

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

UNITED STATES OF AMERICA)
)
 v.) **No. 1:21-cr-69 (APM)**
)
JORGE AARON RILEY)

**GOVERNMENT’S RESPONSE TO
DEFENDANT’S APPEAL OF ORDER OF DETENTION**

The United States respectfully files this memorandum in response to the defendant, Jorge Aaron Riley’s Appeal of Order of Detention. A grand jury of this Court has found probable cause to return an indictment charging Riley with, inter alia, obstructing the U.S. Congress’s certification of the results of the 2020 presidential election, in part by violently and unlawfully entering the United States Capitol on January 6, 2021. Riley’s brazen statements and actions demonstrate that there are no conditions of release that would reasonably assure the safety of the community or Riley’s compliance with Court orders.

I. Factual Background

A. The Attack at the U.S. Capitol on January 6, 2021

On January 6, 2021, thousands of rioters stormed the U.S. Capitol Building. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the U.S. Capitol. During the joint session, elected members of the United States House of Representatives

and the United States Senate were meeting in separate chambers of the U.S. Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Michael R. Pence was present and presiding, first in the joint session, and then in the Senate chamber.

A large crowd began to gather outside the Capitol perimeter as the Joint Session got underway. Crowd members eventually forced their way through, up, and over Capitol Police barricades and advanced to the building's exterior façade. Capitol Police officers attempted to maintain order and stop the crowd from entering the Capitol building, to which the doors and windows were locked or otherwise secured. Nonetheless, shortly after 2:00 p.m., crowd members forced entry into the Capitol building by breaking windows, ramming open doors, and assaulting Capitol Police officers. Other crowd members encouraged and otherwise assisted the forced entry. The crowd was not lawfully authorized to enter or remain inside the Capitol, and no crowd member submitted to security screenings or weapons checks by Capitol Police or other security officials.

Shortly thereafter, at approximately 2:20 p.m., members of the House and Senate (including Vice President Pence)—who had withdrawn to separate chambers to resolve an objection—were evacuated from their respective chambers. The Joint Session and the entire official proceeding of the Congress was halted while Capitol Police and other law-enforcement officers worked to restore order and clear the Capitol of the unlawful occupants.

Later that night, law enforcement regained control of the Capitol. At approximately 8:00 p.m., the Joint Session reconvened, presided over by Vice President Pence, who had remained hidden within the Capitol building throughout these events.

In the course of these events, approximately 81 members of the Capitol Police and 58 members of the Metropolitan Police Department were assaulted, and one Capitol Police officer died. Additionally, four citizens died; many media members were assaulted and had cameras and other news-gathering equipment destroyed; and the Capitol suffered millions of dollars in damage—including broken windows and doors, graffiti, and residue of various pepper sprays, tear gas, and fire extinguishers deployed both by crowd members who stormed the Capitol and by Capitol Police officers trying to restore order.

B. Jorge Aaron Riley Crosses the Country to Publicly Obstruct the Election

Between January 5 and January 8, 2021, the defendant posted over 150 messages, photographs, and videos on his public Facebook account, documenting his thoughts and actions as he stormed the United States Capitol on January 6. On January 5, the defendant posted, “Do you really not get what is going to happen on the 6th? I absolutely am looking forward to that and NO MATTER WHAT THERE IS NOTHING THAT CAN STOP IT!!!!” The next day, after traveling thousands of miles from Sacramento, California to Washington D.C., he posted “Today at noon, the Election is being challenged.” On his way to the Capitol, the defendant posted a video with a large number of other individuals and the Capitol in the foreground, stating “There’s 100’s of thousands of people marching on the Nation’s Capitol!!!!” About thirty minutes later, he added “Hey We’re storming the Capitol.... what are you doing?”

Then the defendant broke into the U.S. Capitol with hundreds of other rioters. In a photograph of himself and others in the Capitol, he wrote, “I’m in the front where do you think I am.” In over 100 photographs, the defendant documented where he and others unlawfully entered and rioted around the Capitol. Afterward, he gave a video-recorded interview outside the Capitol, detailing in his own words what he had just done. In relevant part, he explained:

We breached over there I think. We broke windows, we went into the door, we pushed our way in, and then we just kept going further and further ... we went into, there was like a corridor building.... We pushed our way to Nancy Pelosi's office ... and then we were sitting in there yelling 'fuck you Nancy Pelosi'¹... [I] got pepper sprayed three times, and got fire-extinguished [*sic*] ... When we went into one of the rooms when they were trying to get all the legislators creeping away, one of our guys came in, there was like three of us in a room and everybody else was cops, so they ... fire-extinguished [*sic*] everybody in the room, and that's how the cops got away and we were able to keep going. It was pretty badass.... When we got up inside, they did come in and they set up this line, and they were like trying to push us out of the room. For a long time there was like a hella long power struggle, and we were pushing back and forth on each other, and we were being crushed and people were being trampled on and shit, and it was horrible.

Despite his self-described physical confrontation with the police, Riley then claimed he and the other rioters did not have problems with the officers and that the officers were nice and not injured after the struggle was over. Riley concludes, "It was mostly a peaceful, physical takeover of the Capitol. We stopped the steal, because they were in there and they weren't going to stop the steal, so we stopped the steal. We took our country back. Fuck you guys."

In the days following, Riley continued to post messages and photographs about the events on January 6 to his public Facebook profile. On January 8, for example, he posted in response to another message, "We came to take our country back!!" In another post on the same day, Riley messaged, "Don't leave the GOP I just did what I did so I could say TAKE IT OVER." Finally, in an additional post on January 8, he stated, "I won't say I did nothing while communism over ran my country. I won't say I stood by. Come take my life. I'm right here"—after which, Riley posted his address in Sacramento, California. Shortly thereafter, Riley posted "You will all die."

II. Procedural Background

On January 18, 2021, Riley was charged by Complaint with obstructing an official proceeding, in violation of 18 U.S.C. § 1512(c)(2) (a felony); entering a restricted building without

¹ At this point, Riley flashes both of his middle fingers to the screen as if to reenact what he had done while yelling in the Capitol.

lawful authority, in violation of 18 U.S.C. § 1752(a) (a misdemeanor); and, violent entry on Capitol grounds, in violation of 40 U.S.C. § 5104(e)(2) (a misdemeanor). He made his initial appearance in the Eastern District of California on January 20, and the government moved for detention. On January 25, Riley argued to the Court that it had no legal authority to detain him in light of the charges and filed a briefing to that effect. The government filed its response the next day, arguing that the Court had authority to hold a detention hearing under 18 U.S.C. § 3142(f)(2). The Court agreed with the government and held a detention hearing on January 27. At that hearing, the Court considered the defendant's conduct, the weight of the evidence, and his participation in criminal conduct while on release pending trial, among other factors. Ultimately, the Court held Riley pending a detention hearing in Washington, D.C.²

On February 3, 2021, a federal grand jury in Washington, D.C., indicted Riley on counts of obstructing an official proceeding, in violation of 18 U.S.C. § 1512(c)(2) (a felony); entering a restricted building without lawful authority, in violation of 18 U.S.C. § 1752(a) (a misdemeanor); and, violent entry on Capitol grounds, in violation of 40 U.S.C. § 5104(e)(2) (a misdemeanor).

ARGUMENT

The government submits that it has met its burden of persuasion that pretrial detention is warranted, and that the United States Magistrate Judge in the Eastern District of California got it right. The Court must consider four factors in making this determination: (1) the nature and circumstances of the offense charged, including whether, for example, the offense is a crime of violence; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or the community

² Per the Court's Order dated February 7, 2021, the government has attached as Attachment 1 the transcript of the detention hearing that took place in the Eastern District of California on January 27, 2021.

that would be posed by the defendant's release. 18 U.S.C. § 3142(g). A judicial officer's finding of dangerousness must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f)(2)(b); *United States v. Peralta*, 849 F.2d 625, 626 (D.C. Cir. 1988). When "risk of flight" is the basis for detention, however, the government must only satisfy a preponderance of the evidence standard. *United States v. Xulam*, 84 F.3d 441, 442 (D.C. Cir. 1996). An analysis of these four factors heavily weighs in favor of Riley's continued detention given the clear and convincing evidence that his release presents a particular danger to the community as well as the preponderance of evidence that he poses a serious risk of flight.

I. The Nature and Circumstance of the Offense Was Dangerous and Serious

January 6 was a day hundreds of rioters breached the U.S. Capitol, millions of dollars of damage was done to our seat of government, the certification of a presidential election was delayed, and human beings lost their lives. According to Riley, nothing could stop what was coming. As if to prove that, he traveled over three thousand miles to help halt the peaceful transition of power. He contributed to the mob of anger and destruction that overran law enforcement by sheer numbers and halted the certification of the presidential election, and he did so premeditatedly. Far from someone who got caught in the moment, Riley planned and helped create the moment, and the magnitude of that moment only galvanized him as he posted videos of other rioters and bragged that they were all storming the Capitol grounds. To be sure, Riley would not be outdone by other violent rioters: he made clear that he was in the front as they violently and unlawfully entered the Capitol Building itself.

According to Riley, while inside, he marched around wreaking havoc wherever he went. Trying to find and harass United States Speaker of the House Nancy Pelosi at her office and engaging in a "power struggle" with law enforcement officers, as Riley put it, was all part of a

“mostly peaceful, physical takeover of the Capitol.” Prior to January 6, Riley announced that nothing could stop what was about to happen, and he apparently meant it: as Riley puts it, neither pepper spray nor fire-extinguisher retardant slowed him from accomplishing his publicly-announced goal of “stop[ing] the steal” and taking “our country back.” The defendant’s deeply-held beliefs motivated him to travel across the country to halt an election he viewed as rigged, and in the process he ripped at the fabric of our democratic society.

II. The Weight of Evidence Against Riley is Strong

Second, the weight of the evidence against Riley is immense: Riley’s own 150 or more photographs, videos, and messages documenting his actions before, during, and after January 6; other videos from inside the Capitol that show him in various parts of the building; discovered clothing, electronic evidence, and travel records pursuant to a lawfully-executed warrant at his residence; and his own statements immediately after storming the Capitol, in which he details what he had just done. Put simply, the defendant’s inability to hide from the weight of this evidence creates the acute risk that he will attempt to hide from this Court.

III. History and Characteristics of Riley

Pursuant to 18 U.S.C. § 3142(g)(3), the Court shall consider a number of characteristics of the defendant in determining whether to detain them pending trial, to include the person’s criminal history and whether at the time of the current offense the person was on release pending trial. Here, the defendant has a history of arrests for domestic violence against previous relationships that ultimately resulted in no prosecution. Critically, he is currently pending trial in Sacramento California, where he is charged with felony child abuse against his son. Specifically, he is alleged to have choked and beaten his child in public causing a number of visible marks and resulting in his son briefly losing consciousness. Apart from allegedly presenting a serious danger to even his

own family members, Riley has most recently proven he is willing to travel thousands of miles to commit federal offenses in other jurisdictions while on release pending trial. His conduct belies any notion that there are a set of conditions that can reasonably assure that Riley will follow this Court's orders any better than his home state's court.

IV. Danger to the Community and Risk of Flight Posed by Riley's Release

It is difficult to fathom a more serious danger to the community—to the District of Columbia, to the country, or to the fabric of American Democracy—than the one posed by someone who joined other insurrectionists to occupy the United States Capitol and publicly flaunted his obstructive behavior. Every person who was present without authority in the Capitol on January 6 contributed to the chaos of that day and the danger posed to law enforcement, the United States Vice President, Members of Congress, and the peaceful transfer of power. The defendant's specific conduct helped energize that chaos and danger. Make no mistake: the fear the defendant helped spread on January 6 persists. No combination of conditions could reasonably assure the safety of the community and Riley's compliance with Court orders.

Moreover, Riley made clear that he would not stand silently by while those he viewed as socialists took over his country. Since January 6, a new administration has taken office despite Riley's best efforts to the contrary—a transition he viewed as an existential threat. There is no reason to believe those sentiments have abated, and he should be held pending trial.

CONCLUSION

For the foregoing reasons, the government thus requests that the Court deny the defendant's appeal of detention and detain Jorge Aaron Riley pending trial.

Respectfully submitted,

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ACTING UNITED STATES ATTORNEY

By:



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Dated: February 11, 2021

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2021, I sent a copy of the foregoing to the Court's electronic filing system.



TROY A. EDWARDS, JR.
Assistant United States Attorney

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

United States of America,
Plaintiff,

vs.

Jorge A. Riley,
Defendant.

Sacramento, California
No. 2:21-mj-00013
Wed., Jan. 27, 2021
2:36 p.m.

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TRANSCRIPT OF HEARING VIA ZOOM
BEFORE THE HONORABLE CAROLYN K. DELANEY, MAGISTRATE JUDGE
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APPEARANCES:

For the Plaintiff:

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By: Heiko P. Coppola
Assistant U.S. Attorney

For the Defendant:

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Assistant Federal Defender

Official Court Reporter:

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription

1 (Court called to order, 2:36 p.m.)

2 THE CLERK: Calling magistrate case 21-13; United
3 States versus Jorge A. Riley; on for detention hearing.

4 THE COURT: All right. Mr. Coppola, are you here on
5 behalf of the United States?

6 MR. COPPOLA: I am, Your Honor. Good afternoon.
7 Heiko Coppola on behalf of the United States. And we consent
8 to proceeding by Zoom this afternoon.

9 THE COURT: Thank you.

10 And Mr. Zindel, you're here on behalf of Mr. Riley?

11 MR. ZINDEL: I am, Your Honor. May I have just a
12 moment, Your Honor? Sorry. I'll be right there.

13 (Pause in proceedings.)

14 I'm sorry, Your Honor.

15 THE COURT: Okay. Mr. Zindel, do you and your client
16 consent to proceeding by Zoom today?

17 MR. ZINDEL: Yes, we do, Your Honor.

18 THE COURT: All right. Thank you.

19 And Mr. Riley, if you can just give me a thumbs up if you
20 can see and hear us okay.

21 THE DEFENDANT: (Gesturing.)

22 THE COURT: All right. I see a thumbs up.

23 All right. I've reviewed both Mr. Zindel's briefing and
24 the government's opposition to Mr. Zindel's briefing, and I've
25 had a chance to review it and do my own research.

1 Mr. Zindel, I understand your argument, I just think you're
2 wrong. So, if you want to elaborate at all, I'm happy to hear
3 it, but I think that not only do I have the power I have the
4 obligation to determine detention or release even if the charge
5 does not fall into one of the categories in (f)(1), as this one
6 does not.

7 MR. ZINDEL: Well, Your Honor, I think, as I said in
8 my motion, it has to either fall under (f)(1) or (f)(2). When
9 the government made its motion the other day, it did not give
10 any reason falling under (f)(1) or (f)(2). It now says that
11 the basis for which it seeks detention is serious risk of
12 flight or serious risk of obstruction under (f)(1) and (f)(2).

13 And, yes, I believe the Court does have the authority under
14 (f)(1) and (f)(2) to hold a hearing in a case where there is
15 evidence of a serious risk of personal fleeing or a serious
16 risk the person will obstruct or attempt to obstruct justice.
17 I just didn't -- I don't see that evidence in this case. And I
18 had made that point on -- at the hearing on Monday, and the
19 government has now addressed it. But I continue to believe
20 that they have not made out a case for serious risk of flight
21 or a serious risk of obstruction. And those are the -- that's
22 the basis upon which they're moving.

23 THE COURT: All right. So it's clear, then, that
24 under (f)(2) I have the authority on either my motion or the
25 government's motion. And now that we've unscrambled this a

1 little bit, it's clear that both the government is moving for
2 that and I am relying on that.

3 When we talked on Monday, your position was that Mr. Riley
4 was not accused of any violent acts. Having reread the
5 probable cause statement filed by the FBI agent in this matter,
6 I don't agree with your characterization of what violence
7 includes. And his statements, which included that he was
8 involved in storming the Capitol, there is one statement he
9 posted online about -- I don't want to get the words wrong, but
10 something to the effect of, they will die. And I want to make
11 sure that I get the words correct, so if you can just stand by
12 a minute while I pull up the affidavit so I'm not misspeaking.

13 So, what he is alleged to have said, according to the
14 criminal complaint, included, on January 8th, so after the
15 event, he was making some comments about that he couldn't say
16 or wouldn't say that he did nothing during this situation. And
17 he posted his address in Sacramento, California. And according
18 to the affidavit, shortly thereafter, Riley posted, quote, you
19 will all die. So, the picture that's being drawn for me is a
20 man who was willing to leave the area, travel an extensive
21 distance to be caught up in this situation, and I don't agree
22 with your characterization that he simply was at a peaceful
23 protest making his views known. That's not what his post
24 showed.

25 So, it is true, as far as I can tell from the affidavit,

1 that there is no evidence that he physically assaulted anyone
2 personally, but he does take credit for the damage of property
3 and the shoving match with the Capitol police officers, or
4 whoever was there by that point, by using the term "we" in his
5 postings. So while I don't see him saying, I did this, what he
6 said was, we did this, which to me implies that he was a
7 knowing and willful participant in the actions that happened
8 that day. And all of that says to me that he is a risk both of
9 flight, in that he was willing to go a long distance to be
10 involved in this, and now that he's facing serious
11 consequences, I'm concerned that he would not appear if I
12 released him, and that he is a man of impulse and poor
13 judgment, as Mr. Coppola and the government argued on Monday.

14 So my intention is to detain him, but I don't want to
15 preclude you from giving any last thoughts, just in case you
16 can change my mind. But I'm -- having pondered it for two
17 days, reviewed the briefing, re- and re-reviewed the affidavit,
18 it seems to me detention is appropriate for Mr. Riley.

19 MR. ZINDEL: Well, Your Honor, my computer is frozen
20 up, so I'm going to have to do this based on my memory, but let
21 me speak to you directly.

22 For you to be able to order him detained, first you have to
23 find that there -- that he presents a serious risk of flight.
24 And what that means is that there is a serious risk that he
25 will flee the jurisdiction of the court, that he will not show

1 up for court.

2 That evidence before -- this is what the government says
3 about this serious risk of flight: First, they say the crimes
4 did not occur here. Well, that's true of every Rule 5 that
5 we've ever had in this court. And, yes, it does appear from
6 the evidence before the Court that he flew across the country,
7 but he flew across the country with thousands of other
8 Americans who wanted to -- who were upset by the results of the
9 election and were called to a rally by the President of the
10 United States. This was a thing that happened. It was a
11 unique event in our history. The person who -- for whom it was
12 done, the person who egged it on and encouraged it, is no
13 longer in power and does not have a voice, so that is not
14 likely to recur. But even so, flying across the country to go
15 to a rally does not indicate that going forward Mr. Riley, now
16 that he's before the Court, will not show up for court and will
17 not take care of the business that he's required to take care
18 of.

19 The other --

20 THE COURT: Mr. Zindel, if I can just interrupt you
21 for a moment on that point. If you could address yourself to
22 the prior failures to appear that are referenced --

23 MR. ZINDEL: I would.

24 THE COURT: Okay.

25 MR. ZINDEL: This is why I'm at a bit of a handicap

1 because my computer froze. And, Your Honor, I know they are
2 labeled as FTAs in the pretrial services report, but that's not
3 what they are. And even if they were FTAs, failing to appear
4 in a state court matter is not fleeing the jurisdiction, it's
5 not risk of flight.

6 Risk of flight means you've got -- you've got another ID
7 there, you've got money, you've got some way to get out of the
8 country, you've got offshore accounts, you're going to run from
9 the court.

10 Looking at the report, I went through, very carefully,
11 the -- each of the -- the prior court cases that Mr. Riley had.
12 The last FTA is one that's alleged to have occurred in
13 February 2017 in connection with a charge for which he was
14 diverted. And the record in that case showed that he made ten
15 court appearances between June 1, 2016 and January 18, 2017.
16 There was just one status conference after another. On
17 February 15, 2017, which is the date of the FTA, it says --
18 that's listed as an FTA, but he was there on March 24th, the
19 warrant was recalled.

20 It often happens in state court, because of the press of
21 business, the business -- we have a busy day here today, in
22 state court it's like that every day. He may have missed a
23 proceeding, but he was there the next month. And that case
24 went on and he successfully completed diversion and it was
25 dismissed. So that is -- that is the most recent FTA that's

1 listed on this report.

2 The others you would have to go back 12 years to when he
3 was charged in 2007 with drunk driving. There is an allegation
4 that he failed to appear on April 30, 2007. This would have
5 been his first appearance, and there is no evidence on the
6 docket that he ever had notice that he -- of that appearance or
7 that he was given a court date. And then he went through and
8 made several appearances and resolved that case.

9 Now, there are FTAs listed for April 21, 2008, and May 5,
10 2008, and they are listed on the docket as failures to appear.
11 But the first one, there is no probation revocation. The first
12 one -- these are both post-sentencing hearings, and the first
13 one is a notification to the court that he had not -- they did
14 not receive confirmation that he had enrolled in alternative
15 sentencing. And the second was that he had been dropped from
16 the first offender program. He then went to court, his
17 probation was reinstated, and eventually he -- he completed it.

18 So he does not have any record of deliberately failing to
19 appear in court. In his most recent case he's had, I believe,
20 nine court appearances without fail. He had over a dozen in
21 the preceding case.

22 So the risk of flight means, basically, running. To run,
23 you've got to have money, you've got to have some resources.
24 And Mr. Riley lives on \$750 a month in veterans benefits as a
25 result of his eight years of service in the United States Army.

1 He has no ability to run. I asked him, out of curiosity, how
2 he was able to get to Washington, D.C., because the evidence
3 certainly indicates that he went there, and he said, Donald
4 Trump sent me \$600. So he cashed his stimulus check to get
5 there and back. He does not have the money to run. He does
6 have not those resources. He doesn't have a vehicle, so he
7 wouldn't be able to run. He has lifelong ties to Sacramento,
8 which is usually what we use as sufficient evidence that a
9 person is going to appear.

10 This -- this trip to Washington was the only trip
11 out-of-state that he's made since he was discharged from the
12 United States Army in 2003. His house is here. He was
13 homeless for several years, but he has this house that he's had
14 for two, two and a half years now, that he occupies. The rent
15 is very low. His family is here. His friends are here. Some
16 of them are listening on this call at the moment. He is
17 enrolled in school here and has attended school here for, I
18 think, 20 years.

19 He was arrested at his house. And I'll tell you what, this
20 was very significant, I asked Mr. Riley, did you know the FBI
21 was going to be coming to get you? And he said, yes, and he
22 said, I cleaned my house because I didn't want them to think I
23 was a slob, and I went to the extent of putting the toilet seat
24 down because if a female agent came, I didn't want her to think
25 that I was the kind of person who would always leave the toilet

1 seat up.

2 And I confirmed that with his friend Bill Cardoza, that
3 they had spoken the weekend before, that Bill told me,
4 independently of Mr. Riley, yeah, Jorge had cleaned his house
5 because he didn't want the FBI to think he was a slob. So he
6 knew that they were going to be coming and he didn't run.

7 He's not a flight risk, Your Honor. They would have -- the
8 government -- that's the government's burden, is to prove that
9 he is -- that he poses a risk of flight. He posted his
10 address, that's in the complaint, and he said, I'm right here.
11 That's in the complaint. It was widely publicized throughout
12 the country that the government was looking for people who had
13 gone to the Capitol --

14 THE COURT: Mr. Zindel, I mean, I -- your points are
15 all well made, and you obviously feel strongly about this, I
16 appreciate your passion for his release, but while he did post
17 his address, he also said, basically, we will all die. Now,
18 what am I to take from that?

19 MR. ZINDEL: Well, Your Honor, I don't have the full
20 context of that. My understanding from him is that that was a
21 response that he made -- because of his postings on Facebook,
22 his account is open, I was able to look at them, he got a lot
23 of threats from people that he believed to be Antifa, and some
24 of them were very vicious, and some of them were very awful. I
25 believe that it comes from one of those. It does not have --

1 is not a threat by Mr. Riley. He is not charged with making
2 threatening communications. That's certainly a federal offense
3 that the government could have filed against him, it -- when it
4 brought this case. So that's really just imaginative, and that
5 comment is taken out of context.

6 I should also add that I don't have his phone, he doesn't
7 have access to his telephone, but there are text messages on
8 his telephone that talk about the prospect of him getting
9 arrested.

10 So what I'm saying, Your Honor, is that the -- that for you
11 to be able to order him detained under (f) (2), you would have
12 to find that he presents a serious risk of flight, and the
13 evidence is really overwhelming --

14 THE COURT: I actually disagree with you on that,
15 Mr. Zindel. What triggers the detention hearing are -- are the
16 prongs under (f) (2), but the finding I have to make is that he
17 is a risk of nonappearance and/or a risk to the safety of the
18 community. So, you can't conflate those two things.

19 MR. ZINDEL: I don't think I am. I don't think I am.

20 THE COURT: All right.

21 MR. ZINDEL: The -- I think that once you've found --
22 for you to be able to hold a detention hearing, you have to
23 find under (2) -- (f) (2) either a serious risk that Mr. Riley
24 will flee or a serious risk that he will obstruct justice. And
25 then once you've made those findings you can move on to

1 conditions. And there, under (g), if there is -- you would
2 consider the nature and seriousness of the danger that he poses
3 if you make -- first make that finding.

4 I'm addressing the -- the factual matter of serious risk of
5 flight. And, again, the only evidence that the government
6 proffers regarding risk of flight is that he -- the crimes did
7 not occur here -- I think I'm quoting from their brief -- that
8 he has the resources to travel, which is not true, and he has
9 the will to travel, which is also not true, and for all of the
10 reasons that I've listed. He doesn't even have a passport.
11 And I believe I read that after this happened, many of the
12 people who were known to have been at the Capitol were placed
13 on a No Fly List. So, I don't know how Mr. Riley would be able
14 to leave the jurisdiction with half a motorcycle and no money.

15 THE COURT: All right. I understand your
16 arguments --

17 MR. ZINDEL: All right.

18 THE COURT: -- and I've certainly thought about all
19 of them.

20 Mr. Coppola, I'll give you the last word.

21 MR. COPPOLA: Your Honor, unless the Court has any
22 specific questions of me, I don't have too much to add. I
23 think the Court's -- the Court's already ruled in terms of
24 finding under (f) (2). And then the -- the affidavit itself,
25 Your Honor, as well as the pretrial services report lay out

1 adequate basis under (g) -- under 3142(g) for the Court to make
2 the required findings for continued detention.

3 So, on that, Your Honor, I'll submit it, unless the Court
4 has -- has any specific questions.

5 THE COURT: All right. Thank you, Mr. Coppola. I
6 don't.

7 Yes, Mr. Zindel? I can see you shaking your head.

8 MR. ZINDEL: Yes, I did not -- the government also
9 made the suggestion that (f) -- (f) (2) (B) would also be
10 grounds, which is evidence of a serious risk of obstructing
11 justice. But here, again, the government does not have any
12 evidence sufficient to show that Mr. Riley presents a serious
13 risk of obstructing justice. Their only argument in that
14 regard is that he is charged with obstructing official
15 proceedings. That is not what (f) (2) (B) addresses. (f) (2) (B)
16 --

17 THE COURT: Yeah, but that's not factual
18 underpinnings of what he did. The factual underpinnings are
19 what we've already described, which is, yes, he disrupted an
20 official proceeding, allegedly, but the way he did it was by
21 going with thousands of people and tussling with the Capitol
22 Police, breaking windows, and posting about it.

23 So why isn't that a -- show me a risk of obstruction of
24 justice? If you're not willing to listen to the police
25 officers who are telling you to leave, and not to break

1 windows, then why should I think he's going to obey any of the
2 conditions that I've set or I will set -- would set?

3 MR. ZINDEL: Well, Your Honor, that was -- I have two
4 things to say.

5 First -- and I don't want to miss this, I want to address
6 your point more directly second. But first, if you look at
7 subdivision (f), which is the authority to detain, (f)(1) looks
8 backwards; that's the one that looks at what did you do, did
9 you do one of these five categories of crimes that would
10 justify you being detained. (f)(2) looks forward; what are you
11 going to do if I release you. Are you going to present a
12 serious risk of flight or a serious risk of obstruction of
13 justice. And it's not a risk, it's a serious risk. So, that
14 is the government's burden. That's looking forward, not what
15 did you do because you -- did you -- you flew to Washington for
16 this protest, does that make Mr. Riley a serious risk going
17 forward of obstructing justice.

18 Now, I have a few points to make about that, but I also
19 think it's very important to bear in mind, you know, most of
20 the -- the people who have been charged in these cases across
21 the country, not all of them, but many of them, including
22 people whose conduct was far more serious than Mr. Riley, are
23 being ordered released because this was -- although it was a
24 mass protest, it was -- it was a unique and unusual event that
25 is not at all likely to recur. And --

1 THE COURT: Except, Mr. Zindel, when we're in the
2 corollary situation, when you have a defendant who, you know,
3 has other defendants that have been detained, you say, oh, but
4 my guy is different. Now that they're being released, you
5 know, you -- you're trying to compare all of them. And I have
6 no idea what the other circumstances of the other defendants
7 are, nor do I care.

8 (Inaudible/audio interruption) a particularized showing in
9 this case. And how I can predict the future is only by looking
10 at the past. How I can predict whether he's a serious risk of
11 flight or likely to obstruct justice, and likely, for that
12 matter, to obey the rules of the Court, is by looking at what
13 he's done. And what he did in this case, for whatever reason
14 that you want to argue about, it concerns me greatly.

15 My intention is to detain him. And you will have, or he
16 will have, the right to argue again when he gets to Washington,
17 D.C. But that's -- that's where we're at.

18 MR. ZINDEL: I have not finished making my record,
19 Your Honor, and I'd like to finish.

20 THE COURT: Go ahead. I will allow you to make your
21 record.

22 MR. ZINDEL: I guess -- so, I'm going to address this
23 idea that -- this argument that the government made that
24 Mr. Riley presents a serious risk going forward of obstructing
25 justice because he flew to Washington to participate in a mass

1 protest along with thousands of other Americans. There were
2 thousands of others there, many of them believed that they were
3 called there by the President of the United States to do this.

4 Now, the evidence against Mr. Riley is evidence of his own
5 social media postings, Facebook postings, a recorded interview
6 of him that's linked in the complaint, and selfies. So there
7 is nothing that he has the ability to obstruct. When I -- when
8 I read that provision to him, it says there has to be -- the
9 Court has to find a serious risk that a person will obstruct,
10 or attempt to obstruct, justice, or threaten, injure,
11 intimidate, or attempt to threaten, injure, or intimidate, a
12 prospective witnesses or a juror. A fair reading of the
13 complaint, the only witness against Mr. Riley is Mr. Riley.
14 And when I mentioned that to him, he said to me -- and I think
15 he was right, he said, I promise not to intimidate myself.

16 I think the Court here -- I don't know what it is that is
17 motivating the Court here, but I think if you step back and
18 ask --

19 THE COURT: Mr. Zindel, what is motivating the Court
20 is following the rule of law. And when I look at the complaint
21 and match it up with the rule of law, I come to a very
22 different conclusion than you do. And that's the nature of the
23 job. Based on what I am seeing, I do not find that Mr. Riley
24 is a good risk for release, and that I am not going to release
25 him.

1 So I think I've given you ample time to make your case.
2 You certainly made it in your papers. And I understand your
3 argument as it relates to the facts, but --

4 MR. ZINDEL: Your Honor --

5 THE COURT: Yes.

6 MR. ZINDEL: I am going to ask the Court to make
7 specific factual findings in order to show -- in order -- about
8 what evidence you believe proves that Mr. Riley presents a
9 serious risk of flight going forward, and a serious risk of
10 obstruction going forward.

11 THE COURT: I've explained to you twice now,
12 Mr. Zindel, I do not believe that those are the findings I need
13 to make to detain him. Those are the -- the move -- the points
14 that the government moves for or the Court finds to have a
15 detention hearing. We have had that detention hearing.

16 Once there is a detention hearing, then I look to the
17 factors laid out in the statute about what I think Mr. Riley
18 has done or will do when I decide whether or not to detain him.

19 And if I could ask my courtroom deputy, please, to mail
20 me -- e-mail me the form that I will fill out, I will tell you
21 which boxes I intend to check as I fill it out.

22 MR. ZINDEL: Are you making a finding that Mr. Riley
23 presents a serious risk of flight?

24 THE COURT: If you can just wait until I get the
25 sheet so I can tell you exactly what the findings are that I'm

1 going to make.

2 THE CLERK: You want the detention order, ma'am,
3 correct?

4 THE COURT: Yes.

5 THE CLERK: I just sent it.

6 (Pause in proceedings.)

7 THE COURT: All right. Mr. Zindel, here are the
8 boxes available to me based on the statute:

9 1. Eligibility for detention. Upon the motion of the
10 government pursuant to, cutting to the chase, 3142(f)(1), or
11 motion of the government or the Court's own motion pursuant to
12 31(f)(2), the Court held a detention hearing and found that
13 detention is warranted. This order sets forward the Court's
14 findings of fact and conclusions of law, as required by 18 USC
15 3142(i)...

16 By clear and convincing evidence that no condition or
17 combination of conditions of release will reasonably assure the
18 safety of any other person and the community.

19 By a preponderance of the evidence that no condition or
20 combinations of conditions of release will reasonably assure
21 the defendant's appearance as required.

22 The reasons for detention include the following:

- 23 1. Weight of the evidence against the defendant is strong.
24 2. Subject to lengthy period of incarceration if convicted.
25 3. Criminal -- prior criminal history.

1 4. Participation in criminal activity while on probation,
2 parole, or supervision.

3 5. History of violence or the use of weapons.

4 6. History of alcohol or substance abuse.

5 I do not see that.

6 7. Lack of stable employment.

7 I believe he's lost his job; is that right, Mr. Zindel?

8 MR. ZINDEL: No. He's a disabled veteran, Your
9 Honor. He doesn't have a job.

10 THE COURT: Okay. I will not check that box.

11 He has a stable residence.

12 He has people that are willing to step up as financially
13 responsible sureties.

14 He has significant ties to this district.

15 I'm unaware of any ties outside the United States.

16 He has legal status.

17 He is not subject to deportation after serving a period of
18 incarceration.

19 He does have prior failures to appear in this court -- in
20 court as ordered.

21 Prior attempt to evade law enforcement. I -- you know, I'm
22 not quite sure about that one. There certainly could be an
23 argument made that his behavior at the Capitol was a prior
24 attempt to evade law enforcement in the pushing match that was
25 described.

1 I don't have any use of aliases or false documents.

2 I don't have any background information that is unknown or
3 unverified.

4 But, I do have prior violations of probation or parole.

5 So I will be checking: The weight of the evidence is
6 strong; subject to a lengthy period of incarceration; his prior
7 criminal history; his participation in criminal activity while
8 on probation, parole, or supervision; his history of violence;
9 his prior failure to appear at courts; his background -- excuse
10 me, prior violations of probation, parole, or supervised
11 release.

12 I'm also going to add the conduct alleged in the affidavit
13 relating to the comment that we will all die, and that he used
14 the terms, we broke the windows, and, we were engaged in the
15 pushing match with the Capitol Police. I will quote that
16 directly from the affidavit.

17 So, that's my ruling. Mr. Riley will be detained on those
18 bases, remanded to custody, and ordered transported forthwith
19 to the District of Washington, D.C., whatever that is.

20 Yes, Mr. Coppola.

21 MR. COPPOLA: One thing, Your Honor. He does have --
22 we did not set a preliminary appearance -- or preliminary
23 examination for Mr. Riley. He has the right to one not only in
24 this district but also in the District of Columbia. And that
25 would have been -- I believe, 14 days from next Wednesday --

1 from last Wednesday when he appeared would be next Thursday.

2 There we go.

3 THE COURT: What are you asking me to do,
4 Mr. Coppola?

5 MR. COPPOLA: I'm just --

6 THE COURT: I ordered him transported forthwith.

7 MR. COPPOLA: Yes. Yes. But he does -- I don't know
8 that he will necessarily make it to Washington, D.C. within --
9 within the timeframe for his -- his initial, so I'm simply
10 asking the Court to set a preliminary examination in this
11 district for next Thursday.

12 THE COURT: No. I'm ordering him transported
13 forthwith. If they want to have a preliminary hearing in the
14 District of D.C. and he's still here, they can do it by video
15 means.

16 MR. COPPOLA: Very well, Your Honor.

17 THE COURT: Anything further, Mr. --

18 MR. ZINDEL: Your Honor, I should note for the record
19 that Mr. -- it continues to be my position that Mr. Riley does
20 not have a history of failures to appear, certainly not one
21 that would indicate -- he has a long record of appearing in
22 court. He has no history of committing crimes while under
23 supervision. And I'm looking at the same record that you're
24 looking at. So I object to those findings.

25 Regarding the weight of the evidence, the Ninth Circuit has

1 clearly said that that's the least important factor, and that's
 2 only to be -- that's only to be considered in determining
 3 what -- what conditions should be set, so I don't believe that
 4 there is any factual support for the Court's record. I
 5 understand that the Court has ruled. I object to the finding.
 6 I don't believe it's supported by the evidence.

7 THE COURT: You've made your record, do with it what
 8 you will. That concludes the hearing today.

9 MR. COPPOLA: Thank you, Your Honor.

10 (Proceedings adjourned, 3:08 p.m.)

11 ---oOo---

12 I certify that the foregoing is a correct transcript from the
 13 record of proceedings in the above-entitled matter.

14
 15 /s/ Kimberly M. Bennett
 16 KIMBERLY M. BENNETT
 17 CSR No. 8953, RPR, CRR, RMR

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