight to the death. Afterwards, both voluntarily surrendered to the FBI, as the district court recognized in concluding that neither posed a flight risk. See [Munchel, 2021 WL 620236, at *5, *7](#). Munchel preserved and voluntarily turned over his cellphone video. Munchel Mag. Tr. at 176. Likewise, even after he was identified as a suspect,


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Munchel made no attempt to hide or remove the firearms that he lawfully possessed at his home. *Id.* at 181–82. As for the defendants’ attitudes towards law enforcement, the video shows that police did not seek to discourage their entry into the Capitol through an open door, Munchel iPhone Video at 38:48; Munchel and Eisenhart made no attempt to harass officers while inside the Capitol; and, as they were preparing to exit, Munchel encountered an officer and said “Sorry, guys, I still love you,” *id.* at 49:26. Finally, contrary to the district court’s characterization of Eisenhart as a “would-be martyr,” she specifically declined to bring a knife into the Capitol because of her expressed concerns with “federal prison.” See  [Munchel, 2021 WL 620236, at *2](#). The defendants’ other personal characteristics—which the district court acknowledged to weigh in favor of release—further indicate that they are likely to comply with release conditions.

In this case, the magistrate judge imposed strict release conditions. For Munchel, he required confinement at the home of a third-party custodian, GPS location monitoring, supervision by Pretrial Services, no possession of firearms, no travel to D.C., no excessive use of alcohol, no possession or use of any controlled substance, and drug testing if ordered by Pretrial Services. Munchel Mag. Tr. at 185–89. For Eisenhart he required home confinement, location monitoring, supervision by a third-party custodian, no possession of firearms, no travel to D.C., and submission to psychiatric treatment if ordered by Pretrial Services. Eisenhart Mag. Tr. at 164–66. The district court gave no plausible explanation for why these stringent conditions would not reasonably ensure public safety.

Of course, we review dangerousness findings only for clear error,  [Smith, 79 F.3d at 1209](#), which requires affirmance


if a district court’s “account of the evidence is plausible in light of the record viewed in its entirety,”  [Anderson v. City of Bessemer City, 470 U.S. 564, 573–74, 105 S.Ct. 1504, 84 L.Ed.2d 518 \(1985\)](#). But while the standard of review here is favorable to the government, both substantive law and the standard of proof favor the defendants. The Bail Reform Act requires a showing that “no condition or combination of conditions” would even “reasonably assure” the safety of individuals or the community.  [18 U.S.C. § 3142\(e\)\(1\)](#). And it requires this showing to be made by “clear and convincing evidence,”  [id. § 3142\(f\)\(2\)](#)—a heightened standard of proof under which the fact finder must “give the benefit of the doubt to the defendant,”  [United States v. Montague, 40 F.3d 1251, 1255 \(D.C. Cir. 1994\)](#); see  [Addington v. Texas, 441 U.S. 418, 424, 99 S.Ct. 1804, 60 L.Ed.2d 323 \(1979\)](#). Putting it all together, because the record strongly suggests that Munchel and Eisenhart would present no safety risk if subjected to strict release conditions, the district court clearly erred in finding that the government had proved its case by clear and convincing evidence.

*13 “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”  [Salerno, 481 U.S. at 755, 107 S.Ct. 2095](#). Because the district court clearly erred here, I would reverse its detention order and remand for the setting of appropriate release conditions.

All Citations

--- F.3d ----, 2021 WL 1149196

Footnotes

- 1 On January 5, a police officer had observed Munchel’s taser and allowed him to keep it, ostensibly because it was legal to possess on the street in the District of Columbia.  [Munchel, 2021 WL 620236, at *1](#).
- 2 Even though Magistrate Judge Frensey had found that the government had not met its burden of proving dangerousness by clear and convincing evidence, the government sought and obtained an *ex parte* stay of that release order that resulted in the appellants being detained for three weeks without any court finding of

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dangerousness, notwithstanding the statute's mandate that review occur "promptly," 18 U.S.C. § 3145(a), and the statutory and constitutional requirement of a dangerousness finding, *see infra*. While COVID-19 issues caused a delay in the appellants' transport to the District of Columbia, the record does not indicate why a D.C. District Judge could not have heard this matter prior to February 17, even if the appellants were in another location. Ultimately, this issue, while troubling, is not presented as a ground for reversal in this appeal.

3 This court stated long ago, in dictum, in a case arising under the predecessor Bail Reform Act that district courts review such prior determinations with "broad discretion." *Wood v. United States*, 391 F.2d 981, 984 (D.C. Cir. 1968) ("Evaluating the competing considerations is a task for the commissioner or judge in the first instance, and then the judges of the District Court (where they have original jurisdiction over the offense) have a broad discretion to amend the conditions imposed, or to grant release outright, if they feel that the balance has been improperly struck.").

4 Below, the government contended that the 50-minute iPhone video was presented to the Magistrate Judge in Eisenhart's detention hearing. ECF No. 41 at 2 & n.2. However, it does not dispute the appellants' claim that the partial transcript of the video and the videos from Capitol CCTV were not presented to the Magistrate Judge.

5 Eisenhart's argument that a taser is not a dangerous weapon—which Eisenhart raises for the first time in reply, and which Munchel seeks to adopt in his reply—is without merit. The relevant statute, 40 U.S.C. § 5104(a)(2)(B), defines the term "dangerous weapon" to include "a device designed to expel or hurl a projectile capable of causing injury to individuals or property. ..." While the record contains no evidence or proffer as to how Munchel's taser operates, a taser is commonly understood as a device designed to expel a projectile capable of causing injury to individuals. See *Cantu v. City of Dothan*, 974 F.3d 1217, 1224–25 (11th Cir. 2020); *Mattos v. Agarano*, 661 F.3d 433, 443 (9th Cir. 2011) ("[A] taser uses compressed nitrogen to propel a pair of 'probes'—aluminum darts tipped with stainless steel barbs connected to the taser by insulated wires—toward the target at a rate of over 160 feet per second. Upon striking a person, the taser delivers a 1200 volt, low ampere electrical charge. The electrical impulse instantly overrides the victim's central nervous system, paralyzing the muscles throughout the body, rendering the target limp and helpless." (internal alterations and quotation marks omitted)). Thus, at this stage, the evidence sufficiently demonstrates that Munchel's taser is a dangerous weapon under the statute.

6 Although the government presented evidence that Munchel was in contact with a member of the Proud Boys after January 6 and was interested in joining the group, *id.* at *6, the District Court made no finding as to whether this evidence indicated that Munchel posed a danger to the community. It did, however, consider the evidence of Munchel's contact with the Proud Boys in its analysis of Munchel's history and characteristics, and determined that despite the evidence, Munchel's history and characteristics weighed against detention. *Id.*

1 I join parts I to III of the Court's opinion. I also agree with much of the legal analysis in part IV, including the proposition that those who assaulted police officers or forcibly breached Capitol security on January 6 "are in a different category of dangerousness" than those who, like Munchel and Eisenhart, only "cheered on" the disruption and "entered the Capitol after others cleared the way." *Ante* at ——— – ———.

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EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF ARKANSAS
3 FAYETTEVILLE DIVISION

4 UNITED STATES OF AMERICA

PLAINTIFF

5 v.

CASE NO. 5:21-MJ-05001-001

6 RICHARD BARNETT

DEFENDANT

7 -----
8
9 VIDEOCONFERENCE DETENTION HEARING

10 JANUARY 15, 2021

11 BEFORE THE HONORABLE ERIN L. WIEDEMANN

12 UNITED STATES MAGISTRATE JUDGE

13 FAYETTEVILLE, ARKANSAS
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1 MS. GUERRERO: The United States District Court
2 for the Western District of Arkansas, Fayetteville
3 Division, the Honorable Judge Erin L. Wiedemann presiding
4 is now in session.

5 THE COURT: Thank you. Good afternoon.

6 MS. GUERRERO: Good afternoon, Judge.

7 THE COURT: Can everyone hear me okay?

8 THE DEFENDANT: Yes, ma'am.

9 MR. SIANO: Yes, Your Honor.

10 THE COURT: All right. At this time, the Court
11 will call up the case of the United States versus Richard
12 Barnett. We have Mr. Clay Fowlkes and Kim Harris present
13 for the government. We have Mr. Anthony Siano present
14 representing Mr. Barnett. We also have participating today
15 Mr. Bruce Eddy and Jack Schisler with our Federal Public
16 Defender's Office. I asked them to participate today in
17 the event that we have any witnesses that might need
18 standby counsel.

19 All right. Mr. Barnett, at your initial
20 appearance, I did go over with you your right to have the
21 initial appearance and today's hearing, the detention
22 hearing, conducted in person. You had submitted a waiver
23 of personal appearance form. It covered not just your
24 initial appearance, but also the detention hearing. I just
25 want to make sure today that you are still agreeable to

1 proceeding with your detention hearing by video and waiving
2 your right to an in-person hearing.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. And you consulted with
5 your attorney, Mr. Siano, about that?

6 THE DEFENDANT: I did.

7 THE COURT: All right. Thank you. And I did
8 communicate with the attorneys prior to this hearing about
9 whether the government would like to invoke the Rule as to
10 any witnesses that may testify. I was advised that they
11 would like to invoke the Rule, so the Court has made
12 arrangements for the witnesses, other than the case agent
13 for the government, but all other witnesses are set up in a
14 breakout room and will only join this hearing when it is
15 their turn to testify. So the Rule will be considered
16 invoked.

17 MR. FOWLKES: Thank you, Your Honor.

18 THE COURT: Also, prior to the hearing, I asked
19 the government's attorney and defense attorney to submit
20 any proposed exhibits and to confer with each other as to
21 whether they would agree and stipulate to the admission of
22 their exhibits. They have done so. So the Court will
23 admit for the government, their exhibit list consists of 12
24 exhibits. They will be deemed admitted at this time.

25 The defense's exhibit list, it's Exhibit A, B, C,

1 D and E, will also be deemed admitted as they have been
2 stipulated to by the government. So I'll ask the attorneys
3 as we're proceeding through this hearing if you want to
4 refer to any of these exhibits, to refer to it by the
5 exhibit number or letter so that we can all follow along.

6 MR. FOWLKES: Yes, Your Honor.

7 MR. SIANO: Thank you, Your Honor.

8 THE COURT: And I will note, Mr. Siano, the
9 exhibits that you submitted, which are essentially
10 documents from other cases around the country involving
11 defendants that were arrested in relation to the protests
12 at the Capitol, I don't know that you're going to be
13 presenting these through any witness, but the Court has
14 reviewed them and will take notice of the exhibits that you
15 offered.

16 MR. SIANO: Other than in argument, Judge, I
17 won't be referring to them. Thank you for the Court's
18 attention to them.

19 THE COURT: Thank you. All right. With that
20 said, are the parties ready to proceed with the detention
21 hearing, for the government?

22 MR. FOWLKES: Yes, Your Honor.

23 THE COURT: And Mr. Siano?

24 MR. SIANO: Yes, Your Honor.

25 THE COURT: All right. The government may call

1 its witness then.

2 MR. FOWLKES: The government calls Special Agent
3 Jonathan Willett to the witness stand.

4 THE COURT: All right. Agent Willett, at this
5 time, I'm going to ask you to raise your right hand and be
6 sworn.

7 THE WITNESS: I'm ready, Your Honor.

8 (Witness Sworn)

9 THE COURT: All right. Thank you. Mr. Fowlkes,
10 go right ahead.

11 JONATHAN WILLETT, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FOWLKES:

15 Q. Please state your name for the Court, and spell your
16 last name for the court record.

17 A. Jonathan Willett.

18 THE COURT: I'm sorry, let me interrupt.

19 Mr. Fowlkes, we're getting some feedback from
20 your end. I don't know -- there's an echo. I don't know
21 if you can check your audio.

22 MR. FOWLKES: Can you still hear the echo, Your
23 Honor?

24 THE COURT: I still -- are you all hearing an
25 echo? Yes, we're still --

1 THE DEFENDANT: Your Honor, I'm hearing the echo.
2 I can't understand anything he's saying.

3 THE COURT: Okay. I'm not sure, Mr. Fowlkes, if
4 there's anything you can try, or we can give you a minute.

5 MR. FOWLKES: Can you hear me, Your Honor?

6 THE COURT: Yes. There's some static, but it is
7 better. We can try it that way.

8 Q. (by Mr. Fowlkes) All right. Please state your name
9 for the Court and spell your last name for our court
10 record.

11 A. Jonathan Willett, W-I-L-L-E-T-T.

12 Q. How are you employed?

13 A. I'm employed by the Federal Bureau of Investigation as
14 a special agent.

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

16 A. I've been employed by the FBI in this position since
17 approximately January 2017.

18 Q. During the course of your duty as a special agent with
19 the FBI, did you work on an investigation involving a
20 person named Richard Barnett?

21 A. I did.

22 Q. What was the nature of that investigation?

23 A. The investigation was initiated on approximately
24 January 6th, 2021, last Wednesday. So this was stemming
25 from the Capitol riots. So earlier on on January 6th,

1 President Trump had given a speech in the Capitol. After
2 that, protestors marched towards the U.S. Capitol building.
3 What was happening at the time at the U.S. Capitol is U.S.
4 Congress was meeting to certify the results of the recent
5 presidential election. So the Capitol police had erected a
6 restricted area or fencing around the U.S. Capitol
7 building. And protesters had pushed their way past the
8 U.S. Capitol police barricades up towards the U.S. Capitol
9 where the crowd got even more aggressive and barged into
10 the U.S. Capitol building. So the investigation was based
11 off of trying to identify the individuals that had engaged
12 in those activities to gain entry into the Capitol.

13 Q. During the course of your investigation, did you
14 review surveillance videos from the Capitol?

15 A. Yes, I did.

16 Q. I'm going to show what's been marked as Exhibit 1.

17 MR. FOWLKES: Your Honor, can you see this video?

18 THE COURT: Yes. Is everyone else --

19 MR. FOWLKES: I'm going to start the video now.

20 THE COURT: Is everyone else able to see this?

21 MR. SIANO: Yes, Your Honor.

22 THE COURT: Mr. Barnett?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. Go right ahead.

25 MR. FOWLKES: This video has no audio, Your

1 Honor.

2 (Exhibit No. 1 played)

3 Q. (by Mr. Fowlkes) Special Agent Willett, I'm going to
4 ask you, what does this video depict?

5 A. So I was able to speak with the U.S. Capitol Police.
6 They provided this and another video we'll see here in a
7 minute. So what the U.S. Capitol Police told me is, this
8 is showing Mr. Barnett walking into one of several
9 entrances of Speaker Pelosi's office.

10 MR. FOWLKES: All right. Your Honor, I'm going
11 to try to share a second video now. It's going to take me
12 just a second.

13 THE COURT: Is this Exhibit 2?

14 MR. FOWLKES: This will be Exhibit 2, Your Honor.
15 And, Your Honor, can you see this video as well?

16 THE COURT: Yes. Can everyone else see it?

17 MR. SIANO: Yes, Your Honor.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Go right ahead,
20 Mr. Fowlkes.

21 (Exhibit No. 2 played)

22 Q. (by Mr. Fowlkes) All right. Special Agent Willett,
23 does this video also depict the defendant at the United
24 States Capitol?

25 A. Yes.

1 Q. What does this video show?

2 A. So in speaking with Capitol police, what this shows is
3 yet another entrance to Speaker Pelosi's office. So
4 Mr. Barnett is imaged -- is in this video wearing a plaid
5 jacket and dark hat. He is asked by Capitol police to
6 please leave Pelosi's office. He leaves, looks to be --
7 and it appears that he is videotaping during this. And
8 then after the Capitol police officer turns their back,
9 Mr. Barnett goes back into Pelosi's office and then leaves
10 one more time. Something to point out in that video is
11 there's an object that's evident on his hip, and we further
12 identified that as a walking stick taser.

13 Q. All right. During the course of your investigation,
14 did you also review some photographs that depicted the
15 defendant inside the Capitol?

16 A. I did.

17 Q. I'm going to share with you what's been entered into
18 evidence as Exhibit 3.

19 (Exhibit No. 3 displayed)

20 MR. FOWLKES: And, Your Honor, can you see this
21 photograph?

22 THE COURT: Yes, I can.

23 Q. (by Mr. Fowlkes) All right. Special Agent Willett,
24 what does this photograph show?

25 A. So this shows Mr. Barnett with his feet up on a desk

1 in Speaker Pelosi's office. Also of note in this photo, he
2 has got a cell phone in his hand and a walking stick taser
3 on his hip.

4 Q. All right.

5 MR. SIANO: Excuse me. Mr. Fowlkes, I didn't
6 hear the exhibit number. I apologize.

7 MR. FOWLKES: That was Exhibit Number 3.

8 MR. SIANO: Thank you. Sorry to interrupt.

9 MR. FOWLKES: No problem.

10 (Exhibit No. 4 displayed)

11 Q. (by Mr. Fowlkes) Now I'm going to share Exhibit 4.
12 And Special Agent Willett, what does this photograph
13 depict?

14 A. This shows Mr. Barnett again in the office of Speaker
15 Pelosi holding up a letter from that office.

16 (Exhibit No. 5 displayed)

17 Q. All right. And now I'm going to share Exhibit No. 5.
18 And what does this photograph depict?

19 A. This shows Barnett again holding what appears to be
20 that folded letter in his right hand, and on his hip, he
21 has a walking stick taser.

22 Q. All right. Did you also review some photos and videos
23 that depicted the defendant after he left the Capitol
24 offices?

25 A. Yes, I did.

1 MR. FOWLKES: All right. I'm going to try to
2 share Exhibit No. 6 now, Your Honor. We did have some
3 trouble with the video, or with the audio on Exhibit 6
4 yesterday, so if you have trouble hearing it, please let me
5 know, Your Honor.

6 THE COURT: All right. Thank you.

7 MR. FOWLKES: It will take a second to load.
8 And, Your Honor, can you see the video before I start it on
9 your screen?

10 THE COURT: Yes. It's a little blurry, but I'm
11 assuming once you start it, it will be more focused.

12 MR. FOWLKES: Okay. I'm going to try to start it
13 now, Your Honor.

14 THE COURT: All right.

15 (Exhibit No. 6 played; inaudible audio)

16 Q. (by Mr. Fowlkes) And Special Agent Willett, what did
17 this video depict?

18 A. It was kind of choppy on my side, Mr. Fowlkes, so I
19 can go ahead and try to summarize some of the key points if
20 it was for anyone else as well. But what this video
21 showed, and it was taken right outside the U.S. Capitol
22 after the D.C. protests. What we can see here is
23 Mr. Barnett getting a bullhorn, speaking about being inside
24 the U.S. Capitol building. And the important fact to take
25 away from this video is that in his left hand, he is

1 holding the letter from Speaker Pelosi's office as well as
2 the walking stick taser in that hand.

3 Q. And you've testified previously about the walking
4 stick taser. During the course of your investigation, did
5 you participate in the execution of a search warrant at the
6 defendant's residence?

7 A. Yes, I did.

8 Q. And did you find any evidence regarding the item the
9 defendant is holding that you've described as a walking
10 stick taser?

11 A. Yes. We found the packaging for a walking stick taser
12 which is consistent with the item that Mr. Barnett is
13 photographed with.

14 MR. FOWLKES: And, Your Honor, I'm going to try
15 to share Exhibit No. 7 at this time.

16 (Exhibit No. 7 displayed)

17 Q. (by Mr. Fowlkes) Special Agent Willett, can you see
18 this photograph?

19 A. I can.

20 Q. Is it a fair and accurate depiction of the item you
21 saw during the execution of the search warrant?

22 A. It is.

23 Q. What does it appear to be?

24 A. It appears to be the wrapper for a walking stick
25 taser, or a ZAP Hike 'n Strike hiking staff.

1 Q. And did you take steps to confirm where this item was
2 purchased and who purchased it?

3 A. Yes, we did.

4 Q. And what did you discover regarding this?

5 A. Yes. Other people at the FBI were out looking at
6 various local stores to see who would sell that particular
7 item. They identified that that item was sold to
8 Mr. Barnett from Bass Pro.

9 MR. FOWLKES: Your Honor, I'm going to try to
10 show Exhibit No. 9. Oh, sorry. It should be Exhibit
11 No. 8. I got off track. This is Exhibit No. 8.

12 (Exhibit No. 8 displayed)

13 Q. (by Mr. Fowlkes) Special Agent Willett, can you see
14 this on your screen?

15 A. Yes, I can.

16 Q. What does it appear to be to you?

17 A. This is a receipt that was provided by Bass Pro. So
18 when Mr. Barnett purchased these items, so he purchased
19 them on approximately December 31st, 2020. He bought two
20 items of pepper spray. He bought two three-packs of
21 two-way radios and a walking stick taser, the Hike 'n
22 Strike stun gun.

23 Q. And how can you be certain that this defendant,
24 Mr. Barnett, made this purchase?

25 A. This was purchased using one of his, either debit card

1 or credit card.

2 Q. All right.

3 MR. FOWLKES: Your Honor, it will take me a
4 moment to pull up the next exhibit.

5 THE COURT: All right. Let me just ask, Agent
6 Willett, where was this Bass Pro Shop located?

7 THE WITNESS: Yes, Your Honor. It was the one up
8 here in Northwest Arkansas, in Rogers, I believe.

9 THE COURT: All right. Thank you.

10 MR. FOWLKES: All right. Your Honor, I'm going
11 to try to share Exhibit No. 9 with the Court. All right.
12 Your Honor, can you see this video?

13 THE COURT: Yes, I can. Thank you.

14 MR. FOWLKES: I'm going to play it now.

15 (Exhibit No. 9 played)

16 Q. (by Mr. Fowlkes) All right. Special Agent Willett,
17 what does this video show?

18 A. This is a security video provided by Bass Pro up here.
19 And what we can see here is, this is a video of the
20 purchase that Mr. Barnett made, which we saw the items
21 purchased from the previous receipt. So we can see
22 Mr. Barnett in the same hat and jacket that he appeared to
23 be wearing in the U.S. Capitol, and that hat and jacket
24 were both seized at his house as well. We can see him
25 clearly lay out the walking stick stun gun, as well as the

1 items of mace and the two walkie talkies. And then he's
2 got his German Shepherd puppy with him at that time as
3 well.

4 Q. I want to talk to you now about the interview that you
5 conducted with the defendant. When did this interview take
6 place?

7 A. This interview took place on January 8th, 2021.

8 Q. And where did the interview take place?

9 A. It took place in the interview room located at the
10 Benton County Sheriff's Office.

11 Q. Did one of your colleagues advise the defendant of his
12 Miranda rights?

13 A. Yes, he did.

14 Q. Did he agree that he understood all of his rights that
15 day?

16 A. Yes.

17 Q. Did he make a statement to you?

18 A. Yes.

19 Q. Did you record that statement?

20 A. Yes.

21 Q. During this statement, did Mr. Barnett admit that he
22 was the person depicted in the photos from Speaker Pelosi's
23 office?

24 A. Yes, he admitted that he was in Speaker Pelosi's
25 office.

1 Q. During the statement, did Mr. Barnett admit that he
2 took a letter from Speaker Pelosi's office?

3 A. Yes.

4 Q. And did he provide you with that letter?

5 A. Yes, he had the letter with him.

6 MR. FOWLKES: Your Honor, I'm sharing Exhibit 10
7 now.

8 (Exhibit No. 10 displayed)

9 Q. (by Mr. Fowlkes) What does this appear to be to you?

10 A. This appears to be the letter. This is the letter
11 that Mr. Barnett had with him, and this appears to be a
12 letter from Speaker Pelosi's office.

13 Q. In that same statement, did Mr. Barnett tell you that
14 he had some firearms at his residence?

15 A. He had firearms at his residence, but he had -- he
16 has recently moved them.

17 Q. Did you also review a photograph from social media
18 that appeared to depict the defendant holding a firearm?

19 A. Yes.

20 MR. FOWLKES: Your Honor, I'm going to try to
21 show Exhibit 11 now.

22 (Exhibit No. 11 displayed)

23 Q. (by Mr. Fowlkes) What does this photo appear to be to
24 you?

25 A. This appears to be a photo of Mr. Barnett with two

1 young children. And one of the girls is holding what
2 appears to be an AR. And then Mr. Barnett has what looks
3 to be a (inaudible) gun with possibly some kind of silencer
4 on it.

5 Q. Did you recover any firearms or silencers from his
6 house?

7 A. No.

8 Q. Did the defendant tell you during his interview about
9 a "Save the Children" rally that he had participated in?

10 A. Yes.

11 Q. What did he tell you about that rally?

12 A. During that rally, he just said that he let people go
13 and take photos with some of his antique cars, and then he
14 let them go and take pictures with some of the guns that he
15 had after he unloaded them.

16 Q. During the same interview, did Mr. Barnett tell you
17 whether he had a cell phone?

18 A. Yes.

19 Q. In fact, did you review photographs and video from the
20 Capitol that depicted the defendant holding a cell phone?

21 A. Yes, I did.

22 Q. Did you recover a cell phone from the defendant that
23 day?

24 A. He did not have one on him.

25 Q. Did you recover a cell phone from his residence during

1 the execution of the search warrant?

2 A. No, we did not.

3 Q. I want to talk to you now about the defendant's
4 appearance at other rallies. Did you receive information
5 from Fayetteville Police Department regarding their
6 interaction with the defendant at a prior rally?

7 A. Yes.

8 Q. And what was that information?

9 A. The information was that Fayetteville P.D. had had an
10 interaction with him sometime in approximately July of
11 2020. They had a caller gave a description of an
12 individual who had possibly maybe pointed a gun at her.
13 When the police officer showed up, they identified a person
14 matching Richard Barnett's description. He was causing a
15 little bit of a ruckus at the time, though he did comply
16 with law enforcement.

17 Q. And did you confirm with the officers by reviewing
18 that report that the defendant was in possession of a
19 firearm during that rally?

20 A. Yes.

21 MR. FOWLKES: Excuse me, Your Honor.

22 THE COURT: Let me ask, while we're on this
23 issue, you said it was a rally in July of 2020?

24 THE WITNESS: Yes, ma'am. Yes, Your Honor.

25 THE COURT: And do you know what type of rally it

1 was and where it was?

2 THE WITNESS: I do not remember at this time,
3 Your Honor. It was sometime, I believe either July 25th or
4 July 26th here in Fayetteville, Arkansas.

5 THE COURT: But you don't recall what the rally
6 was for?

7 THE WITNESS: I do not, Your Honor.

8 Q. (by Mr. Fowlkes) And if you reviewed a report from
9 Fayetteville Police Department, would that refresh your
10 memory on this matter?

11 A. It would.

12 MR. FOWLKES: All right. Your Honor, may Special
13 Agent Willett have just a moment to refresh his
14 recollection?

15 THE COURT: Yes, that's fine.

16 THE WITNESS: Yes, Your Honor. The rally
17 appeared to be in support --

18 MR. SIANO: Your Honor, before cross, might we
19 find a way to let me have access to that report since the
20 witness is now using it to refresh his recollection before
21 he continues to testify?

22 MR. FOWLKES: Your Honor, I believe we've already
23 disclosed this to the defense.

24 MR. SIANO: Well, those discovery materials,
25 Judge, I'm having a little trouble getting them through the

1 system. So I have the exhibits. Is this one of your
2 exhibits marked today, Mr. Fowlkes? I don't think so.

3 MR. FOWLKES: No, it's part of the discovery that
4 we disclosed.

5 MR. SIANO: I will tell the Court, I don't --
6 again, I take Mr. Fowlkes and Ms. Harris at face value. I
7 was able to download the exhibits, but I haven't been able
8 to download the discovery. And since it's now being used
9 in the hearing, this particular item is of interest to me.
10 So that's the only --

11 MR. FOWLKES: Well, it's being used to refresh
12 this witness's recollection during the hearing.

13 MR. SIANO: And the rules say I'm entitled to see
14 it before I begin crossing.

15 MR. FOWLKES: Certainly.

16 THE COURT: Okay. What I will ask is, we can
17 take, once Mr. Fowlkes has completed his direct
18 examination, we can take a brief recess. And, Mr. Fowlkes,
19 if you can either point Mr. Siano to where this report
20 would be in discovery, or if it might be quicker to just
21 e-mail that one report to him, if you can do that. And,
22 Mr. Siano, I will give you an opportunity to review that
23 before cross examination.

24 MR. SIANO: That's fine, Judge. I will move as
25 fast as I can.

1 MR. FOWLKES: We'll do that right now, Your
2 Honor.

3 THE COURT: All right. Thank you. You may
4 proceed, Mr. Fowlkes.

5 Q. (by Mr. Fowlkes) Did you also review a copy of a news
6 report from November of 2020 in which the defendant gave an
7 interview?

8 A. Yes.

9 MR. FOWLKES: And I'd like to publish now
10 Exhibit 12, Your Honor. And I think that the sound will
11 come through a lot more clearly if everyone is muted except
12 for myself. And so I just would ask everyone to mute their
13 computers while I try to publish this video.

14 THE COURT: All right. If everyone can do that
15 at this time who is not already muted.

16 MR. FOWLKES: I'm going to play the first part
17 and then ask my colleagues here if the sound is coming
18 through for them.

19 (Exhibit No. 12 begins playing as follows:)

20 REPORTER CRYSTAL MARTINEZ: A group of people
21 express their support --

22 MR. FOWLKES: Did the sound come through? Okay.
23 I'm going to start it over now then.

24 (Exhibit No. 12 played as follows:)

25 REPORTER CRYSTAL MARTINEZ: A group of people

1 express their support for President Donald Trump with a
2 "Stop the Steal" rally saying the 2020 election isn't over
3 until it's proven to be fair.

4 Good evening and thanks for joining us tonight.
5 I'm Crystal Martinez. KWA's Samantha Boyd joins us live in
6 studio. Samantha, you attended the rally. Why do they
7 believe we need to reevaluate the election results?

8 REPORTER SAMANTHA BOYD: Crystal, a group called
9 "Engaged Patriots" held the rally this morning in
10 Bentonville protesting what they believe is voter fraud.
11 But a political science expert says most election officials
12 believe votes were more secure than they've ever seen.

13 Richard Barnett was one of many who took part in
14 Saturday's "Stop the Steal" rally in Bentonville.

15 THE DEFENDANT: And, hey, if you don't like it,
16 send somebody after me, but I ain't going down easy.

17 REPORTER SAMANTHA BOYD: He supports President
18 Trump's claims of voter fraud and believes that cost him
19 the election. One major complaint, mail-in voting.

20 THE DEFENDANT: People are going to vote and find
21 out somebody already used their vote and they're not
22 allowed to vote. This is insane.

23 REPORTER SAMANTHA BOYD: William H. Bowen School
24 of Law Professor John Dipippa says otherwise.

25 PROFESSOR DIPIPPA: The mail-in system has its

1 own verification process, and so there are some people who
2 have made claims, but none of them have ever been verified.
3 There was a woman who showed up in Nevada the night after
4 the election and said people stole the ballot from her
5 mailbox and submitted it. Turns out that wasn't true.
6 That in fact, she had voted.

7 REPORTER SAMANTHA BOYD: Jeff Kinard, another
8 protester, believes a common mistake was made inside many
9 polls.

10 MR. JEFF KINARD: I believe there's been poll
11 watchers that were not allowed to see certain votes count.
12 And according to state laws, they are supposed to be
13 allowed to do that.

14 REPORTER SAMANTHA BOYD: But Dipippa says the
15 country has put up safeguards to prevent this for years.

16 PROFESSOR DIPIPPA: So, for example, the voting
17 systems, they're electronic with a paper ballot. Those are
18 hard to falsify in the first place. Secondly, when those
19 paper ballots are verified, they're counted in public with
20 observers from both parties and the press.

21 REPORTER SAMANTHA BOYD: It's an election Dipippa
22 says would need more evidence to prove corruption and
23 protesters say would need more evidence to prove it was
24 trustworthy.

25 THE DEFENDANT: Whatever it takes. Whatever it

1 takes.

2 REPORTER SAMANTHA BOYD: Dipippa says those
3 protesting today do have some ground to stand on because
4 errors occur every election. But he's convinced even
5 recounts will have little effect on this one. And the
6 Electoral College will meet December 14th to elect the
7 official president. Live in studio, Samantha Boyd, KNWA,
8 Northwest Arkansas News.

9 (End of Exhibit No. 12)

10 Q. (by Mr. Fowlkes) All right. Special Agent Willett,
11 do you care to unmute yourself at this time? So what is
12 your understanding of when and where this video was taken?

13 A. This video was taken approximately November 14th,
14 2020, in Bentonville.

15 MR. FOWLKES: And, Your Honor, did the audio play
16 on that video this time for the Court?

17 THE COURT: Yes, I was able to hear it. Thank
18 you.

19 MR. FOWLKES: Your Honor, with the Court's
20 permission, I'd like to go back and try to publish
21 Government's Exhibit No. 6 again with everyone, with their
22 microphone muted, to see if that helps the audio come
23 through on that one a little bit better.

24 THE COURT: All right. That's fine. If
25 everybody will mute their microphones.

1 MR. FOWLKES: Thank you, Your Honor. It will
2 take me just a second to pull it up again here. All right.
3 Your Honor, I'm going to try to publish this video again.

4 (Exhibit No. 6 played as follows:)

5 THE DEFENDANT: Can you all hear me up there? I
6 need ya'll to know something. We took back our house. And
7 I took Nancy Pelosi's office. And another thing. I didn't
8 steal this. I bled on it and they fucking made me
9 (inaudible) and I still paid a quarter for it. I put a
10 quarter (inaudible). I took her stationery and I left her a
11 note. And that note says, "Nancy, Bigo was here, you
12 bitch."

13 (Repetitive Chanting of "Our House")

14 (End of Exhibit No. 6)

15 MR. FOWLKES: Your Honor, did that video/audio
16 come through?

17 THE COURT: Yes, it did. Thank you.

18 MR. FOWLKES: Okay. All right.

19 Q. (by Mr. Fowlkes) Special Agent Willett, I would like
20 to go back to the Second Amendment event, the rally that
21 you testified about a few minutes ago. During the review
22 of the records associated with that Fayetteville Police
23 Department report and their report about what happened at
24 the rally, were you able to determine whether that date of
25 birth was the same date of birth that the defendant

1 provided to you?

2 A. He didn't provide me a date of birth when we went to
3 interview him, but through the course of the investigation,
4 we determined that Mr. Barnett has possibly been utilizing
5 two separate date of births.

6 Q. Was the date of birth at the Fayetteville Police
7 Department interaction the same as the date of birth on
8 Mr. Barnett's driver's license?

9 A. I believe so.

10 Q. Okay. What did Mr. Barnett tell you about what you
11 will find if you searched his residence?

12 A. If I may kind of do a pretty close to verbatim quote
13 from the interview of some key things that Mr. Barnett
14 said. During the interview of Mr. Barnett, he said, "If
15 ya'll go out there and do a search warrant, you can see all
16 my shit. You ain't going to find nothing out there." And
17 then later on, he says, "I assure you, I'm a smart man,
18 there is not anything there."

19 Q. During the course of the interview, did Mr. Barnett's
20 wife participate in a portion of the interview?

21 A. Yes, she did.

22 Q. And how did you view the interaction between
23 Mr. Barnett and his wife during that interview?

24 A. It appears to be that Mr. Barnett was somewhat
25 controlling of his wife.

1 Q. And did Mr. Barnett tell you whether or not he had a
2 cell phone with him during his travels to Washington, D.C.,
3 and his return travels to Arkansas?

4 A. He had made mention about, and the video shown clearly
5 that he had a cell phone that he was either talking on or
6 recording when he was in the Capitol building. And some of
7 the photos show him having a cell phone in his hand. He
8 mentioned when he left D.C. that he had turned the location
9 services off on his phone, and, you know, only paid cash
10 for everything and had driven straight back.

11 MR. FOWLKES: And, Your Honor, may I have just a
12 moment to consult with Ms. Harris before we continue our
13 examination?

14 THE COURT: Yes, you may. I'll ask if we can
15 have you and Ms. Harris put into a breakout room. Would
16 you like Agent Willett put in the room with you?

17 MR. FOWLKES: We're together, Your Honor. I just
18 need to mute my screen for just a moment.

19 THE COURT: Oh, okay. Go right ahead then.

20 MR. FOWLKES: Thank you.

21 (pause)

22 THE COURT: Mr. Fowlkes, are you ready to
23 proceed, or do you need additional time?

24 MR. FOWLKES: All right. Yes, we are ready to
25 proceed, Your Honor. I apologize. It said the host was

1 not allowing me to unmute myself. So we just have a few
2 follow-up questions for Special Agent Willett, Your Honor.

3 THE COURT: Go right ahead.

4 Q. (by Mr. Fowlkes) Special Agent Willett, during the
5 interview, you just said that Mr. Barnett and his wife, and
6 you viewed their interactions and you viewed those
7 interactions to be somewhat controlling. I'd just like you
8 to elaborate on why you believe that.

9 MR. FOWLKES: Okay. I don't think it's letting
10 Mr. -- Special Agent Willett unmute himself.

11 THE COURT: All right. There we go.

12 Q. (by Mr. Fowlkes) There we go. All right.

13 A. Yeah, to follow up with that. It appeared that
14 perhaps Mr. Newburn's (sic) wife, or common-law wife, I'm
15 not sure exactly the entire relationship between him and
16 Tammy Newburn, but she had been receiving some calls or
17 threats which we were concerned about and we were wanting
18 to get some more information while she was in the room. So
19 we had asked or she had offered to let us go and look at
20 those. And at that time, Mr. Barnett had taken the phone
21 out of her hands and indicated that he was only going to
22 show what he thought was appropriate and would not let
23 Ms. Newburn go through and interact or show us that stuff
24 directly.

25 Q. All right. I want to ask you now, did Mr. Barnett

1 tell you whether or not he traveled with other individuals
2 to Washington, D.C.?

3 A. Initially on the interview when we asked him that, he
4 said, no, he had not really traveled with anyone and kind
5 of indicated that he had been by himself. Later on, he
6 kind of indicated that he had been with, met up with
7 several individuals in Washington, D.C., but didn't provide
8 us any further details.

9 Q. All right. Did Mr. Barnett tell you anything about
10 excitement and things that he enjoyed?

11 A. Yeah. Mr. Barnett kind of indicated that, and kind of
12 a quote from him would be, "I love excitement, that's what
13 got me in trouble," with reference to the events that
14 happened in the U.S. Capitol.

15 MR. FOWLKES: All right. Your Honor, can I have
16 just one more moment? I'm just going to mute myself right
17 here.

18 THE COURT: Yes, that's fine.

19 (pause)

20 MR. FOWLKES: All right. Just a couple more
21 follow-up questions for Special Agent Willett.

22 Q. (by Mr. Fowlkes) When Mr. Barnett turned himself in
23 at the Benton County Jail, what items did he have in his
24 possession?

25 MR. FOWLKES: Okay. Mr. -- Special Agent Willett

1 is still muted. I think it says the host -- there we go.

2 Q. (by Mr. Fowlkes) All right.

3 A. Yeah. The items that Mr. Barnett had on him at the
4 time was a wallet, and he had a hefty amount of money in
5 his wallet, the letter from Speaker Pelosi's office, a
6 medical device, and a coffee cup with him.

7 Q. No cell phone?

8 A. He had no cell phone on him.

9 MR. FOWLKES: And, Your Honor, the government has
10 no additional questions for Special Agent Willett. I did
11 want to take that brief pause to confirm that we had
12 e-mailed to Mr. Siano the FBI reports, the Fayetteville
13 Police Department reports that he inquired about that
14 refreshed Mr. Willett's recollection.

15 MR. SIANO: If I might, Your Honor.

16 THE COURT: Yes. Go ahead, Mr. Siano.

17 MR. SIANO: I received two Fayetteville Police
18 reports. I don't think Mr. Fowlkes meant to describe them
19 as FBI reports. They appear to be local police reports in
20 Fayetteville. I did receive two of them and I have had a
21 chance to look them over. Thank you, Mr. Fowlkes. And
22 thank you, Ms. Harris.

23 THE COURT: All right. So are you ready, then,
24 Mr. Siano, to proceed with your cross examination?

25 MR. SIANO: Yes, Your Honor. Thank you. May I

1 proceed?

2 THE COURT: Go right ahead.

3 MR. SIANO: Thank you.

4 CROSS EXAMINATION

5 BY MR. SIANO:

6 Q. Special Agent Willett, I want to go back and go
7 through these events and try to fill in some dates, times
8 and places.

9 A. Yes, sir.

10 Q. Is that all right with you?

11 A. Yes, sir.

12 Q. First of all, you testified you have been an agent
13 since January of 2017?

14 A. Yes, sir.

15 Q. Did you have any other office assignment other than
16 Fayetteville since the time you became a special agent, or
17 is Fayetteville your first office?

18 A. Fayetteville is my first office, sir.

19 Q. Can you tell me your educational background, sir?

20 A. Yes. So I've got a undergraduate degree in
21 microbiology and I've got a Ph.D. in microbiology.

22 Q. And where did you gain those degrees from?

23 A. So I got an undergraduate degree at Indiana University
24 and I've got my post-doctoral degree in microbiology from
25 the University of Iowa.

1 Q. Okay. And the date of your graduation, your diploma,
2 undergraduate?

3 A. Let's see. I graduated from there in approximately
4 May or June 2007.

5 Q. And the post-graduate degree?

6 A. In approximately December 2012.

7 Q. Did you have full-time employment after your
8 graduation, undergraduate?

9 A. I was employed as a graduate assistant, or a graduate
10 researcher full-time, yes.

11 Q. At Iowa?

12 A. Yes, sir.

13 Q. And then I take it did you leave the University of
14 Iowa after you got your graduate degree in December of
15 2012?

16 A. Yes, sir.

17 Q. Where did you work between 2012 and when you went into
18 the Academy at Quantico?

19 A. After I graduated, I worked as a post-doctoral
20 research fellow at the University of Chicago for four
21 years.

22 Q. That would bring me to about '16. Any other full-time
23 employment?

24 A. No, sir.

25 Q. All right. Thank you very much. When were you first

1 assigned the case that led to Mr. Barnett's arrest?

2 A. The case is not currently assigned to me, sir.

3 Q. Okay. Who is it assigned to?

4 A. Another agent here in the Fayetteville office.

5 Q. Who might that be?

6 A. Special Agent Kim Allen.

7 Q. When is the first time you actually engaged in
8 investigative activity either at your own initiative or at
9 the direction of Special Agent Allen in connection with
10 this matter?

11 A. On the 6th.

12 Q. That would be the Wednesday?

13 A. Yes, sir.

14 Q. All right. And can you tell me what that was?

15 A. Yeah. On January 6th, I was the relief supervisor for
16 our squad on that day, so I got the initial call that there
17 had been an individual located up here in Northwest
18 Arkansas that was possibly involved in the protest.

19 Q. And I take it that individual was Mr. Barnett?

20 A. Yes, sir.

21 Q. All right. Now, can you tell me, I want to go through
22 these exhibits. And the video that's Exhibit No. 1.

23 A. Yes, sir.

24 Q. When did you first see that video?

25 A. I am not sure the exact day that I saw it. I mean,

1 I've seen it sometime after the 6th, sir.

2 Q. Okay. When you say after, you mean the 7th, the 8th
3 or 9th, or at some point at that time?

4 A. Yes.

5 Q. Do you know the date/time codes for that video?

6 A. They are in the title of the video, but I do not know
7 them offhand.

8 Q. Do you know if that's one continuous piece of video?

9 A. Each of those snippets?

10 Q. No. Each of the exhibits. I'm not suggesting that
11 all the videos are one continuous.

12 A. Okay.

13 Q. But is the video, Exhibit No. 1, which it appears to
14 depict Mr. Barnett entering, is that one continuous video?

15 A. I did not have that conversation with the U.S. Capitol
16 Police, though I'm assuming so.

17 Q. Excuse me?

18 A. I said, though I assume so.

19 Q. And the second video, the one with what appears to be
20 three different Capitol police officers in and out of the
21 video?

22 A. Yes, sir.

23 Q. Do you know the date/time code for that?

24 A. No. It is in the title of the video, sir.

25 Q. All right. And as far as you know, that's one

1 continuous video?

2 A. As far as I know.

3 Q. And in the video, there's a doorway to the left with a
4 little desk, unoccupied desk at the lower corner of the
5 video. And then there's a hallway to the right, is that
6 correct?

7 A. I believe you when you say it. I believe there's
8 actually -- there's a door off to the left and they're
9 actually looking at a hallway.

10 Q. All right.

11 MR. SIANO: Mr. Fowlkes, could I ask that the
12 government play its exhibit again so I don't take advantage
13 of Agent Willett in these questions?

14 THE COURT: Is that Exhibit 2, Mr. Siano?

15 MR. SIANO: It appears to be Exhibit 2 as best I
16 can -- yes, it's Exhibit 2. Yes. Yes, Your Honor. It's
17 short.

18 MR. FOWLKES: It will just take me a moment, Your
19 Honor.

20 MR. SIANO: Take your time. Excuse me, I'm
21 sorry.

22 MR. FOWLKES: All right. I'm ready, Your Honor.

23 THE COURT: All right. Go right ahead,
24 Mr. Fowlkes.

25 (Exhibit No. 1 played)

1 MR. FOWLKES: All right. And would you like me
2 to play Exhibit 2 as well?

3 MR. SIANO: Yes. Yes.

4 MR. FOWLKES: Okay. It will take me just a
5 second. All right. I'm ready, Your Honor.

6 THE COURT: Go right ahead.

7 (Exhibit No. 2 played)

8 MR. SIANO: Thank you, Mr. Fowlkes.

9 MR. FOWLKES: Yes, sir.

10 Q. (by Mr. Siano) Agent, have you had a chance to look
11 at that video again?

12 A. Yes, sir.

13 Q. When you testified earlier, I believe, that
14 Mr. Barnett went back into the office. It's that three or
15 four second period after his first interaction with one
16 Capitol police officer, and then he came out, he went back
17 to the left and then came back out again. Is that what you
18 were describing?

19 A. Yes, sir.

20 Q. All right. And then he has an interaction with a
21 second Capitol police officer and then proceeds off the top
22 of the video, is that right?

23 A. Yes, sir.

24 Q. And that's where the exit was, generally speaking, out
25 the top of the video, is that right?

1 A. I have no idea in terms of the floor layout of the
2 U.S. Capitol.

3 Q. Okay. Did your investigation disclose what the
4 complaint says about the duration of Mr. Barnett's presence
5 inside the Capitol?

6 A. I have no knowledge of the total duration inside the
7 U.S. Capitol.

8 Q. How did these two videos come into your possession?

9 A. We were provided them. Actually, the U.S. Capitol
10 police provided both these videos.

11 Q. When?

12 A. They were provided to a prosecutor out of D.C. I have
13 no idea what that exact time was.

14 Q. What day was it?

15 A. I do not know.

16 Q. When did you first see them?

17 A. Like I mentioned previously, I do not remember the
18 specific day that I first saw those videos.

19 Q. Did you see the videos before you first made contact
20 with anybody in the Barnett household?

21 A. No.

22 Q. Okay. Now, from time to time in this -- in your
23 testimony, you've referred to a letter?

24 A. Yes, sir.

25 Q. Has it come to your attention it was actually an empty

1 envelope?

2 A. I do not know, sir. It is sealed. It's a sealed
3 envelope, so there could or there could not be something
4 inside that envelope or --

5 MR. SIANO: I'd ask the Court to -- again, I know
6 Your Honor has read this, but I believe it's the last two
7 lines of the factual statement of the amended statement of
8 facts which describe this as an empty envelope.

9 Q. (by Mr. Siano) When you took possession of the
10 envelope, was there anything in it?

11 A. Like I said, I do not know. It's a sealed envelope,
12 sir.

13 Q. So you didn't open the envelope?

14 A. I did not.

15 Q. Thank you, sir. And when did you first make contact
16 with anybody connected with the Barnett household?

17 A. Can you repeat your question? I could not -- you
18 trialed off.

19 Q. I'm sorry. I apologize. I did put my head down.
20 When is the first time, day and time, you made contact with
21 anybody from the Barnett household?

22 A. The first time I made anyone -- contact with anyone
23 from that household was Friday, December 8th, approximately
24 10:00 a.m.

25 Q. Okay. Did you make contact with local police in

1 Bentonville on Thursday?

2 A. I did not. Other people of our office were reaching
3 out to a lot of local partners along that time.

4 Q. So you were aware that the local Benton police were
5 told the FBI was looking for Mr. Barnett on Thursday, isn't
6 that right?

7 A. Do you mean Benton County Sheriff's Office, sir, or
8 Bentonville Police Department?

9 Q. Pardon my ignorance in this regard. Again, the
10 geography is a little new to me. I'm coming up to speed
11 slowly.

12 But I'm talking about local police. I mean, your
13 agents reached out to the local police to get their
14 assistance with respect to Mr. Barnett on Thursday, isn't
15 that right?

16 A. We actually reached out to a lot of agencies, I
17 believe as early as Wednesday, trying to identify the
18 individual in the photo before we knew Mr. Barnett's
19 identity.

20 Q. Okay. All right. Do you have any reason to doubt
21 that the local police on Thursday were looking for
22 Mr. Barnett?

23 A. They could be. I have no idea what the local police
24 were doing at that time, sir.

25 Q. Let's try coming at this another way.

1 A. Okay.

2 Q. You were in a local law enforcement premises on Friday
3 morning, isn't that right, 10:00?

4 A. Yes, sir.

5 Q. Which one?

6 A. Benton County Sheriff's Office.

7 Q. Okay. Now, was it serendipitous that you were in that
8 police -- Benton County Sheriff's Office at 10:00 a.m. on
9 Friday morning?

10 A. No, it was not.

11 Q. Okay. And you were there because somebody had
12 arranged with Mr. Barnett that he would surrender in the
13 sheriff's office on Friday morning?

14 A. Yes.

15 Q. Okay. Who was that?

16 A. Who was what? The person that was --

17 Q. Well, who made the appointment for you?

18 A. Yeah. So a third party had reached out through the
19 Benton County Sheriff, Sheriff Holloway, to coordinate the
20 self-surrender of Mr. Barnett.

21 Q. And who was that third party?

22 A. I believe his daughter at one point in time had direct
23 communication with Sheriff Holloway up in Benton County.
24 And there may have been some other individuals too, and
25 kind of like one more step removed.

1 Q. And that happened on Thursday, isn't that a fact,
2 Special Agent?

3 A. No, I actually believe it happened on Wednesday night
4 that Mr. Barnett had reached out wanting to -- he had
5 reached out wanting to self-surrender.

6 Q. Okay. So Wednesday night, at that point in time,
7 since the last video or photo you have of Mr. Barnett in
8 Washington is sometime in the afternoon, isn't that
9 correct, on Wednesday?

10 A. I believe so, sir, yes.

11 Q. All right. So can we agree that Mr. Barnett was
12 somewhere between the District of Columbia and Western
13 Arkansas when he became aware that he wanted -- that you
14 were looking for him and he wanted to self-surrender?

15 A. I think Mr. Barnett, my assumption is he assumed that
16 we were looking for him and he had reached out wanting to
17 turn himself in.

18 Q. What's the basis for your -- what you kindly described
19 as your assumption?

20 A. We had notified no one that we were trying to go and
21 arrest Mr. Barnett at that time, so if he heard that, that
22 did not come from us.

23 Q. Nonetheless, he appeared on schedule at that
24 appointment on Friday morning at 10:00?

25 A. Yes.

1 Q. And he surrendered?

2 A. Yes.

3 Q. Okay. And at that time, he was in the company of his
4 domestic partner, his common-law wife, Tammy Newburn, isn't
5 that right?

6 A. Yes.

7 Q. And have you had occasion in the course of your
8 investigation to see the lobby camera of the Bentonville
9 Sheriff's Office, Special Agent?

10 A. I know it exists. I have not watched it fully.

11 Q. In fact, it depicts my client and his wife walking in
12 together, isn't that right?

13 A. As I mentioned, I have not --

14 Q. All right. Now, at the time you talked to my client
15 in what you describe as an interview, isn't it a fact you
16 told at least Ms. Newburn that you had a search warrant
17 that you wanted to execute at the home, isn't that right?

18 A. At the time of the interview?

19 Q. Yes.

20 A. No.

21 Q. When did you first make her aware, then?

22 A. We called her later that day.

23 Q. You called her?

24 A. Yes.

25 Q. On the telephone?

1 A. Yes.

2 Q. Where were you?

3 A. We were in close proximity to her house, a couple
4 miles down the road.

5 Q. A couple miles down the road. And you told her you
6 were coming, isn't that right?

7 A. Yes.

8 Q. And she was there?

9 A. Yes.

10 Q. To let you in the house?

11 A. Yes.

12 Q. You executed your search?

13 A. Yes, sir.

14 Q. Wasn't there an interaction between you and
15 Ms. Newburn in which you asked to see her phone and she
16 gave it to you?

17 A. She -- I did not ask her personally. I talked to her
18 about it. She gave it to another special agent. I did not
19 get to see her phone.

20 Q. Okay. And which special agent might that be?

21 A. I believe it is Special Agent Randy Jackson is one of
22 the people that was looking at it.

23 Q. I see. So whatever interaction there was between my
24 client and his wife in the Bentonville Sheriff's office,
25 one of your fellow agents nonetheless had Ms. Newburn's

1 phone that same day and went through it, isn't that right?

2 A. Yes.

3 Q. Okay. Now, that's not the only search warrant you
4 executed at the family home, isn't that right?

5 A. That is correct.

6 Q. Okay. So you went in and you took some things and you
7 gave Ms. Newburn an inventory and then you went and applied
8 for another search warrant, isn't that right?

9 A. I did not apply for the search warrant, but other
10 agents applied for the search warrant, yes, that is
11 correct.

12 Q. The investigative team that was assigned to
13 Mr. Barnett in Western Arkansas got another search warrant?

14 A. Yes.

15 Q. And you went back and Ms. Newburn was there?

16 A. Yes.

17 Q. And she let you in the house and you executed a search
18 warrant?

19 A. Yes.

20 Q. Now, the pictures, the several images and long video
21 associated with my client's purchase of the walking stick
22 taser, or the walking stick stun gun, this was essentially
23 a purchase from a Bass Pro Shop, isn't that right?

24 A. Yes.

25 Q. And it was at the end of December, which is the date

1 depicted on it?

2 A. That is correct.

3 Q. And it was, again, a normal commercial purchase, made
4 in plain view, isn't that right?

5 A. Yes.

6 Q. And he used his credit card?

7 A. Credit or debit card, sir.

8 Q. Non-cash, purchased the items, left. Isn't that
9 right?

10 A. That is correct.

11 Q. Okay. Now, at any point during your searches was the
12 dog that was in that photo, was it in the Newburn house?

13 A. Yes, it was.

14 Q. Was it as friendly to you as it was to the people in
15 the Bass Pro Shop?

16 A. The dog was, yes, sir.

17 Q. Thank you. Now, the photograph of my client with two
18 young people at this rally, did you identify who those
19 people were?

20 A. No, not at this time.

21 Q. Did you identify anything outside of the photo?

22 A. Not at this time.

23 Q. Not right until now, is that right?

24 A. We have not as of this time identified the specific
25 photo.

1 Q. So if I told you that the parent of the child holding
2 the firearm is right outside the frame of that picture, you
3 would have no basis to differ with me about that, would
4 you?

5 A. I would not.

6 Q. Okay. And did you conduct any further investigation
7 of whatever that gathering was?

8 A. I have not, and I do not believe other members of the
9 investigative team have at this time.

10 Q. Thank you. You knew my follow-up question. Thank
11 you.

12 All right. Now, I want to go to the events in
13 Fayetteville that involve the two Fayetteville Police
14 Department reports, okay. Now, was anybody from the FBI
15 called to that event in, what are we in, July of 2002, I
16 mean 2020?

17 A. If they were, I do not know of it.

18 Q. Okay. So when you used this noun "ruckus?"

19 A. Uh-huh.

20 Q. You're evaluating the two reports and your
21 conversations with law enforcement, isn't that right?

22 A. Yes.

23 Q. Okay. Is that a term of art in the FBI?

24 A. You're going to have to explain further.

25 Q. Well, again, I don't want to say I've never heard that

1 expression before, but I don't think I have ever heard it
2 in connection with FBI testimony. What is your
3 understanding of what that was? I mean --

4 A. So I could use another word, such as "disturbance."

5 Q. Okay. And all of this is based on what you told me,
6 the documents and conversations with other law enforcement
7 officials, isn't that right?

8 A. Yes, sir.

9 Q. And in that police report, Mr. Barnett is not
10 described as a suspect, is he?

11 A. No.

12 Q. And in fact, even the complainant couldn't identify
13 who she was disturbed with, isn't that right?

14 A. Yes.

15 Q. Okay.

16 A. He gave a description that matched Barnett, but --

17 Q. But the report itself describes another human being
18 similar to Mr. Barnett at that time, isn't that right?

19 A. I could go and refresh myself or I can take your word
20 for it, whichever you would --

21 Q. Well, I certainly don't want to take advantage of you.
22 Could you take a look at the report?

23 A. I'm not familiar with another person.

24 Q. Okay. In fact, in that report, the police officers
25 talk to Mr. Barnett and he identified himself, is that

1 right?

2 A. That is correct.

3 Q. Is there any indication as to what that -- whether
4 that demonstration was pursuant to a permit or a
5 spontaneous gathering or anything else?

6 A. I have no idea or knowledge of permitting at this
7 point.

8 Q. Particularly as to the thing that is in these two
9 police reports, isn't that right?

10 A. What was your question?

11 Q. There's no indication, you have no investigative basis
12 to identify either the gathering, whether it was permitted,
13 whose auspices it was under, anything else other than what
14 is in these two police reports?

15 A. Yes, that's correct.

16 Q. And where -- the police who actually prepared these
17 reports didn't identify my client as the suspect, isn't
18 that right?

19 A. That's correct.

20 Q. All right. Now, you've described what -- I think you
21 used the word "threats." And in this instance, would it be
22 fair to say those are threats directed against Mr. Barnett
23 or persons of his household?

24 A. Yes.

25 Q. Okay. And are you also aware that the fact that he

1 has been subject to hate mail and at least one envelope
2 filled with a white powder and postal inspectors are aware
3 of that?

4 A. I was -- I know the postal inspectors were concerned
5 about items being sent to him. I was unaware of the
6 specifics of what was being sent to him.

7 Q. But you're aware that that's ongoing, isn't that
8 right?

9 A. Yes.

10 Q. And you're aware that the matter of my client being
11 threatened in various permutations is being investigated by
12 an Assistant United States Attorney in Little Rock,
13 Arkansas, isn't that right?

14 A. I believe the Assistant U.S. Attorney is located up
15 here in the Western District of Northwest Arkansas, but --

16 Q. The geography betrays me again, Agent Willett, and I
17 apologize.

18 Now, my client turned himself in. He had his wallet
19 with him. He didn't have some of the other things that you
20 were looking for. It's fair to say from an investigative
21 standpoint, that's disappointing?

22 A. I don't know if it's disappointing. It's something
23 we're interested in going and pursuing further. I wouldn't
24 characterize it as disappointing.

25 Q. So that's an ongoing aspect of your investigation?

1 A. I think that would be something that would be -- that
2 we're obligated to look for.

3 Q. Excuse me?

4 A. I think that's something that you could say that we're
5 obligated to look for.

6 Q. That's a yes answer to my question, isn't that right?

7 A. Yes.

8 Q. Okay. No further questions, Special Agent. Oh, I do
9 have one --

10 MR. SIANO: Excuse me, I'm sorry. I apologize to
11 the Court.

12 Q. (by Mr. Siano) Special Agent Willett, you and I spoke
13 for less than a minute, was it on -- it was on Saturday,
14 wasn't it? No, I called you on Saturday. You called me
15 back on Sunday, isn't that right?

16 A. I never gave you a call back, but, yes, you reached
17 out to me. It was either Saturday or Sunday. It was on
18 the weekend.

19 Q. And you passed my name and phone number to the office
20 of the United States Attorney in some manner, shape or
21 form, isn't that right?

22 A. That is correct.

23 Q. And it was on the weekend?

24 A. Yes. Immediately following our conversation, I passed
25 your contact information on.

1 Q. Thank you very much, Special Agent.

2 MR. SIANO: I have no further questions.

3 THE COURT: All right. Mr. Fowlkes, any
4 redirect?

5 MR. FOWLKES: Yes, Your Honor. Just very
6 briefly.

7 THE COURT: Go right ahead.

8 REDIRECT EXAMINATION

9 BY MR. FOWLKES:

10 Q. Special Agent Willett, Mr. Siano asked you some
11 questions about how Mr. Barnett and when Mr. Barnett
12 arrived back in the Western District of Arkansas from
13 Washington, D.C. I have a couple of follow-up questions
14 for you about that matter.

15 A. Yes, sir.

16 Q. What did Mr. Barnett tell you about when he drove back
17 from Washington, D.C.?

18 A. He said he drove back straight from Washington, D.C.,
19 and it's my understanding through the course of the
20 investigation that he got back sometime on maybe
21 mid-afternoon on the 9th, the day before he turned himself,
22 or the 7th, the day before he turned himself in.

23 Q. Did Mr. Barnett turn himself in to the Benton County
24 Sheriff's Office immediately upon arriving back in the
25 Western District of Arkansas?

1 A. No.

2 Q. What did Mr. Barnett tell you about how he drove back
3 from Washington, D.C.? Did he give you any details about
4 things that he did during that trip?

5 A. Yeah. He indicated that he turned the location
6 services off on his phone. He paid with only cash and he
7 kept his face covered and drove straight back.

8 Q. And, again, you've testified just now that Mr. Barnett
9 did not immediately turn himself in. What again did
10 Mr. Barnett tell you specifically about what you would find
11 during the execution of the search warrant at his
12 residence?

13 A. Yeah. I'll read again as close to a verbatim quote as
14 I can get of Mr. Barnett, of what he told us during the
15 interview. He said, "If you all go out there and do a
16 search warrant, you can see all my shit. You ain't going
17 to find nothing out there. I assure you I'm a smart man.
18 There's not anything there."

19 Q. And he provided that statement to you several hours
20 after he arrived back in the Western District of Arkansas,
21 is that correct?

22 A. Yes.

23 Q. Mr. Siano also asked you some more questions about the
24 Second Amendment rally in Fayetteville. I want to ask you
25 a couple follow-up questions about that as well.

1 Did you conduct more investigation into
2 Mr. Barnett's travel to that rally?

3 A. Yeah. In reaching out with local law enforcement
4 agencies, it appears to be on the day that he was heading
5 down to Fayetteville, he had an interaction with Gravette
6 P.D. Speaking with Gravette P.D., it appears that they had
7 gotten calls up in Gravette about a man parked in a school
8 zone. When the police showed up, they encountered
9 Mr. Barnett. He had an AR slung on his back and a pistol
10 on his side.

11 Q. Did those same law enforcement, local law enforcement
12 officers that you reached out to, did they express any
13 concern over Mr. Barnett's release from jail in this
14 matter?

15 MR. SIANO: Objection.

16 THE WITNESS: In speaking with some of the local
17 law enforcement --

18 MR. FOWLKES: Just a minute. We have an
19 objection.

20 THE COURT: Just a moment. Just a moment, Agent
21 Willett. There is an objection.

22 What is your objection, Mr. Siano?

23 MR. SIANO: Your Honor, we're now having one law
24 enforcement official testify to his impression of what
25 another law enforcement official was feeling about the

1 prospect of Your Honor ruling on bail.

2 THE COURT: All right. Your response,
3 Mr. Fowlkes?

4 MR. FOWLKES: Well, Your Honor, I don't believe
5 it's a question regarding that person's feeling. It's
6 trying to elicit what that person told Special Agent
7 Willett.

8 THE COURT: All right.

9 MR. FOWLKES: As this is a detention hearing, I
10 don't believe the Rules of Evidence apply to this matter.

11 THE COURT: The normal Rules of Evidence do not
12 apply to this hearing. And if you will limit the response,
13 Agent Willett, to what you were told by the Gravette Police
14 Department. Not any impression, but what -- not any
15 impression of your own, but what you were told.

16 MR. FOWLKES: Thank you, Your Honor.

17 THE WITNESS: Yes, Your Honor. So it was not
18 myself. It was another special agent in our office had
19 reached out. And the information that was relayed was is
20 that local law enforcement agencies such as Gravette P.D.
21 were concerned. In one instance, they had someone show up
22 and try to film their police station for an extended period
23 of time before they left. And there had been -- threats
24 had been received around the area stemming from, or as a
25 result of Mr. Barnett.

1 MR. FOWLKES: Your Honor, may I have just one
2 moment? I'm just going to mute my screen.

3 THE COURT: Yes, that's fine.

4 MR. FOWLKES: Thank you, Your Honor.

5 (pause)

6 MR. FOWLKES: No further questions at this time,
7 Your Honor.

8 THE COURT: All right. Mr. Siano, any further
9 questions?

10 MR. SIANO: Nothing further for Special Agent
11 Willett.

12 THE COURT: All right. Agent Willett, I do have
13 one or two questions for you.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: I believe you said that when you
16 interviewed Mr. Barnett on January 8th, he said that his
17 firearms had been moved from his residence, is that
18 correct?

19 THE WITNESS: Yes, that's my understanding.

20 THE COURT: Did he say where they were moved to?

21 THE WITNESS: He did not tell us.

22 THE COURT: Okay. And as far as you know, are
23 all of those firearms, including the firearms that are in
24 the photographs, are they legally possessed by him?

25 THE WITNESS: As far as I know.

1 THE COURT: Okay. All right. That's all of the
2 Court's questions.

3 Mr. Fowlkes, any questions as a result of the
4 Court's questions?

5 MR. FOWLKES: No, Your Honor. Thank you.

6 THE COURT: Mr. Siano?

7 MR. SIANO: Nothing further, Your Honor.

8 THE COURT: All right. Thank you, Agent Willett.

9 Does the government have any further witnesses,
10 Mr. Fowlkes?

11 MR. FOWLKES: No, Your Honor.

12 THE COURT: All right. And the Court, I will at
13 this time just advise counsel, I do intend to take notice
14 of all of the information in the initial pretrial services
15 report that was filed on January 12th and the addendum that
16 was filed on January 15th.

17 Is there any objection to the Court taking notice
18 of that information from the government?

19 MR. FOWLKES: No objection, Your Honor.

20 THE COURT: Mr. Siano?

21 MR. SIANO: No objection.

22 THE COURT: All right. Mr. Siano, are you ready
23 to proceed with your first witness, or do you need a brief
24 recess?

25 MR. SIANO: I don't think a brief recess will

1 help me, Judge. I think what I need to do is, whoever is
2 maintaining the witness electronic holding room, I'm
3 prepared to call witnesses, but I think I'm going to need
4 somebody's assistance to, you know, open up their
5 testimony. I haven't left the screen so I haven't gone
6 across to the other participants. It says here at the
7 bottom there's 52 participants. I haven't gone looking for
8 my witnesses as I might.

9 THE COURT: Mr. Siano, they are in a separate
10 breakout room. They are not participating in the hearing
11 at this time since the Rule was invoked. Can you tell me,
12 do you know what order you intend to call your witnesses
13 in?

14 MR. SIANO: I'm going to call Mr. Michael
15 Ratledge first, Judge.

16 THE COURT: All right. I will ask our -- I think
17 we've got Mr. Ballentine or Ms. Guerrero that can assist
18 us. If we can have Mr. Ratledge enter the hearing and
19 unmute him and put his video on.

20 MS. GUERRERO: Judge?

21 THE COURT: Yes.

22 MS. GUERRERO: Mr. Ratledge has left the waiting
23 room a bit ago. I have followed up with several e-mails
24 and he has not responded to my e-mails.

25 THE COURT: All right.

1 MR. SIANO: All right. Let me try another
2 witness. I will use a break at some point to try to track
3 Mr. Ratledge down, but I don't want to slow the proceedings
4 down.

5 MS. GUERRERO: And also, Mr. Scroggin also left
6 the waiting room.

7 THE COURT: Why don't we take a brief recess,
8 Mr. Siano, to let you regroup a minute. If you want to try
9 to contact Mr. Ratledge and Mr. Scroggin. Anyone else that
10 is not in the waiting room, Roxana?

11 MS. GUERRERO: No, ma'am. Everybody else --

12 MR. SIANO: Judge, why don't I -- rather than
13 have them have another dose of waiting around, why don't I
14 try to clear the waiting room of the witnesses who are
15 there, then they can go about their business, and then I
16 can take the break and find Mr. Ratledge and Mr. Scroggin.

17 THE COURT: That's fine. So who would you like
18 to call, then?

19 MR. SIANO: Mr. Houpe.

20 THE COURT: Mr. Houpe. All right. So if we can
21 have Mr. Houpe join the hearing.

22 MR. BALLENTINE: He's coming in.

23 THE COURT: All right. Mr. Houpe, can you hear
24 me okay?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Am I pronouncing your name correctly?

2 THE WITNESS: No, it's Houpe.

3 THE COURT: Houpe, okay. And if you could adjust
4 your camera just a little bit, the top of your head is
5 being cut off. There you go.

6 THE WITNESS: There's no hair up there anyway.

7 THE COURT: All right. Let me ask you,
8 Mr. Houpe, to raise your right hand at this time and be
9 sworn.

10 (Witness Sworn)

11 THE COURT: Go right ahead, Mr. Siano.

12 MR. SIANO: Thank you, Judge.

13 JEFFREY HOUBE, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SIANO:

17 Q. Mr. Houpe, could you tell me your age and county of
18 residence, please?

19 A. 45. And Benton County.

20 Q. Are you aware of the defendant and do you know Richard
21 Barnett?

22 THE COURT: Let me -- just a moment. Mr. Houpe,
23 let me back up and ask you to state your full name for the
24 record and to spell your last name.

25 THE WITNESS: Jeffrey Jack Houpe, H-O-U-P-E.

1 THE COURT: All right. Thank you. Go right
2 ahead, Mr. Siano.

3 MR. SIANO: Thank you, Judge.

4 Q. (by Mr. Siano) Do you recognize Mr. Barnett in one of
5 these photos here, one of these images?

6 A. Yes.

7 Q. Okay. And can you tell the Court approximately when
8 you first came to know Richard Barnett?

9 A. I'm going to say five, six years ago probably.

10 Q. And have you -- how did you first come to know
11 Mr. Barnett?

12 A. We were at -- it was a 4th of July get-together at a
13 friend's house, mutual friend's, and that's how I met him.
14 Kids, family, barbecue, all that stuff.

15 Q. And can you describe the nature of your contact and
16 interactions with Mr. Barnett from that initial meeting
17 about five years ago until recently?

18 A. I've run into him here and there, same kind of events.
19 Always friendly, you know. We always hit it off and talk.
20 And, you know, never any issues or anything.

21 Q. All right. And have you had occasion to see him at
22 local community events, particularly focused on Gravette
23 Day?

24 A. Yes. Yes.

25 Q. All right. And have you seen him participating in

1 those events?

2 A. Yes.

3 Q. All right. Have you had an occasion to form an
4 opinion as to his character for honesty?

5 A. I would say Richard is very honest would be my
6 opinion, yes.

7 Q. All right. And have you ever known Mr. Barnett to
8 harm or threaten any person or property during the five
9 years you've known him?

10 A. No, sir.

11 MR. SIANO: No further questions, Your Honor.

12 THE COURT: All right. Mr. Fowlkes, cross?

13 MR. FOWLKES: Can I have just a moment, Your
14 Honor?

15 THE COURT: Yes.

16 (pause)

17 MR. FOWLKES: I'm ready to proceed, Your Honor.

18 THE COURT: Go right ahead.

19 CROSS EXAMINATION

20 BY MR. FOWLKES:

21 Q. Hey, Mr. Houpe. My name is Clay Fowlkes. I'm an
22 Assistant U.S. Attorney here. I just have a couple quick
23 questions for you.

24 A. Sure.

25 Q. You testified that you have known Mr. Barnett for

1 about five or six years, is that correct?

2 A. Yes. I met him five or six years ago, yes.

3 Q. Did you go to Washington, D.C., with him recently?

4 A. No, sir.

5 Q. Okay. So you have no personal knowledge of any of
6 Mr. Barnett's actions last week in Washington, D.C., is
7 that correct?

8 A. Other than what I have seen on the media, yes.

9 Q. Have you ever seen Mr. Barnett in possession of
10 firearms?

11 A. No, sir, I don't believe so.

12 Q. And so you have no personal knowledge as to how many
13 firearms he has or what kinds he has?

14 A. I don't, no, sir.

15 Q. All right.

16 MR. FOWLKES: No further questions, Your Honor.

17 THE COURT: All right. Mr. Siano, any further
18 questions?

19 MR. SIANO: No, Your Honor.

20 THE COURT: May this witness be excused, then?

21 MR. SIANO: Yes, Your Honor.

22 THE COURT: All right. Mr. Houpe, you may leave
23 the call at this time. Thank you.

24 THE WITNESS: Thank you.

25 MR. SIANO: Your Honor, the defendant would like

1 to call next Jaklyn Chalk.

2 THE COURT: All right. If we can have Ms. Chalk
3 enter the hearing. All right. Ms. Chalk, can you hear me
4 okay?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: All right. I'm going to ask you to
7 speak up. And at this time, if you will raise your right
8 hand and be sworn.

9 (Witness Sworn)

10 THE COURT: Ms. Chalk, if you will state your
11 full name and spell it for the record.

12 THE WITNESS: Okay. Jaklyn Chalk. J-A-K-L-Y-N,
13 C-H-A-L-K.

14 THE COURT: Thank you. Go right ahead,
15 Mr. Siano.

16 MR. SIANO: Thank you.

17 JAKLYN CHALK, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SIANO:

21 Q. Ms. Chalk, how are you?

22 A. Good. How are you?

23 Q. I'm fine. I'm going to ask you your age and county of
24 residence, please. Could you tell us?

25 A. I'm 20 years old, and Washington County.

1 Q. Thank you. Are you aware, familiar with the
2 defendant, Richard Barnett?

3 A. Yes, sir.

4 Q. Do you see him here in one of the images on the screen
5 today?

6 A. Yes, sir, I do.

7 Q. Okay. Could you tell us just the first four letters
8 up there in the little box where he is situated just so we
9 can confirm that?

10 A. WCDC.

11 Q. Thank you. Can you tell the Court approximately when
12 you first came to know Mr. Barnett?

13 A. I believe it was approximately the end of 2013, like
14 September or October.

15 Q. And what was the context of you becoming acquainted
16 with Mr. Barnett?

17 A. He is my best friend's stepdad.

18 Q. And would that be Ashlee Newburn?

19 A. Yes, sir.

20 Q. Okay. And at the time you were attending, I believe
21 it was high school with Ms. Newburn, is that right?

22 A. Well, in 2013, that was middle school.

23 Q. Wow. Okay. Middle school. And then you attended
24 high school with Ms. Newburn as well?

25 A. Yes, sir.

1 Q. And could you tell the Court in what context you had
2 occasion to interact with Richard Barnett during the time
3 that you went to school with his stepdaughter?

4 A. So we were in a pretty close -- there was about five
5 or six of us that were best friends. And we spent probably
6 like every other weekend at their house together just for
7 sleepovers and stuff. And I was also on the cheer team
8 with Ashlee. And we would have like cheer parties, like
9 little get-togethers at their house pretty often.

10 Q. And the cheer squad activity, did that lead to
11 attendance at various local sporting events and other such
12 activity?

13 A. Yes. I can't really remember a single, like even away
14 game that Richard and Tammy didn't attend. They were at,
15 like pretty much every game, no matter how far it was.

16 Q. Okay. And did -- in these every other weekend, you
17 said you were at the Newburn/Barnett home. Can you
18 describe the condition of that home for us?

19 A. It was always super cleanly, and they just kind of
20 made it like a second home to us. We were all really,
21 really close, especially with Tammy and Richard. And they,
22 you know, would make meals for us, you know. Really
23 catered to us. And we also would have Halloween parties
24 pretty much every October and Richard would always be out
25 there like making bonfires for us, like catering to what we

1 needed, like s'more stuff. Just pretty much anything that
2 we needed, he would provide for us, so --

3 Q. An engaged father is what you're saying?

4 A. Yes, sir, absolutely.

5 Q. All right. Do you have an opinion of Mr. Barnett
6 particularly with his character for honesty?

7 A. I think that he's an honest man and a good man.

8 Q. Okay. Have you ever observed Mr. Barnett not to keep
9 his commitments or appointments in any of the activities
10 that you and Ashlee were involved in?

11 A. No, never.

12 Q. Okay. Have you ever known Mr. Barnett to harm or
13 threaten to harm any other person or entity during the time
14 you have known him?

15 A. No, sir, not at all.

16 MR. SIANO: No further questions.

17 THE COURT: Mr. Fowlkes?

18 MR. FOWLKES: Ms. Harris is going to handle this
19 cross examination, Your Honor.

20 THE COURT: All right. Ms. Harris?

21 MR. FOWLKES: Okay. She needs to be unmuted,
22 Your Honor. I apologize.

23 THE COURT: All right. If we can -- there we go.

24 CROSS EXAMINATION

25 BY MS. HARRIS:

1 Q. Good afternoon, Ms. Chalk. And so it's your opinion
2 that Mr. Barnett is a good father, is that correct? I'm
3 having trouble hearing you.

4 THE COURT: Ms. Chalk, did you hear the question?

5 Q. (by Ms. Harris) I still can't hear you. Can you hear
6 me okay?

7 A. I can hear you.

8 MS. HARRIS: Turn it up so I can hear from you
9 what she's saying.

10 THE COURT: All right. Repeat your question,
11 Ms. Harris.

12 MS. HARRIS: I asked -- we're trying to deal with
13 some sound issues, Your Honor.

14 Q. (by Ms. Harris) Ms. Chalk, it's your opinion that
15 Mr. Barnett is a good father, is that correct?

16 A. Yes, ma'am.

17 MS. HARRIS: I'm going to switch computers.

18 THE COURT: Okay. That's fine. All right. So
19 we need to have -- there we go. We've got you unmuted now,
20 Ms. Harris.

21 MS. HARRIS: And can you see me?

22 THE COURT: Yes, we can.

23 Q. (by Ms. Harris) Ms. Chalk, so it's your opinion that
24 Mr. Barnett is a good father, is that correct?

25 A. Yes, ma'am.

1 Q. And he's been supportive of your best friend, is that
2 correct?

3 A. Yes, ma'am.

4 Q. How often do you go to their home now that you're an
5 older person?

6 A. I want to say like once every couple of months.

7 Q. When was the last time that you remember that you had
8 direct contact with Mr. Barnett?

9 A. Ashlee graduated not too long ago and I talked to him
10 and Tammy. She graduated cosmetology school, so that was
11 about the last time.

12 Q. Was that in person or was that over the phone, do you
13 remember?

14 A. That was over the phone.

15 Q. Do you recall the last time you had direct like
16 face-to-face contact with Mr. Barnett?

17 A. I'm trying to think of the last time. Probably like
18 in August, I went over to their house.

19 Q. So maybe five or six months ago, is that fair to say,
20 you think?

21 A. Yes, ma'am.

22 Q. All right. Does Mr. Barnett have a firing range or a
23 shooting range at his residence?

24 A. Not that I'm aware of.

25 Q. Have you ever been to any events at his house? Other

1 than the cheer ones. I'm sorry. Other than the cheer
2 ones. For instance, like a rally or fundraiser or
3 something of that nature?

4 A. Never, no.

5 Q. When did you first learn that Mr. Barnett had gone to
6 the Capitol in January, on January the 6th?

7 A. The day that everything happened on the news.

8 Q. So did you see him on the news, is that how you knew?

9 A. Yes, ma'am. I saw a picture of him and I sent it to
10 Ashlee and said, you know, "My gosh, this looks like
11 Richard." And she was like, "It is. He is in D.C." And
12 so that was --

13 Q. And is that the Richard that you knew? In other
14 words, was that surprising to you that he had forced his
15 way into the Capitol and was apparently posing for
16 photographs in Speaker Pelosi's office?

17 MR. SIANO: Objection as to the form of the
18 question.

19 THE COURT: Tell me what exactly the --

20 MR. SIANO: The word, "forced his way into the
21 Capitol."

22 THE COURT: All right. Ms. Harris, if you can
23 rephrase the question.

24 Q. (by Ms. Harris) Were you surprised to learn that
25 Mr. Barnett was part of the group of people that breached

1 the secure area of the United States Capitol on January the
2 6th, 2021, and that he had been photographed in Speaker
3 Pelosi's office?

4 A. I think that Richard is a good man and he's never
5 forced his political opinions ever, so I --

6 Q. Hang on. Okay. So that was surprising to you?

7 A. Yes, ma'am.

8 Q. Did you have any discussions with Ashlee about what
9 was going on after you learned that her dad was on the
10 national news?

11 A. Yes, ma'am, we did have discussions about it.

12 Q. And what did you tell her?

13 A. I just told her that I was supportive of her and if
14 she needed anything, she could contact me. And I was
15 worried about her.

16 Q. And how was she doing when you talked to her?

17 A. She was handling it pretty well. She was -- you know,
18 didn't really need my help for anything, but said that if
19 anything came up, she would let me know, so --

20 Q. Did she tell you who all was staying at her house the
21 past few days?

22 A. She did not.

23 Q. Did you go over there?

24 A. Yes, ma'am.

25 Q. When were you last with Ashlee?

1 A. This morning.

2 Q. Were you over there the night, January 6th, that night
3 after it all happened in Washington?

4 A. No, I was not.

5 Q. Do you recall if you were there on the 7th?

6 A. No, ma'am.

7 Q. Do you know any of Mr. Barnett's associates very well?

8 A. I don't.

9 MS. HARRIS: I'll pass the witness, Your Honor.

10 THE COURT: All right. Any further questions,
11 Mr. Siano?

12 MR. SIANO: No further questions for Ms. Chalk.

13 THE COURT: All right. May this witness be
14 excused, then?

15 MR. SIANO: Yes, Your Honor.

16 THE COURT: All right. Thank you, Ms. Chalk.
17 You may be excused and leave the meeting.

18 Your next witness, Mr. Siano?

19 MR. SIANO: Joseph Martinez. Is he available?

20 THE COURT: If we can have Mr. Martinez join the
21 hearing. Mr. Martinez, can you hear me okay?

22 Mr. Martinez, can you hear me? I'm not sure that he's
23 hearing. Mr. Martinez?

24 MR. SIANO: He seems to be muted.

25 THE COURT: Is he --

1 MR. BALLENTINE: He's not muted on our end.

2 THE COURT: He's not muted. All right.

3 MS. GUERRERO: He's connected.

4 THE COURT: It appears he's muted now, looking at
5 the little icon.

6 THE WITNESS: How's that?

7 THE COURT: All right. Can you hear me okay,
8 Mr. Martinez?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: All right. Let me ask you to state
11 your full name for the record.

12 THE WITNESS: Jose Miguel Martinez.

13 THE COURT: All right. And if you will raise
14 your right hand at this time, Mr. Martinez, and be sworn.

15 (Witness Sworn)

16 THE COURT: All right. Go right ahead,
17 Mr. Siano.

18 MR. SIANO: Thank you.

19 JOSE MARTINEZ, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SIANO:

23 Q. Mr. Martinez, good afternoon. This is Anthony Siano.
24 I'm going to ask you some questions.

25 Can you tell us your age and county of residence,

1 please?

2 A. 51. Benton County, Arkansas.

3 Q. Are you familiar with an individual named Richard
4 Barnett?

5 A. Yes, sir, I am.

6 Q. And within the limitations of your phone, can you
7 recognize the image of Richard in the hearing here today?

8 A. I don't see anybody but you, sir.

9 Q. Okay.

10 MR. SIANO: Judge, I'd like to proceed. I don't
11 know whether the government is going to contest
12 identification, but since he's on an iPhone, this is not
13 the most hospitable image under these circumstances. I
14 don't know whether Mr. Fowlkes or Ms. Harris have an
15 objection on identity of who we are talking about.

16 THE COURT: Any objection, Mr. Fowlkes or
17 Ms. Harris?

18 MR. FOWLKES: No objection, Your Honor.

19 THE COURT: All right. You may proceed,
20 Mr. Siano.

21 Q. (by Mr. Siano) All right, Mr. Martinez. We're going
22 to continue.

23 Can you tell the Court approximately when you first
24 came to know Richard Barnett?

25 A. Approximately five, six years ago.

1 Q. And what were the context and circumstances of you
2 coming to know Mr. Barnett?

3 A. First time I met Mr. Barnett was at a football game.
4 My son played football and his daughter was a cheerleader.

5 Q. All right. And did you -- from that point forward
6 until today, have you from time to time met with him?

7 A. Yes, on occasion.

8 Q. Okay. And what are the general contexts of those
9 interactions, you know, when you met him; he met you?

10 A. Like I said, you know, football games, some school
11 things that his daughter and my son attended. His wife, my
12 wife, and some social settings. We have some neighbors
13 that live close and we have been together at some
14 summertime parties. Played golf on occasion.

15 Q. Have you been to his home?

16 A. I have not been to Richard's home. I have not.

17 Q. All right. Now, do you have an opinion as to
18 Mr. Barnett's character for honesty?

19 A. As far as I'm concerned, I've never had any issues
20 with Richard, I mean, as far as him being dishonest. I
21 mean, always been a likable guy. Always spoke when I seen
22 him. Nothing negative about Richard.

23 Q. All right. And have you ever known Mr. Barnett to
24 harm or threaten to harm, harm or threaten to harm any
25 person or entity?

1 A. None at all.

2 MR. SIANO: And I have no further questions of
3 Mr. Martinez.

4 THE COURT: All right. Mr. Fowlkes or
5 Ms. Harris?

6 MR. FOWLKES: I'll be handling this witness, Your
7 Honor.

8 THE COURT: All right. Go right ahead.

9 CROSS EXAMINATION

10 BY MR. FOWLKES:

11 Q. Good afternoon, Mr. Martinez. Are you -- were you
12 born in Arkansas?

13 A. I was, sir. Yes, sir.

14 Q. Okay. I want to ask you some questions about how well
15 you know Mr. Barnett. It sounds to me like you are casual
16 acquaintances with Mr. Barnett. How would you classify
17 your friendship with him?

18 A. I mean, I would say casual. I know his wife a lot
19 better than I know him. We went to high school together.
20 Like I say, probably the first time I met Richard was
21 through school functions with our kids.

22 Q. And you testified that you have never been to his
23 house before?

24 A. I've never been to his house. Mainly we met at other
25 peoples' houses and school functions.

1 Q. And you said you have socialized somewhat outside of
2 school functions as well. You mentioned that you may have
3 played golf with Mr. Barnett?

4 A. Yeah. We have a mutual friend that lives right down
5 the road, kind of between my house and his house that,
6 yeah, we have been over there. And he's got a golf course
7 at his house and we've played golf and been in the swimming
8 pool and that kind of stuff. Fourth of July party, I
9 believe.

10 Q. Have you ever shot guns with Mr. Barnett?

11 A. I don't believe I have.

12 Q. Have you ever talked to Mr. Barnett about guns?

13 A. I'm sure we've talked about guns. I mean, I've got --
14 I'm a gun owner, and I know he was.

15 Q. Okay. Were you aware about his participation in the
16 Second Amendment rally in Fayetteville?

17 A. I was not.

18 Q. Okay. Did you ever see Mr. Barnett ride around on his
19 motorcycle around the Gravette area?

20 A. Never on a motorcycle, no.

21 Q. Okay. Did you ever see him carrying a gun around the
22 Gravette area?

23 A. No, I never seen him carry a gun. I know -- I mean,
24 no, I don't -- I never seen him carry a gun.

25 Q. So you testified just a few minutes ago that you

1 believe he's an honest person, is that accurate?

2 A. As far as I'm concerned, yes, he's always been honest
3 with me.

4 Q. Would it surprise you to know that the birthday on his
5 driver's license is not his actual birthday?

6 A. I have no knowledge of that, but, no. Yes, it would
7 surprise me.

8 Q. Have you ever talked to Mr. Barnett about any criminal
9 history that he may have under a different birthday?

10 A. No, sir.

11 Q. Were you surprised when you saw Mr. Barnett on the
12 news?

13 A. I was very surprised.

14 Q. And that's not the Mr. Barnett that you believe you
15 knew?

16 A. Not at all.

17 Q. The one who forced his way into the Capitol with a
18 large crowd?

19 MR. SIANO: Objection as to form. Whether it's
20 Ms. Harris or Mr. Fowlkes, it's the same problem, Judge,
21 characterizing as "force his way into the Capitol."

22 THE COURT: All right. If you could --

23 MR. FOWLKES: Your Honor, Mr. Barnett was not --
24 certainly not welcome in the Capitol. It's well
25 established that the crowd that was there breached the

1 security around the Capitol and were not welcome there.
2 And so "forcing their way in" I believe is an accurate
3 description of that, Your Honor, but I will rephrase the
4 question.

5 THE COURT: Thank you.

6 MR. FOWLKES: I apologize.

7 Q. (by Mr. Fowlkes) Did it surprise you to see
8 Mr. Barnett in the Capitol in such a way?

9 A. Yes.

10 Q. Did it surprise you to see Mr. Barnett on television
11 shouting into a bullhorn?

12 A. I actually never seen that. The only thing I seen was
13 the picture. I never seen any video, but I try not to
14 watch much news.

15 Q. All right.

16 MR. FOWLKES: No further questions for this
17 witness, Your Honor.

18 THE COURT: Any other questions, Mr. Siano?

19 MR. SIANO: No, Your Honor.

20 THE COURT: All right. Thank you, Mr. Martinez.
21 You may be excused.

22 THE WITNESS: Thank you, Your Honor.

23 MR. SIANO: Judge, if Mr. Ballentine could give
24 me some guidance as to who else is in the waiting room.
25 I've been on the phone once trying to solicit the return of

1 some people.

2 MR. BALLENTINE: You have Ashlee Newburn, Tammy
3 Newburn and Marie Halpin.

4 MR. SIANO: Okay. All right. Why don't we try
5 Ms. Halpin first.

6 THE COURT: All right. If we can have
7 Ms. Halpin.

8 MR. SIANO: I think they are all on the same
9 feed, Judge.

10 MR. BALLENTINE: Yeah, that's what I was going to
11 say. They are all at the same residence using the same
12 connection, so two of them will have to leave the room.

13 MR. SIANO: Yeah.

14 THE COURT: Okay. All right. If you can bring
15 them into the hearing, I want to be able to direct
16 Ms. Tammy Newburn and Ashlee Newburn to leave the room
17 while Ms. Halpin testifies.

18 MR. BALLENTINE: They are coming in right now.

19 THE COURT: All right. We're ready to proceed
20 with Ms. Marie Halpin's testimony. I need to know who is
21 in the room at this point.

22 THE WITNESS: Just me.

23 THE COURT: And you're Ms. Halpin?

24 THE WITNESS: I'm Ms. Halpin, yes.

25 THE COURT: Okay. And there was someone that was

1 adjusting the camera for you. Who was that?

2 THE WITNESS: That was Ashlee Newburn. She was
3 fixing the computer for me, yes. She is out of the room
4 now. She's locked back there with her mother.

5 THE COURT: Okay. So it's just you in the room?

6 THE WITNESS: And a little dog.

7 THE COURT: Okay. And is the door closed,
8 Ms. Halpin?

9 THE WITNESS: Yes, it is.

10 THE COURT: Okay. Thank you. All right.
11 Ms. Halpin, let me first ask you to state your full name
12 for the record.

13 THE WITNESS: Marie Halpin.

14 THE COURT: And how do you spell your last name?

15 THE WITNESS: H-A-L-P-I-N.

16 THE COURT: "N?"

17 THE WITNESS: "N," like in "Nancy."

18 THE COURT: Okay. All right. Ms. Halpin, at
19 this time, if you could please raise your right hand and be
20 sworn.

21 (Witness Sworn)

22 THE COURT: Go right ahead, Mr. Siano.

23 MARIE HALPIN, having been first duly sworn,
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. SIANO:

2 Q. Ms. Halpin, how are you this afternoon?

3 A. I'm fine. Thank you.

4 Q. This is Tony Siano. This is the voice on the other
5 end of the phone.

6 Ms. Halpin, can we agree, you and I, that you're over
7 21 and just tell me what county you live in?

8 A. Yes, I'm over 21. And I live in Benton County.

9 Q. Are you familiar with Richard Barnett?

10 A. Yes, I am.

11 Q. And how do you know Mr. Barnett?

12 A. He's been my daughter's partner for the last 20 years,
13 almost 21 years.

14 Q. And where is their home in relation to your home?

15 A. About seven miles from my home.

16 Q. Okay. And how long -- so you've known Mr. Barnett
17 continuously for that 20-some-odd years?

18 A. Yes, I have.

19 Q. Can you pick out his image here among all of these
20 little postage stamps on the screen?

21 A. Yes. He's the one on the far right here.

22 MR. SIANO: Okay. Can we agree on
23 identification? I see Mr. Fowlkes and Ms. Harris nodding,
24 Judge.

25 MR. FOWLKES: No objection, Your Honor.

1 Q. (by Mr. Siano) Ms. Halpin, can you tell the Court the
2 two most, two most significant interactions you've had with
3 Mr. Barnett prior to today?

4 A. Well, when I was sick with a gallbladder attack, I
5 thought it was a heart attack, he was the one that came,
6 called the ambulance and got me to the hospital. And then
7 a few years later, I didn't know what was happening to me.
8 I couldn't remember anybody's name or where I was. And I
9 called and I happened to get my daughter's number. And he
10 was there with her, and he came down with her, put me in
11 the car and took me up to the hospital. I got there. My
12 blood pressure was 185. So if I would have stayed home
13 much longer, we might not be talking at this time.

14 Q. And when was the gallbladder attack that might have
15 felt like a cardiac incident, approximately?

16 A. 2005.

17 Q. And when was the, what I would call symptoms of a
18 stroke?

19 A. November of 2008.

20 Q. Thank you. Have you had occasion over these 20 years
21 to form an opinion as to Mr. Barnett's character for
22 honesty?

23 A. I think he's a very honest person. I've never had him
24 lie to me that I know of.

25 MR. SIANO: No further questions.

1 THE COURT: All right. Mr. Fowlkes?

2 MR. FOWLKES: I think Ms. Harris is going to
3 handle this witness. I apologize, Your Honor.

4 THE COURT: Ms. Harris?

5 MS. HARRIS: I believe I'm unmuted. Can you hear
6 me?

7 THE COURT: Yes.

8 CROSS EXAMINATION

9 BY MS. HARRIS:

10 Q. Ms. Halpin?

11 A. Yes.

12 Q. Just a couple of questions for you. My name is Kim
13 Harris and I'm one of the attorneys with the United States
14 today.

15 When did you first learn that Mr. Barnett had gone to
16 D.C. and participated in the events that happened on
17 January the 6th, 2021?

18 A. I believe it was on a Monday, maybe. Tammy told me
19 that he was on his way to Washington, D.C. And I didn't
20 know about any of the events until I saw them on T.V.

21 Q. What did you think when you saw what was going on on
22 the T.V.?

23 A. I couldn't believe it was Richard Barnett.

24 Q. Do you now believe that it was in fact Richard
25 Barnett?

1 A. Oh, I know it was, but it wasn't his character that I
2 knew and still know. I don't think he's a violent type
3 person.

4 Q. Knowing what you know now, does that change that
5 opinion even a little bit?

6 A. No, I don't think he's that violent. I don't think he
7 would hurt anybody. I've never seen him hurt anybody.

8 Q. Did you know that he was wearing a stun gun on his hip
9 that day?

10 A. No. No, I didn't.

11 Q. Is that surprising to you that he would have been
12 wearing what is considered a dangerous weapon when he went
13 into the Capitol that day?

14 A. Kind of, yes.

15 Q. Would that change your opinion of him at all?

16 A. I've never seen him use a gun, so I don't -- I don't
17 know.

18 Q. Do you think it's possible that there are two
19 Mr. Barnetts out there; the one that you know and then the
20 other person that he appears to be?

21 MR. SIANO: Objection as to form.

22 THE WITNESS: I was going to say, that's a weird
23 question.

24 THE COURT: Just a moment. Ms. Harris, I'll just
25 ask if you can rephrase that.

1 MS. HARRIS: Thank you, Your Honor.

2 Q. (by Ms. Harris) Ms. Halpin, do you think it's
3 possible that Mr. Barnett engages in other activities that
4 you are not familiar with?

5 A. I don't know everything he does because I don't live
6 with him.

7 Q. About how often do you see him?

8 A. Whenever I have him at my house or if I go up to his
9 house. I mean, I've spent weekends at his house and I've
10 never seen any kind of violence or anything.

11 Q. Prior to his arrest, when was the last time you saw
12 him face to face?

13 A. Probably -- well, it was the week after Thanksgiving
14 and his niece was here from Nashville. And we came up and
15 his daughter, Ashlee, he considers her his daughter, she
16 got out of beauty school. That was when she completed the
17 beauty school. And we came up for cake and ice cream and
18 everything. And I was at his house for quite a while that
19 day. And there was no violence, no anger, no nothing. I
20 mean, everybody got along. In fact, my husband and him
21 went outside and walked around and looked at his old
22 vehicles. No, I didn't see nothing out of the way.

23 Q. And so that would have been about a month and a half
24 ago, two months ago, was your last face-to-face contact
25 with him?

1 A. It might have been, yes. Now, my daughter I see at
2 least once a week. I don't see him as often.

3 Q. By any chance did your daughter, Tammy Newburn, bring
4 anything to your house, like firearms or a stun gun?

5 A. Oh, God no. No, no. I have no firearm. My husband
6 has a little pistol, a 12 gauge, I think it is. Just a
7 little pocket pistol. And he don't even use that. I know
8 where it is, but it's never used. The last time he used
9 it, he shot a opossum that he caught in a cage, because we
10 have opossums under our trailer. But no, no.

11 Q. Thank you, Ms. Halpin.

12 MS. HARRIS: May I have just a moment, Your
13 Honor?

14 THE COURT: Yes, that's fine.

15 MS. HARRIS: I have no additional questions for
16 Ms. Halpin.

17 THE COURT: All right. Any further questions,
18 Mr. Siano?

19 MR. SIANO: No, Your Honor. No, Your Honor.

20 THE COURT: All right. Ms. Halpin, you may be
21 excused, then. Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: I'll ask you, Mr. Siano --

24 MR. SIANO: Ashlee, Judge, would probably be
25 good. Why don't we just keep that connection right now and

1 do Ashlee.

2 THE COURT: All right. Ms. Halpin, if you can
3 have Ms. Ashlee Newburn enter the room.

4 THE WITNESS: Okay. Okay.

5 THE COURT: Ms. Newburn, can you hear me okay?

6 THE WITNESS: Yes.

7 THE COURT: All right. And let me ask you, are
8 you the only one in the room and do you have the door
9 closed?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay. And please state your full
12 name for the record.

13 THE WITNESS: Ashlee Newburn.

14 THE COURT: And how do you spell your last name?

15 THE WITNESS: It's N-E-W-B-U-R-N.

16 THE COURT: All right.

17 THE WITNESS: And Ashlee is with two Es. L-E-E.

18 THE COURT: Okay. Thank you. Let me ask you at
19 this time, Ms. Newburn, if you will raise your right hand
20 and be sworn.

21 (Witness Sworn)

22 THE COURT: All right. Before Mr. Siano proceeds
23 with questioning you, Ms. Newburn, I do want to advise you
24 that you must answer all questions truthfully. And failure
25 to do so can result in you being charged with perjury. I

1 also want to advise you that anything you say can be used
2 against you. You do have the right under the Fifth
3 Amendment to not incriminate yourself and you can choose
4 not to answer questions that you think might be
5 incriminating. I have asked Mr. Bruce Eddy, and I'm not
6 sure if we still have Mr. Schisler in the hearing.

7 MR. SIANO: I see him, Judge.

8 MR. SCHISLER: I am here, Your Honor.

9 THE COURT: Oh, there you are, Mr. Schisler. All
10 right. You got moved. Okay. They are both, Mr. Schisler
11 and Mr. Eddy, are from our Public Defender's office. I did
12 ask Mr. Schisler to meet with you and just go over with you
13 your right against self-incrimination.

14 Did you have a chance to visit with him?

15 THE WITNESS: Yes, I did.

16 THE COURT: Okay. And I'm not sure that it's
17 necessary, but I'm going to go ahead and appoint
18 Mr. Schisler for you for today's hearing for the purpose
19 of, if he thinks there's anything in a question or as you
20 start to respond to a question, anything that he feels
21 might be incriminating, again, I don't know that there's
22 any concern for that, but just in case, I'm asking
23 Mr. Schisler to be listening. And if he feels there is
24 something in which he needs to counsel you about your right
25 against self-incrimination, Mr. Schisler, if you will just

1 stop and alert the Court and we can give you a moment to
2 confer privately and advise Ms. Newburn, and then Ms.
3 Newburn can decide whether she wants to answer the question
4 or not.

5 MR. SCHISLER: I will do that, Your Honor.

6 THE COURT: All right. Ms. Newburn, do you
7 understand that?

8 THE WITNESS: Yes.

9 THE COURT: All right, then. All right.
10 Mr. Siano, you may proceed.

11 MR. FOWLKES: Your Honor, also this is
12 Ms. Harris's witness as well.

13 THE COURT: All right. Thank you, Mr. Fowlkes.

14 MR. FOWLKES: Thank you, Your Honor.

15 ASHLEE NEWBURN, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SIANO:

19 Q. Hi, Ashlee. How are you?

20 A. I'm good. How are you?

21 Q. Good. It's good to finally see your face.

22 A. I know.

23 Q. Can you tell us your age and the county of residence,
24 please?

25 A. I am 20 years old and I live in Benton County.

1 Q. All right. And are you aware of the individual who is
2 the defendant in this case, Richard Barnett?

3 A. Yes.

4 Q. Do you see his image on the -- among the postage
5 stamps here on the screen?

6 A. Let me see. I can't see all of them. Let me scroll
7 through. Yes, I do.

8 Q. Okay. Could you tell us the first four little letters
9 in the ID beneath his name?

10 A. WCDC.

11 Q. Thank you. That's all.

12 MR. SIANO: I'd ask government counsel to
13 acknowledge that she's identified the defendant.

14 MS. HARRIS: Yes, Your Honor.

15 THE COURT: All right. Thank you. You may
16 proceed, Mr. Siano.

17 MR. SIANO: Thank you, Judge.

18 Q. (by Mr. Siano) Ashlee, can you tell us -- excuse me,
19 that was rude. Ms. Newburn, can you tell us when is the
20 first time you became familiar with Richard Barnett?

21 A. Well, I think I was like six months old.

22 Q. Okay.

23 A. He's been there my whole life.

24 Q. And would it be fair to say you consider him a father?

25 A. Absolutely.

1 Q. All right. And does he have a relationship with your
2 biological mother?

3 A. Yes.

4 Q. In fact, they're a domestic partnership, to use a
5 phrase that we use Back East?

6 A. Uh-huh.

7 Q. Thank you. All right. Now, can you tell us -- do you
8 live in the house with Tammy and Richard?

9 A. Yes, I do.

10 Q. And you've done so for your whole life?

11 A. Yes. I moved out going to college, but that was it,
12 and I'm back now.

13 Q. Okay. Now, can you describe, in whatever words you
14 wish to use, the nature of your dealings with Richard?

15 A. I mean, he's always -- like he's -- he's always super
16 supportive of me. He's always like kind. He's always -- I
17 mean, if I have any kind of issue at all, he's the
18 number one person I always call. You know, like he's just
19 always there for me. He's always just our protector, our
20 everything.

21 Q. Could I ask you if he had any participation in any of
22 your school activities?

23 A. Yes, he has. He was always there for every game and
24 everything, supporting me.

25 Q. How about specifically with regard to cheer squad

1 activities?

2 A. Yes, always cheer.

3 Q. Okay. And over the course of your 20 years, have you
4 had occasion to form an opinion as to Mr. Barnett's
5 character for honesty?

6 A. Yes, very honest.

7 Q. Could you tell us that opinion?

8 A. Yes, he's very honest. Always honest.

9 Q. All right. And have you had occasion to observe
10 whether or not Mr. Barnett keeps his commitments and
11 appointments?

12 A. Yes, he always keeps his commitments and appointments.

13 Q. Now, have you ever known him to harm or threaten to
14 harm any other person or entity?

15 A. No, never.

16 MR. SIANO: No further questions.

17 THE COURT: Ms. Harris?

18 MS. HARRIS: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. HARRIS:

21 Q. Good afternoon, Ms. Newburn. My name is Kim Harris,
22 and I'm one of the attorneys for the United States. I just
23 have a few follow-up questions for you this afternoon.

24 When did you learn that the defendant, Mr. Barnett,
25 was heading to Washington, D.C., to be a part of the "Stop

1 the Steal" event?

2 A. I believe I was made aware the weekend prior.

3 Q. How did you become aware?

4 A. We just sat down and talked about it here at the
5 house. He just told me he was heading to D.C. because I
6 hadn't talked to him about it yet. So he just sat me down
7 and told me he was heading to D.C. on Monday, I think it
8 was.

9 Q. And do you know what the purpose was for that trip?

10 A. He -- his main purpose for all of this is to just --
11 he doesn't -- he wants to -- I mean, I don't know how to
12 word -- keep our country -- like he just wanted to support
13 Trump, I think.

14 Q. Was it your understanding that he was going to the
15 speech and to the Capitol, or what did you think he was
16 doing there?

17 A. I wasn't quite sure. In my mind, I just thought there
18 was like a peaceful protest going on, because this is what
19 he told me, that he was just going to a peaceful protest in
20 Washington.

21 Q. Who did he tell you he was going with?

22 A. Sorry. You cut out.

23 Q. Who did he tell you he was going with to Washington?

24 A. Mark Hesse and Anthony Lockhart.

25 Q. Do you know them?

1 A. I do, yes.

2 Q. And are they friends of your dad, or Mr. Barnett?

3 A. Yes, they are.

4 Q. Were they at your house when Mr. Barnett, the
5 defendant, told you he was going to Washington?

6 A. No, they were not.

7 Q. Were you aware that he had purchased some walkie
8 talkies and a stun gun and some mace for the trip?

9 A. No, I was not.

10 Q. Have you seen those items either around the time
11 before he left or after?

12 A. I saw the walkie talkies here the other day before --
13 the FBI took them when they did the search, but that's all
14 I saw.

15 Q. You've never seen the stun gun or the mace?

16 A. No, ma'am.

17 Q. Did you have any contact with Mr. -- is it Hesse, or
18 Hesse?

19 A. Hesse, I believe.

20 Q. Okay. Mr. Hesse or Mr. Lockhart prior to the three of
21 them heading to Washington?

22 A. No, ma'am.

23 Q. When did you -- and I realize you may not have the
24 exact day and time -- but approximately when did you learn
25 that the defendant, Mr. Barnett --

1 A. Uh-huh.

2 Q. -- had made his way into the Capitol and was in
3 Speaker Pelosi's office and had taken something from her?

4 A. I believe it was Wednesday around -- I got off work
5 around 6:00 is when I saw everything.

6 Q. And is it fair to say you learned it on the news or
7 you became aware on the news?

8 A. Yes.

9 Q. And what went through your mind?

10 A. Well, I mean, I knew that there was no way. Like, I
11 don't think he went in there violently or anything. What
12 came to my mind immediately was just that the wrong story
13 had gotten out and the media was blowing it up everywhere.

14 Q. Is that what you still believe?

15 A. Yes.

16 Q. And are you aware that in those photographs, the
17 defendant, Mr. Barnett, has that stun gun that I've asked
18 you about? It's on his hip?

19 A. Uh-huh. I did see it in the photo, yes.

20 Q. And so have you wondered why he would be armed with
21 such a weapon?

22 A. I have no idea.

23 Q. Do you think that is an altered photo?

24 A. I'm not sure. I wouldn't think so.

25 Q. Once -- let me ask you this. Have you seen the

1 YouTube videos where the defendant is on a bullhorn yelling
2 at the crowd about what he did in Speaker Pelosi's office?
3 Have you seen any of that --

4 A. No, ma'am.

5 Q. -- footage?

6 A. No.

7 Q. When did you first speak with the defendant after the
8 incident in Washington?

9 A. I called him as soon as I got out of work on
10 Wednesday.

11 Q. Would you say that's around 6:00? I think that's what
12 --

13 A. It would have been around 5:30 or 6:00, I believe.

14 Q. Were you able to get him on the phone?

15 A. Yes. We just talked for like a minute. I just wanted
16 to know if he was safe.

17 Q. And did you confirm that he was all right?

18 A. Yes. And then we didn't -- he got off the phone right
19 away and we didn't talk any further.

20 Q. When did you talk to him again?

21 A. Sorry. You cut out again.

22 Q. When did you speak with him again?

23 A. As soon as he got home, I guess it would have been
24 Thursday, I saw him for just a little bit.

25 Q. Do you know approximately what time he got back to

1 your house?

2 A. I believe around 3:00.

3 Q. Was he alone or was he accompanied or with Mr. Hesse
4 and Mr. Lockhart?

5 A. He was alone.

6 Q. Did you stick around that afternoon and evening at the
7 house with Mr. Barnett and your mom?

8 A. Yes, ma'am.

9 Q. And what happened that night?

10 A. Well, as soon as he came home, he called -- I had been
11 in contact with the Benton County Sheriff. And as soon as
12 he came home, he called him off of my phone and called
13 another attorney and everything and then they set up the
14 FBI meeting for 10:00 a.m. the next day. So we just stayed
15 at home low that night.

16 Q. And so were you present for the moving of any property
17 out of your residence?

18 A. No, ma'am.

19 Q. Would it be surprising to you to know that the
20 defendant told the FBI that when he got home, he moved
21 property out of the residence?

22 A. No, I don't think so. No.

23 Q. How many guns approximately, firearms, does
24 Mr. Barnett own?

25 A. I am only aware of three or four, I believe.

1 Q. And are those currently in your house?

2 A. No, ma'am.

3 Q. Where are they?

4 A. I am not sure.

5 Q. And were you consistently in your house with
6 Mr. Barnett and your mom from 3:00 p.m. until he turned
7 himself in?

8 A. I left early Thursday morning to go babysit for a
9 friend.

10 Q. He got back Thursday?

11 A. I mean, I left early Friday morning. Sorry, sorry.
12 Before he had left to go turn himself in, I had left early
13 Friday morning.

14 Q. And it's your testimony you never saw him or your mom
15 move anything out of that house?

16 A. I did not.

17 Q. Is it your testimony that you never saw anyone else
18 move any of that property out of your house?

19 A. I did not see anything.

20 Q. Have you seen the few firearms that you know him to
21 own in your home since he's been gone in jail?

22 A. No, they are not here. I haven't seen them here.

23 Q. Is your gun still there?

24 A. No, ma'am.

25 Q. You have one, right?

1 A. Yes. There is one, yeah, but I don't have it in here
2 anymore.

3 Q. Okay. Did you see Mr. Barnett give anyone his cell
4 phone when he got back?

5 A. No, ma'am.

6 Q. Do you know why he doesn't have his cell phone?

7 A. I do not.

8 Q. Did you talk to your mom about that, or Mr. Barnett?

9 A. No.

10 Q. Did you try to call him on it and wonder why you
11 couldn't get him on it?

12 A. Once he got home or -- no, I haven't tried to call him
13 on it.

14 Q. Who all has been staying at your house since
15 Mr. Barnett has been in jail?

16 A. We have had Mark Hesse and Anthony Lockhart staying
17 here for a few days. And then me and my mom just started
18 staying here again.

19 Q. So those same folks that traveled out to D.C. with
20 him, is that correct?

21 A. Yes, ma'am.

22 Q. Have you seen either one of them in possession of
23 Mr. Barnett's phone or the stun gun?

24 A. No.

25 Q. Did Mr. Hesse happen to leave a bulletproof vest at

1 your house?

2 A. I did see it the other day, but it is not here now.

3 Q. Do you know why he would have had a bulletproof vest
4 at your house?

5 A. No, ma'am.

6 Q. How would you say -- how would you characterize who
7 controls your household that you live in?

8 A. Richard characterizes (sic) the household.

9 Q. Does your mom, would you say your mom has any control
10 of any day-to-day affairs, or is the household mostly run
11 by Richard?

12 A. No, I -- I mean, yeah, my mom -- we all kind of
13 just --

14 Q. Is there someone that you're looking at over there?

15 A. Oh, no, no, no. Sorry. You want me to -- I can move
16 the computer around if you like. Sorry.

17 Q. It looked like you were looking off to the side at
18 someone.

19 A. No. I can -- no, sorry.

20 MS. HARRIS: May I have just a moment, Your
21 Honor?

22 THE COURT: Yes.

23 (pause)

24 MS. HARRIS: All right. Just a few more
25 questions and then I will pass the witness.

1 Q. (by Ms. Harris) Can you hear me okay?

2 A. Yes.

3 Q. If the defendant, Mr. Barnett, were to take some of
4 his prized possessions someplace, who would he give it to?

5 A. I honestly have no idea who he would give them to. I
6 believe -- I mean, possibly Mark or Tony who he was with.

7 Q. Okay. And let me ask you this. Why did he need to
8 use your phone to call the sheriff?

9 A. Because he -- I don't think he had his phone when he
10 got home.

11 Q. Well, where do you think it is?

12 A. I have no idea where his phone is.

13 MS. HARRIS: Pass the witness, Your Honor.

14 THE COURT: All right. Mr. Siano, any questions?

15 MR. SIANO: Thank you, Judge. All right. Judge,
16 I'd like for the record, although the cat's already out of
17 the bag, to object to Ms. Harris's characterization of
18 "prized possessions," but since the answer is already
19 given, we'll move on. I'm prepared to ask some questions.

20 THE COURT: All right. Go right ahead.

21 REDIRECT EXAMINATION

22 BY MR. SIANO:

23 Q. Ms. Newburn?

24 A. Yes.

25 Q. Did Richard Barnett tell you he was discussing going

1 to Washington with other people, or did you actually see
2 him go to Washington with other people?

3 A. I never saw him go with other people. I saw him go
4 alone.

5 Q. Thank you. Nevertheless, you heard him talk about
6 going with other people?

7 A. I just saw a picture of him traveling with other --
8 like they had stopped on the side of the road and just
9 taken a picture. But I know that they were traveling
10 separately.

11 Q. Thank you. And in connection with the events after
12 January 6th, have there been either threats or crank phone
13 calls directed toward your home, you and your mother?

14 A. Yes.

15 Q. Okay. And is it in that context that other people
16 have been residing in the house while you relocated
17 temporarily?

18 A. Yes, that is exactly why.

19 Q. Thank you very much.

20 MR. SIANO: No further questions.

21 THE COURT: All right. Anything further from the
22 government?

23 MS. HARRIS: No additional questions for
24 Ms. Ashlee Newburn.

25 THE COURT: Ms. Newburn, I have a few questions

1 for you.

2 THE WITNESS: Okay.

3 THE COURT: Are there any firearms in your home
4 right now?

5 THE WITNESS: No, ma'am.

6 THE COURT: And you said you had a firearm, is
7 that correct?

8 THE WITNESS: Yes. Yes.

9 THE COURT: But it's no longer in the home?

10 THE WITNESS: No, ma'am.

11 THE COURT: Where is it?

12 THE WITNESS: I believe Mark Hesse has it.

13 THE COURT: Did you give it to him?

14 THE WITNESS: I did not.

15 THE COURT: Who did?

16 THE WITNESS: I believe my mom handed them over.

17 THE COURT: And do you know how far away

18 Mr. Hesse resides from you?

19 THE WITNESS: I've never been to his house, but I
20 think he just lives a couple minutes away, right down the
21 road.

22 THE COURT: All right. And you testified that
23 you and your mother left the home temporarily because there
24 were some threats?

25 THE WITNESS: Yes.

1 THE COURT: Let me ask you, are you concerned if
2 I release your stepfather on bond about future threats or
3 your safety at the home?

4 THE WITNESS: No, ma'am. And we have started
5 staying here again, me and my mom, because the threats have
6 kind of dissolved a little.

7 THE COURT: So you're no longer receiving
8 threats?

9 THE WITNESS: No, ma'am.

10 THE COURT: Okay. And if I were to release
11 Mr. Barnett, one of the conditions I might consider is that
12 there be -- that he not be allowed any access to the
13 internet, that all internet capable devices be password
14 protected.

15 THE WITNESS: Uh-huh.

16 THE COURT: Is that something you would see any
17 problem with?

18 THE WITNESS: No, ma'am. No.

19 THE COURT: Okay. So if he asked to use your
20 iPhone to access the internet, you would feel comfortable
21 telling him he could not do that?

22 THE WITNESS: Absolutely.

23 THE COURT: All right. Knowing the dynamic
24 between him and your mother, do you feel like she would be
25 comfortable denying him access?

1 THE WITNESS: Yes.

2 THE COURT: Okay. And is there -- is it just you
3 and your mother that live at the home?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Nobody else comes and stays,
6 is that correct?

7 THE WITNESS: No.

8 THE COURT: Okay. All right. Mr. Siano, any
9 further questions as a result of the Court's questions?

10 MR. SIANO: No, Your Honor. Thank you, Ashlee.

11 THE WITNESS: Thank you.

12 THE COURT: Ms. Harris?

13 MS. HARRIS: No, Your Honor.

14 THE COURT: All right. Thank you, Ms. Newburn.
15 You may be excused.

16 Mr. Siano, would you like to call Tammy Newburn
17 next?

18 MR. SIANO: Judge, I've managed to locate and try
19 to get reconnected to our little universe here Mr. Scroggin
20 and Mr. Ratledge. I wonder if Mr. Ballentine would be kind
21 enough to tell me if they have been linked back in the
22 witness room.

23 MR. BALLENTINE: Mr. Scroggin is waiting.

24 THE COURT: Okay. Mr. Siano, just while we have,
25 so that we wouldn't have to put Ms. Tammy Newburn back into

1 a waiting room, would you be agreeable to going ahead and
2 calling her as a witness next?

3 MR. SIANO: Judge, I'm amenable to anything the
4 Court wants, but I'm also -- that's my client's wife. I
5 don't think it's a burden for her to be in the witness
6 room. I think these third, non-party citizens, I'm very
7 concerned about them. And I'd like to get -- Mr. Scroggin
8 will be very quick. And then Mr. Ratledge, who is not
9 there, you know, I can hold that in abeyance and take my
10 break. So I'd like to do Scroggin and then go back and do
11 Tammy Newburn.

12 THE COURT: All right. That's fine. So I'm
13 going to ask at this time then, Mr. Ballentine, if you can
14 put the Newburns back into the waiting room. And then if
15 we can have Mr. Scroggin appear for the hearing.

16 All right. Looks like he's still connecting.
17 And if we can unmute him. There we go. Mr. Scroggin, can
18 you hear me?

19 THE WITNESS: I can.

20 THE COURT: All right. Let me ask you if you
21 will state your full name for the record.

22 THE WITNESS: William Earl Scroggin.

23 THE COURT: All right. Can you spell your last
24 name, please?

25 THE WITNESS: S-C-R-O-G-G-I-N.

1 THE COURT: Thank you. Mr. Scroggin, if you will
2 at this time raise your right hand and be sworn.

3 THE WITNESS: Okay.

4 (Witness Sworn)

5 THE COURT: Mr. Siano, go right ahead.

6 WILLIAM SCROGGIN, having been first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SIANO:

10 Q. Mr. Scroggin, thank you for your patience. Nice to
11 meet you face-to-face for the first time. I appreciate it.

12 A. Okay. Okay.

13 Q. Mr. Scroggin, could I ask you your age and the county
14 of residence?

15 A. I am 70 years old. And I'm in Benton County,
16 Arkansas.

17 Q. And are you aware of the defendant, Richard Barnett?

18 A. Yes, I am.

19 Q. And among these -- in the little photos, can you see
20 Richard in one of the faces?

21 A. Little photos. I'm looking for little photos.

22 Q. The other talking heads.

23 A. It's just you and me on here.

24 MR. SIANO: Okay. Could I ask the government's
25 consent to identity in this circumstance?

1 MR. FOWLKES: No objection.

2 THE COURT: All right.

3 MR. SIANO: Thank you, Mr. Fowlkes.

4 Q. (by Mr. Siano) All right. Mr. Scroggin, would you be
5 kind enough to tell us where your home is in relation to
6 the Newburn/Barnett home?

7 A. Okay. I'm about half a mile to the east of them.

8 Q. All right. And did you move into your home about five
9 years ago?

10 A. Yes, I did.

11 Q. Could you tell us about the incident that led to your
12 meeting Mr. Barnett?

13 A. We have -- we have some dogs, and I was in the front
14 yard mowing my yard. And my little dog, my old Pomeranian,
15 was out messing around with me. And I'm used to, where I
16 lived before was in a real quiet neighborhood, and now I'm
17 out in the country. And there's a major road out here half
18 a block from me. And my Pomeranian ran up on the road and
19 disappeared. And so apparently, he was up there running up
20 and down the road. And Mr. Barnett was going to work and
21 stopped and picked up my Pomeranian and took him home to
22 his house where he also had a Pomeranian. And so then he
23 called -- they called me a little bit later and I ran up
24 there, drove up there, and got my Pomeranian. But
25 Mr. Barnett invited me in the house. We sat and visited,

1 had a nice visit. And I was just thankful he didn't --
2 because that's about a 60-mile-an-hour road that cars run
3 up and down and he could have been killed. My wife would
4 have killed me, so --

5 Q. And could you describe the home as you observed it at
6 that time?

7 A. It was a beautiful home up on a hill, just gorgeous.
8 Long, paved, windy driveway up to it out in the country,
9 lots of acreage. A really pretty area. A very clean home,
10 and they had a Pomeranian there also.

11 Q. Based upon the dealings you had with Mr. Barnett, do
12 you have an opinion as to his character for honesty?

13 A. He just seems like a great guy to me.

14 MR. SIANO: No further questions.

15 THE COURT: Mr. Fowlkes or Ms. Harris?

16 MR. FOWLKES: Yes, Your Honor. May I proceed,
17 Your Honor?

18 THE COURT: Go right ahead.

19 CROSS EXAMINATION

20 BY MR. FOWLKES:

21 Q. Mr. Scroggin, how many years have you known
22 Mr. Barnett?

23 A. From five years ago.

24 Q. Do you ever see Mr. Barnett with firearms?

25 A. No.

1 Q. Do you know if Mr. Barnett has a place behind his
2 house where he can shoot guns?

3 A. I don't know that.

4 Q. Okay. You're close enough to be able to hear gunfire.
5 Do you ever hear gunfire from his house?

6 A. I do not hear gunfire from his house.

7 Q. Okay. Have you ever talked to him about firearms?

8 A. No. No.

9 Q. He never told you about any assault rifles or any
10 pistols or anything else that he had?

11 A. Nothing, no. He didn't have any on display in his
12 home or anything. I didn't see anything, no.

13 Q. Okay. And do you believe that Mr. Barnett is an
14 honest person? Is that what you testified to?

15 A. Absolutely.

16 Q. Would it surprise you to know that the birthday on
17 Mr. Barnett's driver's license is not his actual birthday?

18 A. Hmm. I don't know anything about that.

19 Q. Would it surprise you to know that he has criminal
20 history under a different birthday than the birthday that
21 appears on his driver's license?

22 A. I know nothing about that.

23 Q. Did it surprise you when you saw Mr. Barnett at the
24 Capitol in the photographs on television and on the news?

25 A. Yeah. That -- yeah, it did.

1 Q. Did it surprise you to know that he had a stun gun
2 when he entered the Capitol on that day?

3 A. I didn't learn that until about a day ago, so, yeah.

4 Q. Did you see a video with him shouting into a bullhorn
5 and shouting curse words regarding Speaker Pelosi and
6 bragging that he took a letter from her desk? Did you see
7 that?

8 A. No. All I saw was that picture of him sitting in her
9 desk.

10 Q. Would it surprise you to know that he had done such a
11 thing?

12 A. Yes.

13 Q. That's not the Mr. Barnett that you know, is that
14 correct?

15 A. Exactly. Exactly.

16 Q. Did Mr. Barnett ever talk to you about going to
17 Washington, D.C.?

18 A. No. No.

19 Q. He never told you about his desire to go up there and
20 hear President Trump speak?

21 A. No.

22 Q. Did you know he was going to Washington, D.C.?

23 A. No.

24 Q. No one else told you that he was going either?

25 A. Learned it in the news.

1 Q. Do you know when Mr. Barnett returned from Washington,
2 D.C.; did you see him that day?

3 A. No.

4 Q. Did Mr. Barnett ever ask you to hold anything on his
5 behalf or keep anything for him?

6 A. No.

7 Q. Would you do that if he asked you to?

8 A. I don't think so. Not right now. I wouldn't hold
9 anything for anybody.

10 Q. Have you ever talked to Mr. Barnett on his cell phone?

11 A. No.

12 Q. You don't know his cell phone number?

13 A. I do not.

14 Q. All right.

15 MR. FOWLKES: Your Honor, may I have just a
16 moment?

17 THE COURT: Yes.

18 MR. FOWLKES: Thank you, Your Honor.

19 (pause)

20 MR. FOWLKES: No further questions for this
21 witness, Your Honor.

22 THE COURT: All right. Mr. Siano, any further
23 questions?

24 MR. SIANO: Nothing further, Your Honor.

25 THE COURT: All right. Mr. Scroggin, you may be

1 excused, then. Thank you.

2 THE WITNESS: All right.

3 MR. SIANO: I would like to ask Mr. Ballentine if
4 Mr. Ratledge has reappeared.

5 MR. BALLENTINE: No, I do not have Ratledge.

6 MR. SIANO: Okay. Then, Judge, in the interest
7 of efficiency, I'd like to call Tammy Newburn, and then
8 take a break. Since I can represent to the Court, after I
9 learned he had left the waiting room, I reached out to him
10 and he told me he was on the road and he was trying to find
11 a place he could get off the highway and then dial back in.
12 So that's a work in progress. But I don't want to take up
13 a lot of, or create a lot of dead time. So since we have
14 outside counsel here for her, let's get her on the witness
15 stand, get her testimony. There we go.

16 THE COURT: Ms. Newburn?

17 MR. FOWLKES: Your Honor, this is Ms. Harris's
18 witness also.

19 THE COURT: All right. Thank you. Ms. Newburn,
20 can you hear me okay?

21 THE WITNESS: Yes, I can hear you. I can't see.
22 It just says Zoom.

23 THE DEFENDANT: I'm sorry, Your Honor. I'm
24 sorry, Your Honor. Can you hear me?

25 THE COURT: Yes, I can hear you.

1 THE DEFENDANT: This is Mr. Barnett. They are
2 having trouble with my battery charger and my batteries are
3 fixing to die, and I'm going to miss everything. The
4 officer is trying to get the thing to charge, but it won't
5 charge. They are going to try to swap me out with another
6 one. Can we have a few minutes?

7 THE COURT: Yes, that's fine. Let's go ahead and
8 take a 10-minute recess. If the officer can either get a
9 charger or get you another laptop, Mr. Barnett.

10 THE DEFENDANT: Thank you, Your Honor.

11 THE COURT: It's about 3:40 now. We will go back
12 in session -- I'm sorry, it's 3:30 now. We will go back in
13 session at 3:40. We'll be in recess.

14 MR. SIANO: Thank you, Your Honor.

15 (recess taken at 3:30 p.m.)

16 MS. GUERRERO: The Honorable Judge Erin L.
17 Wiedemann presiding is now in session.

18 THE COURT: All right. Mr. Barnett, did they get
19 you a new laptop? Okay.

20 MR. SIANO: Answer again, Richard, please.

21 THE DEFENDANT: Yeah, we're good.

22 THE COURT: All right. And -- all right. If we
23 can have Ms. Tammy Newburn join the hearing.

24 MR. SIANO: Thank you, Judge.

25 MR. FOWLKES: And, Your Honor, this is

1 Ms. Harris's witness.

2 THE COURT: All right. Thank you.

3 MR. FOWLKES: Thank you, Your Honor.

4 THE COURT: All right. Ms. Newburn, can you hear
5 me?

6 THE WITNESS: Yes.

7 THE COURT: All right. And can you see everyone
8 or --

9 THE WITNESS: I actually just see you, and then I
10 see me up here. I'm not real computer --

11 THE COURT: All right. Well, as long as --
12 Mr. Siano and Ms. Harris, the government's attorney, will
13 be asking you questions, so as long as you can hear them.

14 THE WITNESS: Okay.

15 THE COURT: Let us know if you cannot. Can you
16 state your full name for the record, Ms. Newburn?

17 THE WITNESS: Tammy Lynn Newburn.

18 THE COURT: All right. Ms. Newburn, I do want to
19 advise you that you must answer all questions truthfully.
20 Failure to do so can result in you being charged with
21 perjury. Anything you do say can be used against you. You
22 do have the right to not incriminate yourself and you can
23 choose not to answer questions that you feel might be
24 incriminating.

25 I am going to appoint Mr. Jack Schisler, one of

1 our Federal Public Defenders for you for the purposes of
2 testifying today. Did you have a chance to visit with
3 Mr. Schisler about your right to not incriminate yourself?

4 THE WITNESS: Yes.

5 THE COURT: And I'm going to ask Mr. Schisler
6 that if he feels that a question is being asked of you or
7 that you're starting to testify to something that might be
8 incriminating, that he alert the Court. And at that time,
9 if you would like to be put in a breakout room and speak
10 privately with Mr. Schisler and get his advice and then
11 decide from there whether you would like to answer the
12 question, I'll give you that opportunity, okay?

13 THE WITNESS: Okay. Thank you.

14 THE COURT: So you do understand your Fifth
15 Amendment rights, is that correct?

16 THE WITNESS: Yes.

17 THE COURT: All right. All right, Ms. Newburn.
18 Then if you will raise your right hand at this time and be
19 sworn.

20 (Witness Sworn)

21 THE COURT: Thank you. Go right ahead,
22 Mr. Siano.

23 MR. SIANO: Thank you, Your Honor.

24 TAMMY NEWBURN, having been first duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. SIANO:

3 Q. Hi, Tammy.

4 A. Hi.

5 Q. Can you tell us you're over 21 and what county you
6 live in, please?

7 A. I am over 21. I live in Benton County.

8 Q. All right. And are you familiar with the defendant,
9 Richard Barnett?

10 A. Yes, I am.

11 Q. Can you see his image among the many images here?

12 A. I can't. I only -- I only see me. Is there --
13 there's a little blue arrow. Should I hit that? Will that
14 bring them all up? I don't know. I'm not into computers.15 MR. SIANO: All right. I take it the government
16 will not object to identification is this. Mr. Fowlkes is
17 shaking his head no. Ms. Harris is saying no.18 Q. (by Mr. Siano) So for our purposes, we won't make you
19 scroll through all the postage stamps, all right?

20 A. Okay.

21 Q. How long have you known Richard?

22 A. I have known him 20 plus -- 20 years, almost 21.

23 Q. Can you describe for the Court the nature of your
24 relationship with Richard Barnett over the last 20 years?

25 A. We've been partners for the last 20 years.

1 Q. And when you first became domestic partners --

2 A. Uh-huh.

3 Q. -- did you have biological children?

4 A. No. My children are from my previous marriage.

5 Q. How old were they at the time that you and Richard
6 came together as a unit?

7 A. Jessy was -- had just turned five and Ashlee was about
8 three months old.

9 Q. Okay.

10 A. Yeah.

11 Q. Can you describe for the Court the role Richard
12 Barnett has played in the parenting of your daughters
13 since -- in the last 20 years, please.

14 A. He's been just like a father to them. Everything that
15 a father would do, that's what he's been.

16 Q. And to your observation, can you describe whether or
17 not he was actively engaged in their lives and activities?

18 A. Oh, yes. Yes, in everything. Every school function
19 they had, you know, that parents go to, he would -- he
20 would go. We had kids at our house, you know, sleepovers
21 and cheer parties. And everything that a dad does, he
22 does, you know.

23 Q. All right. Now, before I get into the events of the
24 last couple of weeks, do you have an opinion as to
25 Mr. Barnett's character for honesty?

1 A. Oh, he's very honest, yeah.

2 Q. All right.

3 A. Yeah.

4 Q. And have you observed whether or not Mr. Barnett
5 honors his appointments and commitments when he makes such?

6 A. Yes. Yes. We all do, uh-huh.

7 Q. What is your opinion of Mr. Barnett's keeping his word
8 and showing up where he says he's going to show up?

9 A. I have no doubt. I have no doubts whatsoever that he
10 will do what he says and he will be where he's supposed to
11 be.

12 Q. All right. And have you ever known Mr. Barnett to
13 threaten harm to any person or entity or to actually harm
14 any person or entity?

15 A. No, not at all.

16 Q. Not at all that you don't know. Not at all that it's
17 never happened; it's never happened?

18 A. It's never happened, no.

19 Q. And I'm going to ask you some questions about the last
20 week.

21 A. Okay.

22 Q. But before I do, did you have occasion to talk to a
23 pretrial services officer?

24 A. Yes.

25 Q. She asked you questions?

1 A. Yes.

2 Q. And she gave answers?

3 A. Yes.

4 Q. And you did that without me as part of the
5 conversation, didn't you?

6 A. Yes.

7 Q. Okay. Now, when did you first become aware that
8 Richard had any intention to go to the rally in Washington,
9 D.C., that was going to be held on January 6th?

10 A. Probably -- probably sometime the weekend before.

11 Q. Okay.

12 A. Yeah.

13 Q. And you became aware that he was going to go?

14 A. Yes.

15 Q. All right. When did he leave?

16 A. He left Monday, mid-morning sometime.

17 Q. Did you see him leave?

18 A. Yes.

19 Q. Did he leave alone or with an entourage?

20 A. He was by himself, yes.

21 Q. Did you talk to him before he returned to the family
22 home later in the week?

23 A. I talked to him occasionally on his way down to D.C.
24 He let me know he made it to D.C. okay. And then after
25 everything that happened, he called me from someone else's

1 cell phone -- his was dead, he said -- and let me know that
2 he was okay.

3 Q. Okay. When did he return into the house?

4 A. Let me see. It was Thursday. It was Thursday
5 afternoon sometime that he got home, probably around, I'm
6 going to say around the 3:00 hour in there; 3:00, 3:30.

7 Q. From the middle of the day on Wednesday until
8 Mr. Barnett returned, did you have occasion to talk to
9 anybody connected to law enforcement?

10 A. Yeah.

11 Q. So Wednesday, Thursday. Go right ahead.

12 A. Yeah. Well, Wednesday night before he returned when
13 everything kind of was blowing -- because it blew up so
14 quickly, we talked to a Mr. Holloway that's the Benton
15 County Sheriff.

16 Q. What did Mr. Holloway say to you and what did you say
17 to him?

18 A. Well, we were -- we were talking, I believe it was on
19 Ashlee's phone, like speakerphone. He just said to be sure
20 to have Richard call him the minute that he got into town,
21 that he landed, and they would arrange a meeting, you know,
22 to see each other.

23 Q. Okay. When, if ever, did you pass that Holloway
24 conversation along to Richard?

25 A. I think when he returned. The minute he returned and

1 showed up.

2 Q. Yes.

3 A. Ashlee, me and Ashlee, you know, we met him. And he
4 said -- we said, you've got to call Sheriff Holloway right
5 away. Ashlee had the number and everything still on her
6 phone. He took her phone and called him immediately when
7 we said.

8 Q. Okay. And did you hear Mr. Barnett's part of the
9 conversation, or did you hear both parts of the
10 conversation?

11 A. I think I just heard Mr. Barnett's. They -- he talked
12 about coming in right away. And Mr. Holloway said, well,
13 let's just make an appointment for 10:00 in the morning for
14 you to come in, turn yourself in. And so we made that
15 arrangement. We went straight home, stayed straight home,
16 and stayed in the house until it was time for us to go the
17 next morning.

18 Q. Okay. And what happened the following morning?

19 A. The following morning, we just kind of got up. You
20 know, he got showered and ready to go and we headed that
21 way.

22 Q. He went to the --

23 A. I'm sorry. We went to the sheriff's department and he
24 went in and talked to -- they took him in, of course, and I
25 sat out in the lobby. They took him in. They had two FBI

1 agents that wanted to speak with him. So he went in and
2 spoke with them. They come out at one point. Well, a
3 sheriff come out at one point and asked me to come in for a
4 minute. I went in and the FBI agents just talked to me
5 briefly about what was going to happen, that they were
6 going to transport him to Washington County. They wanted
7 to talk about all the stuff that was already popping up on
8 the internet, all the harassment and threats and our
9 address being everywhere. They were concerned for our
10 safety. So they thought maybe it would be a good idea to
11 just find a safer -- a safe place to stay that wasn't in
12 our actual home.

13 Q. So in other words, FBI agents emit some concern --

14 A. Uh-huh.

15 Q. -- about the harassment you had been enduring and
16 suggested --

17 A. Yes.

18 Q. -- you might want to leave the house?

19 A. Yes.

20 Q. At that time, this is a conversation happening at the
21 sheriff's office?

22 A. Yeah. Yeah.

23 Q. Did they tell you before you left the sheriff's office
24 that they wanted to come by, the FBI wanted to come by and
25 search your house?

1 A. Yes. The agent, Jonathan, said that he -- and he took
2 my phone number and gave me his -- that they were going to
3 issue a -- I don't know if he told me then or if he called
4 me right afterwards and said they were going to issue a
5 search warrant and he would be calling me and letting me
6 know what that process was when they got the warrant.

7 Q. And did they -- did there come a point in time where
8 some FBI agents came by on Friday?

9 A. Yeah. Yeah, they called -- he called me later in the
10 evening. They all came up to the house and had a search
11 warrant and searched the house.

12 Q. And they searched the house, isn't that right?

13 A. Yes, uh-huh.

14 Q. In fact, didn't you tell me that it was only two
15 agents at the sheriff's office, but it was a lot of agents
16 that came to your house on Friday?

17 A. Yes. Yes. It was overwhelming actually, yes.

18 Q. All right. Now, at any point, did you speak to the
19 FBI agents? Did you give an interview?

20 A. Yeah. The one agent, Reed, sat in my car with me
21 during the whole search, you know. He stayed out in the
22 car with me while they searched the house. And then at one
23 time, the other agent, Kim Allen, got in the car and talked
24 to me also about the harassment and the threats that were
25 going on.

1 Q. All right. And did you feel free at that time to
2 answer them or not answer them as you saw fit?

3 A. Yeah. It was kind of a casual conversation. I didn't
4 really feel like -- I didn't really feel like I was being
5 totally questioned or anything. And I -- I didn't have
6 anything not to answer about, you know. I didn't have
7 anything to keep.

8 Q. In fact, they asked you about your cell phone, didn't
9 they?

10 A. Yeah. Yeah, they did.

11 Q. And you gave them your cell phone, isn't that right?

12 A. Yeah. They said that it was on the warrant and I was
13 like, oh. And they said, we don't want to -- we know that
14 that's your only, like that's the only cell phone I have.
15 I don't have a home phone. And they said, can we look at
16 your phone? Can we look at your text thread between you
17 and Richard? And I said yes. And at that point, we went
18 into the house. I pulled up my phone and showed them the
19 text thread. I think they took it. I don't know if they
20 took pictures or copied it or what they did, but I think
21 they got some, you know, off the phone.

22 Q. And was there a second visit from the FBI?

23 A. Yes. Yes, there was a second visit.

24 Q. When was that?

25 A. Let me try to think about what day that was. Tuesday.

1 Was it Tuesday evening, I believe.

2 Q. That would be this week. That would be this week?

3 A. Yes. Yes. Of this week, yes.

4 Q. All right. And what happened? Did they come back
5 with another warrant?

6 A. They came back with another warrant, yes.

7 Q. What did they do?

8 A. They -- they were looking for some things that they
9 said they had seen in some of the photographs they had
10 taken, some packaging and some walkie talkies.

11 Q. They conducted a search?

12 A. Yes.

13 Q. Did they give you an inventory?

14 A. Yes. It had the packaging from the stun gun thing,
15 the walkie talkies. And they found some kind of decal on
16 his -- I don't know what that was. And I'm not exactly --
17 some other piece of paper thing that they took. I don't
18 know what it was, so --

19 Q. Okay. And at any point did the defendant, did Richard
20 Barnett give you instructions as to what to say to the FBI
21 and to the sheriff's office?

22 A. No, not at all. And the second -- the second search,
23 he had no idea that it was even happening, I don't think.
24 I didn't until they showed up, you know, until they called
25 and said they were going to be there in 10 minutes.

1 Q. Well, why do you think that Richard Barnett knew about
2 the first search?

3 A. Oh, because I think that they called me while he was
4 in the car taking him to Washington County, so I think he
5 knew that we had it. And I -- that we were going to have
6 one.

7 Q. This was a telephone conversation?

8 A. Uh-huh. Yes.

9 Q. Nobody handed you a piece of paper or anything?

10 A. No.

11 Q. Okay.

12 MR. SIANO: No further questions.

13 THE COURT: Ms. Harris?

14 MS. HARRIS: Yes, Your Honor. Thank you.

15 CROSS EXAMINATION

16 BY MS. HARRIS:

17 Q. Good afternoon, Ms. Newburn. My name is Kim Harris,
18 and I'm an attorney for the United States and I have a few
19 follow-up questions for you this afternoon.

20 A. Okay.

21 Q. Is it my understanding, then, that you learned that
22 the defendant was traveling to D.C. the weekend before he
23 left, is that correct?

24 A. Yes.

25 Q. Were you aware that he had purchased the stun gun and

1 the walkie talkies and mace prior to leaving?

2 A. Yes.

3 Q. And when did you learn of that?

4 A. I think it was probably either -- I think maybe it was
5 Sunday before he left. Saturday or Sunday, uh-huh.

6 Q. Did you know why he bought those items for his trip?

7 A. I think it was because I was worried for his safety.
8 I was -- I knew that he obviously wasn't going to take a
9 gun, you know. That would -- and I was worried that in a
10 crowd like that, that there would be -- that there would be
11 violence. I was afraid that he would get hurt.

12 Q. So you asked him to buy the stun gun, then?

13 A. I didn't ask him to buy anything, no.

14 Q. You realize he had it on his person when he was in the
15 Capitol building?

16 A. Well, I actually didn't realize it until the FBI
17 agents came in and told me that on the second search, that
18 it was -- it was in -- they saw it in -- it's been seen on
19 his belt loop in the pictures. And I had not even paid
20 attention to that, so --

21 Q. Was it your understanding that he was only going to
22 attend President Trump's speech?

23 A. I actually did not know what all was going to take
24 place. I did not -- I mean, I knew that Trump would have a
25 speech. That was all I really knew that he was going to do

1 is the speech, you know.

2 Q. Well, why would you be worried about his safety if he
3 was just going --

4 MR. SIANO: I can't hear the question.

5 THE WITNESS: You're cutting out.

6 THE COURT: Hold on just a moment. Ms. Harris,
7 you're cutting out just a little bit.

8 MS. HARRIS: I'll try again, Your Honor. Our
9 connection is showing that it's fine on our end. Am I
10 still cutting out?

11 THE COURT: That's better.

12 THE WITNESS: It's better.

13 THE COURT: You can ask the question again.

14 Q. (by Ms. Harris) Ms. Newburn, why would you have been
15 concerned for his safety if you only thought he was
16 attending a speech by the president?

17 A. Because I know in large crowds like that, things get
18 out of hand sometimes. And I worry about -- I mean, we
19 worry about each other. If we head on a two-hour trip, we
20 worry about each other.

21 Q. Did you ask him not to go?

22 A. No, because it's something he believed in. He
23 believes in President Trump and he's a patriot. He
24 believes in us having a free country.

25 Q. And so you were supportive of what he did?

1 A. I support him.

2 Q. Are you supportive of what he did once he unlawfully
3 entered the Capitol and then took Speaker Pelosi's
4 property?

5 A. No. No.

6 MR. SIANO: Objection as to form.

7 THE COURT: I'm sorry. Mr. Siano, what was the
8 objection?

9 MR. SIANO: Objection as to form. I don't have a
10 question about entering the Capitol. I have a question as
11 to the legal conclusion Ms. Harris posits in her question.

12 THE COURT: Well, I'm not sure exactly what
13 you're getting at. Ms. Harris, can you rephrase your
14 question, or if you want to just ask it again and I can
15 rule on it.

16 MS. HARRIS: Thank you, Your Honor.

17 Q. (by Ms. Harris) So, Ms. Newburn, you're supportive of
18 your significant other, the defendant's conduct in
19 Washington, D.C., on January the 6th, 2021, am I correct?

20 A. I am not supportive of him in the -- Nancy Pelosi's
21 office necessarily. But I support -- I support him
22 supporting our country, and that's what he thought he was
23 doing.

24 Q. By unlawfully --

25 A. I don't support unlawfully -- I don't support anything

1 that's unlawful.

2 Q. What do you think would have happened if you asked him
3 not to go?

4 A. I -- I don't know.

5 Q. Were you aware that back in July of 2020, the
6 Fayetteville Police Department responded to a rally and had
7 contact with Mr. Barnett, the defendant, and he was -- they
8 observed him to be causing a disturbance with other folks
9 at this event? Were you aware of that? Did he tell you
10 about that?

11 A. No.

12 Q. Is it normal for him to go to these events armed every
13 time?

14 MR. SIANO: Objection as to form.

15 THE WITNESS: I -- I don't know. I don't know if
16 he goes armed.

17 THE COURT: Just a moment. Ms. Newburn, if
18 there's an objection, you need to let me rule on it, okay?

19 THE WITNESS: Oh, I'm sorry.

20 THE COURT: Mr. Siano --

21 MR. SIANO: "These events," Judge.

22 THE COURT: Mr. Siano, when you raise an
23 objection as to form, I need you to clarify for me.

24 MR. SIANO: Yes, Your Honor.

25 THE COURT: I don't know what part of the

1 question you are objecting to.

2 MR. SIANO: The question is vague because it --
3 that's my objection as to form. What is "these events?"
4 Ms. Harris identified one event in Fayetteville in July of
5 the prior year, last year, and that morphs into "these
6 events." That's my objection.

7 THE COURT: All right. Ms. Harris, if you can
8 elaborate in your question to specify what types of events
9 you're referring to.

10 MS. HARRIS: Well, I was referring to rallies.
11 That was what the question was about. And so again, back
12 in July of 2020, I've asked this witness if she was aware
13 that Fayetteville P.D. had contact with the defendant
14 because he was causing a disturbance at an event and he was
15 armed. And she testified she was -- she was not aware of
16 that.

17 And so then my next question I will ask this
18 witness is, in November of 2020, was she aware that
19 Fayetteville Police had contact with the defendant again at
20 a rally type event and he was armed again, this time with a
21 rifle and a pistol.

22 THE COURT: All right. I'll allow that question.
23 You may answer, Ms. Newburn.

24 THE WITNESS: I don't -- I don't know anything
25 about that particular --

1 Q. (by Ms. Harris) Let me just make sure I understand
2 your answer. You were not aware that back in July of 2020
3 or November of 2020, Fayetteville Police Department had
4 contact with Mr. Barnett at two different rallies or events
5 and he was armed at both?

6 A. No, I wasn't at those rallies or events.

7 Q. Did he tell you about it?

8 A. Not that I recall.

9 Q. Were you aware that he was on the news after the
10 election and he did an interview about "Stop the Steal?"
11 Were you aware of that?

12 A. I'm trying to remember. I think -- I do remember him
13 being on a news, on an interview.

14 Q. And he said, "Whatever it takes, whatever it takes,"
15 with regard to overturning the election results?

16 A. I can't recall what his -- what he said. I can't
17 recall what he said.

18 Q. Okay. Am I correct that you don't recall what he
19 said --

20 A. I can't -- you're cutting out. You're cutting out,
21 ma,am.

22 Q. Am I correct that you don't recall what he said and
23 you're not sure if you know about the interview I'm talking
24 about?

25 A. I'm not sure which one you're talking about, to tell

1 you the truth. I've seen him on an interview, but he's had
2 a couple different interviews.

3 Q. What -- can you explain the two date of births?
4 Without testifying to what the date of birth is, but why
5 does he have two dates of births associated with him?

6 A. I think it was -- it was just a -- like an error at
7 the DMV, and it never got corrected.

8 Q. Do you know if he tried to correct that?

9 A. I think he has tried to correct it. We've talked
10 about how he's tried to correct it. When he got his
11 license renewed the last time and when he -- they didn't
12 correct it.

13 Q. Were you present with him?

14 A. No, I wasn't present when he got it.

15 Q. Do you have a firing range at your house?

16 A. Down in the holler, we do have a firing range to
17 practice.

18 Q. And were you present for a "Save the Children" rally
19 on your property?

20 A. Yes, I was.

21 Q. So what all went on at the "Save the Children" rally?

22 A. It was a photo shoot for -- to obviously earn money
23 for this cause. That was about it. We took photo shoots
24 with his old trucks. We did take photo shoots with guns.

25 Q. They were his guns, right?

1 A. They weren't all his guns, no. They were guns from --
2 other people brought guns also.

3 Q. Do you know approximately how many firearms
4 Mr. Barnett owns?

5 A. I don't. I don't know how many he owns. I don't -- I
6 have one little gun he gave me for like if I needed
7 protection in the home. And my daughter has one just like
8 it. And I know he has a Ruger that he carries. And I know
9 of maybe a couple of other guns, but I don't know the
10 number of guns that he has because I don't know really
11 anything about guns.

12 Q. Would you say he has small guns and also really large
13 guns?

14 A. Well, yeah, there's small ones and then there's larger
15 ones.

16 Q. Do you know what a silencer is?

17 A. Yeah. I don't think we have a silencer.

18 Q. You specifically mention just the one firearm to the
19 U.S. Probation Office pretrial services officer. You
20 mentioned the Ruger. But are you testifying then that your
21 husband owns multiple other firearms?

22 A. He does have other firearms. I don't know what they
23 are, what kind they are. I don't know how many he owns.

24 Q. Do you know why you just mentioned -- I guess you
25 singled out the Ruger, and then said you don't know how --

1 A. Because I knew that he had the Ruger and I knew that
2 we had our two, me and my daughter had the two .380s
3 because I knew specifically that we had those two.

4 Q. Where are those guns typically kept? On your property
5 at your house?

6 A. Yeah, we have them at our house. We don't have them
7 at our house now.

8 Q. When did you move them?

9 A. They were moved when all of this started. And I just
10 kept my little handgun and my daughter kept hers because of
11 the threats and the harassment we've had. We kept those
12 with us. After talking to the probation officer yesterday
13 when she said that all guns would have to be removed if he
14 came home, that that was -- I've had them taken out also.
15 I don't --

16 Q. Why were the defendant's guns removed before he went
17 to see Mr. Holloway, or the police?

18 A. They weren't. They weren't moved before then, and I
19 removed them because I wasn't in my house. I had to leave
20 my house because of the threats. And I didn't want -- I
21 didn't want people breaking into my house and using our
22 guns against us. I didn't -- I just -- I had Mark take
23 them.

24 Q. Mark Hesse?

25 A. Mark Hesse has them.

1 Q. Okay. Let me just -- there's something I'm not
2 understanding. Can you help me understand why Mr. Barnett
3 told the FBI he removed everything from his house before he
4 came in to see them?

5 A. Okay. Well, he might have done it before.

6 THE COURT: Ms. Newburn?

7 THE WITNESS: Yes.

8 THE COURT: You're interrupting Ms. Harris when
9 she's asking a question. Let her complete her question so
10 that you all aren't speaking over each other, okay?

11 THE WITNESS: Okay. I'm sorry.

12 THE COURT: That's okay. Ms. Harris, if you will
13 restate your question, and I want to make sure you've
14 completed your question.

15 MS. HARRIS: Thank you, Your Honor.

16 Q. (by Ms. Harris) Ms. Newburn, help me understand then
17 why Mr. Barnett told the FBI on Friday -- that would have
18 been a week ago today -- that he had cleaned his house out
19 and they wouldn't find anything. And he also said he had
20 removed his firearms.

21 A. I know that we had the firearms removed. That's all I
22 know. I don't know why he said that.

23 Q. So now either he's lying or you're not --

24 A. No, I'm not lying. The firearms were removed because
25 he was leaving the house. And I didn't want them in the

1 house. I did not want -- I mean, we were already getting
2 threats. I knew I was going to have to go stay someplace
3 else.

4 Q. Okay. Let's back up. We can maybe work through this.

5 A. Okay.

6 Q. You testified that Mr. Barnett got home around 3:00 or
7 3:30 on Thursday, okay. And I'm talking about the Thursday
8 after everything happened in Washington on Wednesday,
9 correct?

10 A. Yes.

11 Q. And it's fine if maybe it was 3:15 or 4:00, but
12 approximately sometime in the afternoon, he got home?

13 A. Yes.

14 Q. Could you tell the Court what happened when he got
15 home? What did you all do?

16 A. Immediately when he got home, we weren't actually at
17 our house. We were at a safe house because we were scared.
18 As soon as he came to the safe house, our daughter and me
19 told him, you need to call Sheriff Holloway. We had spoken
20 to him the night before and he wanted Richard to call him
21 immediately. My daughter gave him her phone. She had the
22 phone number and the information. He called Sheriff
23 Holloway. Sheriff Holloway had given a time at
24 10:00 Friday morning to come into the Benton County
25 Sheriff's Office and turn himself in. He said that there

1 would be two FBI agents.

2 Q. Did you spend the night at your house?

3 A. Yes, we did go home and spend our night -- the night
4 at our house that night.

5 Q. Who came over that night?

6 A. I think maybe Mark did. I know another young friend
7 of Richard's did, Derek. He just came over to visit for a
8 little bit. And then that -- that was pretty much it. We
9 just kind of spent the night together as a family.

10 Q. What property did Mr. Barnett give Mark or Derek that
11 night?

12 A. Excuse me? He didn't give Derek anything.

13 Q. Would he give --

14 THE COURT: Ms. Harris, you're going out a little
15 bit. If you can repeat your question.

16 Q. (by Ms. Harris) What property did Mr. Barnett give
17 Mark Hesse that night?

18 A. I'm trying to remember back. It's been a really bad
19 week. I don't know what was given, to tell you the truth.
20 I can't -- I don't know what was given.

21 Q. Where were you when they were exchanging property?

22 A. I was here at the home, but I don't even know if I was
23 in the room with them. I mean --

24 Q. Where is Mr. Barnett's phone?

25 A. I don't -- I have no idea where his phone is.

1 Q. Is it possible that Mark Hesse has it?

2 A. I don't know.

3 Q. Do you not think it's weird that your significant
4 other of 20 years, you don't know where his phone is?

5 A. I don't know where it is.

6 Q. Did he tell you who he gave it to?

7 A. No.

8 Q. Where is the stun gun?

9 A. I have -- I don't know.

10 Q. You don't think that's a little weird that you don't
11 know where that is? Have you seen it since he got back?

12 A. I have not seen it since he's got back. I have not
13 seen the stun gun. I don't -- I do not know where it is.

14 Q. Have you seen Mr. Barnett's phone since he's gotten
15 back?

16 A. No.

17 Q. You sure about that?

18 A. Yes.

19 Q. So what do you think he gave Mark Hesse?

20 A. I believe Mark Hesse just has our guns that we had in
21 our house. That's all I know that he has.

22 Q. And so Mark Hesse, he went down there with Mr. Barnett
23 to D.C., correct?

24 A. He didn't go with. Him and his nephew drove a
25 separate vehicle and left after Richard did. They did not

1 go at the same time.

2 Q. But they met up (inaudible), correct?

3 A. Yes.

4 Q. I want to talk to you a little bit now about the
5 interview, and we've kind of talked about it a little bit
6 before. But you were there on Friday, a week ago, when
7 Mr. Barnett went to the sheriff's office, right?

8 A. Yes. Yes.

9 Q. At one point during the interview, like you said, they
10 called you out from the hallway and you went inside?

11 A. Yes.

12 Q. Were you aware that that interview was audio and video
13 recorded?

14 A. I don't -- I don't know if it was.

15 Q. Okay. Well, I'm telling you it was.

16 A. It was? Okay.

17 Q. Keep that in mind as we go through these questions.
18 It was audio and video recorded.

19 A. Okay.

20 Q. Do you recall when you were going to show Special
21 Agent Willett the threats that you had received on your
22 phone? Do you remember that?

23 A. I don't -- I don't -- I don't recall. I mean --

24 Q. Wasn't the purpose of why you went into the interview
25 in the first place to show them the threats on your phone?

1 A. Well, to tell them about it and I tried to look on
2 mine. A lot of the threats were on like Facebook and
3 social media, and I don't have Facebook or social media. I
4 never have.

5 Q. Okay. Do you recall during the time when you came
6 into the interview room and you were going to show those
7 agents what was on your phone that Mr. Barnett stopped you
8 and said, no, he would be the one to show those agents what
9 was on your phone. Do you remember that?

10 A. No.

11 Q. You don't remember that?

12 A. I -- if it happened, it just happened. If he asked to
13 show -- I don't -- I'm sorry.

14 Q. And so do you remember your husband actually wanting
15 to take your phone from you and go through it?

16 A. Well, if he wanted to, then he could have. I probably
17 gave it to him to do that. I don't hide anything on my
18 phone.

19 Q. You didn't think that was weird that he wouldn't just
20 let you show the agents yourself on your phone?

21 A. No.

22 Q. Okay. Do you recall how he interrupted you several
23 times while you were trying to tell about different events
24 that had gone on and he interrupted you and said, "Let me
25 tell the story." Do you recall that?

1 A. He could have. He -- he could have done that.

2 Q. Is that normal for him?

3 A. Yeah. I mean, yeah, sometimes he will be like, well,
4 let me say it, or let me tell or whatever.

5 Q. He interrupts you?

6 A. Yeah, sometimes he interrupts me.

7 Q. Sometimes he controls the situation, the situations
8 that you're in, is that correct?

9 A. No, I wouldn't say that. If I have something to say
10 or if I want, then I'll stand up for myself.

11 Q. But just not that day?

12 A. No. I didn't think -- it wasn't something that was
13 that important for me to show. He could show.

14 Q. You're being interviewed in an interview with the FBI,
15 right? And it's threats about, life threats to your family
16 and your family's life on your phone; not Mr. Barnett's?

17 A. Uh-huh. Well, I think he was probably just upset
18 about it all.

19 Q. Upset about what he had done?

20 A. The threats that other people were sending our way.

21 Q. Oh. And so then you've said that sometimes he
22 interrupts you and that's not uncommon in your relationship
23 if I understand you right?

24 A. I have interrupted him also.

25 Q. Do you do what he says?

1 A. Like in what context?

2 Q. It appears like during that whole interaction, he
3 ordered you around and that you really had no voice of your
4 own during that conversation with the FBI?

5 A. No, I have a voice.

6 Q. Do you think if you would have asked him not to go to
7 D.C., that he would have listened to you?

8 A. He may have, but I knew he wanted to go so I wasn't
9 going to ask him not to go.

10 Q. Do you really think you have the ability to report to
11 this Court if he violates any condition if the Court were
12 to release him?

13 A. Yes. Yes, because this has been horrible for me so
14 I'm not about to not -- I want him home and I'm not about
15 to -- I will report. I will do whatever I have to do for
16 him to be home and for it to be legal and right.

17 Q. What happens the next time when he says, "No, Tammy,
18 let me tell it?"

19 A. I'll say, "No, Richard, I can tell it."

20 Q. Okay. So it's your testimony then that you don't know
21 where his cell phone is and you haven't seen it since he
22 got back. And do you know why?

23 A. I don't know -- I don't know why.

24 Q. You think it's because it has evidence of the crime on
25 it? Why else would someone hide their phone and get rid of

1 it?

2 A. What crime?

3 MR. SIANO: Objection, Your Honor. Argumentive.
4 There's no jury here. She says she doesn't know. She
5 answered that question half a dozen times. I object.
6 Argumentive.

7 THE COURT: All right. Ms. Harris, if you can
8 rephrase it in a way that does not appear to be
9 argumentive.

10 MS. HARRIS: I apologize for my zealous advocacy,
11 Your Honor, this afternoon. Just my point was, can she
12 think of a reason why Mr. Barnett would just all of a
13 sudden not have his phone.

14 THE WITNESS: I can't think of a reason.

15 Q. (by Ms. Harris) Were you aware that he had turned his
16 location services off on his cell phone as he drove back
17 from Washington, D.C.?

18 A. No.

19 Q. When did you learn that he had done that?

20 A. Just now.

21 Q. Were you aware that he had covered his face as he
22 drove home from Washington, D.C.?

23 A. I've been covering my face all week also because I
24 don't want pictures of it. I wasn't -- I wasn't aware. I
25 didn't have -- I didn't have contact with him on the way

1 home.

2 Q. I need for you to say yes or no.

3 A. Oh. No.

4 MS. HARRIS: May I have just a moment to collect
5 my thoughts, Your Honor, to make sure I haven't missed
6 anything?

7 THE COURT: Yes.

8 (pause)

9 Q. (by Ms. Harris) Ms. Newburn, Mr. Barnett wants to
10 make money off his recent fame, is that correct?

11 A. No.

12 Q. You're not aware that he wants to get a copyright on
13 his now famous slogan?

14 A. Oh. He -- my cousin actually started that. He didn't
15 start that, so it wasn't his idea. It wasn't -- he hasn't
16 -- that was my cousin's idea.

17 Q. Is he going in on that idea now?

18 A. What?

19 Q. Has Mr. Barnett joined in on that and does he think
20 that's a great idea?

21 A. I don't know.

22 Q. Do you know whether or not Mr. Barnett recorded the
23 events that happened in Washington on his cell phone?

24 A. There's a video on my cell phone of him going into the
25 building, of what happened and how he was pushed into the

1 building.

2 Q. How did you get that?

3 A. He sent it to me.

4 Q. From what device?

5 A. I guess it would have been his phone.

6 Q. And when did he send that to you?

7 A. He sent that to me right after it all happened.

8 Q. Would that be on January the 6th, January --

9 A. The day that it all happened, just --

10 Q. Is it still on your phone?

11 A. Yes. I've showed it to the FBI agents.

12 Q. Are there any other videos that Mr. Barnett sent you
13 on your phone?

14 A. Yes. He sent me a video of -- there was a small
15 child, a toddler that was kind of playing in the grass.
16 And Richard sent me a video of that because the little boy
17 was interacting with Richard somewhat.

18 Q. Did you see any of the events on his phone?

19 A. No.

20 Q. Did he tell you he had other videos on his phone?

21 A. Those are the only two videos I'm aware of, the ones
22 that he sent to my phone before he ever got home. I never
23 saw his phone to see any videos on it.

24 Q. Does the defendant, Mr. Barnett, leave his house armed
25 regularly?

1 A. Yes, he wears his gun. It's his Second Amendment
2 right.

3 Q. That's not my question. Like the pistol or the rifle,
4 or both?

5 A. The pistol.

6 Q. Who hid his clothing that he was wearing at the
7 Capitol? The jacket, who hid that?

8 A. Hid it? The FBI agents have it.

9 Q. Right. But it was recovered from under a dog crate in
10 the back of a vehicle.

11 A. It was in the -- it was in my trunk. I did not know
12 that he -- that it was on the search warrant. And when
13 they asked about it, I said, it's in my trunk.

14 Q. So then did you put it in your trunk under the dog
15 crate?

16 A. I put it in my trunk when I was packing my things. I
17 had my dog crate. I had my suitcase. And I had grabbed
18 his flannel jacket that he had.

19 Q. It is one of his favorite pieces of clothing, is that
20 correct?

21 A. It is one of his favorite pieces of clothing. I gave
22 it to him for Christmas last year.

23 Q. Was it under your dog crate in the back of your truck,
24 or back of your vehicle?

25 A. It was in my trunk and it was in -- I don't know if it

1 was under the dog crate, above the -- it was just, I had
2 been putting everything in my trunk because we were going
3 to have to leave the house for several days because of the
4 threats. We wanted to leave the house. I took the crate
5 and put it in the trunk at the same time because I have a
6 German Shepard puppy. I have to take the crate with me
7 when I go.

8 Q. But the dog wouldn't have traveled in the trunk in the
9 crate?

10 A. No. But when I got to the house I was staying at, I
11 put him in the crate to sleep, to spend the night.

12 Q. Did you have any other items of Mr. Barnett's clothing
13 in the back of your trunk?

14 A. I think his hat was back there, his cap that he had
15 on.

16 Q. The same cap he wore in Washington?

17 A. Uh-huh. Uh-huh.

18 Q. Why just those two items?

19 A. Because, I don't know. I had them -- hello?

20 Q. Yes, ma'am.

21 A. Are you still there?

22 Q. Yes, Ms. Newburn.

23 A. Okay. All right. The picture changed to a different
24 person. I -- I think I just gathered them up when I was
25 gathering everything up. I think he actually handed them

1 to me at one point. And I might have tossed them in the
2 back seat of my car because he wasn't going to wear them
3 into the -- he was all -- he showered and changed into
4 fresh clothes. And I think that -- yeah.

5 Q. Okay. So it's okay to admit they were in your trunk.

6 A. They were in my trunk. I admitted that. I mean, they
7 asked me about his clothing. I said, I washed his jeans
8 and his T-shirt and all that. I said, but his jacket and
9 hat are in the back of my car, in the trunk of my car. And
10 I was sitting in the car at the time.

11 MS. HARRIS: I'll pass the witness, Your Honor.

12 THE COURT: Mr. Siano, any other questions for
13 Ms. Newburn?

14 MR. SIANO: No redirect, Your Honor.

15 THE COURT: All right. I have a few questions
16 for you, Ms. Newburn.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Are there any firearms in your home
19 at this time?

20 THE WITNESS: No. I've had them removed.

21 THE COURT: All right. What did you do with your
22 firearm?

23 THE WITNESS: I gave it to Mark Hesse.

24 THE COURT: And what about your daughter's
25 firearm?

1 THE WITNESS: The same, Mark Hesse.

2 THE COURT: Okay. Are there any other types of
3 dangerous weapons or devices in your home?

4 THE WITNESS: No, ma'am.

5 THE COURT: Any large knives, hunting knives,
6 (inaudible), anything like that?

7 THE WITNESS: No. Just my kitchen knives, but no
8 hunting or any other kind of knife.

9 THE COURT: And where was it that your husband
10 normally stored his guns at your home?

11 THE WITNESS: Some were in our bedroom. Some
12 were -- I'm trying to think, ma'am. Some were in the -- we
13 didn't have a gun safe. Some were in the bedroom. Some
14 were in the back den room.

15 THE COURT: And all of those have been removed,
16 correct?

17 THE WITNESS: Yes. Yes, ma'am.

18 THE COURT: Okay. And if I were to release your
19 husband, if he violated any of the conditions that I put in
20 place, do you feel comfortable contacting probation and
21 reporting that violation knowing that it could result in
22 your husband being rearrested and placed back into custody?

23 THE WITNESS: Yes. I have to do the right thing
24 because I do have my daughter in the house. I will do the
25 right thing.

1 THE COURT: And are you concerned if I release
2 your husband about any threats or the safety of you and
3 your daughter at home if your husband is also there?

4 THE WITNESS: So far, the last couple of days,
5 the threats have been nonexistent. I do have a locked gate
6 at the end of my driveway and I do have driveway alarms set
7 up now that Mark Hesse has set up for me. So -- and we
8 kind of have a -- like they text me before they come up the
9 driveway so I know that they are coming. If I -- if I
10 heard the alarms go off and I didn't recognize the vehicle,
11 I would just dial 9-1-1. So I'm not -- I am not at all
12 concerned.

13 THE COURT: Okay. And if I were to impose a
14 condition that your husband not have any internet access
15 and that any internet capable devices that you or your
16 daughter have or that are in the home be password
17 protected.

18 THE WITNESS: Yes.

19 THE COURT: Can you assure me that you would not
20 allow your husband to access those devices?

21 THE WITNESS: Yes.

22 THE COURT: And if I impose a condition that your
23 husband were not allowed to have contact with certain
24 individuals, with individuals that he knew were also
25 involved in the riot, is that something you can ensure me

1 that you would --

2 THE WITNESS: Yes.

3 THE COURT: -- see is enforced?

4 THE WITNESS: Yes. Yes.

5 THE COURT: All right. I believe that's all of
6 the Court's questions.

7 Mr. Siano, any questions as a result of the
8 Court's questions?

9 MR. SIANO: No, Your Honor. Thank you.

10 THE COURT: Ms. Harris?

11 MS. HARRIS: No, Your Honor. No further
12 questions.

13 THE COURT: All right. Thank you, Ms. Newburn.

14 Mr. Siano, are you going to have any additional
15 witnesses?

16 MR. SIANO: Only if Mr. Ballentine tells me
17 Mr. Ratledge has arrived.

18 THE COURT: All right. Do we know that,
19 Mr. Ballentine?

20 MR. BALLENTINE: He was here, but he has left.

21 MR. SIANO: No further witnesses, Your Honor.

22 THE COURT: All right. So nothing further other
23 than argument, is that correct, Ms. Harris?

24 MS. HARRIS: That's correct, Your Honor.

25 THE COURT: And Mr. Siano?

1 MR. SIANO: That's right, Your Honor.

2 THE COURT: All right. Are the parties ready to
3 proceed with their closing arguments, or do you all need a
4 minute to look at your notes or collect your thoughts?

5 MS. HARRIS: The government is ready, Your Honor.

6 MR. SIANO: Defendant is ready.

7 THE COURT: All right. Go right ahead,
8 Ms. Harris.

9 MS. HARRIS: Thank you, Your Honor.

10 The United States respectfully submits that it
11 has shown by clear and convincing evidence that no
12 condition or combination of conditions will reasonably
13 assure the defendant's appearance as required and the
14 safety of any other person and the community. The factors
15 the Court must consider pursuant to Title 18 United States
16 Code 3142(g) as applied to the defendant's case weigh more
17 favorably for his detention.

18 I want to start this afternoon by talking about
19 the nature and circumstances of the offenses at issue,
20 Judge. And as the Court is aware, there's three charges on
21 the criminal complaint. Knowingly entering or remaining in
22 any restricted building or grounds without authority while
23 carrying a dangerous weapon. Violent entry or disorderly
24 conduct on Capitol grounds. Theft of public money,
25 property or records.

1 On January the 6th, 2021, a Joint Session of the
2 United States Congress convened in Washington, D.C., on our
3 Nation's Capitol in order to certify the vote count of the
4 Electoral College of the 2020 presidential election. The
5 United States Capitol building, as Your Honor is aware, is
6 a symbol of democracy and freedom, not only in the United
7 States, but across the world. And on that particular day,
8 the function being performed by this country's elected
9 lawmakers is one of the most important functions undertaken
10 by our government leaders. United States Senators, members
11 of the House of Representatives and the country's Vice
12 President, Mike Pence, were all inside the building doing
13 the work of the American people, the work that they were
14 elected to do, when this defendant and like-minded
15 individuals broke in, breached, unlawfully entered and
16 remained in this building. And this defendant did so all
17 armed, while he was armed with a dangerous weapon.

18 He traveled throughout the building where he
19 accessed highly restricted areas, including Speaker
20 Pelosi's office, where he then proceeded to prop his feet
21 up on the desk, take property, and mock her office,
22 essentially, make a mockery of her and her office appearing
23 in all of the photographs that are before this Court in
24 evidence to very much enjoy this moment of fame.

25 Then, after finally exiting the building, the

1 defendant, still reveling in his moment of notoriety, got
2 on a bullhorn and bragged to the mob, the crowd, about what
3 he had done. And he tried to stir the pot even more, stir
4 up the situation even more by chanting, "Our House, Our
5 House."

6 Eventually, though, he did decide to go back to
7 his truck and head back to the Western District of
8 Arkansas. However, he was sure to turn off his location
9 services on his phone, pay in only cash, and cover his face
10 where he then hurried home to set about removing any
11 damning items of evidentiary value, including his phone,
12 and then arranging to turn himself in to law enforcement.
13 Make no mistake, by then he knew law enforcement was coming
14 for him.

15 Amongst this backdrop, and as a result of what
16 happened at our Nation's Capitol on January the 6th, 2021,
17 we now know there are five dead people, two of which are
18 police officers, and there are over 50 injured. And now
19 there are thousands of National Guard troops guarding and
20 protecting our Capitol. These are the circumstances of
21 this offense.

22 And it's also important, Your Honor, when you
23 look at the nature and circumstances of this offense to
24 also consider the level of planning on the part of the
25 defendant. This goes back to his interview from November

1 of 2020 at "Stop the Steal," another rally in Northwest
2 Arkansas when he made it clear then, quote, "I ain't going
3 down easy. Whatever it takes. Whatever it takes." He was
4 really clear about that. And that was with regard to
5 whatever it takes to overturn what he perceived to be a
6 stolen election.

7 And then the Court can consider that just shy of
8 a week, four or five days prior to his departure for D.C.,
9 the defendant went to Bass Pro Shop where he purchased
10 walkie talkies, mace, and the dangerous weapon that he is
11 seen carrying on his person while he is in the Capitol
12 building on January 6th, '21, 2021. And, again, after the
13 incident paying in cash, covering his face, turning off his
14 location services and removing items from his home, all
15 before turning himself in.

16 What's interesting too, Your Honor, is that in
17 his statement to investigators, he shows up to turn himself
18 in with a wallet full of cash, but no phone. And made it
19 clear that he's a smart man, you won't find anything at my
20 house if you decide to show up with a search warrant. He
21 talked about moving guns. No phone. No phone, no stun
22 gun, just some packaging. No firearms. He moved it all.
23 He initially told the investigators that he went alone, all
24 by himself. I guess maybe that's nuanced. Sometime later
25 in the interview, he then says, well, I might have known

1 some, but he never told him their names. And now we know,
2 while it's true he might have been alone in his truck,
3 that's not the truth. He was out there in Washington,
4 D.C., with his buddies, Mark Hesse and Mr. Lockhart.

5 And we also know that the defendant loves
6 excitement and that by his own statements, that's what got
7 him in trouble. When the Court must look at the weight of
8 the evidence, it couldn't be more clear the weight of the
9 evidence is strong and weighs in favor of detention. It's
10 incredibly strong. There's video evidence. There's
11 surveillance evidence. There's numerous photos. There's
12 receipts, a confession. Obstructive behavior that is
13 corroborative of his consciousness of guilt.

14 The history and characteristics of the defendant,
15 and a lot of what the Court can look at under nature and
16 circumstances can also be looked at by the Court under this
17 section too, his history and characteristics. It's just
18 not credible that he has two dates of birth and that he's
19 tried to fix it at the DMV, but they won't do it. I think
20 I feel comfortable saying that you take your records up to
21 the DMV and they change it, because it's important. It's a
22 government database, the DMV, the driver's license. That's
23 critical. That has to be accurate. Either he didn't try,
24 or he only went once, it's a little bit unclear. But
25 that's just not a credible, reasonable explanation.

1 We also know that back in July of 2020,
2 Fayetteville P.D. gets called out and they respond. They
3 make contact with Mr. Barnett, the defendant, and what is
4 he doing? He's causing a disturbance at a rally while he's
5 armed. September 2020, Fayetteville Police Department,
6 they again have to respond to a call. They make contact
7 with the defendant. This time he's got his rifle and a gun
8 on his hip at another rally. The Court can also consider
9 the "Save the Children" rally photo where he's pictured
10 with young minors. One young female is in possession of a
11 very large firearm. And the defendant is possessing what
12 appears to be a silencer.

13 The Court can consider how he loves excitement
14 and that's what got him in trouble. And the Court can
15 consider how this defendant treated the United States
16 Capitol on January 6th, 2021, how he treated Speaker
17 Pelosi's office and his conduct afterwards; bragging,
18 proud, enjoying his moment in the spotlight.

19 The Court can consider also the conduct of him in
20 the interview and how he treated Tammy Newburn. He
21 interrupted her, wouldn't let her show her phone, and he
22 wanted to control exactly what those agents saw. And, Your
23 Honor, as far as history and characteristics of the
24 defendant, what do the defendant's actions in this case
25 tell this Court about his respect for the law and

1 deterrence? Breaching a highly restricted area while armed
2 with a dangerous weapon in the company of an angry mob and
3 then bragging about it on a bullhorn later, what does that
4 say about respect for the law? If the defendant will
5 travel across the country and engage in this level of
6 criminal behavior because he believes that he is right, and
7 it is the Electoral College that is wrong, what would deter
8 him?

9 With regard to the nature and seriousness of the
10 danger posed to any person or the community that would be
11 posed by this defendant's release, I would like to make a
12 record on that as well. As Your Honor is aware, there has
13 been a bounty put out on this defendant, and he sits in
14 protective custody at the jail. The U.S. Marshals Service
15 have put him in protective custody. There have been
16 threats to his family that began pretty much right after he
17 committed these criminal acts in Washington, D.C. And even
18 today, we now know that the Postal Inspector is
19 investigating mail, hate mail, coming to this defendant's
20 address in Gravette.

21 We also know there are community concerns. Local
22 community members are concerned about what it will do in
23 their communities should this defendant be released today.
24 And Inauguration Day is right around the corner, and there
25 are a lot of concerns about the safety of the community in

1 general on those days. And then you take that with the
2 situation the Court has with all of the other threats, all
3 centered around this defendant and his family.

4 Lastly, I would like to address the defendant's
5 exhibits. And, Your Honor, every case that is in that
6 packet of documents occurred at the U.S. Capitol on
7 January 6th, 2021, and it has its own set of unique facts,
8 every single case. Each defendant who comes before a Court
9 on federal charges arising out of his or her criminal
10 conduct that day does so based on their own particular
11 actions and brings to the Court nature and circumstances,
12 history and characteristics unique to them. And release of
13 each defendant poses a different risk in each case, as Your
14 Honor is aware. And while it is interesting and
15 informative to look at those records, it's also noteworthy
16 that there is not a single person charged with carrying a
17 dangerous weapon in that packet. They are all misdemeanors
18 except for one felony theft, and that felony is based on --
19 it's a felony because of the value of the property stolen
20 from the Capitol police.

21 The review of these other criminal complaints is
22 not a factor contemplated in Title 18 United States Code
23 3142 that this Court should consider as this Court is
24 tasked with determining whether detention or release is
25 appropriate for this defendant who is before Your Honor

1 this afternoon. The defense witnesses, while I know they
2 are all well-intentioned individuals, most of them do not
3 know Mr. Barnett very well. Some haven't seen him in a
4 while, haven't talked to him in a while, don't even know
5 his phone number. Certainly, Ashlee Newburn loves him.
6 Certainly, Tammy Newburn loves him. And they want to see
7 good things happen to him. Sadly, it is the government's
8 position that Ms. Newburn is not an acceptable third-party
9 custodian. And that is based on what we now know what
10 happened after he got back from Washington, and how the
11 defendant can manipulate her. The government has concerns
12 that she would not be able to report any violations to the
13 Court and that she just wouldn't do it.

14 And it is for all these reasons, Your Honor, that
15 the government respectfully requests that Mr. Barnett
16 remain detained pending any further proceedings in this
17 matter.

18 THE COURT: Thank you, Ms. Harris.

19 All right. Mr. Siano?

20 MR. SIANO: Thank you, Your Honor.

21 Your Honor, I'd like to start from the premise
22 that the Bail Reform Statute, when it was initially passed
23 and as it continues to (inaudible), that the Court should
24 seek to try the least onerous set of conditions by which
25 the defendant can be released subject to the conditions in

1 the statute.

2 Now, Mr. Barnett returned home, was told by law
3 enforcement that they wanted to see him on an appointment
4 that was made by his wife, and he kept that appointment on
5 a Friday and voluntarily surrendered. He did that. It's
6 an important point because it bears directly on whether or
7 not he's a risk of flight. All of these colorful
8 presentations and spins on his trip back also say he never
9 took the opportunity to absent himself. He didn't deflect
10 his return home. After he came home on Thursday, he didn't
11 go someplace else. He went down to the sheriff's office
12 and surrendered himself.

13 I tried to present witnesses to this Court, Your
14 Honor, that demonstrate that the individual defendant is
15 fit to be bailed by this Court, to accept the challenge and
16 burden that a release order with conditions would present.
17 I know for a fact pretrial services questioned my client.
18 He answered those questions for about an hour and a half.
19 I know they questioned Ms. Newburn. And my client stated
20 he's willing to comply with the conditions that were
21 brought up in the interview. And I will tell you -- and I
22 have discussed with him at length restricted conditions.
23 And in point in fact, not basically to compliment me or my
24 client, but because I could anticipate the concerns of the
25 Court, not just as to the internet, but in other respects

1 as well, that the Court would impose restricted conditions
2 and we're prepared to meet those.

3 The people I have brought here know Mr. Barnett
4 in his ordinary, everyday life. That's what Your Honor
5 needs to evaluate. I'm not going to respond to the
6 overstated hyperbole that the Assistant United States
7 Attorney presented. I'm certainly not going to try the
8 politics of the election, the politics of the
9 demonstrations afterward, even though defense lawyers in my
10 position might be sorely tested to say to the Court that
11 nobody who stepped to the lectern that day, who got on the
12 podium and provoked this event, has been called before the
13 bar of justice to answer for their comment.

14 My client understands the charges against him.
15 These prosecutors told me on Monday morning in the first
16 conversation when my client was charged with three
17 misdemeanors that there was no way they would grant
18 anything other than detention. Now, I presented five
19 exhibits. And in those exhibits, I present the charges,
20 which are the same statutes against my client. The facts
21 are all different. Every defendants' facts are individual.
22 I presented the arrest warrant. I presented how the Court
23 treated those defendants. I went further. I actually
24 asked the prosecutors to identify for me other cases in
25 which Magistrate Judges or District Court Judges have

1 confronted these charges and had granted bail on whatever
2 conditions. They told me I was not entitled to have that
3 information. That's why Your Honor only has five. But
4 those five are submitted to Your Honor for a more important
5 reason, and that is, I tried to do my homework about the
6 Western District of Arkansas. And make no mistake about
7 it, the Court was very generous to enter my admission pro
8 hac vice. And while I have tried one case in the Eastern
9 District of Arkansas, it was a long time ago and I'm not
10 familiar with the normal caseload and flow of cases before
11 Your Honor. And respectfully, I observed that a case of
12 the type that Mr. Barnett has is not run-of-the-mill,
13 ordinary, recurring sort of a case. But not saying it's
14 more important or it's less important. But I tried to give
15 the Court a window on what other judicial officers are
16 doing in similar circumstances. And that's why I presented
17 those to Your Honor. No two cases are alike.

18 Mr. Barnett has a clean and safe home. He has a
19 stable home life. He answers calls for need and people in
20 need in his community. He's needed by his family, both
21 Ms. Newburn and Ms. Halpin. I think it's just
22 absolutely -- I'm not going to use the word -- it's
23 absolutely inappropriate to suggest that the fact that
24 unknown persons are doing unknown things which lead the
25 Court to issue a threat assessment to my client and to his

1 wife form a basis for denying bail. That leads to the
2 question of, who is doing it and why are they doing it?
3 And that's not the issue.

4 The issue here is, can my client be responsible
5 for his compliance with the Court's order. And the fact
6 that what I will describe as "crackpots and kooks" are
7 using the internet and the U.S. mail to vent their opinions
8 about Mr. Barnett is not an element in Your Honor's
9 consideration.

10 I would ask the Court to look beyond the
11 notoriety and the publicity of this case. They are serious
12 charges. The government's proof, the government is
13 euphoric over the fact that they can identify that my
14 client was in the Capitol. There's no proof laid out here
15 by witnesses other than one FBI agent. And the fact that
16 he was in the Capitol is not the only element of the
17 charges brought against him, and those charges will be
18 answered at trial. It's very facile for Ms. Harris to
19 assume my client's guilt beyond a reasonable doubt because
20 they have him in the building. But there's no evidence as
21 to knowledge, intent, mens rea, permission, lack of
22 permission. I'm not trying the Capitol police. I'm not
23 trying who did what, where. The video Your Honor has
24 indicates that my client was there for a very finite period
25 and left after his interaction with the Capitol police

1 officer. I offer that not to say anything other than this
2 case isn't being tried here. There's no argument with
3 regard to these exhibits. And as far as the fact that --
4 I'm going to put this as broadly as I can -- the fact that
5 my client is outspoken and is a, at base, very, very
6 enthusiastic supporter of Donald J. Trump and is a great
7 believer in the Second Amendment is not the basis for any
8 charge in this case.

9 As far as these two birth dates go, he explained
10 this to pretrial services. They don't have a criminal
11 record in either birth date. They have his fingerprints.
12 And as far as I know for the last 47 years, regardless of
13 what name or birth date you use, if you run fingerprints
14 through every law enforcement index, you come out at the
15 other side. He told pretrial services what happened with
16 his birth date, and I'm not going to try the Department of
17 Motor Vehicles. That's like me saying to you that in New
18 York State, a trip into the Department of Motor Vehicles is
19 a trip into hell administratively. That's not what he's
20 charged with. He's not charged for -- I like Special Agent
21 Willett's phrase -- for whatever "ruckus" took place at any
22 one of these rallies. He wasn't charged with any offense.
23 He wasn't accused of any offense. He wasn't identified as
24 a suspect in any of these offenses. And I suspect to you
25 that there's no weight associated with that.

1 I think Your Honor can shape a release order that
2 provides a sufficient array of conditions that will allow
3 my client to be released, will allow my client to
4 effectively defend himself. And frankly -- and I say this,
5 Your Honor, not in a provocative way -- but that will allow
6 him to have Your Honor build enough of a quote, unquote,
7 "fence" around him that if he stumbles, Your Honor, it will
8 be brought to Your Honor's attention almost immediately.

9 And I'm particularly offended by the notion that
10 they would attack Ms. Newburn as a third-party supervisor.
11 Now, that term is new to me. I will admit that to the
12 Court. I will tell you that in other courts in which I
13 practice, the Court's package up a personal recognizance
14 bond with sureties and they condition the bond on certain
15 obligations of sureties. I was informed here through the
16 good offices of the Federal Public Defenders that there's a
17 restraint on this with regard to a third-party supervisor.
18 It has to be somebody in the home rather than a third-party
19 surety. I can assure the Court I could present acceptable
20 sureties, numerous acceptable sureties who will come up and
21 cosign a bond and they will meet whatever obligations Your
22 Honor state.

23 But the reason Ms. Harris attacked Ms. Newburn
24 the way she did, to make her look on the one hand like an
25 abused spouse, which is an utter distortion, or to be

1 submissive to her husband, which is also untrue as
2 demonstrated by the testimony, is because they are trying
3 to defeat the use of Ms. Newburn as a third-party
4 supervisor. And she said in exactly the words and with the
5 tone that an honest witness would. She's not enthusiastic
6 about turning her domestic partner in to Your Honor, but as
7 best she could under these electronic circumstances, she
8 looked you in the eye and told you she would do it.

9 Your Honor, I believe the Court can shape a set
10 of conditions that will allow Mr. Barnett to be bailed.
11 And I submit to you that Magistrate Judges similarly
12 situated in similar cases across the country have drawn
13 that conclusion. And if there were no other cases, the
14 government would not have turned away with the back of its
15 hand my request for the bail determinations of any other
16 defendant. Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Siano.

18 All right. Do I have Ms. Tammy Newburn? I think
19 she's still participating in the hearing. I would
20 like her -- if I can have you turn your video on,
21 Ms. Newburn, as I rule. Can you hear me okay, Ms. Newburn?

22 MS. TAMMY NEWBURN: Yes.

23 THE COURT: All right. Well, I'm hearing an
24 echo. Okay. I think it's gone away.

25 The parties gave very good, thorough closing

1 arguments. I've carefully considered both arguments and
2 all the evidence presented today. As has been referenced,
3 the Court must look at the applicable statute to determine
4 whether there's any condition or combination of conditions
5 that will reasonably assure the appearance of Mr. Barnett
6 for all court appearances and the safety of any other
7 person and the community.

8 The government has to prove by clear and
9 convincing evidence that there are no conditions that can
10 assure the Court of the safety of other people in the
11 community and by a preponderance of the evidence that there
12 is a risk of nonappearance. In making this determination,
13 the Court must look at many factors as again has been
14 referenced.

15 First, looking at the nature and circumstances of
16 the offense, Mr. Barnett is charged with very serious
17 offenses, the most serious offense being entering Capitol
18 grounds while carrying a stun gun. That offense carries up
19 to 10 years' imprisonment. The other two offenses that he
20 is charged with -- violent entry and disorderly conduct on
21 Capitol grounds -- that carries up to six months'
22 imprisonment. And theft of public property, that carries
23 up to one-year imprisonment. So Mr. Barnett is looking at
24 a possible maximum sentence on all three counts of 11 and a
25 half years imprisonment. So it's certainly a serious

1 offense.

2 Looking at the circumstances of the offense, it
3 certainly turned into a very volatile situation on Capitol
4 grounds that wasn't just created by Mr. Barnett, but many,
5 many other individuals in sort of a mob mentality.
6 However, Mr. Barnett, it appears, was prepared for that
7 type of situation and obtained pepper spray and a stun gun
8 and walkie talkies. The circumstances got so out of hand
9 that the Senators did have to take cover. The Vice
10 President had to be evacuated. And ultimately, five people
11 were killed in the riot at the Capitol, including two
12 officers, and many others were hurt. So certainly the
13 nature of the circumstances of the offense are very
14 serious.

15 Looking at the weight of the evidence against
16 Mr. Barnett, it is very strong. There are photos and
17 videos of Mr. Barnett inside Nancy Pelosi's office. He
18 admitted that he was in her office. He had the letter that
19 was taken from her office and turned that over to the FBI.
20 He left a note that he was there for Nancy Pelosi. And
21 then he bragged about it on a bullhorn in a video after he
22 left the Capitol. So the weight of the evidence is against
23 the defendant.

24 Looking next at the factors that the Court
25 characterizes as the history and characteristics of the

1 defendant, we heard several witnesses say they were
2 surprised by this conduct by Mr. Barnett, that it's not his
3 nature. I will note he does not have anything more than
4 very minor criminal history. He appears to be a
5 law-abiding citizen for the most part, although there have
6 been instances that do cause the Court concerns with him
7 being armed at rallies. However, he has strong family
8 ties, strong community ties. He has been employed, has
9 financial resources. He appears to be a family man. So
10 his history and character in large part weigh in his favor.

11 What I am concerned about, first of all, the fact
12 that Mr. Barnett allegedly turned off his location services
13 when returning to Arkansas and used only cash. It's not a
14 strong leap to infer from that that he didn't want to be
15 located by law enforcement. However, when he did return to
16 Arkansas, he turned himself in to law enforcement. On the
17 other side of that, there are concerns that his phone
18 cannot be located. A phone doesn't just disappear. The
19 stun gun cannot be located. He told law enforcement that
20 they weren't going to find anything. So there was some
21 effort, it appears, on his part to remove anything from the
22 home that he thought could incriminate him.

23 The Court is also concerned about threats that
24 have been made to Mr. Barnett including, as the government
25 mentioned, a bounty put on him. I'm concerned that those

1 threats, they are not just a danger to Mr. Barnett, but to
2 his family as well, to neighbors as well and to the
3 community. There have been threats even to the police
4 department, and as I understand it, even to other
5 individuals in Gravette. So I do have concerns about the
6 safety of the community.

7 However, looking at all of these factors, what I
8 must determine is whether there is a combination of
9 conditions that I can put in place that would reasonably
10 assure the safety of the community and that Mr. Barnett is
11 not a flight risk. And I do believe there are conditions
12 that I could put in place. I am inclined to make these
13 conditions very, very restrictive. And I want to explain
14 the reason I feel that's necessary is to ensure
15 Mr. Barnett's safety, his family's safety, and the
16 community's safety. So this isn't the usual type case
17 where I wouldn't find a need to impose such restrictive
18 conditions, but given the nature and volatility of this
19 situation and that threats have been made, I feel like I
20 need to put more restrictive conditions in place than what
21 I would normally, given the types of offenses that are
22 involved in this case.

23 Mr. Siano, I know you noted you're not real
24 familiar with third-party custodians. That is something
25 that is important to this Court. I prefer a third-party

1 custodian that's going to assure me, that lives with the
2 defendant and will assure me that they will report any
3 violations to me. I prefer that over any type of secured
4 bond or money. Somebody that's going to keep an eye on
5 them and that will report to me.

6 MR. SIANO: Your Honor, it's nice to know that
7 Your Honor believes I'm not too old to learn something new.

8 THE COURT: Certainly not. But the most
9 important thing to me is knowing there's someone there, and
10 that's why I wanted Ms. Newburn, I want to make sure she is
11 listening to me and hearing the conditions that I'm going
12 to impose because I'll hold her accountable as third-party
13 custodian. She's going to be signing off on this bond, and
14 she's going to be promising the Court that if her husband
15 violates any of these conditions, that she will immediately
16 report it to his probation officer.

17 I know there are some concerns about her
18 suitability of a third-party custodian, and I do understand
19 those concerns by the government. But I asked her
20 point-blank, will she report violations. You have assured
21 me, Ms. Newburn, and I'm going to take your word that you
22 will report violations. So the Court -- here is what the
23 Court would propose doing. And I don't want to hear
24 argument again that I should not release Mr. Barnett, but
25 I'll certainly allow comments on the proposed conditions,

1 if there's an objection to the conditions or if the
2 government would ask for any additional conditions.

3 The Court will release Mr. Barnett on a \$5,000
4 unsecured bond. I don't feel it necessary to make it a
5 secured bond. Ms. Tammy Newburn will act as his
6 third-party custodian and he will reside at their residence
7 with her. I will advise my courtroom deputy, Ms. Guerrero,
8 I would like this bond to remain under seal because I do
9 not want their address on the bond to be a public record,
10 so let's make sure that this bond stays under seal.

11 So he'll be released to the third-party custody
12 of Ms. Newburn. He must submit to pretrial services
13 supervision. I intend to place Mr. Barnett on home
14 incarceration and also require that he submit to location
15 monitoring. Now, that is a very restrictive condition. It
16 essentially is 24-hour-a-day lockdown. I want him locked
17 down in his home. I don't know how much property he has,
18 but I would like him to remain in his home, in the
19 perimeters of his residence. So it will be 24-hour-a-day
20 lockdown except for court appearances and other activities
21 that are approved in advance, Mr. Barnett, by your
22 probation officer. You will also be placed on location
23 monitoring so that when you are out to go to a court
24 appearance or other approved outing, that you will have a
25 location monitor that will track where you are.

1 Mr. Barnett, do you have a passport?

2 MR. SIANO: My client does, Your Honor.

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: All right. Do you know where that
5 is?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. I would like that -- if you
8 can advise your wife as to where it is and I would like
9 that turned over to our probation officer immediately.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: I'm sorry. Ms. Newburn?

12 MS. TAMMY NEWBURN: I have it already in my purse
13 for the probation officer.

14 THE COURT: Okay.

15 MS. TAMMY NEWBURN: We talked yesterday. She
16 told me.

17 THE COURT: I would like that turned over
18 immediately to the probation officer.

19 MS. TAMMY NEWBURN: Yes, ma'am.

20 THE COURT: Mr. Barnett, you are not to obtain
21 another passport or any other international travel
22 document. Your travel will be restricted to -- you're
23 going to be on home incarceration, but when necessary for
24 outings, your travel will be restricted to the Western
25 District of Arkansas, Fayetteville Division, and the

1 District of Columbia, again, unless you're given prior
2 approval by your probation officer.

3 This next condition is very important,
4 Mr. Barnett. I want you to avoid all contact, directly or
5 indirectly, with any person who is or may become a witness
6 in the investigation or prosecution. I'm also going to put
7 in place no contact with anyone, Mr. Barnett, that you know
8 participated in the riot at the Capitol. And after this
9 hearing, I would like to go into a separate breakout room
10 with the government, defense counsel, Ms. Reely, and my
11 courtroom deputy, and I would like the government, if they
12 have any specific individuals that they would like to
13 identify that Mr. Barnett is not to have contact with, I'll
14 let you privately identify them to the Court and I will
15 make that a condition of bond. And, again, that document
16 will be under seal. And I'll ask Mr. Siano as well as the
17 probation office, once we have any specific names, to
18 thoroughly go over that with Mr. Barnett.

19 Mr. Barnett, and everyone in your home, you're
20 not to possess a firearm, destructive device or any other
21 weapon. You're not to use alcohol excessively. You're not
22 to use or unlawfully possess any narcotic drug or other
23 controlled substance unless it is prescribed by a licensed
24 medical practitioner. You are also not to obtain a medical
25 marijuana card and you are prohibited from the use of

1 marijuana. If deemed warranted, you will be tested for
2 prohibited substances.

3 The location monitoring, I will require you to
4 pay for that, Mr. Barnett. I do not believe that it's very
5 costly, but I will require you to pay for that.

6 Mr. Barnett, if you have any contact with law enforcement
7 whatsoever, that means a traffic stop on the way to court,
8 any contact with law enforcement, you are to immediately
9 report that to your probation officer. And I'm also going
10 to put in place a condition that Mr. Barnett have no
11 internet access and that all internet capable devices in
12 the home and owned by Ms. Newburn and her daughter be
13 password protected. And you are not allowed to permit
14 Mr. Barnett to access those devices. I feel like that
15 condition is necessary given concerns the government has
16 regarding the upcoming inauguration and the climate that
17 exists right now regarding that. So I will prohibit
18 Mr. Barnett from having any access to the internet.

19 And I believe, Mr. Barnett, you are to report --
20 I believe you have a court appearance in Washington, D.C.,
21 on March 1st and your attorney can give you the information
22 regarding that.

23 So those are the Court's proposed conditions.
24 Let me first ask the government, any additional conditions
25 or any thoughts on the conditions that the Court has

1 imposed? Mr. Fowlkes or Ms. Harris?

2 MR. SIANO: They are muted, Your Honor.

3 THE COURT: All right. We need to unmute both
4 Ms. Harris and Mr. Fowlkes.

5 MR. FOWLKES: No objections to the Court's
6 conditions, Your Honor.

7 THE COURT: All right. And, again, Mr. Fowlkes
8 and Ms. Harris, I will meet in a separate breakout room
9 with you all immediately following this hearing to find out
10 if there are any specific individuals you want to prohibit
11 contact with.

12 All right. Mr. Siano, any objection to the
13 Court's proposed conditions?

14 MR. SIANO: No objection, Your Honor.

15 THE COURT: All right. Those will be the
16 conditions imposed then.

17 Mr. Barnett, I want to advise you that you have
18 every incentive to comply with these conditions. First of
19 all, let me ask you, do you understand all of these
20 conditions?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And do you have any concern about
23 your ability to comply with these conditions?

24 THE DEFENDANT: No, Your Honor. You will have no
25 problems.

1 THE COURT: Ms. Newburn, do you understand all of
2 these conditions?

3 MS. TAMMY NEWBURN: Yes, ma'am.

4 THE COURT: And, again, can you assure the Court
5 that if these conditions are not complied with, you will
6 immediately report any violation?

7 MS. TAMMY NEWBURN: Yes, I will.

8 THE COURT: Mr. Barnett, if you do not comply
9 with any of these conditions, that will be brought to my
10 attention. I would likely issue a warrant for your arrest
11 and I would likely revoke your bond at that point. So you
12 have every incentive to comply with these conditions.

13 I also want to advise you that a failure to
14 comply with these conditions could result in more severe
15 punishment on the charges you're now facing if you're
16 convicted on those charges and could even result in new
17 charges being brought against you. Do you understand that?

18 THE DEFENDANT: I do understand, Your Honor.

19 THE COURT: All right. It will take -- I'm going
20 to meet in a private -- adjourn this hearing and meet in a
21 private breakout room with the government and defense
22 counsel and Ms. Reely. It will take a few minutes to have
23 that conversation and to have the bond forms prepared. It
24 is 5:25. I am not sure that we can process Mr. Barnett's
25 release this evening. We do have to obtain a GPS monitor.

1 There's a lot that has to be put in place. So I would
2 propose if we can have until tomorrow morning to get
3 every -- to get the bond forms prepared, to notify the
4 jail, to get the GPS device ready and set up at
5 Mr. Barnett's home. Is that agreeable with you, Mr. Siano?

6 MR. SIANO: Judge, I'd suggest that no earlier
7 than noon. The Court and its personnel, clerks and
8 otherwise, have been extraordinarily courteous to us and I
9 think we and my client would be happy to show reciprocal
10 courtesy. Noon at the earliest, Judge, as long as it's
11 tomorrow and we're not spilling into Monday, which is what
12 worries me, which worries me tremendously.

13 THE COURT: Yes. I will ask, then, that we'll
14 try to shoot for around noon tomorrow to secure his
15 release.

16 All right. Before we go into a private breakout
17 room, before I adjourn this hearing and go into a private
18 breakout room, is there anything else we need to put on the
19 record from the government?

20 MS. HARRIS: Yes, Your Honor. The government
21 would respectfully request for a three-day stay of the
22 release order as our colleagues in D.C. are appealing Your
23 Honor's decision to the Chief Judge in D.C.

24 THE COURT: All right. That's something I want
25 to look at. I'd like to look at the statute. So I will --

1 we're not set to release Mr. Barnett until noon tomorrow,
2 so I want some time to look at the statute and I will be in
3 contact with you all this evening and let you know whether
4 I'll grant that stay or not.

5 MS. HARRIS: Thank you, Your Honor. That's all
6 that we have.

7 THE COURT: All right.

8 MR. SIANO: Ms. Guerrero, may I ask, I don't know
9 who the court reporter is, but I want to put on the record
10 we'd like a transcript. If the government is getting a
11 transcript, we'd like a copy too. And I see Ms. Guerrero
12 nodding. Whatever needs to be done. We managed to
13 navigate my pro hac vice fee without too much delay, so I'm
14 sure I can do whatever it is to advance the transcript
15 costs associated with my side of this, but I will ask for a
16 transcript. Thank you.

17 THE COURT: All right. I believe you can contact
18 Ms. Guerrero and make arrangements to obtain a transcript.

19 MR. SIANO: Thank you, Judge.

20 THE COURT: All right. Mr. Siano, is there
21 anything else we need to put on the record?

22 MR. SIANO: No, Your Honor.

23 THE COURT: All right. The Court, then, is going
24 to adjourn this hearing.

25 Mr. Ballentine, would it be easier to put -- I

1 need myself, Mr. Siano, Mr. Fowlkes, Ms. Harris,
2 Ms. Guerrero and Ms. Reely in a separate breakout room.
3 Would it be easier to just adjourn the hearing and set up a
4 new call? Or how --

5 MR. BALLENTINE: No, you can go in a room.
6 That's no problem.

7 THE COURT: You can put us into a breakout room?

8 MR. BALLENTINE: Yeah, no problem.

9 THE COURT: All right. Okay, then. This hearing
10 will be adjourned and I will meet privately then with
11 Mr. Siano, Ms. Harris, Mr. Fowlkes, Ms. Reely and
12 Ms. Guerrero. Thank you all.

13 MR. FOWLKES: Thank you, Your Honor.

14 MR. SIANO: Thank you, Judge.

15 MS. HARRIS: Thank you.

16 (proceedings concluded)
17
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25

C E R T I F I C A T E

I, Paula K. Barden, CCR, RPR, RMR, Federal Official Court Reporter, in and for the United States District Court for the Western District of Arkansas, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the proceedings, transcribed from electronic media, held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of January 2021.



PAULA K. BARDEN, CCR, RPR, RMR #700
Federal Official Court Reporter
Western District of Arkansas

EXHIBIT F

UNITED STATES DISTRICT COURT

for the
District of ColumbiaUnited States of America
v.
Richard Barnett aka "Bigo"

Case No.

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
(name of person to be arrested) Richard Barnett aka "Bigo",
who is accused of an offense or violation based on the following document filed with the court:

☐ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☒ Complaint
☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☐ Order of the Court

This offense is briefly described as follows:

18 U.S.C. 1752(a)- Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority

40 U.S.C. 5104(e)(2)- Violent Entry and Disorderly Conduct on Capitol Grounds

18 U.S.C. 641- Theft of Public Money, Property, or Records

Date: 01/07/2021G. Michael Harvey
2021.01.07 19:49:39
-05'00'

Issuing officer's signature

City and state: Washington, DCG. MICHAEL HARVEY, U.S. Magistrate Judge
Printed name and title

Return

This warrant was received on (date) 1/7/2021, and the person was arrested on (date) 01/08/2021
at (city and state) Bentonville, Arkansas.

Date: 01/11/2021

Arresting officer's signature

Jonathan Willett / Special Agent / FBI
Printed name and title

UNITED STATES DISTRICT COURT

for the
District of Columbia

WESTERN DISTRICT OF ARKANSAS

FAYETTEVILLE DIVISION

5:21MJ-5001-001

FILED ON JANUARY 8, 2021

United States of America

v.

Richard Barnett aka "Bigo"

Case: 1:21-mj-00013

Assigned to: Judge Harvey, G. Michael

Assign Date: 1/7/2021

Description: COMPLAINT W/ARREST WARRANT

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of _____ in the
_____ District of Columbia, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. 1752 (a)

Knowingly Entering or Remaining in any Restricted Building or Grounds
Without Lawful Authority

40 U.S.C. 5104(e)(2)

Violent Entry and Disorderly Conduct on Capitol Grounds

18 U.S.C. 641

Theft of Public Money, Property, or Records

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.

Complainant's signature

James Soltes, U.S. Capitol Police

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by

Telephone (specify reliable electronic means).

Date: 1/7/2021

G. Michael Harvey

2021.01.07 19:48:32 -05'00'

Judge's signature

City and state: Washington, D.C.

Magistrate Judge G. Michael Harvey

Printed name and title

STATEMENT OF FACTS

On January 6, 2021, your affiant, Special Agent James Soltes of the Capitol Police Department, was on duty and performing my official duties as an Officer in the United States Capitol Police. Specifically, I was detailed and deployed in the surrounding area of the United States Capitol building to provide protective functions for members of Congress and their staff. As a Special Agent in the United States Capitol Police, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws.

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. Specifically, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the 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. Vice President Mike Pence was present and presiding in the Senate chamber.

With the joint session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. Temporary and permanent barricades surround 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 approximately 2:00 p.m., certain individuals in the crowd forced their way through, up and over the barricades and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. At such time, the joint session was 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, at approximately 2:15 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows. Shortly thereafter, 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 approximately 8:00 p.m.

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.

In the course of my duties, I learned that an individual entered the restricted office area of the Speaker of the House of Representatives Nancy Pelosi and took photographs with his feet propped up on furniture. Those photos were circulated on numerous news media platforms which identified the individual as RICHARD BARNETT of Gravette, Arkansas. Capitol Police searched law enforcement databases including Department of Motor Vehicle records and obtained a photograph and biographical information for BARNETT. These records confirmed that the individual in the news photographs did in fact appear to be RICHARD BARNETT of Gravette, Arkansas DOB 07/12/1960.

The photos circulated by news media depict BARNETT in and around U.S. Capitol property. One photo shows BARNETT seated inside of Nancy Pelosi's office with his feet propped on a desk with an America flag lying on an adjacent credenza. BARNETT is wearing a hat, plaid jacket, blue jeans, and brown boots in the photo. Another photo depicts BARNETT seated holding

an envelope in his left hand addressed to The Honorable Billy Long 2453 Rayburn House Office Building Washington, D.C. 20515 and a digital signature of Nancy Pelosi. In another photo, an individual whose face is blocked by a flag but appears to be BARNETT based on his clothing is seated at a different desk with his feet propped holding an American flag and a cell phone. Another unidentified individual in a brown jacket is sitting next to him on a couch.

Video surveillance from a camera positioned outside of the Speaker's main office door captures individuals entering and exiting the office. At approximately 2:30 p.m., several unidentified individuals appear to try the door to the office however the door is locked. At approximately 2:33 p.m. an unidentified individual pushes in the door to the office. At 2:50 p.m. BARNETT is captured on surveillance video carrying an American flag and a cellular phone while entering the doors which lead to the Speaker's conference room adjoining the main office space. As he is entering it, he is following behind the unidentified individual in the brown jacket. At 2:56 p.m. BARNETT is captured leaving the main office doors of the Speaker's office space with only a phone in his hand.

On the same date, BARNETT spoke to media outlets in a video recording. In the recording, BARNETT is wearing the same hat and plaid jacket as worn inside of the Speaker's office except that BARNETT appears to have removed his shirt. BARNETT is asked by a person off camera how BARNETT obtained an envelope he is holding, which was addressed to The Honorable Billy Long 2453 Rayburn House Office Building Washington, D.C. 20515 with a return address of Office of the Speaker U.S. House of Representatives Washington, D.C. 20515 and a digital signature of Nancy Pelosi. BARNETT states "I did not steal it. I bled on it because they were macing me and I couldn't fucking see so I figured I am in her office. I got blood on her office. I put a quarter on her desk even though she ain't fucking worth it. And I left her a note on her desk that says "Nancy, Bigo was here, you Bitch."

In another photograph which appears to be taken outside on Capitol grounds, BARNETT is depicted holding the envelope he purported to have taken from Speaker Pelosi's office. Based on the writing on the envelope, the envelope appears to be the same envelope BARNETT was photographed holding inside of the office building.

Based on the foregoing, your affiant submits that there is probable cause to believe that BARNETT violated 18 U.S.C. § 1752(a), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; or (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions. For purposes of Section 1752 of Title 18, a restricted building includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant also submits that there is probable cause to believe that BARNETT violated 40 U.S.C. § 5104(e)(2)(C), (D), and (G), which makes it a crime to willfully and knowingly (C) with the intent to disrupt the orderly conduct of official business, enter or remain in a room in any of the Capitol Buildings set aside or designated for the use of – (i) either House of Congress or a Member, committee, officer, or employee of Congress, or either House of Congress; or (ii) the Library of Congress; (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Ground or in any of the Capitol Buildings with the intent to

impede, disrupt or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; or (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Furthermore, your affiant submits, there is probable cause to believe that BARNETT also violated 18 U.S.C. § 641, which makes it a crime to steal or purloin..., a thing of value of the United States or of any department or agency thereof or any property made...for the United States or any department or agency thereof . . .” For purposes of this section, the word “value” means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.



SPECIAL AGENT JAMES SOLTES
CAPITOL POLICE DEPARTMENT

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 7th day of January 2021.



G. Michael Harvey
2021.01.07 19:49:19
-05'00'

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

for the WESTERN DISTRICT OF ARKANSAS
District of Columbia FAYETTEVILLE DIVISION

5:21MJ-5001-001

FILED ON JANUARY 12, 2021

United States of America)

v.)

Richard Barnett aka "Bigo")

Case: 1:21-mj-00013

Assigned to: Judge Harvey, G. Michael

Assign Date: 1/12/2021

Description: COMPLAINT W/ARREST WARRANT

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of _____ in the
_____ District of Columbia, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. 1752 (a)(1)&(2);(b)(1)(A)

Knowingly Entering or Remaining in any Restricted Building or Grounds
Without Lawful Authority While Carrying a Dangerous Weapon

40 U.S.C. 5104(e)(2)(C)(D) & (G)

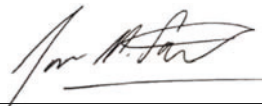
Violent Entry and Disorderly Conduct on Capitol Grounds

18 U.S.C. 641

Theft of Public Money, Property, or Records

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.

Complainant's signature

James Soltes, US Capitol Police

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by

Telephone (specify reliable electronic means).

Date: 01/12/2020



G. Michael Harvey

2021.01.12 11:55:30

-05'00'

Judge's signature

City and state: Washington, DC

Magistrate Judge G. Michael Harvey

Printed name and title

STATEMENT OF FACTS

On January 6, 2021, your affiant, Special Agent James Soltes of Capitol Police Department was on duty and performing my official duties as an Officer of the United States Capitol Police. Specifically, I am assigned to the Criminal Investigations Section tasked with investigating criminal activity in and around the Capitol grounds. As a Special Agent of the Capitol Police Department I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws. 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.

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.

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.

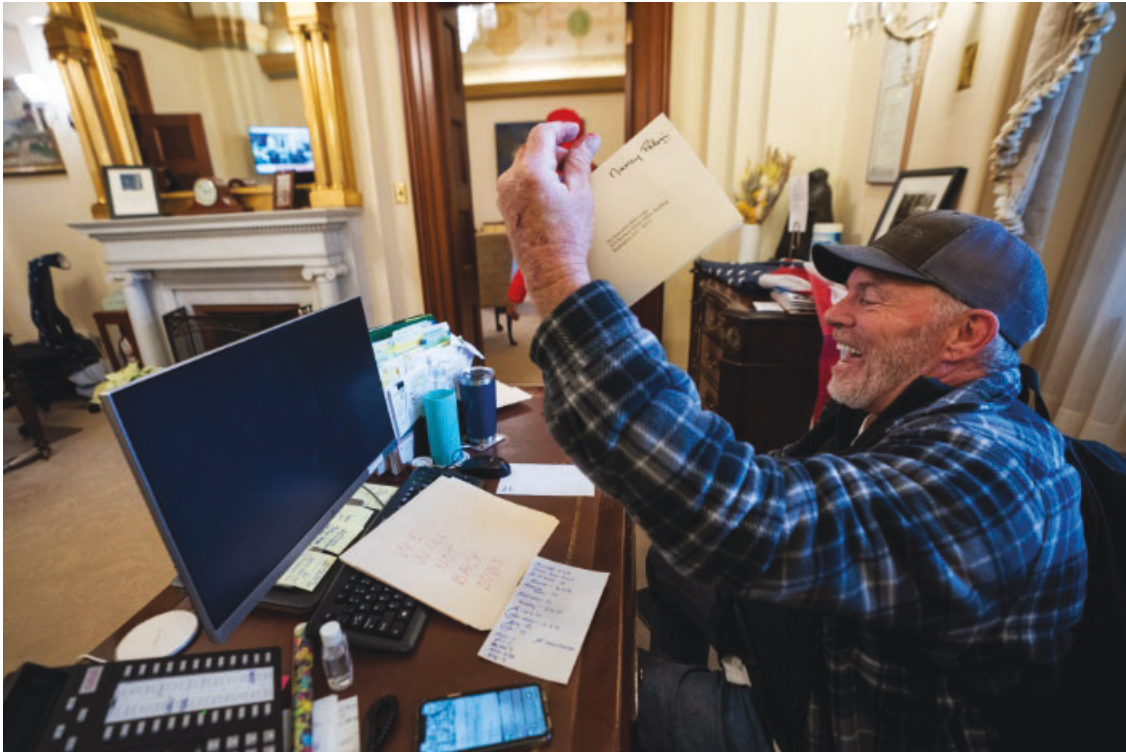
During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be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

In the course of my duties, I learned that an individual entered the restricted office area of the Speaker of the House of Representatives Nancy Pelosi and took photographs with his feet propped up on furniture. Those photos were circulated on numerous news media platforms which identified the individual as RICHARD BARNETT of Gravette, Arkansas. Capitol Police searched law enforcement databases including Department of Motor Vehicle records and obtained a

photograph and biographical information for BARNETT. These records confirmed that the individual in the news photographs did in fact appear to be RICHARD BARNETT of Gravette, Arkansas DOB 07/12/1960.

The photos circulated by news media depict BARNETT in and around U.S. Capitol property. One photo shows BARNETT seated inside of Nancy Pelosi's office with his feet propped on a desk with an America flag lying on an adjacent credenza. BARNETT is wearing a hat, plaid jacket, blue jeans, and brown boots in the photo. Another photo depicts BARNETT seated holding an envelope in his left hand addressed to The Honorable Billy Long 2453 Rayburn House Office Building Washington, D.C. 20515 and a digital signature of Nancy Pelosi. In another photo, an individual whose face is blocked by a flag but appears to be BARNETT based on his clothing is seated at a different desk with his feet propped holding an American flag and a cell phone. Another unidentified individual in a brown jacket is sitting next to him on a couch.



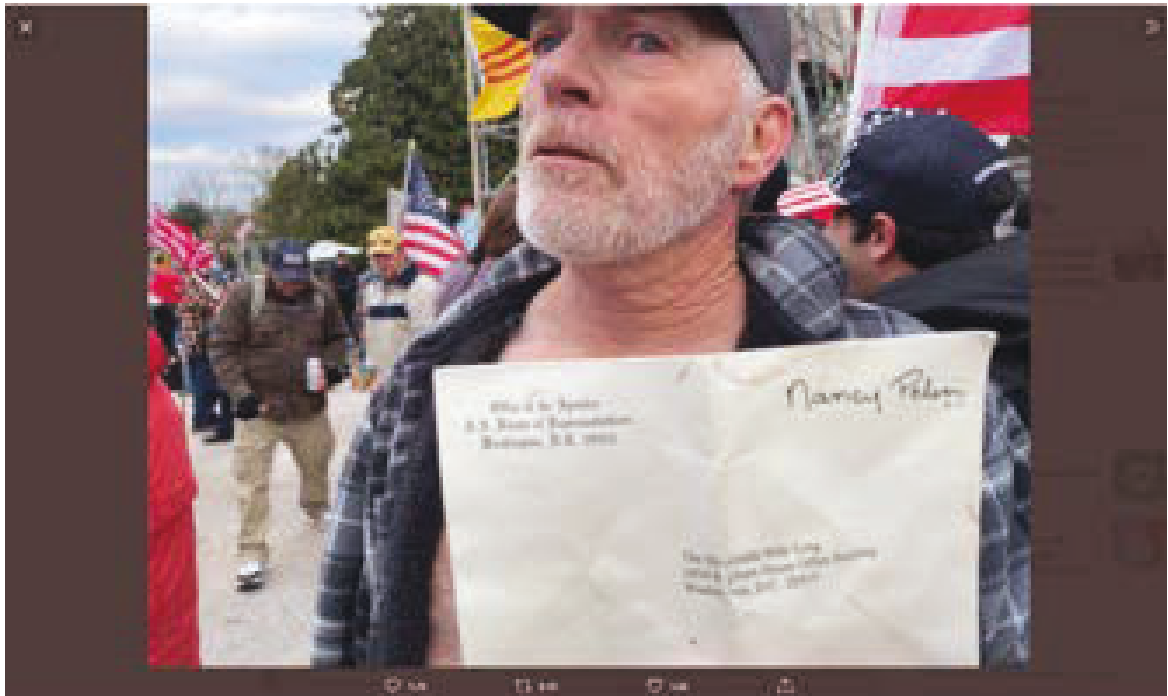


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unidentified individuals appear to try the door to the office however the door is locked. At approximately 2:33 p.m. an unidentified individual pushes in the door to the office. At 2:50 p.m. BARNETT is captured on surveillance video carrying an American flag and a cellular phone while entering the doors which lead to the Speaker's conference room adjoining the main office space. As he is entering it, he is following behind the unidentified individual in the brown jacket. At 2:56 p.m. BARNETT is captured leaving the main office doors of the Speaker's office space with only a phone in his hand.

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In another photograph which appears to be taken outside on Capitol grounds, BARNETT is depicted holding the envelope he purported to have taken from Speaker Pelosi's office. Based on the writing on the envelope, the envelope appears to be the same envelope BARNETT was photographed holding inside of the office building.



On January 8, 2021, BARNETT waived his Miranda rights and participated in a custodial interview with law enforcement. During the interview, Barnett admitted driving from Arkansas to Washington D.C. to participate in the "Stop the Steal" Rally. During the course of the protests, BARNETT stated he was pushed inside of the Capitol by a large crowd. BARNETT returned the

above pictured envelope to law enforcement during the interview. Law enforcement had previously learned from Speaker Pelosi's staff that the envelope was empty at the time it was taken from Speaker Pelosi's office.

On January 11, 2021, your affiant learned that law enforcement received a tip that in one or more of the photographs of BARNETT seated in Speaker Pelosi's office BARNETT was carrying a stun gun. Your affiant reviewed the photographs again and determined the tip to be accurate. As seen in the zoomed in box in the photograph below, the ZAP brand is clearly visible on the stun gun tucked into BARNETT's pants. Based on the brand on the weapon, and its appearance, the weapon appeared to be a ZAP Hike N Strike 950,000 Volt Stun Gun Walking Stick.



On January 11, 2021, your affiant also learned that law enforcement conducted a search on January 8, 2021, at the residence of BARNETT located on Mount Olive Road, Gravette, Arkansas pursuant to a search warrant issued by Chief U.S. Magistrate Judge Erin L. Wiedemann in the Western District of Arkansas. During the execution of that warrant, law enforcement observed the empty packaging for a ZAP Hike n' Strike Hiking Staff High Voltage Stun Device inside the home. This packaging is shown in the below photograph.

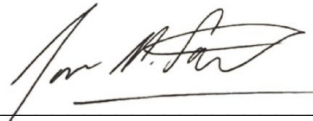


Based on the foregoing, your affiant submits that there is probable cause to believe that BARNETT violated 18 U.S.C. § 1752(a), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; or (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions. Your affiant further submits that there is probable cause to believe that BARNETT violated 18 U.S.C. § 1752(b)(1)(A) which makes a violation of 18 U.S.C. § 1752(a) a crime punishable by up to 10 years imprisonment where the person, during and in relation to the offense, uses or carries a deadly or dangerous weapon or firearm. For purposes of Section 1752 of Title 18, a restricted building includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant also submits that there is probable cause to believe that BARNETT violated 40 U.S.C. § 5104(e)(2)(C), (D), and (G), which makes it a crime to willfully and knowingly (C) with the intent to disrupt the orderly conduct of official business, enter or remain in a room in any of the Capitol Buildings set aside or designated for the use of – (i) either House of Congress or a Member, committee, officer, or employee of Congress, or either House of Congress; or (ii) the Library of Congress; (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Ground or in any of the Capitol Buildings with the intent to impede, disrupt or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a

committee of Congress or either House of Congress; or (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Furthermore, your affiant submits, there is probable cause to believe that BARNETT also violated 18 U.S.C. § 641, which makes it a crime to steal or purloin..., a thing of value of the United States or of any department or agency thereof or any property made...for the United States or any department or agency thereof . . .” For purposes of this section, the word “value” means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.



SPECIAL AGENT JAMES SOLTES
CAPITOL POLICE DEPARTMENT

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephone, this 12th day of January 2021.



G. Michael Harvey
2021.01.12 11:55:50
-05'00'

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

V.

CASE NO. 5:21MJ5001-001

RICHARD BARNETT

DEFENDANT

WAIVER OF PERSONAL APPEARANCE

I understand I have the absolute right to appear in person before the Court. After consulting with counsel, however, I choose to waive my right to appear in person for hearings before a Magistrate Judge, including my initial appearance and/or/arraignment and detention hearing, and I opt instead to appear via video conference.

Date: 1/11/21

 Defendant's Signature - Richard Barnett


 Signature of Defendant's Attorney

Anthony Siano

Printed Name of Defendant's Attorney

RENUNCIA A COMPARECER EN PERSONA

Entiendo que tengo el derecho absoluto de presentarme en persona ante el tribunal. Sin embargo, despues de consultarlo con mi abogado he decidido renunciar a mi derecho de presentarme en persona a mis audiencias ante el Magistrado. Incluyendo mi comparecencia inicial y/o la comparecencia de presentacion de acusaciones, al igual que la audiencia de fianza. En lugar de ello he optado por presentarme por video conferencia.

Fecha: _____

Firma del Acusado_____
Firma del abogado defensor_____
Nombre del abogado defensor

WESTERN DISTRICT OF ARKANSAS

FAYETTEVILLE DIVISIONMINUTES

USA _____

PLAINTIFF

ATTY: Clay Fowlkes _____

Kim Harris

Richard Barnett _____

DEFENDANT

ATTY: Anthony J Siano _____JUDGE: Erin L. Wiedemann, U. S. Magistrate Judge _____REPORTER: Roxana Guerrero, ECRO _____CLERK: Roxana Guerrero _____CASE NO. 5:21-MJ-05001-001 _____DATE: January 15, 2021 _____ACTION: Detention Hearing _____TIMEMINUTES

12:52 pm	CONVENE-Room 210
	Court sets out purpose of hearing
	Government invokes the rule
	Government exhibits 1-12 -admitted
	Defense exhibits A,B,C,D and E -admitted
2:13 pm	Testimony on behalf of Government begins
	Witness identified and sworn
	G1.) FBI SA Jonathan Willett
	Testimony on behalf of Government continues
	Government rests
	Testimony on behalf of Defense begins
	D1.) Jeff House
	Witness identified and sworn
	D2.) Jaklyn Chalk
	Witness identified and sworn
	D3.) Joseph Martinez
	Witness identified and sworn
	D4.) Marie Halpin
	Witness identified and sworn
	D5.) Ashlee Newburn
	Jack Schisler, FPD appointed
	Witness identified and sworn
	D6.) Earl Scroggin

TIME

MINUTES

[illegible]

AO 432
(Rev. 2/84)

Administrative Office of the United States Courts

WITNESS AND EXHIBIT RECORD

DATE 1/15/2021	CASE NUMBER 5:21-MJ-05001-001	OPERATOR Roxana Guerrero			PAGE NUMBER 1	
NAME OF WITNESS		DIRECT	CROSS	REDIRECT	RECROSS	PRESIDING OFFICIAL
G1.SA Jonathan Willett		X	X	X		X
D1.Jeff Houpe		X	X			
D2.Jaklyn Chalk		X	X			
D3.Joseph Martinez		X	X			
D4. Marie Halpin		X	X			
D5. Ashlee Newburn		X	X	X		X
D6. Earl Scroggin		X	X			
D7. Tammy Newburn		X	X			X
EXHIBIT NUMBER	DESCRIPTION				ID	ADMITTED IN EVIDENCE
Gov. Exhibit 1	Surveillance Video				X	X
Gov. Exhibit 2	Surveillance Video				X	X
Gov. Exhibit 3	Photo of Barnett (feet on desk)				X	X
Gov. Exhibit 4	Photo of Barnett (holding letter)				X	X
Gov. Exhibit 5	Photo of Barnett (standing with stun gun visible)				X	X
Gov. Exhibit 6	YouTube Video of Barnett				X	X
Gov. Exhibit 7	Photo of stun gun box				X	X
Gov. Exhibit 8	Receipt from Bass Pro				X	X
Gov. Exhibit 9	Video from Bass Pro				X	X
Gov. Exhibit 10	Photo of letter				X	X

AO 432
(Rev. 2/84)

Administrative Office of the United States Courts

WITNESS AND EXHIBIT RECORD

DATE 1/15/2021	CASE NUMBER 5:21-MJ-05001-001	OPERATOR Roxana Guerrero			PAGE NUMBER 1	
NAME OF WITNESS		DIRECT	CROSS	REDIRECT	RECROSS	PRESIDING OFFICIAL
EXHIBIT NUMBER	DESCRIPTION			ID	ADMITTED IN EVIDENCE	
Gov. Exhibit 11	Photo of Barnett with silencer			X	X	
Gov. Exhibit 12	News interview with Barnett (November 2020)			X	X	
Def. Exhibit A-E	Documents relating to cases to other Defendants arrested			X	X	
	in relation to the protests					

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 5:21-MJ-5001

RICHARD BARNETT

DEFENDANT

O R D E R

At the conclusion of the detention hearing on this date, the Court determined that the Defendant should be released on bond.

The Government moved for a three-day stay of the release order to allow it file an appeal under 18 U.S.C. § 3145(a). The motion is DENIED, as the Court believes that the very restrictive conditions of release imposed, including home incarceration and location monitoring, will ensure that the Defendant will not pose a flight risk or danger pending any appeal, and that the Defendant can easily be taken back into custody should the release order be overturned.

IT IS SO ORDERED this 15th day of January, 2021.

s/ Erin L. Wiedemann

HON. ERIN L. WIEDEMANN
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No.5:21MJ-5001-001

Corresponding Case No. 1:21-mj-00013
USDC District of Columbia

RICHARD BARNETT aka “BIGO”

DEFENDANT

ORDER

At the initial appearance conducted on a Complaint from the District of Columbia, the defendant waived the issues of identity and probable cause pending removal of the case to the District of Columbia. The Defendant requested a detention hearing be set in this District. Accordingly, the Defendant is considered detained and remanded to the custody of the United States Marshals Service pending outcome of the detention hearing in this District.

The Detention hearing is scheduled for Friday January 15, 2021 at 12:30 p.m. via zoom.

SO ORDERED this 12th day of January, 2021.

/s/ Erin L. Wiedemann

HONORABLE ERIN L. WIEDEMANN
UNITED STATES CHIEF MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 5:21-MJ-5001

RICHARD BARNETT

DEFENDANT

O R D E R

The District Court Clerk is directed to file the bond granted by this Court under seal. The Defendant shall not be released on this bond, as a stay has been issued in the District of Columbia pending an appeal of the release decision.

IT IS SO ORDERED this 16th day of January, 2021.

s/ Erin L. Wiedemann

HON. ERIN L. WIEDEMANN
UNITED STATES MAGISTRATE JUDGE

WESTERN DISTRICT OF ARKANSAS

FAYETTEVILLE DIVISION

5:21MJ-5001-001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED ON JANUARY 19, 2021

UNITED STATES OF AMERICA

v.

RICHARD BARNETT,
Defendant.:
:
:
:
:
:
:

MAGISTRATE NO. 21-MJ-13 (GMH)

TRANSPORT ORDER

Having considered the United States' Motion to have the defendant Richard Barnett transported from the Western District of Arkansas to the District of Columbia for further proceedings on the Complaint filed against him, it is hereby **ORDERED**

That the United States Marshals Service transport the defendant forthwith from the Western District of Arkansas to the District of Columbia for further proceedings in this matter.

DATE: January 15, 2021



A handwritten signature in cursive script, reading "Beryl A. Howell".

BERYL A. HOWELL
CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT

for the

Western District of Arkansas

United States of America)

v.)

Case No. 5:21-mj-05001)

Richard Barnett aka Bigo)

Defendant)

Charging District's)

Case No. 1:21-mj-00013)

COMMITMENT TO ANOTHER DISTRICT

The defendant has been ordered to appear in the _____ District of Columbia,
 (if applicable) _____ division. The defendant may need an interpreter for this language:
N/A.

The defendant: ☒ will retain an attorney.
☐ is requesting court-appointed counsel.

The defendant remains in custody after the initial appearance.

IT IS ORDERED: The United States marshal must transport the defendant, together with a copy of this order, to the charging district and deliver the defendant to the United States marshal for that district, or to another officer authorized to receive the defendant. The marshal or officer in the charging district should immediately notify the United States attorney and the clerk of court for that district of the defendant's arrival so that further proceedings may be promptly scheduled. The clerk of this district must promptly transmit the papers and any bail to the charging district.

Date: 01/19/2021

Judge's signature

Hon. Erin L. Wiedemann U.S. Magistrate Judge

Printed name and title

CLOSED

U. S. District Court
Western District of Arkansas (Fayetteville)
CRIMINAL DOCKET FOR CASE #: 5:21-mj-05001-ELW All Defendants

Case title: USA v. Barnett
 Other court case number: 1:21-mj-00013 District of Columbia

Date Filed: 01/08/2021
 Date Terminated: 01/19/2021

Assigned to: Honorable Erin L. Wiedemann

Defendant (1)

Richard Barnett
TERMINATED: 01/19/2021
also known as
Bigo
TERMINATED: 01/19/2021

represented by **Anthony J Siano**
 Anthony J. Siano, ESQ.
 333 Westchester Avenue
 Suite S302
 White Plains, NY 10604
 914-997-0100
 Fax: 914-997-0100
 Email: tonysiano@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

18:1752(a)-KNOWINGLY ENTERING OR
 REMAINING IN ANY RESTRICTED
 BUILDING OR GROUNDS WITHOUT
 LAWFUL AUTHORITY; 40:5104(e)(2)-
 VIOLENT ENTRY AND DISORDERLY
 CONDUCT ON CAPITOL GROUNDS;

Disposition

18:641-THEFT OF PUBLIC MONEY,
PROPERTY, OR RECORDS

Plaintiff

USA

represented by **Kimberly Nicole Davis Harris**
United States Attorney's Office
414 Parker Avenue
Fort Smith, AR 72901
(479) 783-5125
Fax: (479) 441-0578
Email: Kimberly.Harris@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
01/08/2021		Arrest (Rule 5) of Richard Barnett.Other District: District of Columbia USDC Case No. 1:21-mj-00013. (rg) (Entered: 01/11/2021)
01/08/2021	<u>1</u>	COMPLAINT as to Richard Barnett. (rg) (Entered: 01/11/2021)
01/08/2021	<u>2</u>	THE DOCUMENT IS RESTRICTED TO COURT USERS. Arrest Warrant as to Richard Barnett.(USDC, District of Columbia, Case No. 1:21-mj-00013). (rg) (Entered: 01/11/2021)
01/11/2021	<u>3</u>	Arrest Warrant Returned Executed on 1/8/2021 as to Richard Barnett.(USDC, District of Columbia, Case No. 1:21-mj-00013) (rg) (Entered: 01/11/2021)
01/11/2021	4	TEXT ONLY ORDER Setting Hearings as to Richard Barnett. This hearing will be accessible via video conference ONLY. Access to the courthouse will not be allowed. Any non-party desiring access to the hearing should contact chambers at ELWinfo@arwd.uscourts.gov by 1/11/2021 5:00 PM and state their interest in the case. Recording of these proceedings by any means is prohibited (see FRCrimP 53 and Local Rule 83.2(a)). Violation of this prohibition may result in sanctions. Disruptive behavior will not be tolerated and may result in automatic removal from the conference. Please keep devices on mute unless asked to speak by the judge. Initial Appearance - Rule 5 set for 1/12/2021 03:00 PM before Honorable Erin L. Wiedemann. Signed by Honorable Erin L. Wiedemann on January 11, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/11/2021)
01/11/2021	<u>5</u>	WAIVER of PERSONAL APPEARANCE at a Rule 5 Initial Appearance pursuant to the CARES Act of 2020 with the consent of the Defendant, or the Juvenile, after consultation with counsel by Richard Barnett. (rg) (Entered: 01/11/2021)
01/11/2021	<u>6</u>	MOTION for Anthony J. Siano to Appear Pro Hac Vice by Richard Barnett. (src) (Entered: 01/11/2021)
01/11/2021		CLERK'S NOTICE REGARDING FILING FEE. The following document was received and filed without the appropriate filing fee as to Richard Barnett : <u>6</u> MOTION for Anthony J. Siano to Appear Pro Hac Vice.

		<p>You <u>MUST</u> pay the filing fee of \$ 100.00 or file a motion to proceed In Forma Pauperis, if appropriate, within 2 business days.</p> <p>Present your payment to the appropriate Divisional Office or Pay Online, using the Criminal -> Other Documents -> Filing Fee Submitted event. (src) (Entered: 01/11/2021)</p>
01/12/2021	<u>7</u>	<p>ORDER granting <u>6</u> Motion to Appear Pro Hac Vice. Anthony Siano appearing for as to Richard Barnett (1). The Court waives the requirement that local counsel be designated. Mr. Siano is directed to immediately register for Pro Hac Vice filer access through PACER and enter his appearance in this matter. Mr. Siano is further directed to immediately pay the requisite Pro Hac Vice fee immediately following the unsealing of this case. Signed by Honorable Erin L. Wiedemann on January 12, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/12/2021)</p>
01/12/2021	<u>8</u>	<p>NOTICE OF ATTORNEY APPEARANCE: Anthony J Siano appearing for Richard Barnett. (src) (Entered: 01/12/2021)</p>
01/12/2021	<u>9</u>	<p>AMENDED COMPLAINT as to Richard Barnett. (rg) (Entered: 01/12/2021)</p>
01/12/2021	<u>10</u>	<p>THIS DOCUMENT IS RESTRICTED TO CASE PARTICIPANTS AND COURT USERS.</p> <p>Penalties as to Richard Barnett. (rg) (Entered: 01/12/2021)</p>
01/12/2021	<u>11</u>	<p>THE DOCUMENT IS FILED UNDER SEAL WITH THE COURT.</p> <p>PRETRIAL REPORT in case as to Richard Barnett. (tree) (Entered: 01/12/2021)</p>
01/12/2021		<p>Case unsealed as to Richard Barnett. (rg) (Entered: 01/12/2021)</p>
01/12/2021	12	<p>TEXT ONLY Minute Entry for proceedings held before Honorable Erin L. Wiedemann: Initial Appearance in Rule 5 Proceedings as to Richard Barnett held on 1/12/2021. Appearance entered by Anthony Siano, Retained, on behalf of defendant. Defendant waived the issues of identity and probable cause in this district. Defendant requested a Detention Hearing in open court. Defendant remanded to custody of U.S. Marshals Service pending Detention Hearing in this district. (Roxana Guerrero-Digital Recorder) (Proceedings held in Fayetteville-Room 210) (rg) (Entered: 01/12/2021)</p>
01/12/2021	<u>13</u>	<p>ORDER OF DETENTION as to Richard Barnett. Defendant remanded to the custody of the U.S. Marshals Service pending hearing or release on bond. Detention Hearing set for 1/15/2021 12:30 PM in Fayetteville - 2nd flr (Rm 210) before Honorable Erin L. Wiedemann. Signed by Honorable Erin L. Wiedemann on January 12, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/12/2021)</p>
01/12/2021	14	<p>TEXT ONLY ORDER Setting Hearings as to Richard Barnett. This hearing will be accessible via video conference ONLY. Access to the courthouse will not be allowed. Any non-party desiring access to the hearing should contact chambers at ELWinfo@arwd.uscourts.gov by 1/14/2021 12:00 PM and state their interest in the case. Recording of these proceedings by any means is prohibited (see FRCrimP 53 and Local Rule 83.2(a)). Violation of this prohibition may result in sanctions. Disruptive behavior will not be tolerated and may result in automatic removal from the conference. Please keep devices on mute unless asked to speak by the judge Detention Hearing set for 1/15/2021 12:30 PM before Honorable Erin L. Wiedemann. Signed by Honorable Erin L. Wiedemann on January 12, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/12/2021)</p>

01/13/2021		Pro Hac Vice motion filing fee paid as to Richard Barnett re Clerk's Notice Regarding Filing Fee,, : \$ 100, receipt number AARWDC-2311682. (Siano, Anthony) (Entered: 01/13/2021)
01/15/2021	15	THE DOCUMENT IS FILED UNDER SEAL WITH THE COURT. Addendum to PRETRIAL REPORT in case as to Richard Barnett. (tree) (Entered: 01/15/2021)
01/15/2021	16	Minute Entry for proceedings held before Honorable Erin L. Wiedemann: Detention Hearing as to Richard Barnett held on 1/15/2021. (Roxana Guerrero-Digital Recorder) (Proceedings held in Fayetteville-Room 210) (Attachments: # 1 witness/exhibit list) (rg) (Entered: 01/15/2021)
01/15/2021	17	ORDER DENYING Government's motion for three-day stay of the release order as to Richard Barnett; see order for specifics. Signed by Honorable Erin L. Wiedemann on January 15, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/15/2021)
01/16/2021	18	ORDER directing the District Court Clerk to file the bond granted by this Court under seal as to Richard Barnett; see order for specifics. Signed by Honorable Erin L. Wiedemann on January 16, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) Modified text on 1/19/2021 (lgd). (Entered: 01/16/2021)
01/16/2021	19	*UNDER SEAL* Unsecured Bond Entered as to Richard Barnett in amount of \$5,000.00. (rg) (rg). (Entered: 01/16/2021)
01/16/2021	20	*UNDER SEAL* ORDER Setting Conditions of Release as to Richard Barnett (1) \$5,000.00 Unsecured Bond. Signed by Honorable Erin L. Wiedemann on January 16, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (rg). (Entered: 01/16/2021)
01/19/2021	21	MOTION for Emergency Stay and Review of Release order to Stay.(USDC, District of Columbia, Case No. 21-MJ-13) by USA as to Richard Barnett. (rg) (Entered: 01/19/2021)
01/19/2021	22	ORDER as to Richard Barnett GRANTING the governments Motion to Stay. Signed by Chief Judge Beryl A. Howell on January 15, 2021.(USDC, District of Columbia, Case No. 21-MJ-13) (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/19/2021)
01/19/2021	23	ORDER, as to RICHARD BARNETT, GRANTING the governments Motion to Transport. Signed by Chief Judge Beryl A. Howell on January 15, 2021.(USDC, District of Columbia, Case No. 21-MJ-13) (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/19/2021)
01/19/2021	24	COMMITMENT TO ANOTHER DISTRICT as to Richard Barnett. Defendant committed to District of District of Columbia. Signed by Honorable Erin L. Wiedemann on January 19, 2021. (cc via CM/ECF: U.S. Probation Office, U.S. Marshals Service) (rg) (Entered: 01/19/2021)
01/19/2021	25	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Detention Hearing as to Richard Barnett held on January 15, 2021, before Judge Erin L. Wiedemann. Court Reporter/Transcriber Paula K Barden, Telephone number paula_barden@arwd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber. After the Release of Transcript Restriction deadline, it, or a redacted transcript, may be obtained through the Court Reporter/Transcriber or PACER A Notice of Intent to Request Redaction of the Transcript <u>MUST</u> be filed within 7 calendar days of the filing of the transcript and served manually

		on the court reporter/transcriber. Redaction Request due 2/9/2021. Redacted Transcript Deadline set for 2/19/2021. Release of Transcript Restriction set for 4/19/2021. (pkb) (Entered: 01/19/2021)
01/19/2021	26	Notice to District of Columbia of a Rule 5 or Rule 32 Initial Appearance as to Richard Barnett. Your case number is: 1:21mj-00013. (If you require certified copies of any documents, please send a request to CRinfo_Team@arwd.uscourts.gov.) (If you wish to designate a different email address to notify your court of future criminal case transfers, please send your request to InterDistrictTransfer_TXND@txnd.uscourts.gov.) (rg) (Entered: 01/19/2021)

EXHIBIT G



EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

UNITED STATES OF AMERICA

v. Magistrate Case No. 21-13-GMH

RICHARD BARNETT,

Defendant

-----X

Washington, D.C.
Thursday, January 28, 2021
3:15 p.m.

TRANSCRIPT OF MOTION FOR PRETRIAL DETENTION
BEFORE THE HONORABLE BERYL HOWELL
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:

For the Government: Mary Lyle Dohrmann, AUSA
U.S. ATTORNEY'S OFFICE FOR D.C.
555 4th St, NW
Washington, DC 20530
(202) 252-7035

For the Defendant: Anthony J. Siano, Esq.
333 Westchester Avenue, Suite S302
White Plains, NY 10604

Court Reporter: Lisa Walker Griffith, RPR
U.S. District Courthouse, Room 6507
Washington, D.C. 20001
(202) 354-3247

P R O C E E D I N G S

THE COURTROOM DEPUTY: Matter before the Court,
Magistrate Case Number 21-13. United States of America
versus Richard Barnett.

Counsel, please state your names for the record,
starting with the government.

And for the record, Your Honor, the Pretrial
Services is Christine Schuck.

THE COURT: Okay. Thank you.

MS. DOHRMANN: Good afternoon, Mary Dohrmann on
behalf of United States.

THE COURT: Good afternoon, Ms. Dohrmann.

And for the defense?

MR. SIANO: Good afternoon, Your Honor. Anthony
Siano for the defendant, Richard Barnett.

THE COURT: Mr. Siano, I granted your Pro Hac Vice
motion this afternoon. I wasn't sure you were going to get
that done in time. So I did ask Mr. Lawlor to be here just
in case.

MR. SIANO: Mr. Lawlor was kind enough to call me.

THE COURT: Mr. Lawlor, I think I can excuse you.

MR. LAWLOR: My pleasure, Your Honor. Have a good
day.

THE COURT: Thank you.

Mr. Siano, I interrupted you. What were you going

1 to say?

2 MR. SIANO: Mr. Lawlor was kind enough to call me
3 and tell me that he had been contacted by the Court as
4 stand-by counsel. That was before we got our papers in
5 today.

6 THE COURT: All right. Good.

7 Let me begin, Mr. Barnett, by pointing out also
8 for the record that this hearing is being held remotely by
9 video conference, with the defendant and counsel all
10 participating by video teleconference. Do you agree after
11 consultation with your counsel to participate in this
12 hearing remotely without being physically present in the
13 courtroom today?

14 THE DEFENDANT: I do, Your Honor.

15 THE COURT: Okay. Thank you.

16 So, pending before the Court is the government's
17 motion for review and appeal of the Magistrate Judge's
18 release order. I do note that the government did file
19 yesterday evening a memorandum in support of pretrial
20 detention that include several exhibits, including the
21 transcript of the proceedings in the Western District of
22 Arkansas, which I also received from -- I'm not sure if it
23 was from one of the parties or from the District of
24 Arkansas. So I had reviewed it beforehand.

25 I also reviewed the Pretrial Services Report, all

1 of the exhibits, the amended complaint in the record of the
2 case, as well as defense counsel's letter which, upon
3 receipt, I did docket. It is docketed now at ECF number 10.

4 So it is the government's motion, so Ms. Dohrmann,
5 I will let you proceed.

6 MS. DOHRMANN: Thank you, Your Honor.

7 The government's position is that no conditions
8 would ensure the safety of the community and the defendant's
9 appearance in this case. And that, in fact, all four
10 factors from 18 USC 3142(g) weigh significantly in favor of
11 detention. Your Honor, the defendant's known behavior alone
12 has shown that he is not going to abide by conditions here
13 for protecting the community from his criminal conduct.

14 First turning to the nature and circumstances of
15 this offense, it involves flouting multiple laws in the most
16 brazen and flagrant manner possible, laws designed to
17 protect the public and to protect our public servants, as
18 well as official proceedings.

19 He breached the U.S. Capitol during a solemn
20 proceeding with both houses of Congress and the Vice
21 President of the United States at the time were then present
22 in the Capitol. He knew exactly what he was doing. Your
23 Honor has his post, which is Figure 7 in the government's
24 memorandum in support, stating "It's time" shortly before
25 the breach of the Capitol. He bought a stun device that he

1 had purchased just days before. It is clear that he planned
2 his actions. And actually acted on animus to occupy the
3 office of Speaker Pelosi.

4 THE COURT: Ms. Dohrmann, you call that a stun
5 device. Is it a stun device? Is it a stun gun or something
6 different from a stun gun?

7 MS. DOHRMANN: Your Honor, it is a stun gun, but
8 it is in the form of a walking stick, like a staff. So I
9 suppose it's extendible to the length of what one might call
10 a walking stick. But it can also be collapsed down is my
11 understanding.

12 THE COURT: That stun gun, walking stick device,
13 has that been recovered?

14 MS. DOHRMANN: No, Your Honor. And that is part
15 of the government's concern is Mr. Barnett's statement to
16 law enforcement that they can search his home and they would
17 not find it. What the government did recover was the box
18 that it came in as well as the receipt. But the stun device
19 itself, Your Honor, the government has inferred that the
20 defendant has disposed of in some manner.

21 THE COURT: I was interested, Ms. Dohrmann, that
22 in the transcript of the detention hearing in Arkansas, the
23 partner of the defendant, her name is Tammy Newburn, she
24 said that a number of items that had been removed from the
25 house had been given to Mark Hesse. So has government

1 tried to recover any of those items from Mark Hesse?

2 MS. DOHRMANN: Yes, Your Honor. Let me just get
3 the exact information on that. The information I have is
4 that a search warrant was conducted at Mark Hesse's home at
5 the same time as the detention hearing that was held January
6 15th. And though law enforcement did observe firearms, they
7 were unable to determine which, if any, were the
8 defendant's.

9 I'm not certain, Your Honor, if there was an
10 observation of a stun device that they also couldn't
11 conclude was the defendant's. But I am sure that if it
12 matched the description, it would have been recovered and
13 noted.

14 THE COURT: I do recall that in the transcript
15 that the defendant's partner was quite vague about being
16 able to identify any of the guns that belonged to
17 Mr. Barnett.

18 Okay. Please proceed.

19 MS. DOHRMANN: Thank you, Your Honor.

20 So, as I was talking about Mr. Barnett's
21 disturbing note that he talks about to the media after these
22 events, having left for Speaker Pelosi, in the same sort of
23 vein there are these photographs of him taken where he
24 appears to know and relish that he is being photographed in
25 a way that suggests that this isn't -- the notoriety that he

1 is bringing to himself is something that he welcomes.

2 And of course, after talking to the media about
3 exactly what he has done, being photographed, occupying in
4 what can only be described as a disrespectful manner on top
5 of an unlawful manner, Speaker Pelosi's office, he then
6 attempts to avoid being identified as he flees D.C., turning
7 off location services on his phone and paying cash and
8 covering his face which, as Your Honor will see in the
9 photographs in the government's memorandum, was uncovered
10 previously in his prior actions.

11 THE COURT: When you are talking about the videos,
12 I know there is a surveillance camera videos from inside the
13 Capitol and I know there were other videos, one of the
14 things that Tammy Newburn said is that the defendant sent
15 her videos that she had on her phone. Were those videos
16 recovered?

17 MS. DOHRMANN: Your Honor, I'm sorry. I don't
18 know the answer to that. I do know that Mr. Barnett
19 essentially intervened in any sort of -- in the interaction
20 between Ms. Newburn and law enforcement, specifically taking
21 Ms. Newburn's phone from her and saying he would show up as
22 appropriate. To my knowledge, there has not been a seizure
23 of Ms. Newburn's phone.

24 THE COURT: Okay. Thank you.

25 MS. DOHRMANN: Your Honor, with respect to the

1 weight of the evidence in this case, it is truly
2 incontrovertible. He is in multiple photographs that are
3 very clear and of very high quality. He is on video. His
4 face is fully uncovered. He is clearly identifiable to any
5 layperson.

6 We know that he bought the stun gun and the box
7 that it came in. We know when he did that based on the
8 evidence recovered from the home, although we don't have the
9 stun device itself. And we know all of this, Your Honor,
10 despite the defendant somehow ditching or secreting his cell
11 phone, not having it with him at arrest, Ms. Newburn saying
12 she has no idea where it is, no doubt that is a source of
13 potential further information that, unlike all the other
14 information, the defendant was willing to share with the
15 media and law enforcement. What is on his cell phone is
16 what he doesn't want the government to know. But despite
17 not having that electronic evidence, at this time, the
18 evidence in this case is very strong.

19 Your Honor, the government is also very concerned
20 about this defendant's history and characteristics. While
21 he doesn't have a criminal history of felonies, he does have
22 a recent pattern that this case and this criminal conduct
23 are a part of. And that is the two other incidents
24 described in Attachment A and Attachment B of him using
25 firearms in a way that drew police attention and, quite

1 frankly, a very public sort of also attracting attention,
2 displayed way, where there is some question about, at least
3 with respect to one of those incidents, whether he was in
4 fact using them in a menacing manner.

5 Certainly, Your Honor, the government's position
6 would be that he appears to be possessing them in a menacing
7 manner. Whether it was actually a criminal, assaultive
8 manner is clearly not resolved or resolved in the
9 defendant's favor in the case of the incident described in
10 Attachment A. But nevertheless, Your Honor, those are
11 instances from July and September of 2020. Then here we are
12 in January of 2021.

13 THE COURT: Ms. Dohrmann, I think your memorandum
14 and the transcript, the hearing transcript mentioned
15 something happened in November. Was that just a typo or was
16 it really just something in September?

17 MS. DOHRMANN: I'm sorry, Your Honor. That may
18 have been my mistake about when -- Your Honor, you are
19 right, that is my mistake. That was --

20 THE COURT: I just wanted to make sure I knew
21 about these incidents because I do have some questions about
22 them. I appreciate that there was a July 25, 2020
23 Fayetteville police report of 911 caller, complaining about
24 a person turning out to be defendant, pointing a rifle at
25 her car because her car had a Black Lives Matter sticker on

1 it.

2 And then there was another incident of a call to
3 the police on September 20, 2020 regarding protesters for
4 something called Save the Children that reported the
5 defendant walking around on the public street in
6 Fayetteville with a rifle slung on his back and a pistol on
7 his hip.

8 I just want to focus a little bit on the September
9 20, 2020 report because it has a series of observations. Of
10 course, what caught my attention is that it also mentioned
11 that these observations were made around a courthouse. So
12 do you know what that is all about?

13 MS. DOHRMANN: Your Honor, so first just to go
14 back to the November versus September issue. I believe that
15 actually November is the inaccuracy and it is September
16 based on just looking at the transcript. The November
17 incident referenced in the transcript is the Save the
18 Children event that is described as having taken place in
19 September. So that is just to correct that part of the
20 record, at least as far as I am aware.

21 THE COURT: Because the incident report of an
22 incident on September 20, 2020, which reads that a police
23 officer spoke with Richard Barnett who had a rifle slung on
24 his back, pistol on his hip, and said he was there for the
25 protesters for Save the Children. So that clearly occurred

1 on September 20, 20, but the report's narrative references a
2 series of observations of the defendant with his rifle and
3 his phone, including references to the courthouse.

4 Was this area where the protest was happening
5 close to a courthouse location? Is that all that means?

6 MS. DOHRMANN: I'm sorry, I would have to look
7 into that further, which of course I can do. My
8 understanding is that this occurred, perhaps it's just a
9 matter I could look at a map of where this occurred and see
10 if it does happen to be near a courthouse. I wasn't aware,
11 and I hadn't noted the apparent involvement of the
12 courthouse in that matter. So I'm not able to say precisely
13 how this--

14 THE COURT: Okay. It's just, you know, it says
15 there was no answer from the courthouse, the narrative was
16 "behind courthouse" in the plot, it just has mentioned the
17 courthouse. So I was just curious whether that has anything
18 to do with anything.

19 In any event, the Save the Children rally, does
20 Save the Children rally -- I don't know what that is about.
21 But is that connected in any way to the Q-Anon conspiracy
22 theory?

23 MS. DOHRMANN: Your Honor, I believe that it very
24 well could be, in that my understanding is that the Save the
25 Children rally is based on a premise that is consistent with

1 that Q-Anon conspiracy theories, espousing the belief that
2 there is an elite group currently in control of the country,
3 consisting of pedophiles who must be stopped. So yes, Your
4 Honor, without having further information specifically
5 tieing into that, I believe that the evidence about the Save
6 the Children rally supports the inference that it is related
7 to that Q non conspiracy theory.

8 THE COURT: I was just curious about that. Okay.
9 Please proceed, Ms. Dohrmann. Your Honor.

10 MS. DOHRMANN: Your Honor, just with a little bit
11 of additional information to point to on the history and
12 characteristics. I think the defendant's characteristics
13 are also notable here, specifically his behavior in the
14 course of the case and in the eyes of -- in front of law
15 enforcement.

16 He has been obstructive and oppositional, even
17 with his significant other, who he has attempted to claim
18 and make sure and ensure the safety of the community by
19 ensuring that he abides by Court orders, even in front of
20 law enforcement. Your Honor, this behavior is of great
21 concern to the government and also weighs heavily in favor
22 of detention with respect to his history and
23 characteristics.

24 And the government has in its memorandum drawn the
25 Court's attention to specific portions of the transcript

1 that sort of outline what that behavior from the defendant
2 looked like with respect to Ms. Tammy Newburn.

3 Finally, Your Honor, with respect to the 3142(g)
4 factor, the defendant's danger, Your Honor, he has shown us
5 how dangerous he is in his complete failure to show respect
6 for the law, protecting the safety of other people,
7 including our public servants in that commission of official
8 proceedings.

9 He has been not only defiant of those laws but
10 brazen in defying them to the extent of it bringing
11 notoriety to him and to people associated with him,
12 including his family members.

13 Frankly, Your Honor, his behavior seems aimed at
14 attracting attention, and in that sense, having influence
15 over others. And as far as the government can tell, the
16 defendant does only what he sees as being in his best
17 interest, no more and no less, which includes in this case
18 getting a stun device, coordinating a trip to D.C.,
19 unlawfully entering highly restricted areas, taking a
20 Congresswoman's mail and talking to the media about it. And
21 then really, turning on a dime to serve his best interests
22 and trying to get away with it, at least in the short run,
23 by turning location services off his phone, hiding somewhere
24 his firearms and stun gun, as well as his cell phone which,
25 as I have already noted, the government can only infer

1 contains additional information that the defendant is very
2 concerned about the government finding out about.

3 Your Honor, the defendant's access to firearms as
4 well as the stun device is just one more reason that this
5 Court has cause for concern about what he would do to enact
6 his will and force it on others.

7 In conclusion, the government simply notes that
8 Pretrial Services in both jurisdictions agreed with -- I
9 shouldn't say agreed with the government. They provided
10 their own recommendation that he be held because no
11 condition or combination of conditions would ensure the
12 safety of the community. For all these reasons, the
13 government submits that detention is appropriate in this
14 case and necessary.

15 THE COURT: Thank you.

16 Mr. Siano, I will be happy to hear from you now.

17 MR. SIANO: Thank you, Judge.

18 I would like to begin with the last remark that
19 counsel for the government made. Pretrial Services Report,
20 there is an amended Pretrial Services Report, which is
21 completely contradictory to what Ms. Dohrmann said.
22 Pretrial Services Office has clearly noted that she could
23 recommend release on a series of conditions, all of which
24 the Magistrate Judge noted and enforced in her order in
25 addition to certain other conditions. So, this is not a

1 universal recommendation of detention.

2 There was a Pretrial Services Report that had not
3 included interviews of Mr. Barnett or Ms. Newburn. And
4 Pretrial Service conducted a lengthy interview with my
5 client, I believe it was an hour and a half. And then
6 underscored and unencumbered by anybody else, Pretrial
7 Services spoke to my client's partner. And after that, made
8 a recommendation that release was possible.

9 I would like to point out, first of all, that my
10 client came home after the events of January 6th, had been
11 called but not visited by law enforcement on the Thursday.
12 And through his wife, made an appointment to surrender on
13 Friday and appeared as he agreed to on Friday morning in the
14 sheriff's office in Bentonville, where he was apprehended.

15 THE COURT: And wouldn't you agree that that
16 scheduled time gave him enough time, as Tammy Newburn
17 testified, to clear out their house? Didn't the agent
18 testify about Mr. Barnett essentially saying, "I cleared out
19 my house, go ahead and search it?" Gave him just enough
20 time to do that, didn't it?

21 MR. SIANO: Well, it certainly did. The agent
22 also said that he wasn't going to go out to arrest him on
23 Thursday. So the level of concern here certainly has a
24 mixed set of characteristics. My client is not charged with
25 a firearm offense. Pretrial Services officer in fact told

1 Ms. Newburn and her daughter that their firearms would have
2 to be out of the house so that my client couldn't have
3 access to any firearms.

4 So to the extent that he has had firearms, they're
5 not part of this charge. And the conditions that were laid
6 out by the Magistrate Judge explicitly exclude him from
7 having any firearms. So the fact that the firearms were
8 removed, I would submit to Your Honor is consistent with
9 somebody being willing to accept the limitations on his
10 liberty associated with the ban.

11 THE COURT: Let me ask you something Mr. Siano.
12 There is a Washington Post report that quotes a New York
13 Times reporter, Matthew Rosenberg who was at the scene on
14 January 6th, and Matthew Rosenberg, the New York Times
15 reporter reports that he spoke directly to Mr. Barnett and
16 Mr. Barnett identified himself as himself. And he is quoted
17 as, Mr. Barnett is quoted as saying, "I wrote her a nasty
18 note, put my feet up on her desk and scratched my balls."
19 Did Mr. Barnett say that to the New York Times reporter?

20 MR. SIANO: I have not seen either of those
21 articles, Judge. So I'm not in a position to respond to you
22 with respect to that. That is frankly a different piece of
23 news coverage than I've been able to see.

24 THE COURT: It's just the New York Times and the
25 Washington Post. I'm sure it is not just the people in this

1 community who read those newspapers.

2 MR. SIANO: I'm not suggesting anything other than
3 that I have not found it, Judge. I'm not casting aspersions
4 on anybody other than perhaps myself. I can't respond to it
5 because I have not had in my hands. I'm taking what Your
6 Honor says and I'll follow it up.

7 It is clear from the information we've received in
8 discovery that my client was politically not in tune with
9 the Speaker. He did, there are photographs of him in the
10 office. There are photographs of him with what the FBI
11 agent describes in the Complaint as an empty envelope. And
12 that empty envelope is in the photo. So that is the only --

13 THE COURT: I thought that that was an issue
14 raised at the hearing, whether there was an empty envelope
15 or an envelope with something in it. And it wasn't clear
16 because the agent had not opened the sealed evidence
17 envelope.

18 MR. SIANO: The last two lines of the amended
19 complaint, the superseding complaint, described the item as
20 an empty envelope, Your Honor. The second complaint they--

21 THE COURT: The amended statements of facts.

22 MR. SIANO: Yes, the amended statement of facts,
23 the last two lines.

24 THE COURT: That is supposed to make it better?

25 MR. SIANO: No, I did not say that, Judge. We

1 described it as stealing Speaker's mail.

2 (Technical difficulties.)

3 THE COURT: Mr. Barnett, could you mute --

4 THE DEFENDANT: Can I say something to my lawyer?

5 MR. SIANO: You have to go to a break-out room,
6 Richie.

7 THE DEFENDANT: Okay, thank you. I'll mute now.

8 MR. SIANO: The suggestion that my client was
9 taking anything other than what could be described as a
10 minimal piece of empty mail, and it was an envelope so it
11 wasn't even a stamp on it. That's the only thing taken out
12 of the Speaker's office. He did say outside, in the
13 materials that the government has given us, essentially that
14 basically he was, you know, he had a political hostility to
15 the Speaker.

16 THE COURT: All right. Let me turn to the letter,
17 Mr. Siano, that, as I mentioned, the Court docketed at ECF
18 10 and it raises an issue that I wanted to make clear for
19 the record here about your lack of notice and an opportunity
20 to be heard by this Court before the Court issued the Stay
21 of the Arkansas Magistrate Judge's release order on Friday
22 night, January 15th.

23 As your letter points out, the Magistrate Judge
24 held this detention hearing until very late in the day on
25 January 15th. And then denied the government's request for

1 a stay of the release order, which created a situation
2 requiring prompt action by both the government and this
3 Court.

4 You have now had since January 15th, almost two
5 weeks, to file in this Court, before this Judge, any papers,
6 briefing papers or whatever relevant to the issue of whether
7 Mr. Barnett should be detained pending trial. Are you
8 essentially resting in terms of written materials on the
9 transcript of the hearing conducted in Arkansas?

10 MR. SIANO: No, Your Honor. No, Your Honor. I
11 frankly, I'm aware that I couldn't file, despite my attempt
12 to do so, until I was admitted and had filing privileges. I
13 finally got paperwork submitted to the Court this past
14 Monday. That's pending. I frankly thought Your Honor would
15 ask me how much time I would need to put something in
16 writing and to respond to Ms. Dohrmann's papers. I'm
17 prepared to--

18 THE COURT: I'm statutorily required to review
19 this and decide it promptly. Typically in these
20 circumstances, when a defendant has been arrested outside
21 this jurisdiction and is being brought here for an appeal,
22 papers are filed. If they don't have filing privileges,
23 they send them to me by e-mail or by letter, just as you did
24 your letter.

25 But there are a couple of other things in your

1 letter, Mr. Siano, that I want to have a bit of a discussion
2 about here since I have granted your Pro Hac Vice motion.

3 This is a Court that prides itself on civility in
4 proceedings. Your letter is very quick to accuse
5 prosecutors of some form of misconduct, citing that -- and I
6 quote: "No where in either of the government's motions for a
7 stay and transfer does the government tell the Court that
8 Mr. Barnett was represented by retained counsel in
9 Arkansas."

10 I want you to be aware and have no fear that this
11 Court was well aware that Mr. Barnett was represented by
12 counsel before the Arkansas Magistrate Judge. I'm sure that
13 is a responsible federal judicial officer and ensured that
14 Mr. Barnett was represented. And whether you were retained
15 or whether he was represented by federal public defenders or
16 CJA counsel in the detention hearing in Arkansas is really
17 immaterial. But I wanted to make it clear to you, this
18 Court was well aware that Mr. Barnett was represented before
19 the Magistrate Judge in Arkansas.

20 You also note in your letter, you were advised by
21 an AUSA that the government was going to seek a stay of the
22 Arkansas Magistrate Judge's release order. So, that should
23 not have come as any surprise to you when the government did
24 exactly what it said it was going to do, which is seek a
25 stay.

1 Nevertheless, your letter goes on to accuse
2 prosecutors of unethical conduct by not disclosing the
3 transfer motion to you because you suggest the government
4 was trying, and I quote you in your letter "to gain a
5 tactical advantage" of some kind or, I quote you again, "to
6 forum shop Mr. Barnett's detention after we prevailed
7 before" the Arkansas Magistrate Judge.

8 I don't know how you practice in other
9 jurisdictions, Mr. Siano, but I am telling you right now,
10 throwing around accusations of misconduct by opposing
11 counsel is not acceptable here when it is without merit.
12 And that accusation is both frivolous and without merit.

13 The defendant is charged in this District.
14 Therefore, this Court is statutorily required to hear any
15 applications for revocation of a Magistrate Judge order
16 releasing a defendant. It is plain as day in 18 USC Section
17 3141(a) which states: If a person is ordered released by a
18 Magistrate Judge or by a person other than a judge of the
19 court having original jurisdiction over the offense, the
20 attorney for the government may file with the court having
21 original jurisdiction over the offense a motion for
22 revocation of the order or amendment of conditions of
23 release, the motion shall be determined promptly. There
24 is no forum shopping going on here. And that accusation is
25 wholly meritless.

1 This was not a needless cross country trip, as you
2 put it, for this defendant. He came here on January 6th for
3 his own purposes. His presence is now required in this
4 district by the government and for the government's
5 purposes.

6 So the motion to transfer was perfectly
7 appropriate both for the government to make for this Court
8 to issue, to bring the defendant before this Court in this
9 jurisdiction to face the charges against him.

10 If you are going to continue with this case, I
11 caution you about how you conduct yourself because that
12 letter was wholly inappropriate.

13 All right. Is there any other information, Mr.
14 Siano, that you want to bring to the Court's attention
15 regarding the pending issue of pretrial detention or
16 release?

17 MR. SIANO: Yes, Your Honor. In the two
18 Fayetteville police reports, my client was not identified by
19 anybody as the suspect of the complaints. And I would
20 submit that, in reading it, he was compliant with the
21 Fayetteville police request. He was not charged with any
22 offense in respect to either one of those police reports. I
23 wanted to point that out.

24 I also want to point out that it is not just that
25 my client doesn't have any felony convictions, he doesn't

1 have any convictions whatsoever. There is a 1992 Driving
2 Under the Influence case that doesn't have a resolution,
3 nonetheless, it was 28 years ago. And the government has
4 had his fingerprints for a substantial period of time and
5 they have not brought forward any other instance of him
6 having violated the law. So I wanted to --

7 THE COURT: Does he have the right birthdate on
8 his driver's license in Arkansas?

9 MR. SIANO: I believe he does, Your Honor. He
10 only has one set of fingerprints, though.

11 THE COURT: All right.

12 MR. SIANO: Again, Judge, to the extent that I
13 would make a submission, could I just inquire of the Court,
14 does Your Honor have both portions of the Pretrial Services
15 Report?

16 THE COURT: I believe I do.

17 MR. SIANO: All right. Then I know that the
18 government filed with its paperwork the full transcript and
19 Your Honor has quoted from it in some respect. I would note
20 that there were a substantial number of people who testified
21 to Mr. Barnett's role in the community, his behavior in the
22 community and the other aspects of his life.

23 As the Pretrial Services Report notes, he has an
24 ongoing business. He works productively. I believe both
25 the FBI agent and Pretrial Services described his home as

1 clean and neat.

2 THE COURT: I am now aware from reading the
3 transcript that you called seven witnesses. Other than
4 Tammy Newburn and Ashlee Newburn, most of those individuals,
5 and I guess Tammy Newburn's mother, the other individuals
6 were at best casual acquaintances of the defendant. No
7 knowledge of his guns. Some of them did. Some of them said
8 they had no knowledge of any guns. They didn't know he was
9 going to D.C. They were -- it didn't have much relevant
10 evidence to submit in connection with these charges. I'm
11 looking at the statement, you are welcome to argue with me.
12 You are welcome to point out what I might be missing from
13 that.

14 MR. SIANO: I would prefer to say I'm discussing
15 it with you, rather than argue.

16 THE COURT: Fine, discussing.

17 MR. SIANO: Judge, I think that the focus of those
18 witnesses and it's the argument I made to the Magistrate
19 Judge, was to show that he was not a danger to the
20 community, that he was a person who could be subject to a
21 series of conditions, with a degree of confidence, A, that
22 he would not harm anybody else, and that he would appear as
23 he agrees to appear.

24 THE COURT: Yes, but that is based on what they
25 knew about him. Jeffrey Houpe has known him about five

1 years, didn't know he was going to D.C. Had no knowledge of
2 any guns. Jaklyn Chalk, I guess was the defendant's, his
3 best friend of the daughter.

4 MR. SIANO: She was his daughter's friend.

5 THE COURT: She didn't know that much about him
6 either. Jose Miguel Martinez has known him also about five
7 years. Never been to his home, only a casual acquaintance.
8 Marie Halpin, that's the mother-in-law, she didn't know much
9 about, you know, didn't know anything about him having a
10 stun gun.

11 Then you have Ashlee Newburn who was put in an
12 uncomfortable position, you know, dissembling and didn't
13 know where the guns were, didn't know they were in the
14 house, didn't know how they got from one place to the next,
15 totally dissembling.

16 William Scroggin, neighbor for five years. Never
17 saw him with guns, never heard guns, never talked about
18 guns. I have to say, they knew very little relevant to the
19 factors that this Court has to consider based on the facts.

20 Anything further, Mr. Siano?

21 MR. SIANO: No, Your Honor. If Your Honor has the
22 transcript, then the full Pretrial Services Report, then I
23 won't need any time to submit anything further.

24 THE COURT: Ms. Dohrmann, anything in rebuttal?

25 MS. DOHRMANN: Your Honor, just very, very

1 briefly.

2 The government would note, fine, Mr. Barnett
3 surrendered himself at a time that worked for him. What
4 else was he going to do after speaking to the media and
5 publicly being -- having his face uncovered, plastered in a
6 newsworthy situation, being brought to everyone's attention.

7 I would just repeat what Your Honor has just
8 pointed out, the people who testified fall into two
9 categories of people, people who do not seem to know him and
10 people who have clearly heavily bias in favor of the
11 defendant to which they were subject to cross examination.
12 That's all, Your Honor.

13 THE COURT: All right.

14 The Court is ready to rule on the government's
15 motion to the review the Arkansas Magistrate Judge's
16 decision to release the defendant pending trial.

17 At the outset, Mr. Barnett, did you want to say
18 something to your counsel?

19 THE DEFENDANT: Yes, Your Honor. I wonder if I
20 could have a consultation with my counsel before you rule
21 about some of the things that the prosecutor mentioned.
22 Some of the things that the prosecution is bringing up, I
23 don't know if my counsel would allow me to, but I have some
24 really honest and simple explanations. I'm not a bad man,
25 I'm very well involved in my community. Most people in my

1 community love me. I raised money for bodycams for my local
2 Police Department, I've worked rallies. Can I have just a
3 minute to speak with my attorney?

4 THE COURT: Having a private conversation here is
5 a little bit difficult.

6 I am going to ask my courtroom deputy to have the
7 jail give you a phone to speak with your counsel.

8 THE DEFENDANT: I appreciate it. Thank you very
9 much.

10 THE COURT: Mr. Barnett, you just have to ask the
11 guard in the room with you what the telephone number is so
12 we can tell your counsel to call that number.

13 THE DEFENDANT: Okay. Thank you, Your Honor. I
14 appreciate it. Thank you very much.

15 (There was a pause in the proceedings.)

16 THE COURT: Okay. Mr. Siano, is there anything
17 else you would like to add following your consultation with
18 your client?

19 MR. SIANO: Yes. My client points out that the
20 FBI agent that testified at the hearing in the Western
21 District of Arkansas pointed out that --

22 THE COURT: Agent Willett, yes.

23 MR. SIANO: Yes, Agent Willett, yes, Your Honor.
24 Agent Willett pointed out in his testimony, that the
25 photographs they had after my client came out of the Capitol

1 building inside did not show that he was still in possession
2 of a stun gun.

3 Secondly, that there is no indication, and my
4 client says that there is no connection with Q-Anon in
5 connection with that Save the Children rally. And I believe
6 that when his partner, when Ms. Newburn was vigorously
7 questioned on cross examination about whether or not she
8 would do what her husband wanted in connection with being a
9 third-party custodian, in answer to the question, I believe
10 what she said was she wouldn't like doing it but if she
11 promised the Court, she would do it, she would carry out her
12 responsibility as third-party custodian. That was a point
13 we felt worthy of making, Your Honor.

14 THE COURT: I did read that. It was apparently
15 persuasive enough for the Magistrate Judge in Arkansas.

16 MR. SIANO: Judge, I know that the Court is aware
17 that the witnesses were there, Magistrate Judge was able to
18 see them. In many instances, the cross examinations were
19 longer than the directs. And the witnesses continued to
20 respond to questions calmly and respectfully throughout the
21 entire hearing.

22 So, I mean, I again, we found as many people in
23 the community as we could consistent with the period of time
24 we had. And those are the people who were able to come
25 forward and describe to the Court their connection with the

1 defendant, specifically with respect to whether or not he
2 would honor his commitments to come to Court and whether or
3 not he was a danger to the community. I just wanted to make
4 that clear. I don't have anything further, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. SIANO: You're welcome.

7 THE COURT: As I mentioned, the Court is ready to
8 rule on the government's motion to review the Arkansas
9 Magistrate Judge's decision to release defendant pending
10 trial.

11 At the outset, a review of the applicable law is
12 appropriate. The Bail Reform Act requires release of a
13 defendant prior to trial unless a judicial officer
14 determines after a hearing that no condition or combination
15 of conditions will reasonably assure the safety of any other
16 person in the community, 18 USC Section 3142(e)(1).

17 In determining whether any conditions of release
18 will reasonably assure the appearance of the person as
19 required, the Court must take into account the available
20 information concerning four factors set out in 18 USC
21 Section 3142(g). And those factors are, one, the nature and
22 circumstances of the offense charged. Two, the weight of
23 the evidence against the person. Three, the history and
24 characteristics of the person, including the person's
25 character, physical and mental condition, family ties,

1 employment, financial resources, length of residence in the
2 community, community ties, past conduct, history relating to
3 drug or alcohol abuse, criminal history and record
4 concerning appearance at court proceedings.

5 And finally four, the nature and seriousness of
6 the danger to any person or the community that would be
7 posed by the person's release.

8 On an appeal for a Magistrate Judge's order of
9 pretrial release, the District Court must conduct a de novo
10 review. In this case, I have reviewed the entire hearing
11 transcript, which consists of the testimony of the FBI Agent
12 Willett and seven witnesses called by the defendant. I have
13 also reviewed the government's submissions and the whole
14 record in the case to date, including defense counsel's
15 letter, which was docketed at ECF 10.

16 In conducting its analysis, the Court examined the
17 available information that touches upon those four statutory
18 factors I just listed. I'm going to discuss each of those
19 factors starting with the first one, the nature and
20 circumstances of the offenses charged.

21 The nature and circumstances of the offenses
22 charged weigh strongly here in favor of a finding that no
23 condition or combination of conditions will reasonably
24 assure the defendant's appearance or the safety of the
25 community.

1 He has been charged with a serious felony.
2 Knowingly entering or remaining in any restricted building
3 or grounds without lawful authority while carrying a
4 dangerous weapon in violation of 18 USC Section 1752. This
5 offense alone carries 10 years of imprisonment.

6 He is also charged with two misdemeanor offenses,
7 violent entry and disorderly conduct on Capitol grounds in
8 violation of 40 USC Section 5104(e). And also theft of
9 Public Money, Property or Records, in violation of 18 USC
10 Section 641.

11 The descriptions and the title, the title of those
12 offenses to my mind don't even properly capture the scope of
13 what Mr. Barnett is accused of doing here.

14 The felony and misdemeanor charges of entering and
15 remaining in the Capitol without lawful authority with a
16 deadly weapon and disorderly conduct on Capitol grounds and
17 theft of property in some ways are too benign-sounding to
18 describe what happened on January 6, 2021 at the U.S.
19 Capitol.

20 What happened on that day at the U.S. Capitol is
21 criminal activity that is destined to go down in the history
22 books of this country, of hundreds of Americans using force
23 and violence against their own government to disrupt what we
24 have been most proud of: A peaceful and Democratic
25 transition of power.

1 On January 6, 2021, there was an assault on the
2 U.S. Capitol during a joint session of Congress, certifying
3 the 2020 presidential election results. During this
4 assault, scores of individuals forced entry into the Capitol
5 by breaking windows, pushing through the Capitol's doors,
6 breaching closed, highly sensitive and reserved areas,
7 assaulting members of the U.S. Capitol Police and the D.C.
8 police force.

9 This violence disrupted a constitutional function
10 of Congress necessary to the presidential transition and to
11 the functioning of our democracy. This was not a peaceful
12 protest. Hundreds of people came to Washington, D.C. to
13 disrupt the transition of power and to thwart Congress, a
14 branch of the federal government in carrying out its duty in
15 fulfilling its constitutional task of officially certifying
16 the votes of the electoral college.

17 During the assault on the Capitol that was
18 intended to disrupt the peaceful transition of power to a
19 new administration, as designed under our U.S. Constitution,
20 five people died and many more were injured. Members of
21 Congress and the then-Vice President Pence were forced to
22 flee the grounds of the Capitol. Congressional staffers and
23 members of the media were forced to hide, fearing for their
24 safety, barricading themselves in offices. Many on the
25 scene, from the Capitol Police to Members of Congress were

1 afraid for their lives.

2 We are still living here in Washington, D.C. with
3 the consequences of the violence in which this defendant is
4 alleged to have participated. Thousands of National Guard
5 troops were brought into the District of Columbia to ensure
6 that last week's inauguration could proceed peacefully.

7 Thousands of heavily armed members of the National Guard
8 remain in the District of Columbia, just outside this
9 courthouse, which faces the mall with a clear view of the
10 Capitol are visible reminders of the January 6th riot and
11 assault on the Capitol.

12 We see heavily armed National Guard troops still
13 patrolling from my window, behind tall fencing, barbed wire
14 and concrete barriers, all of this is to protect the heart
15 of the federal government and the people of the District of
16 Columbia from the risk of violence.

17 Shockingly, this risk of violence is posed by
18 fellow Americans. Just yesterday, the Department of
19 Homeland Security issued a National Terrorism Advisory
20 System Bulletin, indicating a heightened risk of violence
21 from ideologically motivated, violent extremists who are
22 emboldened by the January 6th Capitol attack and might
23 target elected officials in government facilities.

24 The government has presented overwhelming evidence
25 that this defendant, Richard Barnett, enthusiastically

1 participated in this act of assaulting the Capitol and
2 disrupting the Democratic process. The government has
3 presented evidence of videos and photos showing that this
4 defendant was carrying a weapon, a ZAP Hike 'N Strike
5 950,000 volt stun gun walking stick, that he carried on his
6 belt inside the Capitol.

7 He not only entered the Capitol without a
8 authority but he strutted into the Office of the Speaker of
9 the U.S. House of Representatives, Nancy Pelosi, sat behind
10 her desk and had pictures of himself, smiling and seemingly
11 enjoying himself.

12 The government describes his conduct as brazen.
13 And I would agree that is an accurate description. He felt
14 so entitled, he put his feet on the desk. He felt so
15 entitled, he picked up her mail and walked off with a piece
16 of mail. He felt so entitled that the government has
17 pictures of this defendant showing off, holding the mail he
18 took from Nancy Pelosi's 's office when he reached the
19 outside of the Capitol.

20 He felt so entitled to do what he did that he
21 spoke to media outlets on January 6th about the mail he had
22 taken from Speaker Pelosi's office and said, "I did not
23 steal it. I bled on it because they were macing me and I
24 couldn't fucking see so I figured I am in her office. I got
25 blood on her office. I put a quarter on her desk even

1 though she ain't fucking worth it. And I left her note on
2 her desk that says 'Nancy, Bigo was here, you Bitch.'"

3 Wow -- brazen, entitled, dangerous.

4 In these pictures and videos, the defendant is
5 wearing a hat, a plaid jacket, blue jeans and brown boots in
6 the photos. His clothing that day becomes important in
7 evaluating whether he should be detained. And I'll come
8 back to that.

9 The defendant traveled all the way from his home
10 in Arkansas to Washington, D.C. prepared for this assault on
11 the Capitol. The government has obtained evidence that one
12 week before his travels to the Nation's Capitol, he went out
13 and bought the stun gun and also walkie-talkies and pepper
14 spray. He came to the city on a critical day under our
15 constitution, prepared with a weapon and cloaked with
16 entitlement.

17 The nature and circumstances of this offense
18 clearly weigh in favor of pretrial detention.

19 Turning to the second factor, the weight of the
20 evidence against the defendant. As I said, the weight of
21 the evidence against this defendant is overwhelming. The
22 government has surveillance videos and many pictures of the
23 defendant from the assault on the Capitol.

24 These pictures show the defendant in the Capitol
25 appearing to carry this stun gun walking stick. Agents

1 observed empty packaging at his home on January 8th for the
2 exact same type of stun gun that he bought and had on his
3 person when he was unlawfully inside the Capitol and inside
4 the Speaker's office.

5 During a custodial interview with law enforcement
6 on January 8 at the time of his arrest, the defendant
7 admitted to law enforcement that he had participated in the
8 Stop the Steal Rally, and that he was inside the Capitol.
9 It would have been hard for him to deny it since he seemed
10 to be happy to be one of the stars in this assault,
11 appearing in videos and in photos, in and around the
12 Capitol, including in a video where the defendant was
13 proudly holding up a letter with return address of Speaker
14 Pelosi, bragging about what he had done in the Speaker's
15 office.

16 The weight of the evidence weighs heavily in favor
17 of pretrial detention.

18 As to the defendant's history and characteristics,
19 he does have only a limited criminal history. He also has a
20 strong history of employment. As the Magistrate Judge in
21 Arkansas who granted pretrial release also noted, he has
22 strong ties to the area, in which he has lived with his
23 partner, Tammy Newburn.

24 At the same time, the government has presented
25 evidence of other incidents in which defendant's actions

1 have prompted police scrutiny in Fayetteville, Arkansas on
2 at least two occasions, one in July 2020 and September 2020,
3 the police were called to investigate the defendant's
4 behavior when he was armed in the public and members of the
5 public felt threatened by his behavior.

6 These incidents are troubling, not because he got
7 arrested, not because he may have been engaged in criminal
8 conduct or not, they're troubling because they suggest a
9 pattern of engaging in provocative behavior while armed.
10 And even if these activities on these other occasions did
11 not cross the line of criminal behavior, they're in line
12 with the criminal conduct alleged in this case.

13 On July 25, 2020, a 911 caller described an
14 individual matching Barnett's description as pointing a
15 rifle at her when she drove by a protest in her car with a
16 Black Lives Matter sticker. Three different police officers
17 had to investigate this incident.

18 The defendant was at this protest carrying a rifle
19 slung across his chest, with one officer stating and
20 describing his observation of the defendant, creating a
21 disturbance with several counter protesters when he was
22 armed with a rifle.

23 The second incident also in Fayetteville on
24 September 20, 2020, the defendant had an encounter with what
25 the law enforcement calls a protest for Save the Children,

1 when a caller describes him as carrying a pistol and a rifle
2 at a rally, and looking suspicious.

3 Most concerning, or very concerning are not only
4 the defendant's actions while he was inside the Capitol but
5 after the assault on the Capitol. The defendant told the
6 agents that the agents may not find much at his house
7 because he had people packing it up the night before he
8 turned himself in.

9 Indeed, his partner confirmed during her testimony
10 at the Arkansas detention hearing that, after some
11 dissembling about not knowing anything, that they had
12 cleared his house of his guns and given them to a friend,
13 Mark Hesse, who also traveled to Washington, D.C. for the
14 January 6 events.

15 At the same time, she denied knowing how many guns
16 he had or what type of guns he had. And she is not a naive
17 person about guns. She admitted she owns her own guns. She
18 also denied knowing what happened to the defendant's stun
19 gun walking stick or his cell phone, neither of which items
20 have been recovered from his person or in the search of his
21 house.

22 Some items that the FBI did recover were the
23 several items of clothing that the defendant was seen
24 wearing in Washington during the assault on the Capitol, a
25 flannel jacket and a hat. Where did they find these? In

1 the trunk of Tammy Newburn's vehicle hidden under a dog
2 crate.

3 Ms. Newburn's 20 year relationship with the
4 defendant plainly shows her loyalty to him, and her actions
5 to help clear up the house of evidence, put stuff under a
6 dog crate in her trunk, dissembling at the hearing about her
7 activities, to my mind, raises significant questions about
8 her real ability to be a trustworthy third-party custodian
9 to ensure the defendant's compliance with any release
10 conditions.

11 Also troubling is that, when the defendant drove
12 back to Arkansas from D.C., he admitted, almost bragged that
13 he took steps to hide his identity by turning off his
14 location services on his phone, covering his face and only
15 using cash, all steps to evade law enforcement, which he
16 knew, given his fairly brazen conduct while in D.C., were
17 looking for him.

18 This history of provoking police attention while
19 armed in public, compounded by his attempts to evade law
20 enforcement and hide evidence weighs in favor of detention.
21 I am aware that the defendant turned himself into law
22 enforcement. And this fact does count in his favor. But
23 the circumstances surrounding his surrender suggests that
24 this fact is entitled to very little weight.

25 He knew the images of him at the riot in the

1 assault on the Capitol had been widely circulated. He had
2 boldly talked to the press right at the scene of the assault
3 on the Capitol. Both the New York Times and the Washington
4 Post have him identified, you know, talking about how he sat
5 in the Nancy Pelosi's office.

6 He didn't turn himself in immediately, but instead
7 arranged for a time for surrender that allowed him to clear
8 out his house of incriminating evidence. He bragged about
9 this to law enforcement, saying, "If you all go out there
10 and do a search warrant, you can see all my shit. You ain't
11 going to find nothing out there, I assure you. I'm a smart
12 man. There's not anything there."

13 I don't know how smart Mr. Barnett is but he is
14 certainly a bragger. Bragging to law enforcement about what
15 he has done to cover his tracks is not a smart thing to do.
16 In short, the fact that the defendant turned himself in on a
17 schedule of his choosing does little to mitigate the heavy
18 weight of the other factors favoring detention.

19 As to the fourth factor, the Nature and
20 Seriousness of the Danger to Any Person or the Community
21 that Would Be Posed by the Person's Release.

22 I start with what happened on January 6th. He was
23 part of a violent assault on the Capitol in which five
24 people lost their lives. He brought a weapon to this event
25 that he had bought for the occasion. He brought it all the

1 way from Arkansas to the Nation's Capitol to further efforts
2 of disrupting a constitutional event.

3 Given defendant's participation in the assault on
4 the Capitol and his brazen actions while inside the Capitol
5 Building and private offices of the Speaker of the House of
6 Representatives and perhaps others, the fact that he has
7 prompted police attention the last six months due to his
8 public actions while armed, the fact that he owns an unknown
9 number of firearms which he and his partner removed from his
10 home before he scheduled his time to turn himself in, and
11 before the FBI searched his house, the fact that he has
12 admitted to engaging in evasive conduct upon his return to
13 Arkansas after the assault on the Capitol, and his boldly
14 entitled behavior while unlawfully inside the Capitol, all
15 together make this Court very concerned he poses a danger to
16 the community, not only because of his access to guns, which
17 may now be in the custody of his good friend who traveled to
18 Washington, D.C. with him, and also the missing stun gun,
19 but also because of the entitlement that he reflected in his
20 conduct.

21 The Court does not share the Magistrate Judge's
22 confidence in designating Tammy Newburn as a true
23 third-party custodian responsible for defendant's compliance
24 with any release conditions. As noted, Ms. Newburn appears
25 to have helped the defendant hide evidence, was highly

1 evasive when asked at the hearing before the Magistrate
2 Judge about whether she put the clothing in his trunk, why
3 she put it in her trunk and hid it below her dog create.

4 The responses regarding the defendant's firearms,
5 when they were removed, how many there were, where they
6 were, were similarly evasive until she was compelled to
7 answer.

8 Just as importantly, the Court finds that there
9 are no conditions or combination of conditions that will
10 assure this defendant's appearance as required or compliance
11 with any release conditions, because of his entitled
12 behavior that he exhibited on videos and in photographs
13 while he was inside the Capitol show a total disregard for
14 the law and for official directives, total disregard for the
15 U.S. Constitution.

16 Upon consideration of the proffered evidence
17 presented and the factors set forth in 18 USC Section
18 3142(g) and the possible release conditions set forth in
19 Section 3142(c), the Court finds that all four statutory
20 factors weigh heavily in favor of pretrial detention. And
21 the government has met its burden of establishing that there
22 are no conditions or combination of conditions that will
23 reasonably assure the safety of any other person in the
24 community..

25 Magistrate Judge Weidemann did a thorough and

1 thoughtful job considering the evidence but I respectfully
2 disagree. The charges against this defendant are gravely
3 serious and the evidence is extraordinarily strong. His
4 brazen conduct both inside the Capitol Building during the
5 assault on the Legislative Branch of our Government, and his
6 evasive conduct once he knew he was under investigation
7 bring into question his willingness to abide by any
8 conditions of release that this Court might impose instead
9 of pretrial detention.

10 The government's motion for pretrial detention is
11 therefore granted.

12 Mr. Barnett is directed to appear before the
13 criminal duty magistrate next Tuesday at 3:00 P.M. unless he
14 is indicted before then. If the defendant is indicted
15 before then, he will appear when scheduled before the judge
16 to whom this case is randomly assigned.

17 Is there anything further today from the
18 government?

19 MS. DOHRMANN: No, Your Honor.

20 THE COURT: Is there anything further from the
21 defendant?

22 MR. SIANO: No, Your Honor.

23 THE COURT: All right. You all are excused.

24 (Whereupon, at 4:26 p.m., the hearing was
25 concluded.)

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CERTIFICATE OF REPORTER

I, Lisa Walker Griffith, certify that the foregoing is a correct transcript from the record of the remotely reported proceedings in the above-entitled matter.

Please Note: This hearing was held in compliance with the COVID-19 pandemic and the standing orders of this court, and is therefore subject to the technological limitations of court reporting remotely, including static, signal interference and other restrictions.

Lisa Walker Griffith, RPR

1-29-2021
Date

EXHIBIT I



**Homeland
Security**

The Privacy Office
USA v. Richard Barnett Case No. 21-cr-0038 (CRC)
U.S. Department of Homeland Security
Washington, DC 20528



HOW TO PREVENT ONLINE HARASSMENT FROM “DOXXING”

What is Doxxing?

Doxxing refers to gathering an individual’s Personally Identifiable Information (PII) and disclosing or posting it publicly, usually for malicious purposes such as public humiliation, stalking, identity theft, or targeting an individual for harassment.

How Can Doxxing Impact You?

Doxxers may target government employees for such purposes as identifying law enforcement or security personnel, demonstrating their hacking capabilities, or attempting to embarrass the government.

HOW IS IT DONE?

Hacking, Social Engineering, or Other Malicious Cyber Activities

Doxxers may use hacking, social engineering, or other malicious cyber activities to access personal information. One common practice is **getting access to a victim’s email account**. A doxxer could use social engineering to get your password by posing as a representative from the IT helpdesk or your Internet Service Provider.

- Once a doxxer has access to your email account, he or she will attempt to **obtain more personal information from your account or break into other web-based accounts** (e.g., social media, online storage, and financial records) by using email-based password resets or harvesting your information in order to answer website security questions. The doxxer may also attempt to use the same email address and password combination on other sites to gain access to additional accounts.
- **A doxxer could use your DHS username and password to attempt to access the DHS network.**

Collecting Publicly Available Information

Doxxers may collect information about you from Internet sources, such as property records, social media postings, obituaries, wedding announcements, newsletters, public conferences, and web forums.

- Most, if not all, of this information is publicly available. The doxxer compiles information from multiple public-facing sources to reveal sensitive information about the victim, such as the victim’s home address, family members, photos, workplace, and information about the individual’s habits, hobbies, or interests.
- In this “mosaic effect,” **the seemingly innocuous information we post or share can be put together to develop a detailed dossier about us.**

Purchasing Information from Data Brokers

Doxxers may also use “data brokers” or people-search sites that compile information from public and commercial sources and then sell this information to companies or the public. These **brokers may obtain commercial data from retailers, catalog companies, magazines, and websites (e.g., news, travel).**

STEPS TO MITIGATE DOXXING

Limit What You Share Online

- **Be careful about what you choose to share online.** Some of the publicly available information (e.g., public records) may be out of your control, but remember that anything you post on the Internet might be misused, including photos. Once it's online, you cannot take it back.
- **Avoid posting information that may increase your chances of being targeted for doxxing.** Not all information has the same sensitivity level. For example, don't post information about your job on social media, especially sensitive details about your job duties or your physical location.
 - Avoid posting information that might be used to answer website security questions, such as your pet's name or where you were born.
- **Turn on privacy settings** on social media, mobile applications, and other websites, and be careful about the connections or friends you may have on these sites.
- **Limit your use of third-party applications** on social media and the use of social media accounts to log into other websites. These third-party applications receive PII from your profile when you use them.
- **Consider removing yourself from data brokers.** Unfortunately, this can be a time-consuming process, and your information may re-appear when data brokers receive new or updated data sources, so everyone must weigh the potential benefit against the effort required.

Stay Secure

- **Practice good cyber hygiene.** Set up two-step verification, use complex passwords, and avoid using the same password for multiple accounts to help prevent the hacking or hijacking of your accounts.

Act Fast

- **If you receive a suspicious email on your DHS account, forward it to DHSSPAM@hq.dhs.gov.**
- If doxxers publish your information on social media, report it immediately and ask that it be taken down.
- Document threats you receive, and if you think you're in danger, call the police. If you believe you are the victim of identity theft, file a report with your local police office. Even if they do nothing, it's good to get a report on file. Ask to speak with an officer who specializes in online crimes.

FOR MORE INFORMATION

- The Office of the Chief Security Officer also has a [Social Media Safety page](#) with a helpful booklet and many other resources.
- FBI's [Public Service Announcement on doxxing](#).
- US-CERT [cyber tip sheets](#).
- FTC video on [Sharing Information: A Day in Your Life](#) and FTC tips on [protecting personal information](#).
- DHS's [Stop. Think. Connect.](#)TM

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

RICHARD BARNETT,

Defendant.

Case No. 21-cr-0038 (CRC)

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2021, I electronically filed the foregoing Defendant's Bail Modification Motion, Exhibits, and Proposed Order with the Clerk of the United States District Court for the District of Columbia by emailing the Criminal Court Clerk at the following email address on April 5, 2021, DCD_CMECF_CR@dcd.uscourts.gov and Judge Cooper's Deputy Lauren_Jenkins@dcd.uscourts.gov, with the understanding that this Court will accept said motion while my admission is pending. I further certify that a copy of the foregoing was served via email to AUSA Mary Dohrmann, at Mary.Dohrmann@usdoj.gov.

Respectfully Submitted,

/s/ Joseph D. McBride, Esq.

Joseph D. McBride, Esq.

Admission Pending

THE MCBRIDE LAW FIRM, PLLC

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Email: jmcbride@mcbridelawnyc.com

1 interests of justice to enable the defense and the
2 government to work together on a protective order and for
3 the government to continue to compile the discovery in this
4 case and to provide it to the defense.

5 All right. And so I take it from the prior
6 conversation that I should expect a bail modification
7 motion?

8 MR. McBRIDE: That is correct, Judge.

9 THE COURT: Okay. Well, I will leave it for you
10 all to file, and obviously we'll do it all on the papers.
11 And once I get everything, we'll schedule a hearing on that,
12 all right?

13 Anything else?

14 MR. McBRIDE: No, Judge. Thank you very much.

15 THE COURT: From the government?

16 MS. McCLAIN: No, Your Honor, not from the
17 government, except that as Your Honor knows this will be my
18 final hearing in this case. I'll speak with Mr. McBride and
19 Mr. Metcalf about that, and AUSA Mary Dohrmann will be
20 remaining on the case.

21 THE COURT: Okay. All right. If there's nothing
22 else, the Court will stand in recess, and we'll see you back
23 here on May 4th, if not before. Have a good day.

24 MR. TANKLEFF: Thank you, Your Honor.

25 MS. DOHRMANN: Thank you, Your Honor.

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

UNITED STATES OF AMERICA,

v.

RICHARD BARNETT,

Defendant.

Case No. 21-cr-0038 (CRC)

PROPOSED ORDER SETTING CONDITIONS OF RELEASE

This matter having come before the Court and upon consideration of the Defendant's April 5, 2021, Motion to Modify Bail Conditions and corresponding exhibits, the Government's Opposition, Defendant's Reply, and hearing on the motion

IT IS ORDERED that the Defendant's Motion is hereby granted, and the Defendant released on his own recognizance.

Dated: April ___, 2021

HON. CHRISTOPHER R. COOPER
UNITED STATES DISTRICT JUDGE