

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA CALVIN HUGHES,
JEROD WADE HUGHES,

Defendants.

Cause No. 21-CR-00106-TJK

**JOSHUA HUGHES’
MOTION TO AMEND ORDER
OF DETENTION AND FOR
PRETRIAL RELEASE**

Pursuant to 18 U.S.C. § 3145(b) the Defendant JOSHUA CALVIN HUGHES, hereby moves the Court to amend the Magistrate Judge’s order of detention, and to amend it with an order allowing his conditional pretrial release.¹ This motion is made for the reason that he is not a flight risk nor a danger to any person or to the community.

THE FACTS

Joshua and Jerod Hughes were charged by complaint filed on January 28, 2021, with the following offenses:

¹ The Undersigned is a Montana attorney whose application for admission to the District Court for the District of Columbia is pending with the Clerk of Court. The Undersigned has been appointed to represent Defendant Joshua Hughes pursuant to the Criminal Justice Act.

- 18 U.S.C. § 1512(c)(2) - Obstruction of an Official Proceeding;
- 18 U.S.C. § 231(a)(3) - Obstruct/Impede/Interfere with Law Enforcement during a Civil Disorder;
- 18 U.S.C. § 1752(a)(1) - Knowingly Enter or Remain in Restricted Building Without Authorization;
- 18 U.S.C. § 1752(a)(2) - Knowingly Disrupt Government Business or Official Function;
- 40 U.S.C. § 5104(e)(2)(A) - Enter or Remain in Capitol Building Without Authorization;
- 40 U.S.C. § 5104(e)(2)(C) - Enter Capitol Building with the Intent to Disrupt Official Business;
- 40 U.S.C. § 5104(e)(2)(G) - Parade, Demonstrate, or Picket in a Capitol Building;
- 40 U.S.C. § 5104(e)(2)(C) - Enter Capitol Building with the Intent to Disrupt Official Business;
- 40 U.S.C. § 5104(e)(2)(G) - Parade, Demonstrate, or Picket in a Capitol Building;
- 18 U.S.C. § 1361 - Destruction of Property; and
- 18 U.S.C. § 2 - Aiding and Abetting.

See, Doc. 1.

On February 1, 2021, a transfer and detention hearing was held before United States Magistrate Judge John Johnston in the District of Montana in which the following evidence was presented:²

Background

Joshua Hughes is 37 years old. His brother and co-defendant, Jerod Hughes, is 36. The two live in East Helena, Montana, and have a great relationship with each other. They have lived in Helena, Montana, more than 30 years. Josh suffers from necrosis of the scaphoid bone in his wrist. Jerod suffers from irritable bowel syndrome which causes stomach pain. All of their immediate family, which is very tight-knit, lives in the Helena, Montana, area, including their parents, three brothers and a sister, and Jerod's wife and children. Jerod's wife, Catherine, suffers from debilitating interstitial cystitis. She is disabled and Jerod is her sole caregiver. Jerod is employed full-time by Valley Metal Building as a steel worker erecting metal buildings. He supports and provides for his family, takes care of Catherine at home, and does all of the shopping. *Trans.*, 12;13 to 16:11.

Josh is self-employed and provides residential and commercial cleaning services for different businesses like real estate and construction companies. He also helps with his brother's store, Devout Nutrition, and is a personal

² See Attachment A.

trainer. *Id.*, 16:14-22.

Both Jerod and Josh have the financial resources to make it to Washington, D.C. for any court appearances. If released pending trial, Josh would buy plane tickets whenever he needed to and show up wherever he needed to. *Id.*, 16:23 to 17:5.

In terms of criminal history, Josh has a misdemeanor theft conviction that occurred about nineteen years ago when he was around 18 or 19 years old. Neither Josh nor Jerod were under a probationary sentence or on parole on January 6, 2021, when the events charged in the Indictment occurred. *Id.*, 17:11-24.

Josh does not have any drug or alcohol issues. He has had a medical marijuana card for years to deal with pain from the necrotic scaphoid bone in his wrist. On some days the pain is so bad that he can't use his wrist. His doctors recommended the medical marijuana card to treat his wrist pain. If he were released, Josh would turn in his medical marijuana card and not use marijuana during the pendency of this case. *Id.*, 17:25 to 20:1.

Self-Surrender

The events charged in the Indictment occurred on January 6, 2021. On Monday, January 11, 2021, Josh and Jerod found out by watching the news on television that they were persons of interest. They wanted to clear that

up, identify themselves to law enforcement, and be up-front and forthcoming because it was the right thing to do. They have family members who were in law enforcement and they weren't trying to hide from anybody. They therefore called the FBI hotline and waited on hold for 15 minutes. When nobody answered, they went to the jail in Helena, Montana, and tried to self-surrender. They were told that there was a new building for the Sheriff's Office and the Helena Police Department, so they walked downtown to that building and identified themselves to a local detective. They then called the FBI to confirm their identities and to confirm that they had self-surrendered. They were met by an agent with the Federal Bureau of Investigation, Mark Seyler, who confirmed their identities. Between January 11 and February 1, 2021, they worked and waited to hear back from authorities. *Id.*, 20:12 to 23:3.

January 6, 2021

Neither Josh nor Jerod have had any kind of association with political groups of any kind. They are not politically active and had never gone to a Trump rally, although they have gone to freedom of speech rallies. They did support President Trump, however, and when the President called "all patriots" to Washington, D.C. in his last week of public tweets, they decided to go to attend President Trump's rally and then go sightseeing and visit the

Lincoln Memorial. Neither one of them had ever been to Washington, D.C. or the Capitol. They left Helena the night of January 3, 2021, at about 9:00 p.m. and drove through the following day, January 4, 2021, to Tomah, Wisconsin, where they spent the night. On January 5, 2021, they got up and drove to Gaithersburg, Maryland, and spent the night there. On the morning of the 6th they drove to Washington, D.C. to attend the President's rally. They arrived about 11:30 a.m., parked, and found out where the rally was being held. President Trump started his speech sometime between 12:00 and 1:00 o'clock, and it lasted about 30 to 40 minutes. Josh's impression was that President Trump had invited them to go to the Capitol for another rally, and Trump said he was going to walk with them down Pennsylvania Avenue. When Josh and Jerod saw that he wasn't actually going to walk down Pennsylvania Avenue, they stopped for lunch at a taco eatery. They sat down, warmed up, ate some food, used the restroom, and then walked down to the Capitol. *Id.*, 23:4 to 26:25.

Upon arrival at the Capitol they saw that the police had opened up barricades to allow people up onto the Capitol lawn and steps. There were tens of thousands of people. Tear gas was in the air and people were getting sprayed with OC spray. Josh and Jerod worked their way up to the front of the line to see what was going on. They stayed off to the side, not engaging

with any officers or anybody else. They did not intend to engage in any illegal behavior and just came to see what was happening. *Id.*, 27:1-22.

They arrived at the back of the Capitol. They walked through the crowd of people and joined the front line of people off to the side. Then they walked up to the top of the steps area where the police had receded away from the barricades. Some people off to the side started bashing in a window with a riot shield and a two-by-four. They did not know who the people bashing in the window were, had never seen them before, and did not talk to them. Josh was very surprised and didn't know what they were doing or why, and just stood back and watched. The photographs that are in the Government's Statement of Facts (Doc. 1-1, p. 2) show Josh just standing there watching the other people breaking the window. Josh did not provide any assistance to the two individuals that were engaged in this behavior, nor did he encourage them to do so. He was very surprised by what they were doing. *Id.*, 27:23 to 29:6.

Josh entered the Capitol building after he watched people go into the building. Josh saw Jerod go in and so Josh followed him, not wanting to be separated. Doc. 1-1, pp. 2 and 3. Once inside he saw people moving towards the police officers down the hall, and saw his brother kick open a door, looking for Josh. So Josh went over and tapped him on the shoulder and

showed him that he was right there. Josh told Jerod that he was there and to not do anything and to be peaceful. *Id.*, 29:7-20; see also, Doc. 1-1, pp. 3 and 4.

They then followed the mob. Josh walked around with his hands up the whole time. If he encountered an officer, he just stood still with his hands up. He never threatened any officer, although he knew that he wasn't supposed to be there. The only reason he crawled through the window and followed the mob in the first place was to keep an eye on his brother and witness what was going on. He had heard people talking about wanting to do like a sit-in and occupy the building, but he didn't imagine they meant going in the building. Josh thought they were going to be out on the steps. So when he saw people breaking in the windows and then flowing into the building, he followed them in. *Trans.*, 29:22 to 30:24.

Josh had no idea where he was or where he was going. He just followed people that were walking around. He had not made a prior plan to engage in any of the behavior that other people were doing while he was inside the Capitol building. He was following a group of people walking around the building, and they encountered an officer, Eugene Goodman,³ and he and

³ Josh was able to identify Officer Eugene Goodman from the accounts of the incident that he saw on television.

Jerod stayed back because he was armed and had his gun out. He and Jerod weren't trying to engage with anybody. The group of people around them followed the officer up the stairs. One man chased the officer, and they followed behind, walking up the steps. Josh didn't know who the man was and had never seen him before. Josh did not assist him in chasing Officer Goodman. He just walked up the steps behind him. By the time he made it up to the upper landing, Josh looked down the hallway, and could see them turning a corner. *Id.*, 30:15 to 31:23; see also, Doc. 1-1, pp. 5 and 6.

Josh and Jerod entered the Senate chamber as they were walking out of the building. Somebody had kicked a door open off to his left, and they walked through the doors not knowing or having any idea where they were going. But once we walked in, Josh recognized the Senate floor. They were in there only a few minutes. Doc. 1-1, pp. 7 and 8. They walked around and looked at the building. One man jumped into a chair, and Jerod and Josh and another gentleman told him to get out of the chair and to show some respect. They told people not to mess with things. Once they saw people rifling through stuff and desks and taking pictures and stuff, Josh told Jerod it was time to go. They didn't want to be associated with that, and so they walked out of the building and left the Capitol grounds. They heard the police calling out a 6:00 o'clock curfew, walked across town, and eventually found their car.

Josh was in such a state of shock at the time that he could barely use his phone or orientate directions. *Trans.*, 31:24 to 32:21.

They were actually in the Capitol building a total of 10 or 15 minutes. During that entire period of time, Josh just walked around with his hands up the whole time. He did not take photographs and he never pulled out or used his cell phone. Josh touched his glasses in one picture (Doc. 1-1, p. 4) because they fogged up from the change of cold to hot in the building. The only reason he was at the Capitol was because the President told them to go march to the Capitol. The only reason he entered into the building was because he was just following the group, and he thought they were going to be doing a peaceful protest of just occupying and doing a sit-in. He was very surprised at the events that occurred. He is not a member of any kind of subversive group like the Oath Keepers or the Proud Boys. His position now is that they were wrong for being there. He feels misled by the President and he deeply regrets his actions there. *Trans.*, 32:22 to 34:3.

On January 6, 2021, Josh Hughes did not know that he had committed a crime or what crime he might have committed, if any at all, other than, maybe trespass. The only reason he followed the mob or the people into the Capitol building was because he thought there was going to be a sit-in protest. *Id.*, 49:23 to 50:7.

Magistrate Judge Johnston found that the Government had met its burden of proving dangerousness by clear and convincing evidence. Josh Hughes has been detained in a variety of facilities since February 1, 2021, while being transported from the District of Montana to the District of Columbia.

The Indictment was filed on February 10, 2021. Doc. 3.

ARGUMENT

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

When assessing whether pretrial detention is warranted for dangerousness, the 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 poses a concrete, prospective threat to public safety.

The statute concerning review of a Magistrate Judge’s release order says nothing about the standard of the district court’s review. 18 U.S.C. § 3145(a). *Wood v. United States*, 391 F.2d 981, 984 (D.C. Cir. 1968), however, provides that “[e]valuating 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.” When exercising that broad discretion the District Court should apply *de novo* review. See, LCrR 59.3(b); *United States v. Chrestman*, No. 21-mj-218 (ZMF),

2021 U.S. Dist. LEXIS 36117, fn. 5 (D.D.C. Feb. 26, 2021).

Here, the Magistrate Judge concluded that the circumstances of the charges involved a riot at the Capitol in what appears to be an illegal and unlawful attempt to prevent the peaceful transition of power following an election. *Trans.*, 56:20 to 57:1. However, Josh Hughes testified only that he attended the rally, together with tens of thousand of other people, in support of the President.

The Magistrate Judge further concluded that the defendants were displeased with the results with the recent presidential election and took a deliberate course of conduct meant to disrupt the peaceful transition of power and intimidate our representatives and those charged with protecting them in an attempt to defeat the word of the people as reflected by the results of the election. The Magistrate Judge concluded that the defendants have little or no regard for the rule of law and are willing to undertake extreme and illegal manners and methods in an attempt to undermined the foundations of our democracy. The course of conduct led the Court to conclude that the defendants would show little or no regard to any condition or combinations he could impose upon them if they were released from custody pending further proceedings because they could be called to further action by someone they admire. The Magistrate Judge then concluded that defendants, based upon

their recent course of conduct, were a serious danger to the community as they have shown great resolve to damage and destruct our country if they disagree with the results of an election. *Id.*, 57:6 to 58:22.

The Magistrate Judge's conclusions were devoid of evidence to support them. Beyond his simple attendance at the President's rally, there was absolutely no evidence presented that Joshua Hughes intended to disrupt the peaceful transition of power and intimidate the representatives. Other than his mere presence, there was no evidence that he intended or attempted to prevent the peaceful transition of power following an election. The only evidence presented was that he entered the building to see what was happening inside and then followed the crowd. At worst, Josh Hughes thought that there was going to be a peaceful sit-in protest. There is no evidence that Josh Hughes had engaged in any prior planning of the events of January 6, 2021, before his arrival at the Capitol. He did not come to Washington, D.C. with the intention of causing mayhem and disrupting the democratic process. He is not a member of any group and did not assemble with any member of a group, but instead went to a taco eatery to get some food and use the restroom before walking to the Capitol. He does not own a firearm⁴ and was not armed with a weapon. The photos show that the only

⁴ *Trans.*, 35:19, 20.

thing in his hand was a plastic water bottle. Doc. 1-1, pp. 7 and 8. He was not clothed in tactical gear. He did not have a helmet, gas mask, or attempt to obscure his identity. He did not destroy property. He did not threaten or intimidate anybody or engage in violence. He did not photograph or record anything. He further did not encourage, facilitate, or assist anybody else that was engaged in illegal conduct. He did not act as a leader or engage in any conspiratorial conduct. Instead, he unlawfully entered and remained in a restricted area, merely wandering about the premises, not knowing exactly where he was most of the time. His motivation for entering the building was to avoid separation from his brother and to observe events as they transpired. When, five days later, he discovered that he was a person of interest, he promptly went to law enforcement and voluntarily self-identified to the FBI. He later self-surrendered to the United States Marshal's Service in Montana. He has acknowledged that he was wrong for being there and exhibited extreme remorse and regret for his actions at the Capitol. The factors of 18 U.S.C. § 3142(g)(1)-(4) simply do not justify detention on the basis of dangerousness, and there are conditions or a combination of conditions will reasonably assure the safety of other persons and the community. *Id.*, § 3142(f).

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CHARACTER LETTERS

Attached hereto are character letters from friends of Joshua Hughes, attesting to his good character. See, Attachment B.

CONCLUSION

The Government will no doubt argue that Joshua Hughes placed himself at the “tip of the spear” as rioters breached the Capitol on January 6, 2021, and actively destroyed government property, harassed and interfered with Capitol Police officers, and obstructed Congress’s certification of the Electoral College results. The fact of the matter is, however, that Joshua Hughes actually engaged in none of that behavior. While he was admittedly among the first to enter the Capitol building, he destroyed no property, assaulted nobody, and encouraged or facilitated nobody. He was at the wrong place at the wrong time, merely present, watching others engaged in the conduct complained-of. When he realized the gravity of what was happening, he found an exit and promptly left the premises in a dream-like state of shock at the horrible nightmare he had just witnessed.

Joshua Hughes therefore requests the Court to amend his order of detention and to release him from custody, on conditions, pending trial.

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DATED this 31st day of March, 2021.

By: s/ Palmer Hoovestal

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CERTIFICATE OF SERVICE

LCr 49.2

I hereby certify that on March 31, 2021, a copy of the foregoing document was served on the following persons by the following means:

1, 2, 3 CM-ECF

___ Hand Delivery

___ Mail

___ Overnight Delivery Service

___ Fax

2, 3 E-Mail

1. CLERK, UNITED STATES DISTRICT COURT

2. JAMES NELSON

Assistant United States Attorney
Counsel for the United States of America
james.nelson@usdoj.gov

3. Jonathan Zucker
Counsel for Jerod Hughes
jonathanzuckerlaw@gmail.com

ATTACHMENT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal Docket
)	No. MJ-21-07-JTJ
vs.)	
)	
JOSHUA CALVIN HUGHES and)	
JEROD WADE HUGHES,)	
)	
Defendants.)	

Transcript of Initial Appearance/Detention Hearing

Missouri River Federal Courthouse
125 Central Avenue West
Great Falls, MT 59404
Monday, February 1, 2021
11:09 a.m. to 12:29 p.m.

BEFORE THE HONORABLE JOHN T. JOHNSTON
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

Yvette Heinze, RPR, CSR
United States Court Reporter
Missouri River Federal Courthouse
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Great Falls, MT 59404
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Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

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APPEARANCES

PRESENT ON BEHALF OF THE PLAINTIFF,
UNITED STATES OF AMERICA:

Jeff Starnes (in person)
Assistant U.S. Attorney
OFFICE OF THE U.S. ATTORNEY
119 1st Avenue North, Suite 300
Great Falls, Montana 59401

PRESENT ON BEHALF OF THE DEFENDANT:

Palmer A. Hoovestal (in person)
HOOVESTAL LAW FIRM
608 Lincoln Road West
P.O. Box 747
Helena, Montana 59624-0747

ALSO PRESENT:

Tom Kelly, probation officer (in person)

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I N D E X

WITNESSES CALLED BY THE DEFENDANT

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PROCEEDINGS

(Open court.)

(Defendants present in person.)

THE CLERK: This Court will now conduct initial appearances in Criminal Magistrate Case Number 21-7, Great Falls, Judge Johnston, United States of America versus Joshua Calvin Hughes and Jerod Wade Hughes.

THE COURT: And, good morning, Mr. Starnes.

MR. STARNES: Good morning, Your Honor.

THE COURT: Is the government ready to proceed?

MR. STARNES: The government is.

THE COURT: And good morning, Mr. Hoovestal.

MR. HOOVESTAL: Good morning, Your Honor.

THE COURT: Are you and your clients ready to proceed?

MR. HOOVESTAL: Yes.

THE COURT: Your clients consent to having their initial appearances conducted at the same time?

MR. HOOVESTAL: Yes, Your Honor.

THE COURT: Thank you very much.

Gentlemen, my name is John Johnston. I'm a United States Magistrate Judge. Today, I am presiding over a motion that's been filed with the court seeking an order transferring this matter from the District of Montana to the District of Columbia for further proceedings.

1 Do you understand who I am and what I'm doing, sir?

2 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

3 THE COURT: How about you?

4 DEFENDANT JEROD HUGHES: Yes, sir.

5 THE COURT: Mr. Starnes, pursuant to the Due Process
6 Protections Act, the Court confirms the United States'
7 obligation to produce exculpatory evidence to the defendant and
8 orders that it do so. Failing to do so in a timely manner may
9 result in adverse consequences, including but not limited to
10 exclusion of evidence, adversary instructions, dismissal of
11 charges, contempt proceedings, or other sanctions by the Court.

12 Is the government aware of that?

13 MR. STARNES: Yes, Your Honor. Thank you very much.

14 THE COURT: Thank you very much.

15 And, Mr. Hoovestal, will your clients be requesting
16 identity hearings?

17 MR. HOOVESTAL: No, Your Honor.

18 THE COURT: Thank you very much.

19 MR. HOOVESTAL: We would ask for a detention hearing
20 and that it occur right now, however.

21 THE COURT: All right. And your clients consent to
22 their detention hearings being conducted simultaneously?

23 MR. HOOVESTAL: Yes.

24 THE COURT: All right. Sir, please state your full
25 name for the record.

1 DEFENDANT JOSHUA HUGHES: Joshua Calvin Hughes, Your
2 Honor.

3 THE COURT: Sir?

4 DEFENDANT JEROD HUGHES: Jerod Wade Hughes.

5 THE COURT: Gentlemen, you have the right to be
6 represented by an attorney. You've retained Palmer Hoovestall
7 to represent your interests. The only way he can effectively
8 represent your interests is if you fully communicate with him
9 about the situation that brings you to Court. The law provides
10 that none of the communications between you and Mr. Hoovestall
11 can be used by the government against you in any prosecution.

12 Do you understand that, sir?

13 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

14 DEFENDANT JEROD HUGHES: Yes, Your Honor.

15 THE COURT: You also have the right to remain silent
16 and not make a statement. Any statement you make to anyone
17 other than your attorney may be used against you by the
18 government in any prosecution. If you have already made a
19 statement, you have the right not to make any further
20 statements. If you start making a statement in the future, you
21 have the right to stop at any time for any reason.

22 Sir, do you understand your right to remain silent?

23 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

24 THE COURT: How about you?

25 DEFENDANT JEROD HUGHES: Yes, Your Honor.

1 THE COURT: The United States Government has filed a
2 criminal complaint in the United States District Court for the
3 District of Columbia in which it names Joshua Calvin Hughes and
4 Jerod Wade Hughes as defendants.

5 Have each of you received a copy of the criminal
6 complaint and the affidavit attached to it, sir?

7 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

8 DEFENDANT JEROD HUGHES: Yes, Your Honor.

9 THE COURT: Have you had a chance to review it with
10 your attorney?

11 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

12 DEFENDANT JEROD HUGHES: Yes, Your Honor.

13 THE COURT: I'm required to review the charges
14 against you and the maximum penalties.

15 The criminal complaint doesn't have the maximum
16 penalties on it, Mr. Starnes.

17 MR. STARNES: I have those available, Your Honor.

18 THE COURT: Would you please read the charges and the
19 maximum penalties to the defendants.

20 MR. STARNES: Certainly, Your Honor.

21 So with respect to the first charge, Title 18, United
22 States Code, Section 1512(c)(2), styled obstruction of an
23 official proceeding. The maximum punishment is 20 years of
24 imprisonment, a \$250,000 fine, and three years of supervised
25 release.

1 With respect to the charge styled Title 18, United
2 States Code, Section 231(a)(3), obstruction, impeding, or
3 interfering with law enforcement during a civil disorder, the
4 maximum penalty is 5 years imprisonment, a \$250,000 fine, and 3
5 years of supervised release.

6 With respect to both charges filed under Title 18,
7 United States Code, Section 1752, specifically (a)(1), which is
8 knowingly entering or remaining in a restricted building
9 without authorization, and Section 1752(a)(2), knowingly
10 disrupting government business or an official function, the
11 maximum penalty for each of those offenses is the same. It's 1
12 year of imprisonment, a \$100,000 fine, and 1 year of supervised
13 release.

14 With respect to three Title 40 offenses,
15 specifically, allegations under Section 5104(e)(2)(A), entering
16 or remaining in a Capitol building without authorization;
17 Section 5104(e)(2)(c), entering a Capitol building with the
18 intent to disrupt official government business; and
19 Section 5104(e)(2)(G), parading, demonstrating, or picketing in
20 a Capitol building, the maximum punishment for each of those
21 offenses is the same. It's 6 months imprisonment, a \$5,000
22 fine, and a 1 year of supervised release.

23 And, finally, with respect to the charge styled
24 Title 18, United States Code, Section 1361, destruction of
25 property, and aiding and abetting the same, under Title 18,

1 United States Code, Section 2, the maximum penalty is 10 years
2 of imprisonment, \$250,000 fine, and 3 years of supervised
3 release.

4 Finally, if any of these offenses is determined to be
5 a federal crime of domestic terrorism or a federal crime of
6 terrorism, then the maximum amount of supervised release would
7 be a lifetime term of supervision under Title 18, United States
8 Code, Section 3583(j).

9 THE COURT: Thank you very much.

10 Joshua Calvin Hughes, do you understand the charges
11 against you and the maximum penalties you would face if you
12 were convicted?

13 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

14 THE COURT: Jerod Wade Hughes, do you understand the
15 charges against you and the maximum penalties you would be
16 facing --

17 DEFENDANT JEROD HUGHES: Yes, Your Honor.

18 THE COURT: -- if you were convicted?

19 Thank you very much.

20 Mr. Starnes, are any of the charges petty offenses?

21 MR. STARNES: No, Your Honor.

22 THE COURT: Thank you very much.

23 Mr. Hoovestal, does either of the defendants request
24 a preliminary hearing?

25 MR. HOOVESTAL: No, Your Honor. We'll waive a

1 preliminary hearing.

2 THE COURT: I'm a required to advise the defendants
3 that you're allowed to transfer the prosecution of the charges
4 against you from the United States District Court for the
5 District of Columbia to the United States District Court for
6 the District of Montana only if certain circumstances are
7 present. One of these circumstances is that the United States
8 Attorney for both districts approve of the transfer in writing.

9 Mr. Starnes, have the United States Attorneys for the
10 District of Columbia and the District of Montana both approved
11 to such a transfer in writing?

12 MR. STARNES: Not at this time, Your Honor.

13 THE COURT: Thank you very much.

14 Mr. Starnes, where were the alleged offenses
15 committed?

16 MR. STARNES: In the District of Columbia, Your
17 Honor.

18 THE COURT: Has the United States District Court for
19 the District of Columbia issued warrants for the arrests of
20 Joshua Calvin Hughes and Jerod Wade Hughes?

21 MR. STARNES: They have, Your Honor. Those were
22 filed with the court over the weekend, and they are
23 Documents 3-2 and 3-3, respectively.

24 THE COURT: Thank you very much.

25 And, Mr. Hoovestāl, do you agree that the United

1 States District Court for the District of Columbia has issued
2 warrants for the arrest of your clients?

3 MR. HOOVESTAL: So agreed, Your Honor.

4 THE COURT: Do you also agree that the alleged
5 offenses were committed in the district of Columbia?

6 MR. HOOVESTAL: Yes.

7 THE COURT: The government has filed a motion for
8 transfer to the district of offense and requesting that I place
9 the defendants in custody with the United States Marshals for
10 transport from the United States District Court for the
11 District of Montana to the United States District Court for the
12 district of Columbia.

13 Mr. Hoovestal, do your clients waive removal and
14 consent to the government's motion for transfer?

15 MR. HOOVESTAL: No, Your Honor. We don't dispute the
16 fact that the case will be prosecuted in the District of
17 Columbia. We dispute, however, that the Hughes boys should be
18 transported there or transferred there by the United States
19 Marshal service. It's our position that they are neither a
20 flight risk or a danger. We'd ask for a detention hearing so
21 that they can self-surrender in the District of Columbia.

22 THE COURT: Thank you very much.

23 Mr. Starnes, is the government moving for detention
24 of the defendants?

25 MR. STARNES: We are, Your Honor.

1 THE COURT: All right. So we'll proceed directly to
2 the detention hearing at this time.

3 Is that right, Mr. Hoovestal?

4 MR. HOOVESTAL: That's correct, Your Honor.

5 THE COURT: Is the government ready as well?

6 MR. STARNES: I'll proceed, Your Honor. That's fine.

7 THE COURT: Go ahead.

8 MR. STARNES: Thank you, Your Honor. So the
9 information I'd like to proffer before the Court is the
10 information in both bond reports, one for each defendant, as
11 well as the information contained in the statement of facts in
12 the affidavit that was filed in support of the complaint.
13 Beyond that information, I have nothing additional other than
14 legal argument. But, factually, that's what we would rest
15 upon, Your Honor.

16 THE COURT: All right. Mr. Hoovestal, do either of
17 your clients wish to present any evidence to the Court?

18 MR. HOOVESTAL: Yes, Your Honor. We'd call Joshua
19 Hughes.

20 THE COURT: Mr. Hughes.

21 MR. HOOVESTAL: Step forward, please, and be sworn.

22 THE COURT: Come forward to the well of the Court,
23 face the clerk, raise your right hand.

24 ///

25 ///

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 JOSHUA CALVIN HUGHES,
2 called for examination by counsel for the defense, after having
3 been first duly sworn to testify the truth, the whole truth,
4 and nothing but the truth, testified as follows:

5 THE COURT: Sir, please state your full name for the
6 record and spell your last name.

7 DEFENDANT JOSHUA HUGHES: Joshua Calvin Hughes,
8 H-u-g-h-e-s.

9 THE COURT: Mr. Hoovestal.

10 MR. HOOVESTAL: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. HOOVESTAL:

13 Q. Mr. Hughes, you are one of the defendants in this case; is
14 that correct?

15 A. Yes, sir.

16 Q. And do you have -- what's your relationship to Jerod
17 Hughes?

18 A. He is my brother.

19 Q. Okay. How old are you?

20 A. I'm 37.

21 Q. How old is Jerod?

22 A. 36.

23 Q. And what's your relationship? In other words, do you have
24 a good relationship? Do you get along with each other? Are
25 you close?

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

- 1 A. We have a great relationship.
- 2 Q. Okay. Now, where do you both live?
- 3 A. We both live in Montana, in Helena.
- 4 Q. In East Helena? Does that sound more accurate?
- 5 A. Yes. Yes.
- 6 Q. Where were you born?
- 7 A. I was born in Colorado Springs, Colorado.
- 8 Q. And where was Jerod born?
- 9 A. He was born here in Helena.
- 10 Q. How long have you lived, basically, in the Helena area?
- 11 A. Most of my life. But I'd say, probably, 30-plus years.
- 12 Q. And Jerod?
- 13 A. Most of his life, 30-plus years.
- 14 Q. Okay. Do you have any physical disabilities?
- 15 A. Just my broken wrist that's dead -- the dead bone broke.
- 16 Q. And try to speak up so I can hear you.
- 17 A. Just the -- just my broken wrist that has never healed.
- 18 Q. What about Jerod?
- 19 A. He has IBS.
- 20 Q. And what is IBS?
- 21 A. Irritable bowel syndrome.
- 22 Q. What are the symptoms that are occasioned with irritable
- 23 bowel syndrome?
- 24 A. Can't go to the bathroom, stomach is in a knot, can't eat
- 25 sometimes, stuff like that.

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 Q. Does he take medication for that?

2 A. Yes.

3 Q. Does it cause a problem for him?

4 A. Not that I believe, no.

5 Q. In other words, if he were incarcerated, would that pose a
6 problem for him if he were taken into custody and transported
7 to the District of Columbia for the proceedings, would that be
8 a problem for him?

9 A. I don't think so.

10 Q. Okay. Now, you both live in the Helena area. Describe to
11 the Court what your family ties are there, please.

12 A. We have all of our immediate family and loved ones in
13 Helena.

14 Q. And how many people does that consist of?

15 A. My -- our mother, father, our brothers -- Jake, Joe,
16 Jesse -- our sister Cassie, and then his wife and daughter, and
17 I have my girlfriend, and their children.

18 Q. Okay. And would you characterize your family as
19 tight-knit and close or --

20 A. Yes, sir.

21 Q. -- or what?

22 A. Very tight-knit.

23 Q. Okay. Jerod's wife, what's her name?

24 A. Katherine Hughes.

25 Q. And Katherine, does she suffer from some physical

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 disability?

2 A. Yes, interstitial -- I can't pronounce the full -- but
3 she's disabled.

4 Q. Cystitis, does that sound correct?

5 A. Interstitial cystitis, yes.

6 Q. Okay. And --

7 A. And Jerod is her primary caretaker.

8 Q. Well, what is the nature of this interstitial cystitis?

9 A. It's debilitating. She has a hard time urinating.

10 Anything going on down there, it's just very painful and almost
11 too hard to deal with.

12 Q. Does she have any caregivers besides Jerod?

13 A. No.

14 Q. So if Jerod were taken into custody, would that affect her
15 ability to deal with her disability?

16 A. Yes, sir.

17 Q. And how?

18 A. He supports the family. He goes and takes care of her at
19 home and does all of the shopping and just provides for the
20 family.

21 Q. Notwithstanding the support that he provides for his
22 disabled wife, is he employed?

23 A. Yes.

24 Q. And how is he employed?

25 A. He's a steel worker. He erects steel buildings.

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 Q. Is that full-time employment?

2 A. Yes.

3 Q. And when I say full-time employment, that's 40 hours -- at
4 least 40 hours a week?

5 A. Yes, sir.

6 Q. Where does he work?

7 A. He works for -- I forget the name of the company.

8 Q. How about Valley Building?

9 A. Yes, sir.

10 Q. Valley Metal Building?

11 A. Yes, sir.

12 Q. Is that it?

13 A. (No audible response.)

14 Q. What about you? How are you employed?

15 A. I'm a self-employed. I'm a -- I'm a housecleaner. I
16 provide cleaning services.

17 Q. And so what's the nature of your business?

18 A. I --

19 Q. In other words, do you do residential --

20 A. I provide residential cleaning as well as commercial
21 cleaning for different businesses like real estate companies
22 and construction companies.

23 Q. All right. So do you both have the financial resources
24 to, first, retain your own private counsel; and then, secondly,
25 to make it to Washington DC for any further court appearances?

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 A. Yes, sir.

2 Q. And how would you propose to do that if you were released
3 pending trial in this matter?

4 A. I would buy plane tickets whenever I needed to and show up
5 wherever I needed to.

6 Q. Okay. What other community ties do you have with the
7 Helena area?

8 A. I help with my brother's store Devout Nutrition. I
9 personal train people occasionally when they seek out my
10 services. And I just -- I work in the community.

11 Q. All right. Do you have any criminal history?

12 A. Not since I was around 19 -- 18, 19 years old.

13 Q. And what was that?

14 A. It was a misdemeanor theft charge.

15 Q. All right. So the complaint alleges certain conduct by
16 you and your brother on January 6th, 2021. On January 6, 2021,
17 were you under any kind of probation?

18 A. No, sir.

19 Q. Were you under parole?

20 A. No, sir.

21 Q. Or on parole?

22 A. No, sir.

23 Q. How about your brother Jerod?

24 A. No, sir.

25 Q. All right. Do you have any drug or alcohol issues?

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

- 1 A. No, sir.
- 2 Q. Do you have a medical marijuana card?
- 3 A. I had one for years, yes, sir.
- 4 Q. Do you use marijuana?
- 5 A. Yes, sir.
- 6 Q. And what's that for?
- 7 A. That's for my broken wrist.
- 8 Q. Okay.
- 9 A. The pain that they couldn't fix.
- 10 Q. So let's talk a little bit more about your broken wrist.
- 11 Do you have continuing problems with that?
- 12 A. The bone is in necrosis, the scaphoid is dead. And the
- 13 doctors gave me advice to either get a fusion, which would
- 14 immobilize my wrist and cause early onset arthritis, or to not
- 15 do the surgery and to just eat the pain the best that I can.
- 16 Q. So necrosis to me means that the bone is dead?
- 17 A. Yes, sir.
- 18 Q. It's dead bone tissue?
- 19 A. Yes, sir.
- 20 Q. Is that what you suffer from?
- 21 A. Yes.
- 22 Q. Okay. And does that cause pain?
- 23 A. Yes, sir.
- 24 Q. Describe the pain that you suffer?
- 25 A. On some days it's not as bad; on some days it's very, very

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 bad. I can't use my wrist sometimes.

2 Q. Okay. So when we refer to the medical marijuana card that
3 you apparently did have or have --

4 A. Yes.

5 Q. -- is that to treat that pain or deal with that pain?

6 A. Yes, sir. Even the doctors recommended it.

7 Q. All right. They recommended the medical marijuana?

8 A. Yes.

9 Q. Why don't you just use ibuprofen or acetaminophen or
10 something like that to deal with pain?

11 A. I've just -- I don't like to take medicine like that.
12 Just the pills I was told could lead to ulcers and other
13 problems.

14 Q. So if you were released pending trial, would it be any
15 issue for you to turn in your medical marijuana card and not
16 use marijuana during the pendency of this case?

17 A. Yes, sir.

18 Q. It would be an issue?

19 A. No, it would not be an issue. I would turn it in and not
20 use.

21 Q. Okay. Do you have any problems with any other drugs?

22 A. No, sir. No alcohol or other drugs, no.

23 Q. When was the last time you had a drink?

24 A. In weeks.

25 Q. It's been weeks?

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 A. Yeah, a couple of weeks.

2 Q. How about Jerod? What does he -- what's his marijuana
3 use? What's his drug use consist of?

4 A. It's marijuana. He's also had a medical card for the IBS.

5 Q. Anything else?

6 A. Not that I'm aware of.

7 Q. What about alcohol?

8 A. No, no alcohol or other drugs, no.

9 Q. Okay. So the real issue boils down to whether you are
10 going to show up to court. Okay?

11 A. Yes, sir.

12 Q. What assurances can you give to Judge Johnston that you
13 will show up to court in the District of Columbia?

14 A. We self-identified the following Monday after the
15 incident. We called the FBI hotline and waited on hold for
16 15 minutes. And then when nobody got through to us, we just
17 went into the jail and tried to turn ourselves in.

18 Q. All right. So let me stop you. For purposes of
19 chronology here, this incident occurred on January 6, 2021; is
20 that correct?

21 A. Yes, sir.

22 Q. And when did you self-surrender -- or self-identify,
23 that's what you call it?

24 A. On January 11th, the following Monday.

25 Q. Okay. And tell Judge Johnston what you did.

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 A. We -- we called the FBI tip line. Nobody answered for
2 over 15 minutes. So we went into the jail and tried to
3 self-surrender there. We were notified that there was a new
4 building erected for the sheriffs and Helena PD. So we walked
5 to that building downtown, and I helped the detective identify
6 ourselves. And then they called in the FBI agents to confirm
7 our identities and to confirm that we self-surrendered.

8 Q. Okay. So how did you -- what brought you to self-identify
9 and self-surrender?

10 A. We -- we found out that we were persons of interest, and
11 we wanted to clear that up and self-identify and be up-front
12 and forthcoming.

13 Q. Okay. Were you ever met by an agent with the Federal
14 Bureau of Investigation?

15 A. Not prior to that, only on the day that we
16 self-surrendered.

17 Q. But subsequent to your self-surrender or self-identify?

18 A. Yes, yes, we met -- we met Mark Seyler, agent I believe.

19 Q. And what happened on that occasion?

20 A. He notified us that they have to confirm our identities
21 and that they would keep in touch with us, and that we were --
22 we told them that we were going to hire you for an attorney and
23 did so that same day.

24 Q. Okay. So that happened on January 11th, 2021; is that
25 correct?

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 A. Yes, sir.

2 Q. So today's February 1st, 2021. What have you been doing
3 between January 11th and February 1st?

4 A. I've been working and waiting to hear back from
5 authorities.

6 Q. Okay. So let's talk about these photos that you saw on, I
7 guess, social media. Does that sound right?

8 A. I was given them. People -- I was notified when -- well,
9 I saw them on the news and stuff like that. I don't use social
10 media. But I was notified that we were persons of interest, so
11 we made sure to come and turn ourselves in and self-identify.

12 Q. And why would you want to do that?

13 A. Because I wasn't trying to hide from everybody.

14 Q. Are you --

15 A. It's the right thing to do.

16 Q. Okay. It's the right thing to do.

17 Do you have members of law enforcement in your
18 family?

19 A. Yes. Yes.

20 Q. Tell us about those.

21 A. My deceased grandfather was a police captain in Helena.
22 My Uncle Bob Gleich is a retired sheriff. And my Uncle David
23 is an active highway patrolman. And then my Uncle Ron in
24 Texas, I believe, is a police captain.

25 Q. Okay. So you're from a family that has a substantial

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 amount of law enforcement officers in it. Does that sound
2 accurate?

3 A. Yes, sir.

4 Q. All right. So let's then go to the complaint and the
5 affidavit. Since you don't have anything to hide, tell the
6 Court, essentially, what you did on January 6, 2021.

7 THE COURT: And I'll just remind you, you have the
8 right to remain silent. Any statement you make at this time
9 can be used against you by the government and in your
10 prosecution.

11 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

12 THE COURT: Do you understand that?

13 DEFENDANT JOSHUA HUGHES: Yes, Your Honor.

14 THE COURT: All right.

15 BY MR. HOOVESTAL:

16 Q. Okay. Go ahead.

17 A. My brother and I arrived to DC on the morning of the 6th
18 and --

19 Q. Where did you come from?

20 A. We had stayed in Maryland.

21 Q. Well, where did you -- how did you get there from Helena?

22 A. We drove his vehicle.

23 Q. When did you leave?

24 A. We left the night of the 3rd, around 9:00 p.m.

25 Q. January 3rd about 9:00 p.m. --

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 A. Yes, sir.

2 Q. -- you left?

3 Where did you go from there?

4 A. We drove to Tomah, Wisconsin, and we stayed there for the
5 night. And then the following day on the -- or on the 5th --
6 because we drove through the day on the 3rd, all into the 4th,
7 and stayed the night on the 4th. And then we got up on the
8 morning of the 5th and drove to Maryland. I'm trying to
9 remember the name of the city.

10 Q. How about Gaithersburg?

11 A. Yes, sir, Gaithersburg. And we stayed the night in
12 Gaithersburg. And then the morning of the 6th is when we drove
13 county to DC to go attend the rally for the President.

14 Q. All right. So your intention was to attend this rally of
15 President Donald Trump?

16 A. Yes, sir.

17 Q. Now, are you a member of any kind of organization?

18 A. No, sir.

19 Q. Are you a member of the Oath Keepers?

20 A. No, sir.

21 Q. Whatever other organization that's been making the news?

22 A. No. No, I'm not a member of anything.

23 Q. What about your brother?

24 A. He's also not a member of anything.

25 Q. And why then would you be interested in going to a rally

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 in Washington DC?

2 A. The President called for our support, and we wanted to go
3 support him with our presence at the rally, and then we wanted
4 to go see the sites.

5 Q. So what was your intention?

6 A. Was to go hear the President speak.

7 Q. Okay. And what were you going to do after that?

8 A. We were going to go sightseeing.

9 Q. Where did you want to go?

10 A. I wanted to go see the Lincoln Memorial.

11 Q. Anything else?

12 A. Not -- mostly the Lincoln Memorial, but all of the sites
13 that we could come across in the time that we were spending the
14 day there.

15 Q. Had you ever been to Washington DC?

16 A. No, sir.

17 Q. Had you ever been to the Capitol?

18 A. No, sir.

19 Q. And so what did you do when you got there?

20 A. We parked and tried to find out where the rally was going
21 to be held. We were informed that it was going to be in front
22 of the Washington Memorial, and we walked --

23 Q. Washington Monument, you mean?

24 A. Yes, monument, excuse me.

25 And that's where -- that's where President Trump had

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 his rally at.

2 Q. Okay. What time did you arrive?

3 A. It was around 11:30 in the morning.

4 Q. And when did President Trump begin his speech?

5 A. I believe it was supposed to be around noon, but it
6 started sometime between 12:00 and 1:00 o'clock.

7 Q. Okay. So the speech lasted how long?

8 A. Probably about 30, 40 minutes.

9 Q. Okay. Were you -- well, tell us, and I don't want to lead
10 you. But was it your impression that President Trump had
11 invited you to go to the Capitol for another rally?

12 A. Yes. He said he was going to walk with us down
13 Pennsylvania Avenue.

14 Q. Okay. So what did you folks do? What did you and your
15 brother do?

16 A. When we saw that he wasn't going to be actually going
17 down -- walking down Pennsylvania Avenue, we went and got lunch
18 at a taco eatery.

19 Q. So Jerod has IBS, you said. Did he have to go to the
20 restroom?

21 A. He did have to go to the restroom on the way there, yes.

22 Q. Okay. And this taco eatery that you had lunch at, did you
23 go in and sit down or what?

24 A. We went and sat down, warmed up, ate some food, and then
25 we walked down to the Capitol after that.

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 Q. All right. So what happened when you arrived at the
2 Capitol?

3 A. We had seen that the police had opened up barricades to
4 allow people up onto the Capitol lawn and steps. And when we
5 got there, there was already tear gas in the air and people
6 getting OC sprayed.

7 Q. Okay. And how many people were there?

8 A. Thousands. Tens of thousands.

9 Q. Tens of thousands?

10 A. Yes, sir.

11 Q. To the best of your ability to estimate?

12 A. I -- one of the officers in the area when we were walking
13 by we asked him how many people were here, and he gathered
14 there was around 80,000 to 100,000 people.

15 Q. Okay. So, in any event, the barricades were opened. What
16 did you and Jerod do?

17 A. We worked our way up to the front of the line to see what
18 was going on. We stayed off to the side, not engaging with any
19 officers or anybody else.

20 Q. Had you intended to, you know, engage in any illegal
21 behavior? Or what was your intention?

22 A. No, sir. I just came there to see what was going on.

23 Q. All right. And so you arrived where?

24 A. We arrived, I believe, at the back of the Capitol, and we
25 were up on the steps.

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 Q. How did you end up on the steps?

2 A. We walked through the crowd of people, up on the steps,
3 and joined the front line off to the side.

4 Q. All right. And did you ever end up inside the Capitol
5 building?

6 A. Yes, sir.

7 Q. How did that happen?

8 A. When we walked up to the top of the steps area where the
9 cops had receded away from the barricades, some people off to
10 my side started bashing in a window with a riot shield and a
11 two-by-four.

12 Q. Did you know who those folks were?

13 A. No. No, sir.

14 Q. Had you ever seen them before?

15 A. No, sir.

16 Q. Did you talk to them?

17 A. No, sir.

18 Q. What was your impression when they started engaging in
19 that behavior?

20 A. I was very surprised. I didn't know why they -- what they
21 were doing, and I stood back and just watched.

22 Q. And so those are some of the photographs that we can see
23 in the statement of facts?

24 A. Yes, sir.

25 Q. Did you provide any assistance to this guy or these two

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 guys that were engaged in this behavior?

2 A. No, sir.

3 Q. Did you encourage them to continue to do so?

4 A. No, sir.

5 Q. Were you surprised?

6 A. I was very surprised.

7 Q. All right. So how did you end up entering into the
8 Capitol building?

9 A. After I watched people go into the building, I saw my
10 brother go in, and I followed him, not wanting to be separated.

11 Q. Okay. And what happened inside?

12 A. Once inside, I seen -- I seen people moving towards the
13 police officers down the hall, and I saw my brother kick open a
14 door.

15 Q. Okay.

16 A. He was looking for me, and I went over and tapped him on
17 the shoulder and showed him I was right there.

18 Q. What did you do then?

19 A. I told him that I was there and to not do anything and to
20 be peaceful.

21 Q. All right. And what happened next?

22 A. We walked following the mob. I just walked around with my
23 hands up the whole time. If I encountered an officer, I just
24 stood still with my hands up.

25 Q. Okay. Did you ever threaten any officer?

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 A. Absolutely not.

2 Q. Did you know that you weren't supposed be there?

3 A. I -- I did.

4 Q. Okay. Well, why did you crawl through the window then and
5 follow the mob?

6 A. I was -- I was keeping an eye on my brother and just
7 bearing witness.

8 Q. Bearing witness. What do you mean by bearing witness?

9 A. To what was going on and just -- I had heard people
10 talking about wanting to do like a sit-in and occupy the
11 building. I didn't imagine they meant going in the building.
12 I thought we were going to be out on the steps. So when I saw
13 people breaking in the windows and then flowing into the
14 building, I followed in.

15 Q. All right. So where did you go next?

16 A. I had no idea where I was. I didn't know where I was even
17 headed. I had no plans or any idea of where we were even
18 going. I just followed people that were walking around.

19 Q. Had you made a prior plan to engage in any sort of
20 behavior that occurred that other people were doing while you
21 were inside the Capitol building?

22 A. No.

23 Q. Okay. Where did you go after that? Kind of lead us
24 through the --

25 A. I was following a group of people walking around the

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 building, and we encountered an officer, Eugene Goodman, and --

2 Q. How do you know it was Eugene Goodman?

3 A. From the report after the -- after the incident.

4 Q. That you saw on --

5 A. I saw on TV.

6 Q. Okay.

7 A. And we stayed back. I put Jerod behind me, and we stood
8 back away because he was armed and had his gun out, and we
9 didn't -- we weren't trying to engage with anybody.

10 Q. Okay. Where did you go next?

11 A. The group of people around us ended up following the
12 officer up the stairs. One man chased the officer, and we
13 followed behind, walking up the steps.

14 Q. And did you know who this guy was?

15 A. No.

16 Q. Had you ever seen him before?

17 A. No, I didn't know anybody there but my brother.

18 Q. Did you assist him in chasing --

19 A. No.

20 Q. -- Officer Goodman?

21 A. No, I didn't. No, I just walked up the steps behind. By
22 the time I made it up to the upper landing, I looked down the
23 hallway, and I could see them turning a corner.

24 Q. Okay. Was there ever a time when you entered into the
25 Senate floor?

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 A. Yes. We were walking out of the building, and somebody
2 kicked a door open off to my left, and we walked through the
3 doors not knowing -- we had no idea where we were going. But
4 once we walked in there, I recognized the Senate floor.

5 Q. Okay. How long were you there?

6 A. Maybe a few minutes, just -- just walked around and looked
7 at the building and one -- one man jumped into a chair. And
8 Jerod and I, along with another gentleman, told him to get out
9 of the chair, show some respect. We told people not to mess
10 with things. But once we saw people rifling through stuff and
11 desks and taking pictures and stuff, we -- I told him it was
12 time to go. We didn't want to be associated with that.

13 Q. Okay. And so what did you do?

14 A. We walked out of the building and left the Capitol
15 grounds. Unimpeded, we just left. We heard the police calling
16 out a 6:00 o'clock curfew, and we walked across town and
17 eventually found our car. I was in such a state of shock at
18 the time I could barely use my phone or orientate directions.
19 It took us probably like 10 or 15 minutes to find the vehicle
20 in the city at some point, and then we were in gridlock traffic
21 waiting to get out of the city.

22 Q. So how long were you actually in the Capitol building?

23 A. I would say, like, not even -- a total of like -- probably
24 10 or 15 minutes, if I could imagine.

25 Q. And during that entire period of time, did you do anything

JOSHUA HUGHES - DIRECT EXAMINATION BY MR. HOOVESTAL

1 with your hands? Did you touch anything?

2 A. I touched my glasses in one picture because they fogged up
3 from the change of cold to hot in the building. And I just
4 walked around with my hands up the whole time.

5 Q. Did you take photographs?

6 A. No, sir. I never pulled my phone out.

7 Q. Did you use your cell phone?

8 A. No.

9 Q. Okay. So why did you enter into the building in the first
10 place, and why were you there at the Capitol?

11 A. I was there at the Capitol because the President told us
12 to go march to the Capitol. I was in the building just
13 following the group, and I thought we were going to be doing
14 like a -- kind of like a peaceful protest of just occupying and
15 doing a sit-in.

16 Q. Okay. Were you surprised of the events that ended up
17 taking place?

18 A. Very surprised.

19 Q. Okay. And just to make sure that we're clear, do you --
20 are you a member of any kind of subversive group like the Oath
21 Keepers, like whatever groups --

22 A. Like Proud Boys and --

23 Q. Yeah.

24 A. No, absolutely not.

25 Q. Okay. And what's your position now about what occurred?

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 A. My position now is that we were wrong for being there,
2 that I feel misled by our President, and I deeply regret my
3 actions there.

4 MR. HOOVESTAL: Nothing further, Your Honor.

5 THE COURT: Thank you Mr. Hoovestal.

6 And, Mr. Starnes, any cross-examination?

7 MR. STARNES: Yes, Your Honor. Thank you.

8 CROSS-EXAMINATION

9 BY MR. STARNES:

10 Q. Good morning, sir.

11 A. Good morning, sir.

12 Q. Can you hear me okay?

13 A. Yes, sir.

14 Q. If you can't hear me, just let me know. This mask
15 sometimes impedes what I'm trying to say.

16 So I want to take a step back for a minute before we
17 get back to some of your testimony regarding what happened at
18 the Capitol. But just about your background, so you currently
19 live in Helena, and you've lived in Montana for the better part
20 of your life. Is that right?

21 A. Yes, sir.

22 Q. Okay. When you went to DC, had you ever been to DC
23 before?

24 A. No, sir.

25 Q. Do you have any family in the District of Columbia?

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 A. No, sir.

2 Q. Don't do any work there or anything like that?

3 A. No, sir.

4 Q. So no financial ties to the District of Columbia?

5 A. No, sir.

6 Q. So is it fair to say you have absolutely no ties to the
7 District of Columbia apart from your presence there on
8 January 6th?

9 A. Yes, sir.

10 Q. Okay. Then do you or your -- well, same questions for
11 your brother. Does your brother have any ties to the District
12 of Columbia?

13 A. No, not at all, sir.

14 Q. And to your knowledge has he been to the District of
15 Columbia at any point other than on January 6th?

16 A. Never. Never. No.

17 Q. Same boat as you?

18 A. Yes, sir.

19 Q. Okay. Did either you or your brother own firearms?

20 A. No, sir.

21 Q. I noticed in -- and I hope I'm not confusing you guys
22 here, so I'm going to make sure I'm a looking at this
23 correctly. So just looking over -- have you had a chance to
24 look at the bond report that was made and handed to us just
25 before the hearing?

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 A. Yes, sir.

2 Q. Okay. So it says that you were originally charged with
3 burglary back in 2002, but that charge was amended to criminal
4 trespass; is that right?

5 A. Yes, sir.

6 Q. And that was a misdemeanor that it was amended to?

7 A. I believe it was, like, misdemeanor theft, I believe,
8 or --

9 Q. Misdemeanor theft?

10 A. Yes.

11 Q. And that charge has been dealt with; correct?

12 A. Yes.

13 Q. Okay. And then it looks like your brother had a couple of
14 run-ins with law enforcement, again, around the same age, age
15 20 or so, one charge of criminal possession with dangerous
16 drugs with intent to distribute back in 2005. Are you familiar
17 with that?

18 A. Yes, sir.

19 Q. Did he spend time in jail for that?

20 A. A little bit of time, yes.

21 Q. And was that at Montana DOC?

22 A. Yes, sir.

23 Q. And that was a felony offense?

24 A. Yes, sir.

25 Q. Okay. And then there was an automobile felony that was in

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 2006 -- well, I guess it happened in 2005, where he got three
2 years suspended in MSP; is that right?

3 A. Yes, sir.

4 Q. Okay. And as far as -- I just want to make sure I
5 understand. So right now you have a steady job where you work
6 roughly 40 hours a week?

7 A. Yes, sir.

8 Q. And that's at the Valley Metal Builders?

9 A. That's my brother.

10 Q. Oh, that's your brother. Okay.

11 A. Yes, sir.

12 Q. I'm sorry. I'm flip-flopping those around.

13 Okay. Yeah, so you -- you were -- I'm sorry -- home
14 cleaning and residential cleaning or commercial cleaning;
15 correct?

16 A. Yes, sir.

17 Q. And I think you said you do on occasion, like, personal
18 training and that sort of stuff?

19 A. When somebody's recommended to me, yes.

20 Q. Okay. So regarding your current financial situation and
21 your brother's current financial situation, it sounds like the
22 two of you -- I don't know. Would you say you have a lot of
23 money saved up?

24 A. No, sir.

25 Q. Is it fair to say that you live paycheck to paycheck?

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 A. Yes, sir.

2 Q. And you understand that a ticket to the District of
3 Columbia could cost a lot of money; correct?

4 A. I looked recently. They were around \$300 for a ticket.

5 Q. Okay. And I just want to make sure you understand that;
6 right?

7 A. Yes, sir.

8 Q. If the Court were to release you and you were allowed to
9 travel to the District of Columbia on your own accord, you
10 understand you would be responsible for all those expenses;
11 correct?

12 A. Yes, sir.

13 Q. And that could include hotel stays and food and everything
14 else. The government will not reimburse you for that. You
15 understand that?

16 A. Yes, I understand that, yes.

17 Q. Okay. Now, let's get into the meat and potatoes of what
18 happened here. So starting with -- we'll jump ahead to
19 January 11th. That was the first time that you went to the
20 local police station or jail to talk to somebody about what
21 happened; right?

22 A. Yes, sir.

23 Q. And I think you said you met with locate -- was it county
24 sheriffs or local law enforcement? Who was it?

25 A. I believe it was like a detective with the Helena Police

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 Department.

2 Q. Helena PD?

3 A. Yes.

4 Q. Okay. And you explained to them essentially what you
5 testified to here in court; correct?

6 A. Yes, sir.

7 Q. And you've seen a copy of the complaint that was
8 ultimately issued out of the District of Columbia; right?

9 A. Yes, sir.

10 Q. And it sounds to me that basically what you testified to
11 is essentially what's in the complaint; is that right?

12 A. Yes, sir.

13 Q. So apart from the charges -- and I'm not asking you to --
14 whether or not you agree with the charges. I'm just asking
15 you, factually, do you generally agree with what happened as
16 the way it's stated in the complaint?

17 A. Yes, sir.

18 Q. So I want to talk to you about your presence inside the
19 Capitol building. So let's pick it up from you and your
20 brother get up to the Capitol where the rally is supposed to
21 start. What caused you and your brother to go from we're here
22 to listen to the President to we have to get inside the Capitol
23 building?

24 A. I never felt like I needed to get inside the Capitol
25 building. It was nothing that I wanted to do. I had no plan

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 for that. We just went to the -- to go down to see what was
2 going on at the Capitol. When we got there, people were
3 already, like, trying to get up on the steps, all over the
4 place, on both sides of the building.

5 Q. And was there a law enforcement presence or other presence
6 that was trying to prevent, not just you, but members of that
7 crowd from getting inside the building?

8 A. Yes, sir.

9 Q. And was there physical barriers that were put in place?

10 A. Yes, sir.

11 Q. Were there locked doors and windows, things of that
12 nature?

13 A. Yes, sir.

14 Q. How did you ultimately make entry into the building?

15 A. I saw a man with a riot shield break out a window on the
16 left side, and I seen another man run up with a two-by-four and
17 start breaking out the window on the right side.

18 Q. And so after they broke out those windows, is that how you
19 got inside the building?

20 A. Yes, sir.

21 Q. Okay. Is that a normal way that you would think to get
22 inside a building?

23 A. Absolutely not, sir.

24 Q. Did that send any signals to you that maybe this is a
25 place that I shouldn't be in?

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 A. Yes, sir.

2 Q. Okay. But you decided to go in anyway?

3 A. Yes, sir.

4 Q. And your brother went with you?

5 A. He -- yes.

6 Q. You all went through the same window or series of windows
7 on the same side of the building?

8 A. I followed him through, yes.

9 Q. Okay. And once you got inside the Capitol building, did
10 you see people that were telling you to leave?

11 A. No, they weren't telling us to leave.

12 Q. Okay. Was there a point in time -- I think you described
13 this encounter with Officer Goodman, the Capitol police officer
14 that was near the stairs a little bit later when you were
15 inside.

16 A. Yes, sir.

17 Q. He had his gun drawn?

18 A. He did pull his gun out, yes.

19 Q. Okay. And did he say anything to you? Or not just to you
20 but to anybody that was there that could listen?

21 A. I believe he was just saying to stay back.

22 Q. Okay. And so did that signal to you that maybe this is
23 not a place I should be in?

24 A. Yes, sir.

25 Q. How about the Capitol -- or the Senate floor itself? I

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 think you indicated that to get inside the Senate floor area,
2 somebody had to kick in a door?

3 A. Somebody opened some doors down on the Senate floor. We
4 just were walking by when they came open. Had no idea where we
5 were heading. We were just looking for an exit, and we went
6 through that door and realized we were in the Senate floor.

7 Q. Okay. And you and your brother went and sort of walked
8 around the Senate floor area for a while?

9 A. A few minutes at most, probably, if even that, just walked
10 in and --

11 Q. And we can talk about the time. I mean, to be fair,
12 you're not looking at your watch during this whole encounter,
13 are you?

14 A. No. No, I'm not.

15 Q. And you're not checking your cell phone for the time --

16 A. No.

17 Q. -- or getting regular updates; correct?

18 A. No.

19 Q. So to you it may have felt like 10 or 15 minutes. It's
20 possible it could have been shorter or longer than that?

21 A. Possibly.

22 Q. Did you have your cell phone with you throughout the time
23 that you were in the Capitol?

24 A. In my pocket.

25 Q. How about your brother? Did he have a cell phone with

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 him?

2 A. Yes, he did.

3 Q. When you both went to turn yourselves in on the 11th, to
4 self-identify --

5 A. Uh-huh.

6 Q. -- at that time and then you subsequently spoke to the
7 FBI, you both turned in some cell phones; correct?

8 A. We did later on, at the behest of them, a couple of days
9 ago.

10 Q. Okay. And I can't recall which one of you it was, but one
11 of you indicated that the cell phone that you had on you when
12 you were in DC was no longer functional?

13 A. Yes. Well, not no longer functional. I had updated the
14 password for my girlfriend not to be able to access.

15 Q. And locked yourself out?

16 A. And forgot the code. I went to Verizon. I tried to get
17 them to open it back up, and they couldn't do so and tried to
18 just sell me a new phone. So I got a new phone.

19 Q. And do you still have the old phone, or did you turn that
20 one in?

21 A. No, I threw it away. They said it was just a paper
22 weight.

23 Q. When you threw it away, where did you pitch it?

24 A. I just threw it in my garbage.

25 Q. Okay. So you no longer have possession of that phone?

JOSHUA HUGHES - CROSS-EXAMINATION BY MR. STARNES

1 A. No, sir.

2 Q. When did you go to Verizon to try to get it unlocked, that
3 phone?

4 A. It was about maybe a week later, after we had
5 self-identified.

6 Q. So just so I got the timeline right, so January 6th is
7 when are you in DC. You make your way back to Montana in the
8 meantime. And then on January 11th is the day that you turned
9 yourself in?

10 A. Yes, sir.

11 Q. Self-identified. I keep saying --

12 A. Yes.

13 Q. -- you turned yourself in. Self-identified, because at
14 that point you weren't charged with any offense.

15 A. No, sir.

16 Q. And then about a week after you spoke with law enforcement
17 is when the phone got locked out and you end up throwing it
18 away?

19 A. Yes, sir.

20 Q. All right. Bear with me, sir. I may be out of questions
21 for you.

22 Well, I do want to ask this: So how did you
23 ultimately get yourself out of the Capitol building?

24 A. We walked out.

25 Q. And how did you know where to go?

JOSHUA HUGHES - REDIRECT EXAMINATION BY MR. HOOVESTAL

1 A. We didn't. We eventually saw a door and took the door
2 out.

3 Q. Okay. And I think I understood your testimony at the end
4 of your examination by Mr. Hoovestal is that sitting here
5 today, you understand that what you did by getting inside the
6 building was not the correct thing to do?

7 A. Yes, sir.

8 Q. And I understand there's various motivations for that. I
9 think one of the things you indicated is that you felt misled
10 by people in government, specifically, the former President?

11 A. Yes, sir.

12 Q. But you agree that there were multiple opportunities for
13 you and for your brother to take a different course of action
14 on January the 6th?

15 A. Yes, sir.

16 Q. Okay. Thank you very much, sir.

17 MR. STARNES: I have no further questions, Your
18 Honor.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you, Mr. Starnes.

21 And, Mr. Hoovestal, any redirect?

22 MR. HOOVESTAL: Very briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. HOOVESTAL:

25 Q. So I think that the real issue is whether you're going to

JOSHUA HUGHES - EXAMINATION BY THE COURT

1 appear at any further court proceedings.

2 A. Yes, I will, sir.

3 Q. And what you're doing today is an extraordinary effort
4 to -- I mean, it's extraordinarily accepting responsibility for
5 your conduct; is that correct?

6 A. Yes, sir.

7 Q. As well as your brother?

8 A. Yes, sir.

9 Q. That's why you're here testifying about what happened?

10 A. Yes, sir.

11 Q. Are you trying to avoid any responsibility?

12 A. No, sir.

13 Q. Is that why you self-identified when you first found out
14 that you might be a person of interest?

15 A. Yes, sir. I respect law enforcement and authority. And
16 if I'm a person of interest or need to be turned in, I would do
17 absolutely that.

18 MR. HOOVESTAL: Nothing further, Your Honor.

19 THE COURT: Thank you very much.

20 EXAMINATION

21 BY THE COURT:

22 Q. Let me ask you a question. So you're in the Capitol
23 building on January 6th. There's, like, mace, and tear gas, I
24 think -- what's OC spray?

25 A. I think that's mace.

JOSHUA HUGHES - EXAMINATION BY THE COURT

1 Q. Mace. Okay.

2 And that's before you got in there?

3 A. Yes.

4 Q. I mean, that's a pretty heavy signal that people don't
5 want anybody there; right? Isn't that how police disperse
6 crowds with tear gas and OC spray?

7 A. Yes, sir.

8 Q. Okay. Did you ever undertake any course or conduct --
9 let's start with the windows to the nation's Capitol being
10 broken out to say, "Hey, don't do that. What are you doing?
11 Stop doing that?" Did you ever attempt to dissuade anybody
12 from damaging the Capitol building?

13 A. No, Your Honor.

14 Q. Okay. Did you ever dissuade anybody from following the
15 police officer up the stairs?

16 A. No, Your Honor.

17 Q. And did you ever dissuade anybody to leave the floor of
18 the Senate?

19 A. Yes, Your Honor.

20 Q. Okay. And how did you do that?

21 A. I was telling people to not get in the chair and to not be
22 taking and rifling through things, and they weren't listening,
23 and I just left with my brother.

24 Q. Okay. And then you guys -- you leave the Capitol. And at
25 what point in time once you were leaving the Capitol -- or when

JOSHUA HUGHES - EXAMINATION BY THE COURT

1 did you first get the feeling like "My God, what have we done?"

2 A. Immediately.

3 Q. Like?

4 A. Immediately after we left the Capitol.

5 Q. Immediately after you fled?

6 A. Yes.

7 Q. So you're out of the mob mentality. You're outside the
8 Capitol. You go, "Oh, my God."

9 A. It felt like a dream state, and I immediately wanted to
10 wake up from this horrible nightmare.

11 Q. Okay. So what did you do the rest of the day on
12 January 6th?

13 A. We drove -- we drove to a hotel and stayed the night.

14 Q. Where?

15 A. It was West Virginia.

16 Q. Okay. So you leave the District of Columbia. That night,
17 when you left the District of Columbia, you certainly knew and
18 felt that you had committed criminal acts in the District of
19 Columbia?

20 A. Yes, Your Honor.

21 Q. And when you got to West Virginia, you didn't contact the
22 FBI in West Virginia and say, "I was part and parcel of this
23 riot at the Capitol."

24 A. I wasn't aware that I was being sought at that moment.

25 Q. I'm a not asking you --

JOSHUA HUGHES - FURTHER EXAMINATION BY MR. HOOVESTAL

1 A. Okay.

2 Q. -- whether or not you were aware you were being caught?

3 A. No, I didn't. I didn't.

4 Q. I'm asking about you knew you had committed a crime, and
5 what did you do to alert the authorities?

6 A. We alerted the authorities when we got back to town.

7 Q. Okay. And that was on the 11th. And you alerted the
8 authorities, because what?

9 A. Because we found out that we were persons of interest.

10 Q. All right. And absent finding that out, you never would
11 have called the FBI -- correct? -- even though you knew you had
12 committed a crime in the Capitol?

13 A. I -- I -- I -- I don't know, Your Honor.

14 Q. All we do know is that you knew you had committed a crime
15 on January 6th, and you didn't turn yourself in until you found
16 out that the government thought you were a person of interest;
17 right?

18 A. Yes, Your Honor.

19 THE COURT: All right. Any follow-up to that,
20 Mr. Hoovestal?

21 FURTHER EXAMINATION

22 BY MR. HOOVESTAL:

23 Q. Did you actually know that you had committed a crime? Did
24 you know that what you were doing was unlawful?

25 A. I didn't know I committed a crime or what crime I might

1 have committed other than, I thought, maybe trespass. I
2 didn't -- I didn't -- I wasn't aware of what other crimes I
3 might be facing, if any at all.

4 Q. So that we're absolutely clear, why did you follow the mob
5 or the people into the Capitol building in the manner that you
6 did?

7 A. I thought we were going to be having a sit-in protest.

8 MR. HOOVESTAL: That's all, Your Honor.

9 THE COURT: Sir, thanks for your time today.

10 DEFENDANT JOSHUA HUGHES: Thank you, Your Honor.

11 THE COURT: You're excused.

12 Any further witnesses, Mr. Hoovestal?

13 MR. HOOVESTAL: No, Your Honor.

14 THE COURT: And, Mr. Starnes, just as a matter of
15 procedure, is this a presumption case?

16 MR. STARNES: I believe it is, Your Honor. So
17 pursuant to Section 3142 -- it's (e)(3)(C), as in Charlie. So
18 presumption cases include an offense listed in
19 Section 2332b(g)(5)(B). So that statute is in the terrorism
20 statute, and that's the actual definition of what is a federal
21 crime of terrorism. And so the term "a federal crime of
22 terrorism" means an offense that is calculated to influence or
23 affect the conduct of government by intimidation or coercion or
24 to retaliate against government conduct and is a violation
25 of -- there's a whole lot of statutes listed. One of those is

1 1361, destruction of government property.

2 The only other caveat is that it has to be 1361
3 offense that resulted in more than \$1,000 worth of damage to
4 government property, making it a 10-year felony, and that
5 triggers this.

6 So I actually spoke to my counterpart in the District
7 of Columbia who sort of reached the same conclusion
8 independently. So the United States' position is this is a
9 presumption case by virtue of the 1361 charge meeting that
10 definition, if looking at the totality of the circumstances and
11 the facts that both Mr. Hughes testified to as well as what's
12 in the complaint.

13 THE COURT: All right. Mr. Hoovestal, do you agree
14 that it's a presumption case?

15 MR. HOOVESTAL: I do not, Your Honor. I mean, I
16 think that it's pretty clear if we look at Title 18, United
17 States Code, Section 2332b(g)(5)(B), none of the offenses that
18 have been charged in this complaint are included in that
19 section. And so --

20 THE COURT: Well, I think it is. If you go down
21 about two-thirds of the way, it says 1361. That's the eighth
22 offense against your clients relating to government property.

23 Why don't we take a brief recess, and you can look at
24 it, Mr. Hoovestal.

25 MR. HOOVESTAL: Sure. I've looked at it already,

1 Your Honor, but if we could take a break and --

2 THE COURT: Well, I have an alternative motive to
3 take a brief recess. So you can take a look at it.

4 MR. HOOVESTAL: That's fine, Your Honor.

5 THE COURT: And I'll be back in 10 minutes. Court's
6 in recess.

7 MR. STARNES: Thank you, Your Honor.

8 (Proceedings in recess.)

9 (Open court.)

10 (Defendants present.)

11 THE COURT: And, Mr. Hoovestal, what do you think
12 about this, whether it's a presumption?

13 MR. HOOVESTAL: Well, Your Honor, I'm glad that you
14 took the break because I did go back and I did notice that 1361
15 was in there, and that is 10-year mandatory -- well, maximum
16 sentence.

17 THE COURT: Max 10.

18 MR. HOOVESTAL: Yeah. And so I agree that it's a
19 presumption case.

20 THE COURT: All right. Thank you very much.

21 And, Mr. Starnes, what's the government's argument
22 for detention of the defendants?

23 MR. STARNES: Well, Your Honor, in addition to the
24 presumption, which always remains in the case regardless of
25 whether of defendants have an opportunity to combat that, the

1 Court has to consider certain things such as history and
2 characteristics of the defendants, the weight of the evidence
3 against the defendants, so on and so forth.

4 I think, first of all, with respect to criminal
5 history of both defendants, it's somewhat unremarkable.
6 They've had a couple of issues with the law several years ago.
7 So I don't think that is necessarily a deciding factor. I
8 think the more concerning aspect is the weight of the evidence.
9 Not only did they both go and turn themselves in or identify
10 themselves and make a statement similar to the one we heard
11 today and the one that appears in the complaint, but they did
12 that in person and essentially confessed to the charges that
13 they are hit with.

14 And then we have Mr. Josh Hughes who took the stand
15 and basically testified that everything that's in the complaint
16 is essentially true. Now, he had some clarifications about
17 whether he was assisting anybody else or things like that. But
18 as far as the facts that happened that are alleged in the
19 complaint, he's admitted to under oath now. So I think the
20 weight of the evidence against both he and his brother are
21 pretty strong in this particular case.

22 Now, with respect to ties to the district, certainly
23 they both have ties to Montana. But this case is not venued in
24 Montana. This case is venued in the District of DC. And they
25 have zero ties to the District of DC.

1 I also have concerns about the two of them
2 financially being able to make their way out there, given that
3 they just don't have steady income. This could be an expensive
4 proposition for them.

5 So I think when you add all of that up and consider
6 the weight of the evidence as well as the presumption, I think
7 detention and transfer is appropriate going forward, Your
8 Honor. So that's what we're going to ask for.

9 THE COURT: All right, Mr. Starnes. Thank you very
10 much.

11 And, Mr. Hoovestal.

12 MR. HOOVESTAL: Your Honor, I think that what has
13 been displayed here is an extraordinary acceptance of
14 responsibility. These two individuals self-identified on
15 January 11th to law enforcement. And between January 11th and
16 February 1st, the government did not arrest them. They knew
17 who they were. They could have arrested them since the filing
18 of the complaint. They self-surrendered today. So I don't
19 think flight risk is an issue. If they intended to skip town
20 or go to Mexico or whatever, they would have done it. But I
21 think based upon their sense of responsibility, that's not
22 going to happen, and these folks are going to show up in court.
23 Whether it's in Washington DC or not, they will show up in
24 Court to either pay the piper or to go to trial or whatever.

25 So I don't think that that's an issue. I don't

1 think, further, that either one of them are a danger to anybody
2 in the community or to themselves. So we think that there are
3 conditions or a combination of conditions that will assure
4 their presence in Washington DC.

5 I should note for the Court, I don't know if the
6 Court knows, but I do a substantial amount of work in the
7 Washington DC area. It's all civil work. It's relating,
8 basically, Court of Federal Claims or border contract appeals
9 sorts of cases. And so I know attorneys out there. And if I
10 remain on the case, I can be counsel of record there as well.
11 They're retained counsel, they've showed up to Court, and I
12 think that that's what you can expect from these two fellows is
13 that they are going to appear and take their lumps or whatever
14 happens.

15 And so we'd ask that the Court release them on their
16 own recognizance with the standard conditions, no drugs, no
17 alcohol, of course, all of that sort of thing. And we will be
18 in the District of Columbia when we're supposed to be there,
19 Your Honor.

20 THE COURT: Thank you very much, Mr. Hoovestal.

21 Joshua Hughes and Jarod Hughes, we've had a
22 discussion in court today about what a presumption means. This
23 case is a presumption case given the particular crime alleged,
24 destruction of property, in violation of 18, United States
25 Code, Section 1361 and a presumption case. That means there's

1 a rebuttable presumption that there's no condition or
2 combination of conditions that would reasonably assure your
3 appearance as required and the safety of the community. It
4 shifts a burden to the defendants, and you've put on evidence
5 in an attempt to meet that burden, to come forth and produce
6 something that says that the presumption should not be
7 followed.

8 If you proffer evidence to rebut a presumption, which
9 you have, the Court considers the following factors to
10 determine whether pretrial detention is warranted: One, the
11 nature and circumstances of the offense charged; two, the
12 weight of the evidence against the person; three, the history
13 and characteristics of the person; and, four, the nature and
14 seriousness of the danger to any person or the community that
15 would be posed if you were to be released. The presumption is
16 still something that should be considered in spite of the fact
17 that you have come forth and produced some evidence.

18 In light of the evidence presented and the arguments
19 to the Court, the Court makings the following considerations:

20 First, in relation to the nature and circumstances of
21 the offenses charged, the offenses charged are very serious,
22 and the circumstances of the charges are very alarming and
23 concerning. The charges against the defendants involved the
24 riot at the Capitol in what appears to be an illegal and
25 unlawful attempt to prevent the peaceful transition of power

1 following an election.

2 Number 2, the weight of the evidence against the
3 defendants: The weight of the evidence against the defendants
4 is great; however, that's the least important factor to take
5 into consideration at a detention hearing.

6 The defendants' history and characters: It appears
7 from the record that the defendants were displeased with the
8 results with the recent presidential election. And in spite of
9 numerous legal challenges to the election being rejected by
10 courts throughout the country, the defendants and others
11 similarly displeased traveled to Washington DC and then took a
12 deliberate course of conduct meant to disrupt the peaceful
13 transition of power and intimidate our representatives and
14 those charged with protecting them in an attempt to defeat the
15 word of the people as reflected by the results of the election.

16 This course of conduct reveals to the Court the
17 defendants have little or no regard for the rule of law and are
18 willing to undertake extreme and illegal manners and methods in
19 an attempt to undermined the foundations of our democracy. The
20 course of conduct also leads the Court to conclude that the
21 defendants would show little or no regard to any condition or
22 combinations I could impose upon them if they were released
23 from custody pending further proceedings because they could be
24 called to further action by someone they admire.

25 Number 4, nature and seriousness of the danger to any

1 person in the community that would be posed if the defendants
2 were released: The defendants, based upon their recent course
3 of conduct, was a serious danger to the community as they have
4 shown great resolve to damage and destruct our country if they
5 disagree with the results of an election.

6 Therefore, the Court determines the government has
7 met its burden of proof by clear and convincing evidence that
8 there are no conditions or a combination of conditions that
9 would assure the safety of the community.

10 The Court further determines that based upon the
11 defendants leaving the District of Columbia without turning
12 themselves in there, knowing that they had engaged in criminal
13 conduct, and returning to Montana and not turning themselves in
14 until they were found to be persons of interest, that the
15 government has, likewise, met its burden of proof that there
16 are no conditions or combination of conditions that would
17 assure their appearance at future procedures.

18 The Court, therefore, orders that the defendants be
19 detained pending further proceedings and that the United States
20 Marshals transfer the defendants to the United States District
21 Court for the District of Columbia for further proceedings
22 forthwith.

23 Anything further from the government?

24 MR. STARNES: No, Your Honor. Thank you.

25 THE COURT: Anything further from the defense?

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MR. HOOVESTAL: No, Your Honor.

THE COURT: Court's in recess.

(The proceedings concluded at 12:25 p.m.)

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REPORTER'S CERTIFICATE

I, YVETTE HEINZE, Registered Professional Reporter and Certified Shorthand Reporter, DO HEREBY CERTIFY that the foregoing pages were reduced to typewritten form using computer-assisted transcription and constitute a full, true and correct transcript of my shorthand notes, transcribed to the best of my abilities from the FTR system of the proceedings had and taken in the above-entitled cause at the time and place hereinbefore mentioned.

DATED at Great Falls, Montana, this 15th day of February, 2021.

/s/ Yvette Heinze
Yvette Heinze
Registered Professional Reporter
Certified Shorthand Reporter

ATTACHMENT B

14 March 2021

To Whom It May Concern:

I am composing this letter as a character reference for Joshua C. Hughes.

My name is Joyce Evans. I retired in 1995 from the United States Navy, after a 21-year career. My job was Master-at-Arms (Military Police). I am a Vietnam Era veteran and have served on two ships, one of the first women to be stationed on board a vessel in the mid-1980's. I have a Bachelor's Degree in Criminal Justice from National University in San Diego, CA – attained in 1984.

I met Josh Hughes in June 2020, when I hired him to be my housekeeper. Josh's work ethic is beyond reproach. He does a better job cleaning than most women I have hired. He is always punctual and his attention to detail is phenomenal.

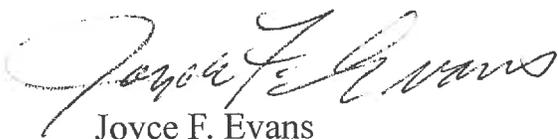
His character is one of total honesty and integrity. I leave money and other valuables lying around in plain site and nothing has disappeared when Josh is present. In addition, (since I am 65 years old), Josh occasionally helps me lift heavy/awkward objects that are too much for one person.

Josh has a “heart of gold”. He has helped elderly people in my neighborhood get their feral cats spayed/neutered.

I have referred Josh to several of my friends for housekeeping services.

I will gladly rehire Joshua Hughes when he returns to Montana from exile in Washington, DC.

Sincerely,



Joyce F. Evans
P.O. Box 6523,
Helena, MT 59604
(406)458-8819
joycefevans@hotmail.com

JOSH HUGHES – CHACTER EVALUATION

We first met Josh when we were looking for a trustworthy person to help us clean and care for our home, His mother worked for one of our long time neighbors. She recommended either Josh or his mom to us as she had known them for a long time and was very satisfied with their work.

Josh became our guy and did an outstanding job for almost two years. He was always on time and did a more than a satisfactory job. My wife Mary would discuss the tasks for the day with him and he gave it 100%.

As we became better acquainted we often discussed national politics and the need for complete honesty in the election process. I'm sure he thought as we do that corruption was evident in the vote counting following the 2020 election. His concern was true to American patriotic beliefs. I'm convinced that violence never entered his mind, that is not in his personality.

We have never had an occasion to question his honesty. We trusted him completely with all of our home possessions. Dependable, trustworthy, sincere, yes all of these and more best describes the Josh we know.

Once the issue of his presence at the January 6 event is resolved we would more than welcome him to return to our home and resume his duties.

A handwritten signature in blue ink that reads "Bill Palmer, Mary Palmer". The signature is written in a cursive style.

Bill and Mary Palmer
1616 Jerome Place
Helena, Mt 59601
406-442-0893

PS, We are willing to discuss our relationship with Josh with any interested party.