

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

UNITED STATES OF AMERICA,

v.

WILLIAM McCALL CALHOUN,

Defendant.

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Criminal No. 21-cr-00016 (DLF)

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S
MOTION FOR RELEASE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this opposition to the defendant’s “Motion for Reconsideration of Detention” (ECF No. Pending). For reasons stated below, the government submits that the motion should be denied. In support, the government relies on the following factual and legal authority, as well as any that may be offered at a hearing on these motions.

PROCEDURAL HISTORY

The defendant was arrested on January 15, 2021, after having been charged by Complaint with one count of entry to Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a), one count of Violent Entry or Disorderly Conduct in violation of 40 U.S.C. § 5104(e)(2), and one count of Obstruction of an Official Proceeding, in violation of 18 U.S.C. § 1512(c)(2).

The defendant appeared before the Court in the Macon Division of the Middle District of Georgia for an initial appearance following his arrest on January 15, 2021, and then for a combined preliminary hearing pursuant to Rule 5.1 of the Federal Rules of Criminal Procedure and detention hearing on motion by the United States in MDGA matter 5:21-mj-00008-CHW. A written ruling

issued under the MDGA caption (Det. Order) entered ordering the Defendant's detention at ECF 10 (Ex. 1).

The Defendant was subsequently charged by Indictment in the District of Columbia in the instant matter on February 12, 2021, and arraigned before this Court on Monday, March 1, 2021. At that hearing, the Defendant, through counsel, notified the Court of his intent to appeal the order of Detention. The Court set a briefing schedule whereby the Defendant's pleading was due on Wednesday March 3, the Government's opposition following on March 4, with oral argument on the motion calendared for March 5, 2021.

ARGUMENT

A defendant must be detained pending trial, if the Court determines 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). A court may reconsider its decision regarding pretrial detention "at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time and that has a material bearing on the issue" of whether there exist conditions for release that would "reasonably assure the appearance of such person as required." *United States v. Bikundi*, 73 F. Supp. 3d 51, 54 (D.D.C. 2014) (citing 18 U.S.C. § 3142(f)(2)(B); accord *United States v. Moore*, No. 13-330, 2014 WL 1273439, at *1 (D.D.C. Mar. 31, 2014)).

I. The Bail Reform Act factors remain in favor of detention.

The Bail Reform Act requires the judicial officer to assess various factors, as described below, before releasing or detaining a defendant. 18 U.S.C. § 3142(g). The determination that a criminal defendant must be detained pursuant to subsection (g) "may be reopened" at any time

prior to trial if new information surfaces that has a material bearing on the potential conditions of release that may reasonably assure the defendant's appearance in court and the safety of the community. 18 U.S.C. § 3142(f).

Section 3142(i) also provides a distinct mechanism for temporarily releasing a detained defendant, in a manner that does not revisit the initial bond determination, but rather if a court finds that such release is "necessary for preparation of the person's defense or for another compelling reason." 18 U.S.C. § 3142(i). Before turning to the defendant's claim that his health concerns and the COVID-19 pandemic generally are an adequate basis to revisit detention, we first assess the §3142(g) factors as summarized by the detaining Magistrate in his detention order attached as government's Exhibit 1, with the exhibits introduced in that proceeding as Exhibit 2 for the purposes of this motion. The exhibit list from that hearing is attached as Exhibit 3, and a full transcript of the January 21 detention hearing has been attached as Exhibit 4.

a. The January 21, 2021 Detention Hearing

At that hearing, the court found as a threshold matter that "the weight of the evidence [against the defendant] is likely to be strong and indicates an ongoing and escalating pattern of threats and threatening behavior culminating in the violent entry of a mob on the United States Capitol." Ex. 1 p. 2. The magistrate found that the defendant "made a series of violent and threatening statements on social media, including threats to 'storm' Washington, D.C., and wage a civil war against political opponents whom he described as Democrats, communists, the Deep State, and BLM-Antifa." Id.

The court found that the defendant's threats included statements (all attached as Exhibit 2) such as "'I have tons of ammo. Gonna use it, too - at the range and on racist democrat communists"

... "we're loading AR15 magazines and getting range time in. My AR15 set up will do head shots at 200 meters no problem. You have no clue what's coming" . . . "For my part, I'll be slinging enough hot lead to stack you commies up like cordwood" . . . "War is coming. It's the only way to deal with our domestic Communist problem. Ruthlessness is in order" . . . "The only remedy for BLM-Antifa communism is violent retribution against the media and the democrats." . . . "You won't be laughing when Patriots go door to door executing you commies" and, "I won't struggle pulling a head shot at 200 meters day or night. Smoke that over commie bitch." Ex. 1 p. 2-3.

The detaining magistrate further found that the defendant made comments regarding his activity in the United States Capitol on January 6, 2021, including the statement “the first of us who got upstairs kicked in Nancy Pelosi's office door and pushed down the hall towards her inner sanctum, the mob howling with rage – Crazy Nancy probably would have been torn into little pieces, but she was nowhere to be seen.” Ex. 1 p. 4. The court also found that the defendant had also clearly expressed his intentions regarding anticipated activity following the January 6 riot, writing “Now we’re all going back armed for war and the Deep State is about to get run out of DC.” Ex. 1 p. 5.

In ordering detention, the court also noted that the defendant had “evade[d] surveillance” and relocated to a family member’s house before his arrest, and noted that at the time of his arrest the defendant was in possession of “at least two AR-15 rifles, four shotguns, a pistol, a set of brass knuckles, and hundreds of rounds of ammunition.” Ex. 1 p. 5 (and depicted below). The magistrate appeared particularly troubled by the defendant’s statement that he intended to “engage in a violent insurrection and ‘slaughter’ people he considered his political opponents.” Ex. 1 p. 6.



The detaining magistrate found, after considering all of the evidence presented, including the testimony of the case agent, that the evidence presented by the government was “sufficient to show by a clear and convincing” standard “that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community” and “[t]he evidence further shows by a preponderance . . . that no condition or combination of conditions of release will reasonably assure the Defendant’s appearance as required.” Ex. 1 p. 5-6. The court found that the defendant “showed that his intentions were more than mere fantasies when he participated in the violent invasion of the United States Capitol during a joint session of Congress to certify the results of a national election, an invasion that resulted in the deaths of five people, including one law enforcement officer,” and that at “the time of his arrest, Defendant was evading law enforcement and heavily armed.” Id.

The basis for the 3142(g) findings has not changed since the Court in the Middle District of Georgia ordered the defendant's detention on January 25, 2021. The defendant remains both a danger to the community and a flight risk. *See* 18 U.S.C. § 3142(g)(4) (requiring the Court to first evaluate "the danger" that "would be posed by the person's release.")

Notwithstanding these factors, the defendant argues that the existing public-health crisis militates in favor of his release. The government now turns to this argument.

II. While the COVID-19 pandemic is dangerous and the defendant may have pre-existing health conditions, neither constitutes a changed circumstance that necessitates reconsideration of detention at this time.

While the defendant asserts that he has pre-existing health conditions, including a prior prostate cancer diagnosis, he provides no medical evidence or other information about its severity or impact on his susceptibility to the virus. Indeed, other than the fact that the defendant appears to have what may be a routine medical visit, there has been no information provided to the court about the nature of his medical diagnoses or his current health other than the precatory assertion that release is mandated. *Cf.* Def. Mot. Ex. A.

This is not the first time a court has considered bond based on real or asserted health emergencies. In *United States v. Johnston*, No. 17-46 (RMM), 2017 WL 4277140 (D.D.C. Sept. 27, 2017), the Court released a defendant for a limited purpose: to obtain surgical treatment. "This is a temporary release to home detention that is narrowly tailored to respond to the exigent and unusual circumstances presented by [the defendant's] cancer diagnosis and the status of his testing and treatment." *Id.* at *9. When the district court has previously reviewed a motion for release from pretrial detention for health conditions that can be treated at the jail, the court denied the motion, citing that a defendant's "history and characteristics" is only one of four factors that the

Court must consider in determining the appropriateness of pretrial detention. *United States v. Parker*, 517 F. Supp. 2d 375, 377 (D.D.C. 2007) (defendant's medical conditions, including diabetes, asthma and hypertension, for which he required ongoing medication and treatment, *cannot* be dispositive in considering motion for release).¹

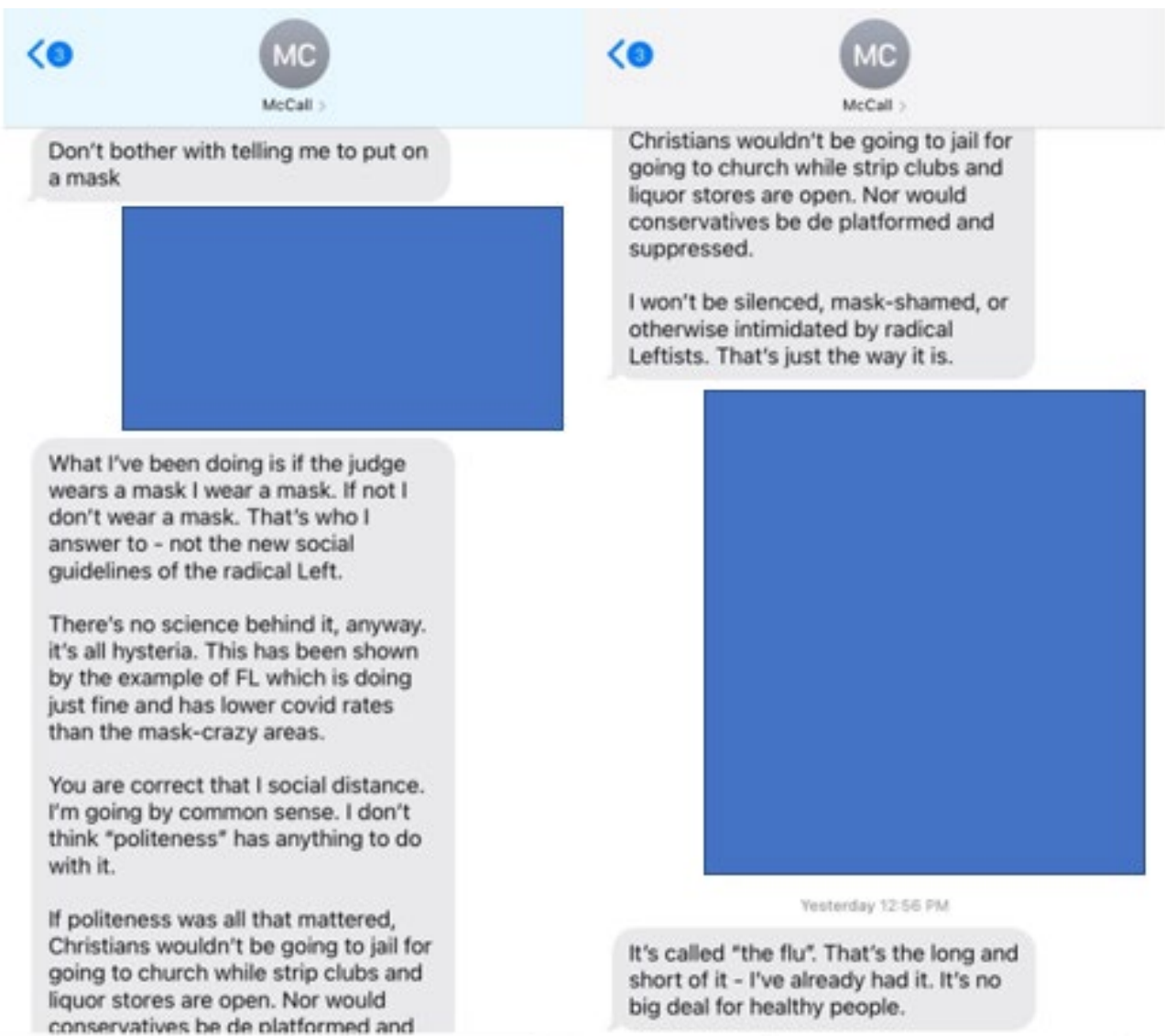
Section 3142(i) operates independently of the detention factors. Under 3142(i), the Court could release a defendant temporarily to the custody of another if it finds a "compelling reason" that necessitates temporary release. The existence of the pandemic in and of itself, however, is not a compelling reason to justify release. Moreover, as discussed in greater detail *infra*, the D.C. Department of Corrections (DOC) appears to have undertaken several steps to try to prevent the spread of COVID-19 within its facilities. Lastly, Section 3142(i) establishes the parameters for *temporary* release; a factor overlooked in the defendant's motion, which considers it, aspirationally and erroneously as a mechanism for indeterminate release.

While the government shares the defendant's purported concerns over the potential risk of COVID-19 exposure while detained, it remains unclear to undersigned counsel what, if any, precautions this defendant would be able to put in place to protect himself and those around him from COVID-19 if he were to be released. *See United States v. Edwards*, 20-mj-50, at *6 (RMM) (March 30, 2020 D.D.C.) ("Although [the defendant's] alleged health problems may make him at heightened risk if he contracts the coronavirus, he would be at risk even if he were not incarcerated."); *United States v. Washington*, 18-cr-309 (DLF) (D.D.C. Telephonic Conference April 2, 2020) (noting that an asthmatic defendant who is addicted to narcotics and avoided taking

¹ *See also United States v. Rebollo-Andino*, 312 F. App'x 346, 348 (1st Cir. 2009) (medical conditions can warrant temporary release under § 3142(i)).

his mental health medication may be safer in custody). Moreover, any such circumstances must also protect the public from a dangerous defendant who appears committed to—and undeterred from—armed violence.

The defendant's argument in the instant motion that his release is required due to the health risks posed by the COVID-19 is ironic when considered in the context of statements made on January 13, 2013 and subsequently provided to the FBI on that topic (redacted to protect the identity of the interlocutor):



As the court can see, the defendant's attitudes towards the COVID-19 pandemic in communications dated January 13, 2021 (two days before his arrest) appear to have shifted dramatically since being detained in this case. Indeed, it seems that the defendant, based on his own statements, previously believed that concerns regarding COVID-19 transmission are "hysteria," didn't consider the disease any worse than "the flu," and may have already contracted the illness, which to the defendant's mind was "no big deal for healthy people" like himself.

The only real basis for the defendant's request for release is the existence of the COVID-19 pandemic in the context of his pre-existing health conditions. While the COVID-19 pandemic is obviously startling, the government still has a duty to ensure the safety of the community and balance the security of others with the safety of the defendant. In other words, unless this or any court is willing to release all defendants, or defendants with verified vulnerabilities, regardless of their danger and/or risks, the Bail Reform Act still provides the pertinent framework to analyze the defendant's motion. As described earlier, the defendant's chief argument is that he has (or has been previously diagnosed) with prostate cancer and thus, he needs to be released.

As this Court is likely aware through prior filings, the government has endeavored – on a case-by-case basis and as a result of the public health crisis currently pending – to permit temporary release pursuant to 18 U.S.C. § 3142(i) or 18 U.S.C. § 3145(c) to those who actually need release.²

Here, it is unclear as to how any of the circumstances cited in his motion, in this context, at this

² For example, in *United States v. Carl Courtney*, 19-cr-413 (TJK), the government consented to release where the defendant had open wounds and was scheduled for surgery. In *United States v. Larry Key*, 19-cr-292 (JDB), the government consented to release due to the defendant's advanced age, his lung, heart, and kidney disease, and current multiple hospitalizations. The government is sincerely trying to balance the danger of the offender and the pandemic, but cannot ignore a person's record, their conduct, or their alleged or unverified maladies.

time, and with this charge, necessitates release under these circumstances. Furthermore, the defendant has not offered any rationale for why release into a community that is already affected by a virus (to which he was previously nonplussed) will protect him any more than his current placement at the Department of Corrections.

III. The D.C. Jail has responsibly addressed the COVID-19 crisis.

In preparing to respond to these and other similar motions, the United States Attorney's Office has consulted with DOC to obtain relevant information as to its handling of the public health crisis, and passes this information along to the Court for its consideration. Indeed, this office continues consulting with the DOC in light of the rapidly-changing situation. Specifically, as of March 27, 2020, DOC has instituted the following protocol to ensure the safety of its incarcerated population:

- banned all non-attorney visits to limit unnecessary exposure;
- implemented screening processes for all visitors and incoming inmates, including attorneys and staff; such screening includes assessing visitors and inmates for symptoms, sanitizing stations, etc.;
- all new inmates are quarantined for 14 days before they assigned to a housing unit;
- if incoming residents at a DOC facility fail the screening process, they are given a mask and taken to medical to determine if they require further hospitalization or testing. Moreover, if there is concern that an inmate has COVID-19, the inmate will be placed into a single cell in a specialized unit, where the inmates only contacts are with medical staff, who will obtain COVID-19 testing within 3-4 days;
- DOC has implemented an incident command program, where each day, DOC units meet to discuss ongoing processes to combat the virus;
- DOC sends out daily reminders to its staff about taking preventative, prophylactic measures to avoid infection, such as washing hands, using sanitizer, etc.;

- DOC has constant meetings with the D.C. Department of Health to ensure its procedures meet both local and national standards, to include following updated recommendations of the Centers for Disease Control;
- DOC has continued to engage with the USAO and the local Public Defender Service to ensure continuity of operations;
- DOC checks and rechecks its ventilation system to ensure the air quality in the facilities;
- DOC is tracking and ordering additional cleaning and sanitation kits (for example, as of March 17, 2020, the D.C. jail had 55,200 bars of fresh soap, which it dispenses weekly and free of charge to each inmate), as well as protective gear and it has mandated cleaning at its facilities every two hours;
- DOC would like to limit the number of inmates coming into its facility at any given time³; and
- upon information and belief, DOC has the capacity to quarantine near 100 inmates, although that number is fluid and subject to change.

See also Coronavirus Prevention, D.C. Department of Corrections (March 27, 2020), <https://perma.cc/L59Z-WG43> (explaining how DOC has suspended in-person visitations,

³ Law enforcement partners have put in place procedures to reduce the number of individuals subject to custodial arrest, exercising their authority to issue citations for individuals to appear on a future dates. *See e.g.*, Metropolitan Police Department Order EO-20-011, *Coronavirus 2019 Modification to Citation Release Criteria* (effective March 17, 2020) (“[T]he USAO and OAG have exercised their authority under DC Code § 23-584(c) to categorically approve the citation release of arrestees consistent with the following updated criteria during the COVID-19 emergency. . .”). Additionally, on March 27, 2020, with the consent of the U.S. Attorney’s Office and others, the Chief Judge issued an order regarding the suspension of the execution of bench warrants in certain misdemeanor cases and an order suspending all sentencing provisions requiring service of sentence on weekends. *See also* Superior Court of the District of Columbia Order, March 16, 2020, available at http://www.dccourts.gov/sites/default/files/Order_3-16-20.pdf; COVID-Emergency Act, D.C. Code § 24-221.0(c) (giving DOC discretion to award good time credit); DOC Change Notice #20-002, March 18, 2020 (doubling the maximum number of monthly sentencing credits which a misdemeanant may receive).

enhanced cleaning efforts, ordered additional sanitation supplies, and diminished out-of-cell recreational time in response to the threat of COVID-19).

As of March 3, 2021, the government learned that there are 1043 residents at the District of Columbia Department of Corrections' (DOC) Central Detention Facility, and 446 residents at DOC's Correctional Treatment Facility, with no general population DOC residents testing positive for COVID-19 and only four positive residents in isolation.

The government and the Court are faced with the difficult challenge—how to balance the security and safety of the community with the safety of the defendant. But it is also critical that the defendant bring his concerns to the DOC's attention, as the DOC is the entity to whom the defendant should direct any specific request for needed accommodations based on the defendant's particular situation. Noticeably absent from the defendant's motion is any statement or claim that the defendant has contacted the DOC to determine what other accommodations, if any, may be appropriate for the defendant given his particular health concerns.

IV. Non-binding District Precedent Militates Against Release.

As defendants have litigated release based on COVID-19, courts in this district have entered a number of orders assessing the validity of the various claims related to COVID-19 or DOC. In *United States v. Smith*, 19-cr-324 (BAH) (D.D.C. March 23, 2020), Chief Judge Howell—who also issued Standing Order 20-9, suspending most courthouse operations as a result of the pandemic—remarked that “[t]he risk presented by the pandemic is serious, and the Court acknowledges that risk may be greater in a jail environment” But the Court also noted that:

[T]he D.C. Department of Corrections has taken aggressive precautions to prevent the spread of the virus within the facility where defendant is detained . . . including suspending all in-person visits, programming, and volunteer activities within its facilities, enhanced cleaning efforts, especially within common areas, and vigilant

medical personnel on alert for symptoms and prepared to isolate and treat symptomatic residents, *see* Department of Corrections Notice, Updated: March 14, 2020, available at <https://doc.dc.gov/page/coronavirus-prevention>. Although defendant is in an age group that may be more susceptible to the virus . . . this risk pertains whether the defendant were released or detained, and any heightened risk posed by pretrial detention does not outweigh the presumption in favor of detaining the defendant pretrial, nor does it alter the balance of the statutory factors Congress prescribed for determining the propriety of detention, which all continue to weigh heavily in favor of detention.

Id. (denying release in a child exploitation case).

Judges have previously noted that DOC appears – despite the obvious struggles of a worldwide health crisis – to be tackling this problem. *See, e.g., Lee*, 19-cr-298, at * 11 (noting the “aggressive precautions that DOC appears to have undertaken to prevent the spread of COVID-19 within its facilities”); *United States v. Adams*, 19-cr-257-003, at *3-4 (DKC) (D. Md March 25, 2020) (COVID-19 is not the “kind of extraordinary reason for Mr. Adams’ release. The correctional and medical staff at detention facilities continue to provide appropriate safeguards for health and safety of those committed to their custody.”); *United States v. Parker II*, 18-cr-344, at *4, 8 (TDC) (D. Md March 21, 2020) (discussing Deputy U.S. Marshal who tested positive for COVID-19, crediting the defendant’s alleged health risks [prior aneurysm, prostate cancer, and present diabetes], and noted that the D.C. Department of Corrections “has implemented prophylactic and other measures in response to the COVID-19 virus.”). To the extent circumstances continue to change, the government is committed to informing the court of any known developments related to COVID-19.

The decisions issued by various courts have consistently and clearly illustrated that in assessing the risk (or any particularized risk to a defendant) related to the COVID-19 pandemic,

the §3142(g) factors provide the necessary framework to evaluate whether to release an individual who was previously deemed too dangerous or too much of a flight risk to reenter the community. *See, e.g., United States v. Gonzalez*, 20-cr-40 (BAH) (D.D.C. March 24, 2020) (denying release, noting the steps taken by DOC to protect inmates); *United States v. Antonio Tabron and Lamont Johnson*, 18-cr-112 (TFH) (denying release after trial in a PCP conspiracy case); *Lee*, 19-cr-298 (KBJ) (denying release in a firearms case based on generalized COVID-19 concerns); *United States v. Parker*, 19-cr-349 (APM) (D.D.C. March 30, 2020) (denying release after a 924(c) plea despite Eighth Amendment claim); *United States v. Watkins*, 20-cr-19 (CRC) (D.D.C. March 31, 2020) (Minute Order) (highlighting the §3142 factors and noting that a “generalized risk to otherwise healthy detainees” is not alone sufficient, denying release in a gun case); *United States v. Foster*, 17-cr-160 (RC) (D.D.C. March 31, 2020) (Minute Order) (discussing *Lee* and other relevant authorities but denying release in a postal robbery); *United States v. Lin*, 19-cr-387, at *4-5 (TJK) (D.D.C. April 1, 2020) (denying release in an aggravated identity theft conspiracy and noting that “even a heightened risk of infection is but one factor that the Court must balance” and finding the difference between COVID-19 pandemic at Rikers Island and D.C. jail to be “substantial”); *United States v. Marchi*, 19-cr-406 (DLF) (D.D.C. April 2, 2020 Minute Order) (“[B]ased on the current record, neither the present pandemic nor the defendant’s mild asthma is a new circumstance that warrants reconsideration” in a firearm case); *United States v. Mathis*, 19-cr-330 (CJN) (D.D.C. April 2, 2020) (denying release post-plea in a an obscene materials to a minor case despite possible existence of hypertension); *United States v. Whitaker*, 19-cr-351 (DLF) (D.D.C. April 2, 2020) (denying release pending sentencing in a firearms case even though the defendant claimed bronchitis, allergies, and asthma); *United States v. Bailey*, 19-cr-391 (JDB)

(denying pretrial release, despite defendant's claim of "complicated medical conditions," noting the applicable §3142 factors); *United States v. Amos*, 19-cr-398 (CRC) (D.D.C. April 3, 2020) (denying release in a firearms case after a plea); *United States v. Park*, 16-cr-9 (TSC) (D.D.C. April 4, 2020) (denying pretrial release in a sex offense case where the defendant failed to rebut the presumption and failed to offer a plan in place if released); *United States v. Rees*, 19-cr-378 (EGS) (D.D.C. April 4, 2020) (denying post-plea release in child exploitation case where the defendant failed to meet his burden and DOC appeared to be reacting reasonably under the circumstances); *United States v. Brooks*, 19-cr-67 (RCL) (D.D.C. April 4, 2020) (denying release after a plea to a firearms charge when the defendant failed to specify the nature of his asthma); *United States v. Green*, 19-cr-250 (DLF) (D.D.C. April 6, 2020) (denying post-plea release in a gun case where the defendant failed to meet 3143(a)(1) factors, and his health risk was limited); *United States v. Carter*, 19-cr-39 (RBW) (D.D.C. April 7, 2020) (denying pretrial release in a Hobbs Act robbery case where DOC is trying to take steps to protect inmates and weighing the 3142(g) factors, including the defendant's criminal history and the "very weighty" evidence). *But see United States v. Harris*, 19-cr-356 (RDM) (D.D.C. March 26, 2020) (releasing defendant in a child exploitation case in part because of COVID-19 pandemic, along with the expert opinion signifying the defendant's limited danger); *United States v. Jaffee*, 19-cr-88 (RDM) (D.D.C. March 26, 2020) (releasing defendant because of COVID-19 pandemic but noting his prior perfect compliance with his conditions of release as well as weakened state evidence in a gun and drugs case); *United States v. Mclean*, 19-cr-380 (RDM) (D.D.C. March 28, 2020) (releasing the defendant in a gun and drugs case due to COVID-19, the defendant's prior HISP release orders, and the underlying condition for diabetes); *United States v. Kofi Appiah and James Hutchings Jr.*,

19-cr-361 (BAH) (D.D.C. March 26, 2020) (releasing defendants in a firearms conspiracy case because of underlying health conditions, including severe assault at jail and verified asthma); *United States v. Stephon Davis*, 19-cr-292 (JDB) (D.D.C. April 6, 2020) (granting home confinement in pretrial narcotics conspiracy where defendant had proven acute bronchitis and had limited record with no record of violence); *United States v. Johnson*, 19-cr-52 (TSC) (D.D.C. April 8, 2020) (granting pretrial release in a felon in possession case where defendant had documented medical issues, including obesity, mobility issues, digestive disorders, and the fact his two prior trials were postponed due to such documented issues); *United States v. Johnson*, 18-cr-293 (RJL) (D.D.C. April 8, 2020) (denying release pending sentencing in wire fraud case where defendant failed to establish exceptional reasons or meet his burden because of his alleged dental issues). A close reading of each case suggests that the particulars of the defendant's circumstances guide the analysis. The pandemic, alone, is not a talismanic but-for cause of the defendant's release, even under 18 U.S.C. § 3142(i).⁴ See *United States v. Phillips*, 20-cr-36, at *2 (ABJ) (D.D.C. April 10, 2020) (“[T]he defendant has focused almost exclusively on the virus, without addressing the facts that relate to him specifically, and following his argument to its logical conclusion would mean that the courts are now obliged to open the doors and release every person at the jail who is awaiting trial. That cannot be the right answer, and judges all over the country have emphasized that these decisions must be made on a case by case basis.”).

⁴ See also *United States v. Cox*, No. 19-cr-271, 2020 WL 1491180 (D. Nev. Mar. 27, 2020); *United States v. Green*, No. 19-cr-304, 2020 WL 1477679 (M.D. Fla. Mar. 26, 2020); *United States v. Steward*, No. 20-cr-52, 2020 WL 1468005 (S.D.N.Y. Mar. 26, 2020); *United States v. Hamilton*, No. 19-cr-54, 2020 WL 1323036 (E.D.N.Y. Mar. 20, 2020).

Opinions filed in neighboring districts are in accord.⁵ Early in this crisis, on March 17, 2020, Judge Paul Grimm of the U.S. District Court, Maryland, issued a written memorandum opinion on COVID-19. *See United States v. Martin*, 2020 WL 1274857, *2 (D. Md. March 17, 2020). Noting, appropriately, that the Court “takes this [COVID-19] health risk extremely seriously,” the Court nevertheless recognized that “resolving . . . an order of detention must in the first instance be an individualized assessment of the factors identified by the Bail Reform Act.” *Id.* at *3. In addressing the new issue raised by the defendant – COVID-19 – the Court nevertheless found that the defendant’s health (his asthma, high blood pressure, and diabetes) was “insufficient to rebut the proffer by the Government that the correctional and medical staff at [the local detention facility] are implementing precautionary and monitoring practices sufficient to protect detainees from exposure to the COVID-19 virus.” *Id.* at *4. Finally, the Court questioned the defendant’s proposed use of GPS location monitoring even if the defendant was released subject to conditions, finding that such monitoring “is not a limitless resource, nor its installation and monitoring by United States Pretrial Services officers without risk to those personnel . . . given the current recommendations regarding implementation of social distancing.” *Id.*; *see also United States v. Lewis*, 19-cr-34-LMA-MBN (E.D. La. March 19, 2020) (“If anything, the COVID-19 pandemic

⁵ *But see United States v. Stephens*, 15-cr-95-AJN (S.D.N.Y. March 19, 2020) (COVID-19 outbreak and as well as a change in the facts of the case – a possible misidentification by an eyewitness – necessitated release). In choosing to release the defendant, the Court noted the defendant’s lack of a violent record, the weakened state of the government’s evidence, the failure of the local jail to arrange legal calls in preparation of his defense, and the effective ban on legal visits with limited exceptions as bases to implement release conditions. *Id.*

Notably, the Court recognized that its decision cannot be made simply because of COVID-19. *See id.* at *6 n.3 (“The Court need not decide this additional factor [the current public health crisis] here because its determination that release is necessary for the preparation of the Defendant’s defense is sufficient under § 3142(i).”)

has reduced the availability of conditions to mitigate the risk to the community”). The Court’s concerns in *Martin* continue to remain relevant, even as the crisis worsens. Like the U.S. District Court for the District of Columbia, judges in the District of Maryland (Greenbelt Division) – whose defendants are also detained by DOC – has also denied release on generalized grounds, noting the importance in evaluating the defendant’s risk through the Bail Reform Act. *See, e.g., United States v. Bilbrough, IV*, 20-cr-33, at *4-5, 7 (TDC) (D. Md March 20, 2020) (“D.C. Department of Corrections appears to be taking reasonable steps to prevent and combat the spread of COVID-19 in its facilities. Although [the defendant] may still be at an increased health risk [from diabetes] . . . this factor alone does not outweigh the other factors.”); *United States v. Brown*, 16-cr-553 (RDB) (D. Md March 26, 2020) (denial of release from BOP custody); *United States v. Jefferson*, 19-cr-487 (CCB) (D. Md March 23, 2020) (“Precautionary measures have been implemented at CTF in light of the COVID-19 pandemic” denying release to an asthmatic defendant); *United States v. Johnson*, 17-po-9262 (TMD) (D. Md March 20, 2020) (discussing general risk of exposure to COVID-19, but denial of release on other grounds); *United States v. Jones*, 17-cr-582, at *2 (CCB) (D. Md March 20, 2020) (“CDF medical personnel are adequately addressing Defendant’s medical needs” and the COVID-19 “risks are not the sole determinant of whether detention is appropriate.”); *United States v. Legard*, 19-cr-137, at *2-3 (PWG) (D. Md March 24, 2020) (Asthma was not a basis alone to release a defendant in light of COVID-19 pandemic and that the measures at the D.C. jail are “in compliance with state and federal guidelines regarding protective measures”); *United States v. Perry*, 14-cr-181, at *1-2 (GLR) (D. Md March 26, 2020) (denial of release from halfway house due to COVID-19, but on statutory reasons, but also noting that the affidavit of Dr. Marc Stern “lack[ed] the case or institution specificity to determine, with sufficient

certainty, the health risks posed at the institution.”). In fact, in *United States v. Williams*, 13-cr-544 (PWG) (D. Md March 23, 2020), the Court even acknowledged that DOC has taken significant measures to stem the tide of the pandemic, but that “[s]hould the unfortunate event occur, the correctional authorities have in place a plan of action that should not be summarily embraced or discarded. Nor does it follow that a presumption of release materializes without more details about the impact upon [the defendant] directly.” *Id.* at *5. Perhaps most explicitly, “[t]he existence of the present pandemic, without more, is not tantamount to a “get out of jail free” card. Not even for the older person being detained.” *Id.* The Court thus denied a 67-year-old defendant emergency release.

Finally, while the COVID-19 virus is a valid and serious concern, arguments based primarily on even serious health concerns are not. Courts have generally recognized that “it is a rare case in which health conditions present an exceptional reason” to allow for release where otherwise detention would be warranted. *United States v. Wages*, 271 F. App’x 726, 728 (10th Cir. 2008) (quotations omitted).

The government appreciates the gravity of this global pandemic and is committed to ensuring the safety and health of inmates like the defendant, but regardless of whether the Court applies the standard articulated under the “compelling reason” language of 18 U.S.C. § 3142(i) or the “exceptional reason” standard of 18 U.S.C. § 3145(c), the defendant cannot meet either burden mandating his release. Moreover, the existence of the COVID-19 pandemic and his prior health diagnoses can certainly factor into this analysis, but it cannot be dispositive, without additional evidence. The inquiry before this Court, today, is whether the Court can find that the defendant

has met his burden under either standard, which the government respectfully submits he has failed to do.

V. The defendant's additional claims are not meritorious.

The defendant also argues, in passing, that his continued pretrial detention would constitute a Due Process violation and would subject him to Cruel and Unusual Punishment. Def. Mot. P. 4. This argument is similarly without merit.

Judge Grimm considered this issue, briefly, in *Martin*, before holding that “as concerning as the COVID-19 pandemic is, resolving an appeal of an order of detention must in the first instance be an individualized assessment of the factors identified by the Bail Reform Act.” ____ F.3d at ____, 2020 WL 1274857 at **2-3 (citing *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001); *Loe v. Armistead*, 582 F.2d 1291, 1293–94 (4th Cir. 1978)). As the Supreme Court has long held, “[n]ot every disability imposed during pretrial detention amounts to ‘punishment’ in the constitutional sense.” *Bell*, 441 U.S. at 537.

The Courts of Appeal have been even more explicit:

[I]solated examples of illness, injury, or even death, standing alone, cannot prove that conditions of confinement are constitutionally inadequate. Nor can the incidence of diseases or infections, standing alone, imply unconstitutional confinement conditions, since any densely populated residence may be subject to outbreaks. . . *a detainee challenging jail conditions must demonstrate a pervasive pattern of serious deficiencies in providing for his basic human needs; any lesser showing cannot prove punishment in violation of the detainee's Due Process rights.*

Shepherd v. Dallas County, 591 F.3d 445, 454 (5th Cir. 2009) (emphasis added); *see also Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017) (noting that a pretrial detainee could not make out a Due Process claim without showing that the detention facility demonstrated “deliberate indifference”

or “recklessness” with regard to inmate safety) (citing *Farmer v. Brennan*, 511 U.S. 825, 836-37 (1994)).

The defendant cannot satisfy this burden. Far from being deliberately indifferent to the threat of COVID-19, DOC has enacted its own protocol – a protocol that is compliant with CDC and D.C. Department of Health requirements and recommendations. DOC has implemented its protocol to quarantine inmates who might have been exposed to COVID-19, and also to isolate the inmates who have tested positive. *See also Lee*, 19-cr-298, at *10-11 (finding that prison authorities have not been deliberately indifferent to this threat); *Parker*, 19-cr-349, at *2 (noting that the defendant offers “no proof specific to [DOC] efforts to manage the present crisis to support his constitutional claim.”); *United States v. Thorne*, 18-cr-389, at *5 (BAH) (D.D.C. March 31, 2020) (“[D]efendant has not shown that the DOC is deliberately indifferent” to risks and that DOC protocols “undercut any claim of” deliberate indifference). In the absence of a Due Process violation, the Court must rest its decision on the Bail Reform Act factors which, as noted above, continue to weigh heavily in favor of pretrial detention in this case. Notwithstanding the potential that Defendant might contract COVID-19 in DOC, there is no combination of conditions which would ensure the safety of the community if he is released.

Finally, defendant also argues, again in passing, for release based on a purported violation of the Sixth Amendment right to counsel. Def. Mtn. p. 10-11. He claims that he should be released because his “ability to prepare a defense will be hampered by his pretrial incarceration.” *Id.* Even assuming such a denial, this Court lacks authority to release the defendant on that ground, which is unrelated to the reasons for his pretrial detention, *viz.*, risk of flight and danger to the community. In any event, given the unprecedented institutional challenges faced by the District of Columbia

Department of Corrections (“DOC”), the defendant has come nowhere close to demonstrating an “unjustifiable obstruction” with his legal representation. *Benjamin v. Fraser*, 264 F.3d 175, 186 (2d Cir. 2001); *see also United States v. Johnson*, 225 F. Supp. 2d 982, 1005 (N.D. Iowa 2002).

“[W]hen an institutional restriction on pretrial detainees infringes a specific constitutional guarantee [*i.e.*, the Sixth Amendment], ‘the practice must be evaluated in light of the central objective of prison administration, safeguarding institutional security.’” *Benjamin*, 264 F.3d at 187 (quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)) (bracketed material in original); *see also Johnson*, 225 F. Supp. 2d at 1006 (“pretrial detainee must show . . . ‘unjustifiable obstruction’ with legal representation”).

The “core” of the Sixth Amendment right to assistance of counsel is “‘the opportunity for a defendant to consult with an attorney and to have him investigate the case and prepare for trial.’” *Kansas v. Ventris*, 556 U.S. 586, 590 (2009) (citation omitted). As explained, the defendant is not (and has not alleged that he is) being deprived of his right to “consult” with his counsel. The defendant can consult with his counsel daily on unrecorded and unmonitored phone calls. Nor is the defendant being deprived of his right to have his counsel investigate his case and prepare for trial based on those daily consultations. Even if the defendant’s current contact is limited to telephone conversations, “not every restriction on counsel’s time or opportunity to investigate or consult with his client or otherwise prepare for trial violates a defendant’s Sixth Amendment right to counsel.” *Morris v. Slappy*, 461 U.S. 1, 11 (1983).

Presumably, when the District and the Nation emerge from this extraordinary health crisis, there will be ample opportunities for counsel to consult with the defendant in person. In the meantime, the defendant should not be released because of the minimal DOC intrusion on his Sixth

Amendment right. *See, e.g., United States v. Green*, 19-cr-250 (DLF) (D.D.C. April 6, 2020 Minute Order) (“Although the COVID-19 pandemic has limited counsel's access to Mr. Green, counsel can still communicate with Mr. Green.”). *United States v Lucas*, 873 F.2d 1279, 1280 (9th Cir. 1989) (per curiam) (defendant failed to show his detention in facility 120 miles from counsel’s office prevented him from adequately communicating with counsel such as to give rise to Sixth Amendment violation); *see generally United States v. Mukhtar*, 2013 WL 12204792, *7 (D. Nev. Feb. 13, 2013) (“The Court recognizes that detention limits Defendant's ability to communicate with his counsel or review electronic discovery or other documentary or physical evidence as frequently or for as long as he might do if he were out of custody. Defendant is, however, represented by competent counsel and has access to support staff and assistance to prepare his defense in this case. Defendant has not demonstrated that his pretrial detention so substantially impairs his ability to communicate with his counsel and examine discovery, that he and his lawyers cannot adequately prepare his defense.”).

CONCLUSION

Given the plans in place at the DOC and the danger that the defendant represents to the community – the same community also affected by this illness, the government respectfully requests that this Court deny the motion.

Respectfully submitted,

Channing D. Phillips
Acting U.S. Attorney
D.C. Bar No. 415793

By: /s/ Adam Alexander
Alaska Bar No. 1011057
Assistant United States Attorney
Capitol Riot Detailee
222 W. 7th Avenue Suite 253
Anchorage, Alaska 99513
(907) 271-2309
Adam.Alexander@usdoj.gov

Dated: March 4, 2021

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

UNITED STATES OF AMERICA,

v.

WILLIAM McCALL CALHOUN,

Defendant.

:
:
:
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:
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:

Criminal No. 21-cr-00016 (DLF)

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S
MOTION FOR RELEASE – EXHIBIT LIST**

1. Exhibit 1, Order of Detention Case 5:21-mj-00008 ECF 10 (MJ C.H. Weigle).
2. Exhibit 2, a 33 page document containing the government’s exhibits 1-35a.
3. Exhibit 3, Exhibit List from 1/21/21 detention hearing 5:21-mj-00008 ECF 9.
4. Exhibit 4, Transcript of January 21, 2021 Preliminary Examination and Detention Hearing in Case 5:21-mj-00008.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 4th day of March 2021, a true copy of the foregoing Opposition to the Defendant's Motion for Reconsideration of Detention, and Exhibits, was emailed to:

Mr. Jonathan Hopkins, Courtroom Deputy
Email: Jonathan_Hopkins@dcd.uscourts.gov
Honorable Judge Dabney L. Friedrich

Ms. Jessica N. Sherman-Stoltz, Esq.
Attorney for Mr. Calhoun
Email: jessica@sslawgroupva.com

With leave of court and until such time that this motion and accompanying exhibits can be filed via CM/ECF in due course.

/s/ Adam Alexander
Alaska Bar No. 1011057
Assistant United States Attorney
Capitol Riot Detailee
222 W. 7th Avenue Suite 253
Anchorage, Alaska 99513
(907) 271-2309
Adam.Alexander@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

UNITED STATES OF AMERICA	:	
	:	
v.	:	File No. 5:21-mj-8 (CHW)
	:	
WILLIAM McCALL CALHOUN, JR.,	:	Charging District's Case No:
	:	1:21-mj-40 (D.D.C.)
Defendant.	:	
<hr style="width: 40%; margin-left: 0;"/>	:	

ORDER OF DETENTION

On January 21, 2021, arrestee William McCall Calhoun, Jr., appeared before the Court for a preliminary hearing pursuant to Rule 5.1 of the Federal Rules of Criminal Procedure and a hearing on the Government's motion for detention. Defendant is charged in a complaint with unlawful entry in a restricted building, in violation of 18 U.S.C. § 1752(a); violent entry and disorderly conduct in the Capitol building, in violation of 40 U.S.C. § 5104(e)(2); and obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2). Following the preliminary hearing, the Court found probable cause to support each of the allegations in the complaint.

Based on the testimony presented by the Government at the preliminary and detention hearing, the Court further found by clear and convincing evidence that no condition or combination of conditions of release would reasonably assure the safety of the community and by a preponderance of the evidence that no condition or combination of conditions of release would reasonably assure the Defendant's appearance as required.

Most significant in the Court's consideration under 18 U.S.C. § 3142(g) is the nature of the offenses alleged, as the offenses involve credible threats of violence against political opponents and intentional participation in violent civil insurrection. The Government showed that the weight of the evidence is likely to be strong and indicates an ongoing and escalating pattern of threats and threatening behavior culminating in the violent entry of a mob on the United States Capitol.

Evidence presented by the Government showed that Defendant made a series of violent and threatening statements on social media, including threats to "storm" Washington, D.C., and wage a civil war against political opponents whom he described as Democrats, communists, the Deep State, and BLM-Antifa. Defendant took action on those threats by participating, intentionally and with premeditation, in the violent riot that led to the takeover of the United States Capitol Building on January 6, 2021.

The Government produced evidence of numerous social media posts between October 2020 and January 2021, indicating Defendant's intent to wage a "civil war" and "slaughter" Democrats and other political opponents. Among Defendant's threats were statements such as: "I have tons of ammo. Gonna use it, too - at the range and on racist democrat communists" (Govt. Ex. 12); "we're loading AR15 magazines and getting range time in. My AR15 set up will do head shots at 200 meters no problem. You have no clue what's coming" (Govt. Ex. 13); "For my part, I'll be slinging enough hot lead to stack you commies up like cordwood" (Govt. Ex. 14); "War is coming. It's the only way to deal with our domestic Communist problem. Ruthlessness is in order" (Govt. Ex. 15); "The only

remedy for BLM-Antifa communism is violent retribution against the media and the democrats." (Govt. Ex. 18). These statements also included direct threats to other social media users, including the statement to one user, "You won't be laughing when Patriots go door to door executing you commies" (Govt. Ex. 27), and to another user, "I won't struggle pulling a head shot at 200 meters day or night. Smoke that over commie bitch." (Govt. Ex. 23).

Prior to the Capitol riot on January 6, 2021, Defendant made clear his desire and intent to invade the Capitol building. On October 20, 2020, Defendant posted the statement, "Patriots be ready to storm Washington! If you're willing to go to Washington in November to 'peacefully protest' with AR15 in hand, upvote this." (Govt. Ex. 19). On January 5, 2021, Defendant posted that he was "Headed to D.C. to give the GOP some back bone," and noted that "DC announced it is 'banning guns' when we storm the Capitol tomorrow. LoL - guns are already banned in DC. Very illegal. Whether the police can enforce their gun laws depends on how many armed Patriots show up." (Govt. Ex. 3). Shortly before the mob entered the Capitol, Defendant posted a picture from outside the Capitol with the statement, "We're going to get inside the Capitol before this ends." (Govt. Ex. 4).

After entering the Capitol with the mob, Defendant continued to make a number of social media posts describing the "hostile takeover" of the Capitol. He also explained his intent and the intent of the mob to do harm to members of Congress:

After we had overrun that last police barricade, the momentum caused a bad crush at one point, but carried the Vanguard through several smaller doors and down halls as we swarmed Congress yelling the names of various members.

Then we stormed upstairs through the rotunda admiring the amazing art work but at the same time looking for members of Congress, as by this time we physically owned the Capitol - all law enforcement had retreated to the perimeter and even more thousands were trying to push in!

And get this - the first of us who got upstairs kicked in Nancy Pelosi's office door and pushed down the hall towards her inner sanctum, the mob howling with rage – Crazy Nancy probably would have been torn into little pieces, but she was nowhere to be seen – then a swat team showed, and we retreated back to the rotunda and continued our hostile take over of the Capitol Building.

(Govt. Ex. 5)

In another post from inside the Capitol, Defendant boasted:

Today the American People proved that we have the power.

We physically took control of the Capital [*sic*] building in a hand to hand hostile takeover.

We occupied the Capitol and shut down the Government – we shut down their stolen election shenanigans.

I was there and saw it all. My buddy Andy Nalley and I were in the first two

hundred to rush up the steps and inside after the Vanguard had clashed hard with the police and had made them retreat.

The military isn't going to save the Democrat Communists. They are done.

Today we brought the Government to its knees with no weapons.

Now we're all going back armed for war and the Deep State is about to get run out of DC.

(Govt. Ex. 6)

Following the Capitol riot, Defendant returned to his home in Americus, Georgia, where he continued to engage in the practice of law and represent clients at court hearings. Defendant also gave an interview to the Atlanta Journal-Constitution, in which he admitted to being one of the first to enter the Capitol. Federal agents sought to arrest Defendant at a scheduled court hearing in Americus, but Defendant failed to appear. Defendant was able to evade surveillance and relocate to Macon, Georgia, where he was eventually located at his sister's house. At the time of his arrest, Defendant possessed several weapons, including at least two AR15 rifles, four shotguns, a pistol, a set of brass knuckles, and hundreds of rounds of ammunition.

The evidence presented by the Government is sufficient to show by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community. The evidence further shows by a preponderance of the evidence that no condition or combination of conditions

of release will reasonably assure the Defendant's appearance as required. Defendant made numerous statements indicating his intent to engage in a violent insurrection and "slaughter" people he considered his political opponents. Defendant showed that his intentions were more than mere fantasies when he participated in the violent invasion of the United States Capitol during a joint session of Congress to certify the results of a national election, an invasion that resulted in the deaths of five people, including one law enforcement officer. Defendant indicated that he intended to participate in further, armed acts of violence. At the time of his arrest, Defendant was evading law enforcement and was heavily armed.

Accordingly, the Defendant shall be committed to the custody of the Attorney General of the United States or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

SO ORDERED, this the 25th day of January, 2021.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge

00116-DLF Document 14-2 Filed 03/06/21

**McCall Calhoun** · 🔒

1h · 🌐



After we had forced our way in but before the cops were rout... See More





McCall Calhoun
@McCallCalhoun

Case 1:21-cr-00116-DLF Document 14-2 Filed 03/06/21 Page 2 of 33

Being physically present in Washington on January 6 is of key importance.

We the People have no other realistic option to communicate our unwavering intent to demand fair elections now and forever - or else.

I'll see you there!

[read less](#)



0



2



6

PENGAD 800-631-6989

GOVERNMENT
EXHIBIT

2



McCall Calhoun · 2 days ago · 377
@McCallCalhoun

Case 1:21-cr-00116-DLF Document 14-2 Filed 03/06/21 Page 3 of 33

Headed to D.C. to give the GOP some back bone - to let them know this is their last chance to Stop the Steal - or they are going to have bigger problems than these coddled Antifa burning down their safe spaces.

DC announced it is "banning guns" when we storm the Capitol tomorrow. LoL - guns are already banned in DC. Very illegal.

Whether the police can enforce their gun laws depends on how many armed Patriots show up.

Ironically, in the long list of firearms and weapons banned by the DC ordinance, tomahawks are not mentioned, meaning there is no prohibition against carrying a tomahawk as long as it is not used offensively!

The tomahawk revolution- real 1776!
[read less](#)



5



1



6

make a comment





McCall Calhoun

7h · 🌐



We're going to get inside the Capitol before this ends



Dandon Hancock and 20 others

7 Comments 1 Share



Like



Comment



Share



McCall Calhoun



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GOVERNMENT
EXHIBIT

4

**McCall Calhoun**

3h · 🌐



Patriots have taken the Capitol building. We overran multiple police barricades and swarmed the building. We busted through - thousands of us swarmed in.

There was a last police barricade inside, and we had packed in right up to them.

Somebody yelled "push through", so we did and the shock of our momentum brushed them aside - some people we're bleeding pretty badly by that point.

After we had overrun that last police barricade, the momentum caused a bad crush at one point, but carried the Vanguard through several smaller doors and down halls as we swarmed Congress yelling the names of various members.

Then we stormed upstairs through the rotunda admiring the amazing art work but at the same time looking for members of Congress, as by this time we physically owned the Capitol - all law enforcement had retreated to the perimeter and even more thousands were trying to push in!

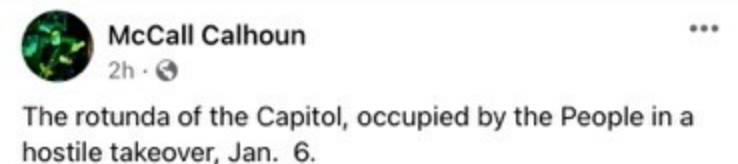
And get this - the first of us who got upstairs kicked in Nancy Pelosi's office door and pushed down the hall towards her inner sanctum, the mob howling with rage - Crazy Nancy probably would have been torn into little pieces, but she was nowhere to be seen - then a swat team showed, and we retreated back to the rotunda and continued our hostile take over of the Capitol Building.

There was such a push of even more Patriots coming into the Capitol that we couldn't get out for about 20 minutes





Like Comment Share





McCall Calhoun

2h · 🌐



The rotunda of the Capitol, occupied by the People in a hostile takeover, Jan. 6.



👍❤️ 17

3 Shares

👍 Like

💬 Comment

➦ Share





WE CAN TAKE THAT... NOW PLAYING 04:59 New footage shows what it was like in the middle of the pro-...

WATCH: Pro-Trump rioters stormed the US Capitol and... 02:11

What the storming of... 00:58

Politics 04:59

BJ Business Analysis... \$76080.000

\$480M GEORGIA

GOVERNMENT EXHIBIT
8
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us.blackboardjob.com



McCall Calhoun @McCall... · 10/17/20

Yeah, standing by, and when Trump makes the call, millions of heavily armed , pissed off Patriots are coming to Washington to deal with the traitorous Chicom Democrats.

Oh yeah, the cops and the military are on our side.





McCall Calhoun @McCall... 10/17/20

Hang the bastard



James Woods ✓ @R... · 10/16/20

#ChinaStoogeBiden



PENGAD 800-431-6889

GOVERNMENT
EXHIBIT
10



McCall Calhoun

@McCallCalhoun1

Replying to [@TheJayneway](#) [@lamthesandman13](#)
and 3 others

You get help you commie hag.

Bring your rioting BLM-Antifa crime
wave to my city and the body bags
with you morons are going to get
stacked up high.

In GA we have the right to self
defense you idiot.

11:37 AM · 10/19/20 · [Twitter for iPhone](#)





McCall Calhoun @McCall... 10/16/20

I am living my life. I have tons of ammo.
Gonna use it, too - at the range and on
racist democrat communists.

So make my day. We will end this BS.





McCall Calhoun @McCall... · 10/16/20 ...

While ya'll pick on Tiffany and concern yourselves with other trivialities and irrelevancies, we're loading AR15 magazines and getting range time in. My AR15 set up will do head shots at 200 meters no problem. You have no clue what's coming.



McCall Calhoun @McCall_ 10/15/20

Oh if you're white and what you're pushing happens you may not die on my sword, but you'll get an Antifa brick bashed against your head.

For my part, I'll be slinging enough hot lead to stack you commies up like cordwood.



GOVERNMENT
EXHIBIT
14



McCall Calhoun @McCall... · 10/15/20 ...

War is coming. It's the only way to deal with our domestic Communist problem. Ruthlessness is in order. Harsh examples have to be made. This can be over soon enough if conservative Americans still have what it takes to kick some *ss. We shall see.





McCall Calh... @McCallCalhoun ✓

4 days ago • ©216

We are waiting on the Supreme Court to do the right thing - and if it doesn't then the civil war is on! We won't stand for this democrat fraud and ejection stealing in the middle of the night!





McCall Calh... @McCallCalhoun ✓
10/20/20 • ©21

As part of the anti-communist counter revolution we've got to get serious about stopping them by force of arms. We've been asleep at the wheel for so long there is no other way.

No one on the right has any balls. All talk. No action.

Will conservatives do nothing and "talk" their way into slavery?

File under "the United States is too weak, effete and corrupted to be allowed to exist any longer.

I'm a lawyer saying these things. We are so fucked unless regular Americans are prepared to do what has to be done.



McCall Calh... @McCallCalhoun ✓

10/20/20 • ©20

I'm banned, I'm an outlaw and I'm pissed.

The only remedy for BLM -Antifa
communism is violent retribution against
the media and the democrats.

And I hate them even more for bringing
us to this point.



McCall Calh... @McCallCalhoun ✓

10/20/20 • ©21

Patriots be ready to storm Washington!

If you're willing to go to Washington in November to "peacefully protest" with AR15 in hand, upvote this.



McCall C... @McCallCalhoun

6 days ago

Why are Republicans so effete? And ignorant of History?

This is a racist communist insurgency.

One cannot negotiate with communists- they keep coming until they are either destroyed or victorious.

You will not end this threat from n courts or R polls, but only by force of arms. Think "ethnic cleansing", but it's anti-communist cleansing.

They will do it to us at the earliest opportunity.

Attempted Peace is no longer even remotely an option, but is a recipe for our downfall!

58k at the latest Trump rally. Biden? LoL. Fake negro Kamala? Not enough people to even have a card game.

Meanwhile, all these businesses aren't boarding up to protect against Trump voters dumb shit. They aren't voting fir you pigs.

Matt Taibi nailed it - this democrat party is like a "vomit milkshake".

Even now you are pushing a form of Nadler's "Antifa violence is a myth" bullshit. Such a liar. So done.

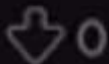
So do you want a re-education camp or a bullet to the head? We're NOT going to co-exist with you racist communist assholes. You wouldn't let us if we wanted to, because believe me we've tried.



McCall Calh... @McCallCalhoun

4 days ago ·

That's why we have AR15s, and it's just about time to open up a can of whoop ass!





McCall C... @McCallCalhoun

11 days ago

@Letsgoducks756 I won't struggle pulling a head shot at 200 meters day or night. Smoke that over commie bitch.





McCall C... @McCallCainoun

5 days ago

@Lokahi7701 I write in complete sentences. You must be a proud graduate of STEM? You're probably one of these poor fools whose middle school history book mentioned George Washington once and Harriet Tubman 11 times - this is why your an ignorant dumbass who hates your own race and country.

You're just another brainwashed idiot who doesn't know squat.

I also shoot in a straight line, right on target - a head shot at 150 meters is like ... no problem, dude.



Jack Gaynor @seriouschance

4 days ago · 1.4k

Terrible thing that is happening but
The Lord is in control. Dad would
say Daniel 4. Try to not be
anxious...try to not be
angry...humility is one of God's traits



McCall Calhoun @McCallCalhoun

4 days ago ·

God helps those who help themselves.

God is on Trump's side - God is not on
the Communists' side and the party of
60 million abortions, and if Patriots have
to kill ten million of these fucking
communists to prove it, then it's God's
Will.



Jack Gaynor @seriouschance

4 days ago

Don't think that's in Scripture
But I'm 100% with Donald J Trump ❤️



The W... @thewash...tonpundit

6 days ago · 180k

Let's watch PA find 700,001 votes
for Biden.



McCall Calh... @McCallCalhoun

6 days ago ·

Let's just slaughter the motherfuckers
because they are coming for us!



PENGAD 800-631-6989

GOVERNMENT
EXHIBIT
26



McCall C... @McCallCainoon

11 days ago

@Letsgoducks756 I'm 58 and fully capable of pounding your snowflake ass into the ground.

You won't be laughing when Patriots go door to door executing you commies.





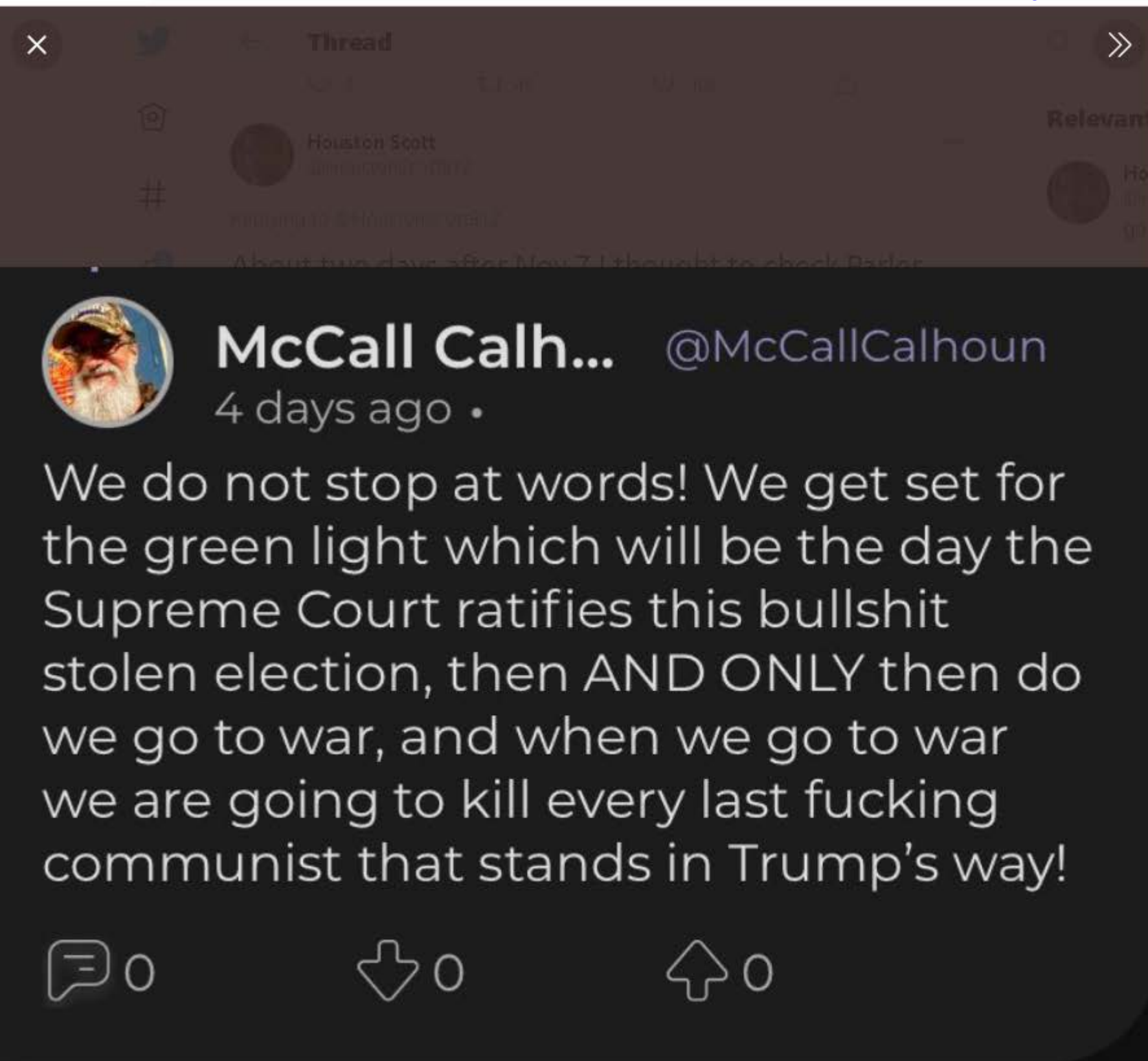
McCall Calhoun

...

1h •

These were first 200 or so of us to actually get inside the Capitol. There was a group outside who made the initial breakthrough (not shown) and a few of them got hurt pretty good, but it didn't matter. Those of us coming up filled the ranks and we pushed on through and headed to the next barricade without stopping. That's what you're seeing here.





GOVERNMENT
EXHIBIT
29





PENGAD 800-631-6889

**GOVERNMENT
EXHIBIT**

30



PENGAD 800-431-6869
**GOVERNMENT
EXHIBIT**
31



PENGAD 800-831-6989
GOVERNMENT
EXHIBIT
32

Transcript of video filmed by William McCall Calhoun Jr.

Transcript completed by: Special Agent Timothy Armentrout, FBI

Transcript completed on January 20, 2021

Calhoun: Capitol... the crowds really, they're taking it back.

Background crowd noise

At :25 secs video goes silent and shows social media posting comments.

At :39 seconds video inside capitol continues with background noise

Calhoun: (@ :49seconds) Looks like we are about to push through these cops.... We'll see what happens. Crowd's really pissed.

Background noise: "fuck the deep state, we'll fucking go to war"



USA

v

WILLIAM MCCALL CALHOUN, JR.

Government's Exhibits

CASE NO: 5:21-MJ-00008-CHW-1



NO.	DESCRIPTION	IDENTIFIED	ADMITTED
1	Screenshot FB	SA Armentrout	yes
2	Screenshot FB	SA Armentrout	yes
3	Screenshot FB	SA Armentrout	yes
4	Screenshot FB	SA Armentrout	yes
5	Screenshot FB	SA Armentrout	yes
6	Screenshot FB	SA Armentrout	yes
7	Screenshot FB		
8	Video-Business Insider Screenshot	SA Armentrout	yes
35	Mr. Scott's Video (contains Calhoun's Video)	SA Armentrout	yes
35a	Transcript of 35 audio	SA Armentrout	yes
34	Video	SA Armentrout	yes
30	Screenshot of 34 video	SA Armentrout	yes
29-Sep	Twitter Posts Feb 28	SA Armentrout	yes
31	Picture - Search Warrant	SA Armentrout	yes
32	Picture - Search Warrant	SA Armentrout	yes
Witness	SA Timothy Armentrout, FBI		
33	NO MENTION		

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

THE UNITED STATES OF AMERICA)
) Case No. 5:21-MJ-8
vs.)
) Macon, Georgia
WILLIAM MCCALL CALHOUN JR.,)
DEFENDANT)
)

PRELIMINARY EXAMINATION and DETENTION HEARING
BEFORE THE HONORABLE CHARLES H. WEIGLE
UNITED STATES MAGISTRATE JUDGE

January 21, 2021

APPEARANCES:

FOR THE GOVERNMENT: Leah McEwen, AUSA
UNITED STATES ATTORNEY'S OFFICE
Post Office Box 1702
Macon, GA 31202-1702

FOR THE DEFENDANT: Timothy R. Saviello
FEDERAL DEFENDERS OF THE
MIDDLE DISTRICT OF GEORGIA
440 MLK JR Blvd, Ste 400
Macon, GA 31202

Proceedings reported stenographically

DARLENE D. FULLER, USCR
Registered Professional Reporter
Registered Merit Reporter
Certified Realtime Reporter
Georgia Certified Reporter No. 5641-3440-5157-6832

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1 Macon, Georgia

2 Thursday, January 21, 2021

3 10:00 a.m.

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

5 COURT OFFICER: All rise. United States District
6 Court for the Middle District of Georgia, Macon Division, is
7 now in session. The Honorable Charles Weigle, United States
8 Magistrate Judge, presiding. Please be seated.

9 THE COURT: Today is January the 21st, 2021. We are
10 here this morning with a preliminary and detention hearing on a
11 criminal complaint from the District of Columbia. That's Case
12 5:21-MJ-8; in the District of Columbia it's Case 1:21-MJ-40, in
13 the matter of United States versus William McCall Calhoun
14 Junior.

15 Mr. Calhoun is here this morning represented by
16 Mr. Saviello from the Federal Defenders Office. We have
17 Ms. McEwen here for the government. Are the parties ready to
18 proceed at this time?

19 MS. McEWEN: Yes, Your Honor.

20 MR. SAVIELLO: Yes, Your Honor, with one quick
21 preliminary question. Is it okay if the Marshals remove
22 Mr. Calhoun's restraint on his right hand so he can take notes
23 and assist me during the hearing?

24 THE COURT: That's good with me if it's good with the
25 Marshals, yeah.

1 MR. SAVIELLO: Thank you, Your Honor.

2 (Officer released Defendant's hand.)

3 THE COURT: I believe Ms. Alston has already
4 mentioned this, but I would request everybody remain seated. I
5 think that's going to work better with the sound system. So no
6 need to stand when you're making arguments.

7 Are there any other preliminary matters that the
8 parties want to take up with the Court before we begin with the
9 evidence?

10 MR. SAVIELLO: Not from the defense. Thank you, Your
11 Honor.

12 MS. McEWEN: No, Your Honor.

13 THE COURT: All right. Then I think the appropriate
14 way to proceed would be with the preliminary hearing matters
15 first. There may be some overlap, depending how that turns
16 out, with the detention matter. But the first issue is to deal
17 with whether there's probable cause to support the allegations,
18 so I'll let the government proceed with its case.

19 MS. McEWEN: Yes, Your Honor. I would call Special
20 Agent Armentrout to the stand.

21 THE COURT: Come up and be sworn in please, sir. And
22 can everybody hear me okay? I'm never sure with the mask on
23 and this is a new courtroom for me.

24 MS. McEWEN: Yes, Your Honor.

25 COURTROOM DEPUTY: Raise your right hand. Do you

1 solemnly swear that the testimony you are about to give is the
2 truth, the whole truth, and nothing but the truth, so help you,
3 God?

4 THE WITNESS: I do.

5 COURTROOM DEPUTY: Please be seated and please state
6 and spell your name.

7 THE WITNESS: Yes, ma'am. My name is Timothy
8 Armentrout, T-i-m-o-t-h-y A-r-m-e-n-t-r-o-u-t.

9 FBI SA TIMOTHY ARMENTROUT
10 called by Government at 10:04 a.m., having first been duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. McEWEN:

14 Q. Special Agent Armentrout, how are you employed, sir?

15 A. I am a special agent with the FBI.

16 Q. And in that regard, are you familiar with the joint
17 session of Congress that was ongoing on January the 6th, 2021?

18 A. Yes, ma'am.

19 Q. Have you become aware, as a part of this investigation,
20 that the United States Capitol is an area to which only
21 restricted access is granted?

22 A. Yes, ma'am.

23 Q. And have you also become aware that on January the 6th,
24 2021, there were temporary barricades that had been placed
25 outside the Capitol Building for purposes of crowd control?

1 A. Yes, ma'am.

2 Q. Now, approximately 2:00 p.m. that afternoon, are you aware
3 that the joint session of Congress was ongoing and then later
4 disrupted by protesters?

5 A. Yes, ma'am.

6 Q. And describe for the Court, if you can, what you
7 understood took place inside the Capitol as a result of the
8 protesters entering the building.

9 A. The protesters entered the building, and the joint session
10 of Congress had to be evacuated, and the congressmen and all
11 the members had to be removed from the building, and the
12 proceeding had to stop.

13 Q. And what was the nature of the proceeding that Congress
14 was taking up that day, if you know?

15 A. They were confirming the election results from the
16 electoral college.

17 Q. And about how long was the session suspended?

18 A. Approximately six hours, I think.

19 Q. Okay. And ultimately, did Congress come back into session
20 later that evening?

21 A. Yes, ma'am.

22 Q. Now, at some point on the afternoon of January the 6th of
23 2021, did you receive a call that indicated that one or more
24 residents of the Middle District of Georgia were alleged to
25 have traveled and participated in the activities at the

1 Capitol?

2 A. Yes, ma'am. It was actually a text message, but the
3 Americus Police Chief texted me, alerting me to the fact that
4 Mr. McCall Calhoun possibly was attending the ongoing
5 disturbance at the Capitol.

6 Q. And prior to that time, were you familiar with
7 Mr. Calhoun?

8 A. I was.

9 Q. Okay. And was that as a result of the call that had come
10 in to an FBI tipline some months ago?

11 A. Correct. And I believe -- I can check my notes as to the
12 exact date -- on or about November 12th, a call was placed to
13 our national tipline concerning Mr. McCall Calhoun posting
14 threatening messages on social media platforms.

15 Q. And, generally speaking, what was the alleged nature of
16 those threatening communications on social media platforms as
17 it was conveyed to the tipline in November?

18 A. I believe it was threatening. There's some quotes here in
19 the notes:

20 "Somebody will live long enough to be
21 exterminated with extreme prejudice."

22 "It is going to be hard to buy a beer when
23 the Democrats are being shot on site."

24 "We are going to kill every last Communist
25 who stands in Trump's way."

1 Q. So as a result of that preexisting familiarity and the
2 text message you received from the Americus Police Chief, did
3 you take any action?

4 A. I attempted to view the video that -- I had received a
5 screenshot of the video as it was on McCall Calhoun's Facebook
6 page. I tried to watch that video. I was able to watch that
7 video, and then I alerted my supervisor that we had an
8 individual from the Middle District of Georgia that may be a
9 participant in the riots at the Capitol.

10 Q. Now, when you viewed the Facebook page that evening,
11 January the 6th, and saw the video that you've just referenced,
12 were there other posts in addition to the video?

13 A. There was. At that time I didn't go through them all, but
14 I did view the video.

15 Q. And since that time, have you had the opportunity to
16 obtain screenshots of various posts from his Facebook page that
17 were made on January the 6th?

18 A. Yes, ma'am.

19 Q. And are those currently labeled as Government's Exhibits 1
20 through 7?

21 A. Yes, ma'am.

22 Q. Now, have you become familiar with the fact that
23 Mr. Calhoun used multiple social media platforms?

24 A. Yes, ma'am. We're aware of a Parler account, a Twitter
25 account, and his Facebook account.

1 Q. And, generally speaking, in your review of the posts that
2 were made on the three social media platforms, did you find
3 them to be consistent with one another or inconsistent with one
4 another?

5 A. They were generally consistent.

6 Q. So if we could, do you have certain exhibits there before
7 you, Government's Exhibits 1 through 7?

8 A. Yes, ma'am.

9 Q. If you could, identify those for the record and describe
10 them for the Court, please.

11 A. Yes, ma'am. Exhibit 1 is the Facebook screenshot of the
12 video posted on Facebook, and that was the original video that
13 was sent to me by Chief Scott. It was inside the Capitol
14 Building. It was titled -- part of the title that you can read
15 -- "After we had forced our way in but before the cops
16 were...," and then there's a partial word, "...rout..."

17 Exhibit 2 is a Parler account posting, I believe it was
18 posted on or about December 29th, and said,

19 "Being physically present in Washington on
20 January 6 is of key importance.

21 "We the People have no other realistic option
22 to convey our unwavering intent to demand
23 fair elections now and forever -- or else.

24 "I'll see you there."

25 Government Exhibit 3, also a Parler post. This would have

1 been on or about January 4th or 5th.

2 "Headed to DC to give the GOP some back
3 bone -- to let them know this is their last
4 chance to Stop the Steal -- or they are going
5 to have bigger problems than these coddled
6 Antifa burning down their safe spaces.

7 "DC announced it is 'banning guns' when we
8 storm the Capitol tomorrow. Laugh out
9 loud -- guns are already banned in DC. Very
10 illegal.

11 "Whether the police can enforce their gun
12 laws depends on how many armed Patriots show
13 up.

14 "Ironically, in the long list of firearms and
15 weapons banned by the DC ordinance, tomahawks
16 are not mentioned, meaning there is no
17 prohibition against carrying a tomahawk as
18 long as it is not used offensively!

19 "The tomahawk revolution -- Real 1776!"

20 Exhibit 4 is a Facebook posting from McCall Calhoun's
21 Facebook page. It is a picture of a large crowd outside the
22 United States Capitol Building. "We're going to get inside the
23 Capitol before this ends," is the caption.

24 Facebook page -- Exhibit 5, excuse me, is an additional
25 Facebook posting from McCall Calhoun on or about January 6th:

1 "Patriots have taken the Capitol building.
2 We overran multiple police barricades and
3 swarmed the building. We busted through --
4 thousands of us swarmed in.

5 "There was a last police barricade inside,
6 and we had packed in right up to them.

7 "Somebody yelled, 'push through,' so we did
8 and the shock of our momentum brushed them
9 aside -- some people were bleeding pretty
10 badly by that point.

11 "After we had overrun that last police
12 barricade, the momentum caused a bad crush at
13 one point, but carried the Vanguard through
14 several smaller doors and down halls as we
15 swarmed Congress, yelling the names of
16 various members.

17 "Then we stormed upstairs through the rotunda
18 admiring the amazing art work but at the same
19 time looking for members of Congress, as by
20 this time we physically owned the Capitol --
21 All law enforcement had retreated to the
22 perimeter and even more thousands were trying
23 to push in!

24 "And get this -- the first of us who got
25 upstairs kicked in Nancy Pelosi's office door

1 and pushed down the hall towards her inner
2 sanctum, the mob howling with rage -- Crazy
3 Nancy probably would have been torn into
4 little pieces, but she was nowhere to be
5 seen -- then a SWAT team showed, and we
6 retreated back to the rotunda and continued
7 our hostile take over of the Capitol
8 Building.

9 "There was such a push of even more Patriots
10 coming into the Capitol that we couldn't get
11 out for about 20 minutes."

12 Exhibit 6 another Facebook posting. On January 6th. By
13 McCall Calhoun.

14 "Today the American people proved that we
15 have the power.

16 "We physically took control of the Capitol
17 building in a hand-to-hand hostile takeover.

18 "We occupied the Capitol and shut down the
19 Government -- we shut down their stolen
20 election shenanigans.

21 "I was there and saw it. My buddy Andy
22 Nalley and I were in the first two hundred to
23 rush up the steps and inside after the
24 Vanguard had clashed hard with the police and
25 made them retreat.

1 "The military isn't going to save the
2 Democrat Communists. They are done.

3 "Today we brought our Government to its knees
4 with no weapons."

5 Now we will all -- "Now we're all going back
6 armed for war and the Deep State is about to
7 get run out of DC."

8 You want me to go to Exhibit 7; is that correct?

9 Q. Yes, sir.

10 A. Okay. Exhibit 7. Another Facebook posting on January 6th
11 by McCall Calhoun.

12 "The rotunda of the Capitol, occupied by the
13 People in a hostile takeover January 6."

14 And it shows a photo of appears to be rioters inside the Capitol
15 rotunda.

16 Q. Now, with respect to the exhibits you have just
17 identified, 1 through 7, do you believe each of them to be a
18 true and accurate screenshot or photograph of the posting on a
19 social media site made by the defendant, William McCall Junior?

20 A. Yes, ma'am.

21 MS. McEWEN: Your Honor, I would tender Government's
22 Exhibits 1 through 7.

23 MR. SAVIELLO: No objection, Your Honor.

24 THE COURT: They are admitted.

25 (Government Exhibits 1 through 7 admitted into evidence at

1 10:14 a.m.)

2 BY MS. McEWEN:

3 Q. Now after viewing posts such as Exhibits 1 through 7, did
4 you and other agents of the FBI endeavor to locate third-party
5 confirmation of the presence of Mr. Calhoun inside the building
6 there at the U.S. Capitol?

7 A. Yes, ma'am.

8 Q. And describe for the Court ways in which you did that.

9 A. We spoke to other witnesses that had screenshots and were
10 aware of Mr. Calhoun possibly being there and, um, were
11 providing us videos that possibly could show him being in the
12 Capitol.

13 Q. And did you take the opportunity to also review footage
14 obtained by media outlets?

15 A. Yes, ma'am.

16 Q. And do you have before you Government's Exhibit Number 8?

17 A. Yes, ma'am.

18 Q. And describe that for the Court, please.

19 A. This is a video that was posted on -- I believe this is
20 from *Business Insider* website, and it is a video which shows an
21 individual, McCall Calhoun, within the Capitol Building.

22 Q. And is it a true and accurate photograph or screenshot of
23 a portion of the video posted on *Business Insider*?

24 A. Yes, ma'am.

25 MS. McEWEN: Your Honor, I would tender Government's

1 Exhibit Number 8.

2 MR. SAVIELLO: No objection, Your Honor.

3 THE COURT: It is admitted.

4 (Government Exhibit 8 admitted into evidence at
5 10:15 a.m.)

6 MS. McEWEN: Your Honor, I would ask if I could
7 publish that for the Court, please.

8 THE COURT: You may.

9 (Video played at 10:15 a.m.)

10 BY MS. McEWEN:

11 Q. Agent Armentrout, are you able to see Exhibit Number 8 on
12 your screen?

13 A. Yes, ma'am.

14 Q. And do you see Mr. Calhoun shown in that photo?

15 A. Yes, ma'am.

16 Q. Can you describe for the Court which individual he is.

17 A. He is the individual on the far right, to the front of the
18 screen, gray beard, ball cap with what appears to be white
19 lettering, a brown and black style scarf around his neck, and a
20 green field jacket style jacket with four pockets.

21 MS. McEWEN: Okay. Now, we can take Government's
22 Exhibit 8 down, please. Thank you, ma'am.

23 BY MS. McEWEN:

24 Q. At some point did you apply for and obtain permission to
25 search Mr. Calhoun's residence in Americus, Georgia?

1 A. Yes, ma'am.

2 Q. The items of clothing that are depicted in Government's
3 Exhibit Number 8, were they some of the things that the Court
4 authorized you to search for and seize if located?

5 A. Yes, ma'am.

6 Q. Did you locate any of the items of clothing shown in
7 Government's Exhibit Number 8 at the residence in Americus?

8 A. So, the search warrant was for 423 East Lee Street,
9 Mr. Calhoun's residence, and we located the green field jacket
10 with the four pockets at his residence.

11 Q. Did you locate any of the other items of clothing depicted
12 in Government's Exhibit Number 8 elsewhere as a part of your
13 investigation?

14 A. Yes, ma'am. When we made contact with Mr. Calhoun in
15 Macon, Georgia, we found what we believed to be the ball cap
16 and the scarf that was in the photo in the bedroom he was
17 staying at at his sister's house.

18 Q. Now you mentioned earlier that Government's
19 Exhibit Number 1 was a screenshot of the beginning of a video
20 that you viewed on Mr. Calhoun's Facebook page; is that
21 correct?

22 A. That is correct, ma'am.

23 Q. Were you able to download that video directly from his
24 page the next day?

25 A. I was not. The page had been taken down.

1 Q. Did you later locate some or all of the same video through
2 another source?

3 A. Yes, ma'am.

4 Q. And can you describe that for the Court, please.

5 A. The video?

6 Q. How you located it.

7 A. Oh, yes, ma'am. So, there was also an individual that was
8 providing kind of Twitter updates on his Twitter page, an
9 individual by the name of Houston Scott, and he was following
10 Mr. Calhoun from early November up through January 6th, and we
11 interviewed him, and he had a copy of the video.

12 Q. Okay. And did you view the video provided to you by that
13 witness?

14 A. Yes, ma'am.

15 Q. Was it the same video that you had seen on January the
16 6th when you had first been alerted to this by Chief Scott?

17 A. He had changed it a little bit to show postings within
18 Facebook, but the -- the beginning of the video and the end of
19 the video is the video. He just added a little bit to the
20 middle to show the Facebook posting comments.

21 Q. Okay. And when you say "he added a little bit to the
22 middle," who are you referring to?

23 A. I apologize. Mr. Scott.

24 Q. Okay. And have you prepared a transcript of some portions
25 of the audio of that video?

1 A. Yes, ma'am.

2 Q. Now, were you able to identify the voice of the speaker in
3 that video?

4 A. Yes, ma'am.

5 Q. How were you able to identify that voice?

6 A. I had previously heard recordings of Mr. Calhoun -- voice
7 recordings of Mr. Calhoun, and I had spoken to Mr. Calhoun.
8 And the voice on the video is consistent with my conversations
9 with Mr. Calhoun and the voice recordings that I had heard.

10 Q. And are you familiar with the fact that the video of that
11 is currently labeled as Government's Exhibit 35 and the
12 transcript that you prepared is currently labeled as
13 Government's Exhibit 35A?

14 A. I believe that's accurate. I have not physically seen 35.
15 The exhibit.

16 MS. McEWEN: May I approach the witness?

17 THE COURT: You may.

18 BY MS. McEWEN:

19 Q. (Displaying items to witness.)

20 A. Yes, ma'am. The video -- the CD I assume has the video on
21 it is 35, and 35A is the transcript which I typed.

22 Q. And you provided the video to our office in electronic
23 format; is that correct?

24 A. Yes, ma'am.

25 Q. And the electronic format that you provided it was a true

1 and accurate copy of it as you had received it; is that
2 correct?

3 A. Yes, ma'am.

4 MS. McEWEN: Your Honor, I would tender Government's
5 Exhibits 35 and 35A and ask to publish them for the Court.

6 MR. SAVIELLO: No objection.

7 THE COURT: They are admitted. You can publish them.

8 (Government Exhibits 35 and 35A admitted into evidence at
9 10:20 a.m.)

10 MS. McEWEN: For explanatory purposes, Your Honor, we
11 are showing a side-by-side version of the transcript and the
12 video at the same time.

13 (Video playing at 10:20 a.m.)

14 BY MS. McEWEN:

15 Q. Now, in further of your search with respect to third-party
16 confirmation videos, did you also locate another video online
17 which appeared to show the same time frame inside the Capitol
18 as Government's Exhibit 35, but from another angle?

19 A. Yes, ma'am.

20 Q. Okay. And describe for the Court, if you can, what you
21 observed relevant to the probable cause issue in this case with
22 respect to viewing that video.

23 A. In that video it shows the crowd pushing forward towards
24 the police barricades, the police line. And at the end of that
25 video, you can see Mr. Calhoun in the bottom corner of the

1 video as part of that crowd. And it's consistent with this
2 video as where they were at within the building.

3 Q. And that particular video, the third-party video, does not
4 contain any narration that you believe to be relevant to the
5 Court's determination in this case; is that correct?

6 A. Correct, ma'am.

7 Q. So have you prepared a transcript in that regard?

8 A. No, ma'am.

9 Q. And you provided that to us in electronic format as well?

10 A. Yes, ma'am.

11 Q. Are you familiar with the fact that's currently labeled as
12 Government's Exhibit 34?

13 A. Yes, ma'am.

14 Q. And do you believe that to be a true and accurate copy of
15 the video you provided to our office?

16 A. Yes, ma'am.

17 Q. And are you familiar with a screenshot that is taken from
18 that video that's currently labeled as Government's Exhibit 30?

19 A. Yes, ma'am.

20 Q. And do you believe that Government's Exhibit 30 is a true
21 and accurate photograph of a portion of the video, Government's
22 Exhibit 34?

23 A. Yes, ma'am.

24 MS. McEWEN: Your Honor, at this time I would propose
25 to publish and tender Government's Exhibit 34 followed by 30.

1 THE COURT: Objection from the defense?

2 MR. SAVIELLO: I'm sorry, no objection, Your Honor.

3 THE COURT: All right, they are admitted. You can
4 publish those.

5 (Government Exhibits 30 and 34 admitted into evidence at
6 10:23 a.m.)

7 MS. McEWEN: Thank you, Your Honor.

8 (Video played at 10:23 a.m.)

9 MS. McEWEN: If we could now switch to the still
10 shot, Government's Exhibit 30, please.

11 BY MS. McEWEN:

12 Q. Now, Agent Armentrout, are you able to see this still
13 shot, Government's Exhibit 30?

14 A. Yes, ma'am.

15 Q. Can you point out for the Court what you believe is
16 relevant to its probable cause determination with respect to
17 the contents of Government's Exhibit 30.

18 A. Yes, ma'am.

19 THE WITNESS: Am I able to touch the screen and draw
20 on it?

21 COURTROOM DEPUTY: Yes, you can circle it.

22 A. This individual at the bottom of the right-hand corner of
23 the screen, which I'm circling, is Mr. McCall Calhoun.

24 BY MS. McEWEN:

25 Q. Okay. And, finally, are you familiar with an interview

1 that Mr. Calhoun gave to the *Atlanta Journal Constitution* with
2 respect to his participation in this activity?

3 A. Yes, ma'am.

4 Q. And without asking you to quote it directly, can you give
5 the Court a summary of what you understand his statement to the
6 *Atlanta Journal Constitution* was.

7 A. Yes, ma'am. He stated that he was there, that he
8 participated in it, that anybody -- that it was -- the crowd
9 was of one like mind, and that it was necessary to show the
10 government they weren't going to stand for the ongoing actions.

11 MS. McEWEN: Just one moment, Your Honor.

12 (Aside with co-counsel at 10:25 a.m.)

13 MS. McEWEN: Your Honor, I have no further questions
14 with respect to this witness as to probable cause.

15 THE COURT: All right. Mr. Saviello for the defense?

16 MR. SAVIELLO: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. SAVIELLO:

19 Q. Agent Armentrout -- is that right?

20 A. Yes, sir.

21 Q. I want to make sure I say that right. -- are you familiar
22 with the affidavit that was submitted by the government in
23 support of the issuance of the Complaint in this case?

24 A. Yes, sir.

25 Q. You did not author that affidavit; did you?

1 A. I'm sorry, sir?

2 Q. You did not write that; did you?

3 A. I participated in the authoring of that.

4 Q. Do you have a copy of it?

5 A. I do, sir.

6 Q. In the first paragraph, is it fair to say that that is a
7 summary of the theory of the affidavit, that there is evidence
8 to support a finding of probable cause as to the three counts
9 listed in the Complaint?

10 A. Yes, sir.

11 Q. Okay. And the last sentence, which appears at the top of
12 Page 2 of the affidavit, begins, "Specifically..." Can you
13 read that for us, please.

14 A. "Specifically, on or about January 6, 2021,
15 CALHOUN traveled to Washington D.C. and
16 knowingly and willfully joined and encouraged
17 a crowd of individuals who forcibly entered
18 the U.S. Capitol and impeded, disrupted, and
19 disturbed the orderly conduct of business by
20 the United States House of Representatives
21 and the United States Senate."

22 Q. All right. Can you tell me in the evidence that has been
23 submitted so far today and in your investigation of this case
24 where is the evidence or what evidence do you have that
25 Mr. Calhoun on January 6th "encouraged a crowd of individuals."

1 That is the encouragement part, not the participation.

2 A. I believe the encouragement part is the entirety of the
3 circumstances. He posted online that he was going there for
4 the specific purpose. He posted online outside the building,
5 "We're going to take this building today." And then he's -- at
6 the beginning he's at the front of the people entering the
7 building and pushing forward the police.

8 He is not trying to stop them. He is not trying to
9 say, "This isn't the right thing to do." He is participating
10 in it and moving forward with the crowd.

11 Q. Okay. So, his social media posts from the day is part of
12 your evidence; is that what you're saying?

13 A. I'm sorry, sir?

14 Q. His social media posts from that day, January 6, you are
15 saying that that is part of the theory of encouragement?

16 A. Yes, sir, I believe so.

17 Q. So your theory, then, is that people in the crowd were
18 following his social media feed and looking at his posts in the
19 moment and, thus, through the social media he was encouraging
20 that crowd?

21 MS. McEWEN: Your Honor, I object to that question.
22 I think it's outside the bounds of what the Court is called
23 upon to consider here today. He is not specifically charged
24 with any offense that requires encouragement. He is charged
25 with obstruction of an official proceeding. So I think this is

1 outside what the Court is called upon to consider.

2 MR. SAVIELLO: Your Honor, I would disagree because
3 the affidavit, in which they had the entirety of the English
4 language to choose from, chose the words that he "encouraged
5 the crowd" and now they have to answer to that.

6 THE COURT: I will overrule the objection. We will
7 sort all that out when we make a decision. But you can ask the
8 question.

9 MR. SAVIELLO: Thank you, Your Honor.

10 BY MR. SAVIELLO:

11 Q. So, again, your theory, then, is that the social media
12 posts he posted while at the Capitol were followed by people
13 also at the Capitol, and those social media posts thus
14 encouraged the others at the Capitol to act?

15 A. No, what I'm saying is his social media posts are
16 indicative of his mindset and his participation in that crowd
17 at the Capitol; that he was there and intended to, along with
18 the crowd, take the Capitol Building that day. And he was
19 encouraging people on social media, and that was his mindset,
20 to encourage the crowd to take the building that day.

21 Q. Okay. So the social media posts were not direct
22 encouragement to individuals who were actually there, but,
23 rather, indicative of his mindset of participation in --

24 A. I think if you were there, sir, and read his posts and you
25 were there, then it was also encouraging anyone there who read

1 his posts.

2 Q. Do you have evidence of anybody who was there who was
3 following and reading his posts in the moment?

4 A. I do not know that anyone specifically read his posts that
5 day. I have no knowledge of that.

6 Q. Moving on, then. You've reviewed and we've heard about
7 videos that you viewed, both Mr. McCall posted and news media
8 posted. Nowhere on any of those videos can Mr. McCall be heard
9 encouraging anybody to do anything; is that fair to say?

10 A. I can go back and look at the quotes, but I believe he
11 said, "We're moving up past this crowd," as in he is part of
12 that crowd moving forward.

13 Q. Okay. Is it fair to say "we are moving forward" is a
14 narration as opposed to encouragement?

15 A. I believe it's all part of his intent to take the
16 building.

17 Q. But, again, we're speaking about encouragement. There is
18 no evidence that he says, "Let's go, everybody!" There's no
19 evidence that he says, "Let's get 'em!" No evidence that says,
20 "Come on, everybody follow me." None of that; right?

21 A. There are no quotes of that, no.

22 Q. Okay. You've seen photographs and we've seen a couple at
23 least of Mr. McCall in the Capitol that day; is that right?

24 A. That's correct.

25 Q. You don't have any photographs or video evidence of

1 Mr. McCall holding a sign in which he's encouraging anybody
2 that says -- a sign, for instance, that says, "Let's go get
3 'em!"; right?

4 A. No, there's no evidence of him holding a sign, no.

5 Q. There is no evidence, video or still photo evidence of
6 Mr. McCall holding a megaphone or any other speaker or
7 amplification device to use to speak to a group; is that right?

8 A. No. That is correct, yes.

9 Q. All right. There's basically only the social media posts;
10 is that fair to say?

11 A. And the videos of him in the Capitol, at the front of the
12 crowd, pushing forward towards the police.

13 Q. Posted on social media?

14 A. Correct.

15 Q. Thank you. How many followers did Mr. Calhoun -- social
16 media followers did Mr. Calhoun have on January 6?

17 A. I can't be for certain because he took the post down
18 shortly thereafter, and I have not been able to view his
19 Facebook page to understand how many followers he had.

20 Q. Okay. All right. Let's speak -- let's speak more
21 specifically, then, about what the social media posts do show.
22 There is nothing showing that Mr. Calhoun was causing any
23 damage while he was there that day; is that correct?

24 A. I'm sorry, can you repeat the question.

25 Q. Sure. There is no evidence showing that Mr. Calhoun

1 caused any damage to property that day; is that right?

2 A. There is no photos of him damaging anything. Breaking
3 anything, is that what you mean?

4 Q. Yeah, damaging property.

5 A. No, sir.

6 Q. There is no evidence showing that Mr. Calhoun assaulted
7 anyone that day; is that right?

8 A. There were no photos -- there's the quotes of him saying
9 that he was part of the crowd that pushed up and kicked in
10 Nancy Pelosi's door in an attempt to locate members of
11 Congress.

12 Q. Okay. And which -- which post is that? Government's 5, I
13 believe.

14 A. I got a little bit out of order here as I was going
15 through them. Correct, sir.

16 Q. Okay. And can you read for us that specific paragraph,
17 the last full paragraph in that post which talks about Speaker
18 Pelosi's office.

19 A. "And get this -- the first of us who got
20 upstairs kicked in Nancy Pelosi's office door
21 and pushed down the hall towards her inner
22 sanctum, the mob howling with rage -- Crazy
23 Nancy probably would have been torn into
24 little pieces, but she was nowhere to be
25 seen -- then a SWAT team showed, and we

1 retreated back to the rotunda and continued
2 our hostile take over of the Capitol
3 Building."

4 Q. So in that paragraph, he never uses the word "I" to
5 describe his individual action; is that right?

6 A. No, he just refers to "we."

7 Q. And throughout this particular post in Government's 5 he
8 uses the -- what we would call the "collective we" to describe
9 what's going on; correct?

10 A. Correct. From the very beginning, "We overran multiple
11 police barricades and swarmed the building. We busted
12 through -- thousands of us swarmed in," and it continues that
13 way throughout the whole post.

14 Q. In fact, in all of the social media posts from that day,
15 when he describes activities that went on, he uses the phrase
16 "we" or "us" to describe them; correct?

17 A. (Witness reviewing document.) I believe that's correct,
18 yes, sir.

19 Q. All right. And you don't have any evidence to show that
20 Mr. Calhoun was armed with any firearms that day, January 6; do
21 you?

22 A. No. There's nothing that says he had a firearm that day.
23 I mean, there's the posting saying that he potentially would
24 take a tomahawk, but I don't know if he actually did.

25 Q. Is there any evidence that he had a tomahawk?

1 A. No, not other than his statement.

2 Q. You spoke on direct examination about the interview that
3 he gave to the *Atlanta Journal Constitution*.

4 A. Correct.

5 Q. In that article he referred to the collective actions of
6 the group that day as civil disobedience; didn't he?

7 A. One second, let me review it. (Witness reviewing
8 document.) He did.

9 Q. Okay. And in that article, he does make some admissions
10 about his individual actions; doesn't he?

11 A. He does.

12 Q. And he basically says that he will freely admit that he
13 trespassed but did it for love of his country; is that fair to
14 say?

15 A. Yes, sir, he states, "I would freely admit that I
16 trespassed, but I did it for love of my country."

17 Q. Okay.

18 A. He also states that, "It's probably not a good idea." He
19 also states,

20 "The crowd was of one mind, everybody there
21 had the same attitude. They felt they had
22 been robbed of their fair election and
23 Congress wasn't listening to them."

24 Q. All right.

25 MR. SAVIELLO: Nothing further -- well, I take that

1 back.

2 BY MR. SAVIELLO:

3 Q. Nothing in the video evidence or the still photo evidence
4 that you have introduced today or that you have seen shows
5 Mr. Calhoun in Speaker Pelosi's office; does it?

6 A. We have no videos or photos of him in the office, no.

7 Q. Okay. And, in fact, the video or photo evidence that you
8 have of Mr. McCall on that day show him in the vestibule or
9 the -- the general areas that would, on a normal day, if given
10 a tour, be open to the public; is that fair to say?

11 A. If it was open to the public, then I would say yes.

12 Q. There are no videos of him or pictures of him in the
13 Senate Chamber; correct?

14 A. Correct.

15 Q. Or the House Chamber?

16 A. Correct.

17 MR. SAVIELLO: Nothing further of the agent, Your
18 Honor, as to probable cause. Thank you.

19 THE COURT: Does the government have any further
20 questions?

21 MS. McEWEN: I do, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. McEWEN:

24 Q. If I could direct your attention to Exhibit 2. I would
25 ask if we could pull that up for the Court. Do you have that

1 in front of you?

2 A. Yes, ma'am.

3 Q. Tell us again about when you believe Exhibit Number 2 was
4 posted. What date?

5 A. December 29th. On or about.

6 Q. Okay. And in Exhibit Number 2, do you believe that
7 Mr. Calhoun has encouraged anyone to do anything?

8 A. Yes, ma'am. He is basically saying that being in
9 Washington on January 6th is important and that

10 "...the People have no other realistic option
11 to communicate [their] unwavering intent to
12 demand fair elections now and forever."

13 So if you don't think elections were fair, then you need to be
14 there to participate in what occurred on the 6th.

15 Q. Okay. And how does he close out this post in
16 Exhibit Number 2?

17 A. "I'll see you there."

18 Q. If I could, then, direct your attention to Government's
19 Exhibit Number 4.

20 MS. McEWEN: If we could display that for the Court,
21 please.

22 BY MS. McEWEN:

23 Q. Now, you were asked a question earlier with respect to
24 what, if anything, you knew about whether anyone who was in
25 Washington during these events was following what Mr. Calhoun

1 was posting on his social media. Do you recall that?

2 A. Yes, ma'am.

3 Q. Now, you see down at the bottom where the "like" function
4 shows on this particular photograph?

5 A. Yes, ma'am.

6 Q. Are you able to see any names associated with persons who
7 had liked this post about getting inside the Capitol before
8 this ends?

9 A. Yes, ma'am. An individual by the name of Dandon Hancock
10 had liked his post.

11 Q. And is Mr. Hancock a resident of the Americus, Georgia,
12 area to your understanding?

13 A. Yes, ma'am.

14 Q. Do you have information that suggests to you that
15 Mr. Hancock traveled to Washington on that occasion for the
16 same purpose?

17 A. Yes, ma'am. He had posted on his Facebook page that he
18 was at the South of the Border rest stop, if you want to call
19 it that, at the North Carolina/South Carolina state lines on
20 I-95. It's a well known place there. And he had posted they
21 were passing through there and someone asked him, "Where are
22 you headed? To Jacksonville?" And he said, "No, to DC." I
23 believe that was the date prior.

24 Q. Okay. And is it -- this screenshot, Government's
25 Exhibit Number 4, it indicates on the screenshot that the post

1 had been made 7 hours before the screenshot. Is that right?

2 A. I'm sorry, can you say that again.

3 Q. Okay. So immediately at the top of the screenshot, under
4 Mr. Calhoun's name, it shows "7 hours."

5 A. Correct.

6 Q. Is it your understanding that that means this post was
7 made 7 hours before the screenshot?

8 A. Yes, ma'am.

9 Q. So by the time this was screenshotted in Exhibit Number 4,
10 21 people had liked it; is that right?

11 A. Correct.

12 Q. And one of those is listed by name.

13 A. Correct.

14 Q. Is it your belief, based on what you know in this case,
15 that Mr. Hancock would have had to have liked Government's
16 Exhibit Number 4 before he returned to Americus, Georgia, from
17 Washington, based on travel time?

18 A. Yes, ma'am, he would have had to do it from 7 hours of the
19 post to the time of this screenshot.

20 Q. So Mr. Saviello asked you a question as to whether you had
21 any information as to -- or evidence as to anyone following
22 Mr. Calhoun's posts while this activity was going on. Anyone
23 who was in Washington. Do you have evidence of that?

24 A. Yes, ma'am. Dandon Hancock had liked his post.

25 MS. McEWEN: Nothing further, Your Honor.

1 MR. SAVIELLO: Just briefly, Your Honor, if I may.

2 THE COURT: Yes, sir.

3 RE CROSS EXAMINATION

4 BY MR. SAVIELLO:

5 Q. So, Agent, you don't know what time Dandon Hancock liked
6 that post in Government's 4; do you?

7 A. No. You can't tell from the posting at what point in time
8 he liked it, no.

9 Q. So he could have liked it anytime from the moment it was
10 posted until 10:16 p.m. that night; correct?

11 A. That's correct.

12 Q. What time were the protesters cleared from the Capitol
13 that day?

14 A. "Cleared from the Capitol"?

15 Q. Yes, sir.

16 A. I don't know the exact time. It would have had to
17 probably be between 6:00 and 7:00, I believe. I think Congress
18 went back into session at 8:00 p.m. that day.

19 Q. So all protesters were cleared and Congress was back in
20 session by 8:00 p.m.; is that fair to say?

21 A. Yes, sir. I don't have the exact times but yes, sir.

22 Q. Certainly by 10:16 p.m.?

23 A. Yes.

24 Q. So the evidence that Mr. Hancock liked this post can only
25 tell the Court that it happened between when the time was

1 posted and 10:16 p.m.; correct?

2 A. Correct.

3 Q. Thank you.

4 THE COURT: All right. May Agent Armentrout step
5 down?

6 MS. McEWEN: He will also be our witness in the
7 detention phase, so if he might remain.

8 THE COURT: All right. You may step down and do what
9 you need to do.

10 (Witness stepped down at 10:43 a.m.)

11 THE COURT: Any other witnesses for the government?

12 MS. McEWEN: No, Your Honor.

13 MR. SAVIELLO: No witnesses for the defense as to
14 probable cause, Your Honor.

15 THE COURT: Do the parties want to make some
16 arguments? Or submit it?

17 MS. McEWEN: The government is prepared to submit it,
18 Your Honor.

19 THE COURT: Mr. Saviello?

20 MR. SAVIELLO: Thank you, Your Honor. I would make
21 some brief argument as to probable cause. In part, because --
22 and so -- and you can catch me on this later -- I don't want to
23 repeat this argument later, but, of course, in the detention
24 phase, the strength of the government's case should be one of
25 the considerations the government should make. So I'm going to

1 piggyback on this argument later, if that's all right.

2 THE COURT: Yes.

3 MR. SAVIELLO: So, Your Honor, as to probable cause
4 as to Count Three, I think there is an issue as to the
5 government's ability to prove up at least one of the critical
6 and required elements of a successful prosecution of a
7 violation of 1512(c)(2). The elements of a violation of
8 15C12(c)(2) -- 1512(c)(2), sorry, have been identified by our
9 own Eleventh Circuit in the *United States versus Friske*,
10 F-r-i-s-k-e, found at 640 F.3d 1288, which is a 2011 case, and
11 they are listed as follows.

12 Number one, that there was an official proceeding
13 taking place. In this case, that official proceeding, under
14 the government's theory, would be the certification of the
15 electoral vote by Congress.

16 Number two, that Mr. Calhoun engaged in conduct which
17 constituted a substantial step toward the commission of the
18 crime of obstruction of an official proceeding. So that he
19 engaged in conduct which constituted that substantial step.

20 Number three, that he acted corruptly--that is, with
21 an improper purpose--and to engage in conduct knowingly and
22 dishonestly with the specific intent to subvert, impede, or
23 obstruct the electoral certification.

24 And, four, that the natural and probable effect of
25 Mr. Calhoun's conduct would be the interference with the due

1 administration of justice.

2 And so I think what's critical for a question of
3 probable cause finding, Your Honor, is that the government has
4 to prove that his actions were a substantial step toward
5 commission of the crime of obstruction. And the only evidence
6 the government has offered so far is that Mr. Calhoun made some
7 social media posts relating to going to the Capitol and being
8 at the Capitol to voice objections to the election and
9 electoral process, although he didn't specifically mention
10 that.

11 There is no evidence that he was anyone who broke
12 down any barriers or engaged with any law enforcement, but,
13 rather, the evidence as presented is that he was inside the
14 Capitol, along with a lot of other people, in what would on a
15 normal day be the public areas available -- areas available for
16 the public to enter.

17 As Agent Armentrout brought out, he used the royal
18 "we" -- that is, he spoke about "we" as a group -- consistently
19 throughout his social media posts and never said, "I did this,"
20 "I did that," "I am going to do this." He spoke about the
21 group. And you can see that in Government's 5, 6 and 8
22 specifically.

23 And if you read it that way, Your Honor, you can read
24 it that it shows that he is narrating and observing what is
25 going on, and he is including himself as the narrator. It

1 could be read the government's way as well, Your Honor. But as
2 to probable cause, the Court has to find that it is more likely
3 than not in order to find probable cause. And if it can be
4 read equally both ways, his use of the word royal "we" in the
5 absence of his presence as to specific intent, then I would
6 argue that is not sufficient to find probable cause as to that
7 element.

8 I would point the Court finally to one quote from
9 *United States versus Friske* found at 1293 -- that opinion, by
10 the way, authored by our very own Beverly Martin -- and she
11 said this: The only way the jury could conclude that the
12 defendant knew his actions were likely to affect an official
13 proceeding, in the absence of any evidence that he was aware
14 that the specific official proceeding was pending or
15 foreseeable, would be through speculation. But speculation is
16 not enough to sustain a conviction based on circumstantial
17 evidence.

18 And there has been no evidence, Your Honor, that
19 Mr. Calhoun knew specifically that Congress was in session that
20 day. It is -- you know, the posts talk about going to the
21 Capitol, and we're going to get inside, and we've -- you know,
22 we're inside, and we're moving forward, and those sorts of
23 things. And so I think there is a question of probable cause
24 as to those two elements that *Friske* requires for a conviction
25 of 1512(c), and for that reason we think the government has not

1 met its burden on those points.

2 THE COURT: Anything the government wants to say in
3 reply?

4 MS. McEWEN: Yes, Your Honor. I believe there is
5 substantial evidence that Mr. Calhoun was aware of the nature
6 of the proceedings going on before Congress on the 6th. That's
7 from the various posts, that have been entered into evidence,
8 by him, before he traveled to Washington. His express purpose
9 was to travel to Washington to be, as he said, physically
10 present on the day that this decision was taken up and to cause
11 a change or in some way affect the proceeding that was going on
12 inside Congress.

13 We know that he was present inside the building, and
14 we have his own statements as to the activities that he
15 participated in, together with other people, that actually did
16 have the effect of obstructing the proceedings.

17 This is not a case in which there's a lack of
18 evidence. There's certainly not circumstantial evidence as to
19 what his intent was or what his hope that the result of his
20 activities would be. He has said it as plainly as it could be
21 said. It's direct evidence of his own words, of his own state
22 of mind, both prior to and during the time of these events
23 inside the Capitol, and we believe we have carried the
24 necessary burden of probable cause in this case.

25 THE COURT: All right. Very good. Well, I want to

1 take a recess for about 15 minutes to review my notes and
2 review the *Friske* case that Mr. Saviello cited. So we will be
3 in recess, let's say 20 minutes, until 10 after 11:00.

4 COURT OFFICER: All rise. Court will stand in recess
5 for 20 minutes.

6 (Court in recess from 10:49 to 11:09 a.m.)

7 COURT OFFICER: All rise. This Honorable Court is
8 again in session. Please be seated.

9 THE COURT: All right. With regard to probable
10 cause, there are three charges set out in the Complaint. The
11 first is 18 U.S.C. Section 1752(a) which makes it a crime to
12 knowingly and with intent to impede or disrupt the orderly
13 conduct of government business or official functions engage in
14 disorderly or disruptive conduct in or within such proximity to
15 any restricted building or grounds when or so that such conduct
16 in fact impedes or disrupts the orderly conduct of government
17 business or official functions. I do find probable cause to
18 establish that charge as set forth in the evidence presented
19 here today.

20 The second charge is 40 U.S.C. Section 5104(c)(2).
21 That makes it a crime for any individual or group of
22 individuals to willfully and knowingly, with the intent to
23 disrupt the orderly conduct of official business, enter or
24 remain in a room in any of the Capitol buildings set aside or
25 designated for the use of either House of Congress or a member,

1 committee, officer, or employee of Congress or either House of
2 Congress. And I do find probable cause to establish that
3 violation as well.

4 And then finally the felony charge is 18 U.S.C.
5 Section 1512(c)(2). And as Mr. Saviello pointed out, the
6 *Friske* case gives an outline of the elements of that. That
7 crime provides that anyone who corruptly obstructs, influences,
8 or impedes any official proceeding or attempts to do so shall
9 be liable to imprisonment of not more than 20 years.

10 And that requires the government to prove, one, that
11 there was an official proceeding taking place. There was. Of
12 course, it's beyond dispute there was an official proceeding
13 taking place -- the joint session of Congress to certify the
14 results of the election on January the 6th, 2021.

15 Number two, that the defendant engaged in conduct
16 which constituted a substantial step toward the commission of
17 the crime of obstruction of an official proceeding. It is
18 quite clear that the defendant joined a large mob of people who
19 stormed the Capitol Building and did, in fact, disrupt the
20 official proceedings. That was simply going into the building
21 with that mob, whether it's the first person plural or the
22 first person singular involved, it's clear that the defendant
23 was involved in that, and that was a substantial step towards
24 the commission of obstruction.

25 Number three, that the defendant acted

1 corruptly--that is, with an improper purpose--to engage in
2 conduct knowingly and dishonestly with the specific intent to
3 subvert, impede, or obstruct the proceeding. In this case, the
4 defendant's intent has been shown by the various social media
5 posts he made, both before and during the events of January the
6 6th, indicating that the intent was, in fact, to "stop the
7 steal," as the defendant said, or to take back the House of
8 Congress to obstruct the certification of the election.

9 And then finally, that the natural and probable
10 effect of the defendant's conduct would be the interference
11 with the due administration of justice, and that certainly was
12 the natural and probable and foreseeable effect of storming --
13 to use his own terms, "storming the Capitol" with a mob while
14 Congress was in session. So I find that there is probable
15 cause to establish each of the three crimes that are alleged in
16 the Complaint. So the case can be bound over.

17 Now, what that means, Mr. Calhoun -- of course, you
18 are an attorney, so you know this -- but the next step in the
19 case would be for the government to present these allegations
20 to a grand jury for indictment. Because there is a felony
21 charged in those charges, they would, under the Fifth
22 Amendment, have to be presented to a grand jury. So the
23 government will have to make a presentation at some point to a
24 grand jury.

25 If the grand jury refuses to return an indictment,

1 then the case would be dismissed. If the grand jury does
2 return an indictment, then you would move forward in the more
3 formal criminal proceedings in the District of Columbia.

4 And, of course, I will enter an Order of Removal to
5 the District of Columbia to remove these proceedings for
6 further proceedings in that District as required.

7 And that brings us to the question of the
8 Government's Motion for Detention in this case. So let's move
9 on to that. And let me hear from the government first,
10 Ms. McEwen.

11 MS. McEWEN: Yes, Your Honor. First I would like to
12 ask the Court to consider the exhibits that were previously
13 admitted as a part of the preliminary examination in its
14 consideration of the issue of detention before I call the
15 witness to continue to explain those facts.

16 THE COURT: Any objection to that, Mr. Saviello?

17 MR. SAVIELLO: No objection, Your Honor.

18 THE COURT: All right. We will take those into
19 consideration.

20 MS. McEWEN: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. McEWEN:

23 Q. Now, Agent Armentrout, in addition to the exhibits that
24 you discussed earlier during the preliminary examination, have
25 you reviewed many more social media posts of the defendant?

1 A. Yes, ma'am.

2 Q. And can you give the Court an estimate of the number of
3 total posts you've reviewed.

4 A. Somewhere between 150 and 200.

5 Q. And as a result of that review, have you identified what
6 are now marked as Government's Exhibits 9 through 29 as
7 exhibits that you believe speak to issues before the Court in
8 this detention hearing?

9 A. Yes, ma'am.

10 Q. And can you tell us, as a group, Exhibits 9 through 29,
11 what social media platform were they pulled from.

12 A. These are Twitter posts.

13 Q. And do you believe that each of those is a true and
14 accurate screenshot of a post from Mr. Calhoun's Twitter
15 account?

16 A. Yes, ma'am.

17 MS. McEWEN: Your Honor, at this time I would tender
18 as a group Government's Exhibits 9 through 29, and then ask to
19 publish them individually.

20 MR. SAVIELLO: No objection, Your Honor.

21 THE COURT: All right. They are admitted.

22 (Government Exhibits 9 through 29 admitted into evidence
23 at 11:15 a.m.)

24 MS. McEWEN: If we could begin with Exhibit Number 9,
25 please, ma'am.

1 BY MS. McEWEN:

2 Q. All right. Agent Armentrout, first, can you tell us the
3 date that this indicates it was posted by Mr. Calhoun.

4 A. Yes, ma'am. It would be October 17th, 2020.

5 Q. And can you read into the record the contents of the
6 Twitter post.

7 A. "Yeah, standing by, and when Trump makes the
8 call, millions of heavily armed, pissed off
9 Patriots are coming to Washington to deal
10 with the traitorous Chicom Democrats.

11 "Oh yeah, the cops and the military are on
12 our side."

13 MS. McEWEN: Moving forward then to Government's
14 Exhibit Number 10, please, ma'am.

15 BY MS. McEWEN:

16 Q. Can you describe what is shown here and then read it into
17 the record, please.

18 A. That's a posting from 10-17-2020. The caption is "Hang
19 the bastard." It appears to be, like, a reposting of someone
20 else's, and it's a picture of Now-President Biden with what
21 appears to be a China flag behind him, and it says (hashtag)
22 "ChinaStoogeBiden." And the original post was from 10-16, the
23 day prior.

24 Q. Moving forward then to Government's Exhibit Number 11.
25 Now, does this one display a date near the bottom?

1 A. Yes, the date on the bottom is 10-19-2020, 11:37 a.m.

2 Q. Can you read this into the record, please.

3 A. "You get help you commie hag.

4 "Bring your rioting BLM-Antifa crime wave to
5 my city and the body bags with you morons are
6 going to get stacked up high.

7 "In GA we have the right to self-defense you
8 idiot."

9 Q. Do you know what "BLM" stands for in this post?

10 A. I believe it refers to Black Lives Matter.

11 Q. Moving forward then to Government's Exhibit Number 12,
12 please. What's the date on this post?

13 A. This is 10-16.

14 Q. And can you read it into the record, please.

15 A. "I am living my life. I have tons of ammo.
16 Gonna use it, too -- at the range and on
17 racist democrat communists.

18 "So make my day. We will end this BS."

19 Q. Moving forward to Government's Exhibit 13, please. What's
20 the date on this post?

21 A. Also 10-16.

22 Q. And can you read it into the record.

23 A. "While y'all pick on Tiffany and concern yourselves
24 with other trivialities and irrelevancies,
25 we're loading AR-15 magazines and getting

1 range time in. My AR-15 set up will do head
2 shots at 200 meters no problem. You have no
3 clue what's coming."

4 Q. Prior to reading this post, were you familiar with the
5 term "head shot"?

6 A. Generally, yes, ma'am.

7 Q. And what do you believe it refers to?

8 A. Head shots usually refer to shooting someone in the head.

9 Q. Okay. Moving forward to Government's Exhibit 14. What's
10 the date on this?

11 A. This is 10-15-2020.

12 Q. Please read it into the record.

13 A. "Oh if you're white and what you're pushing
14 happens you may not die on my sword, but
15 you'll get an Antifa brick bashed against
16 your head.

17 "For my part, I'll be slinging enough hot
18 lead to stack you commies up like cordwood."

19 Q. Had you previously heard the phrase, "hot lead"?

20 A. "Hot lead" would be bullets, fired bullets, bullets that
21 had been fired.

22 Q. Moving forward to Government's Exhibit 15, what's the
23 date?

24 A. Also 10-15-2020.

25 Q. Please read it into the record.

1 A. "War is coming. It's the only way to deal with
2 our domestic Communist problem. Ruthlessness
3 is in order. Harsh examples have to be made.
4 This can be over soon enough if conservative
5 Americans still have what it takes to kick
6 some *ss. We shall see."

7 Q. Moving forward to Government's Exhibit 16, please. Now,
8 here, does it show a date?

9 A. No, it does not. It just says, "4 days ago."

10 Q. Okay. And can you read it into the record, please.

11 A. "We are waiting on the Supreme Court to do
12 the right thing -- and if it doesn't then the
13 civil war is on. We won't stand for this
14 democrat fraud and ejection stealing in the
15 middle of the night!"

16 Q. And here do you believe that there's a typographical error
17 in the word "ejection"?

18 A. Yes. I believe it was probably meant to be "election
19 stealing."

20 Q. Thank you. Moving forward to Government's Exhibit 17.
21 What's the date on this post?

22 A. It's 10-20-2020.

23 Q. And please read it into the record.

24 A. "As part of the anti-Communist counter
25 revolution we've got to get serious about

1 stopping them by force of arms. We've been
2 asleep at the wheel for so long there is no
3 other way.

4 "No one on the right has any balls. All
5 talk, no action.

6 "While conservatives do nothing and 'talk'
7 their way into slavery?

8 "File under 'the United States is too weak,
9 effete and corrupted to be allowed to exist
10 any longer.

11 "I am a lawyer saying these things. We are
12 so fucked unless regular Americans are
13 prepared to do what has to be done."

14 Q. Moving on to Government's Exhibit 18, please. What's the
15 date here?

16 A. It's 10-20-2020.

17 Q. Please read it into the record.

18 A. "I'm banned, I'm an outlaw and I'm pissed.

19 "The only remedy for BLM-Antifa communism is
20 violent retribution against the media and the
21 democrats.

22 "And I hate them even more for bringing us to
23 this point."

24 Q. Government's Exhibit 19, please. What's the date here?

25 A. Also 10-20-2020.

1 Q. Please read it in.

2 A. "Patriots be ready to storm Washington!

3 "If you're willing to go to Washington in
4 November to 'peacefully protest' with AR-15
5 in hand, upvote this."

6 Q. Government's Exhibit 20? And are you able to see a date
7 on this post?

8 A. It says, "6 days ago." There is no actual date.

9 Q. Can you read it into the record.

10 A. "Why are Republicans so effete? And ignorant
11 of history?

12 "This is a racist communist insurgency.

13 "One cannot negotiate with communists -- they
14 keep coming until they are either destroyed
15 or victorious."

16 You are not -- "You will not end this threat
17 from n courts or R polls, but only by force
18 of arms. Think 'ethnic cleansing,' but it's
19 anti-Communist cleansing.

20 "They would do it to us at the earliest
21 opportunity.

22 "Attempted Peace is no longer even remotely
23 an option, but is a recipe for our downfall!"

24 Q. Moving forward to Government's 21. Are you able to
25 determine the date that this was posted?

1 A. No, ma'am.

2 Q. Please read it into the record.

3 A. "Enough.

4 "58K at the latest Trump rally. Biden?

5 LOL. Fake negro Kamala? Not enough people
6 to even have a card game.

7 "Meanwhile, all these businesses aren't
8 boarding up to protect against Trump voters
9 dumb shit. They aren't voting for you pigs.

10 "Matt Taibi nailed it -- this democrat party
11 is like a 'vomit milkshake.'

12 "Even now you are pushing a form of Nadler's
13 'Antifa violence is a myth' bullshit. Such a
14 liar. So done.

15 "So do you want a re-education camp or a
16 bullet to the head? We're NOT going to
17 co-exist with you racist communist assholes."
18 You won't be let -- "You wouldn't let us if
19 we wanted to because believe me we've tried."

20 Q. Moving forward to Number 22. Is there a date posted on
21 Government's Exhibit Number 22?

22 A. No, ma'am. It simply says "4 days ago."

23 Q. Please read it in.

24 A. "That's why we have AR-15s, and it's just
25 about time to open up a can of whoop ass!"

1 Q. Government's Exhibit 23, please. Does this one show a
2 date?

3 A. No. It states, "11 days ago."

4 Q. Please read it in.

5 A. It has,

6 "@letsgoducks756. I won't struggle pulling a
7 head shot at 200 meters day or night. Smoke
8 that over commie bitch."

9 Q. Government's Exhibit 24. Does this one display a date?

10 A. No, ma'am. It states, "5 days ago."

11 Q. Please read it in.

12 A. "@Lokahi7701. I write in complete sentences.
13 You must be a proud graduate of STEM? You're
14 probably one of these poor fools whose middle
15 school history book mentioned George
16 Washington once and Harriet Tubman 11
17 times -- this is why your an ignorant dumbass
18 who hates your own race and country.
19 "You're just another brainwashed idiot who
20 doesn't know squat.
21 "I also shoot in a straight line, right on
22 target -- a head shot 150 meters is like...no
23 problem, dude."

24 Q. Government's Exhibit 25. Does this display a date?

25 A. No, ma'am.

1 Q. And in this particular post, are there items that were
2 posted apparently by someone other than Mr. Calhoun?

3 A. Yes, ma'am. There's a post by someone using the screen
4 name of Jack Gaynor at Serious Chance.

5 Q. So, first, if you could read in the initial post under the
6 name, Jack Gaynor.

7 A. "Terrible thing that is happening but The Lord
8 is in control. Dad would say Daniel 4, Try
9 not to be anxious...try not to be angry...
10 humility is one of God's traits."

11 Q. And what was Mr. Calhoun's response to that?

12 A. "God helps those who help themselves.
13 "God is on Trump's side -- God is not on the
14 Communists' side and the party of 60 million
15 abortions, and if Patriots have to kill
16 ten million of these fucking communists to
17 prove it, then it's God's Will."

18 Q. Government's Exhibit 26. Does this display a date?

19 A. No, ma'am.

20 Q. Can you read in the original post by someone whose name is
21 partially shown as "The W."

22 A. It states, "Let's watch PA find 700,001 votes for Biden."

23 Q. What do you believe "PA" stands for?

24 A. Pennsylvania.

25 Q. And what was Mr. Calhoun's response?

1 A. "Let's just slaughter the motherfuckers
2 because they are coming for us!"

3 Q. And do you know who it is that he's referring to needing
4 to be slaughtered in Government's Exhibit 26?

5 A. Based on his other posts, I would say democrat-communists-
6 Antifa-BLM's, something to that effect.

7 Q. Moving forward to Government's Exhibit 27. Does this
8 display a date?

9 A. No, ma'am.

10 Q. And here is Mr. Calhoun responding to the same poster that
11 you mentioned earlier, "letsgoducks756"?

12 A. Yes, ma'am.

13 Q. And what does he say in Government's Exhibit 27?

14 A. "I'm 58 and fully capable of pounding your
15 snowflake ass into the ground.

16 "You won't be laughing when Patriots go door
17 to door executing you commies."

18 Q. Based on your view of the several hundred posts that you
19 mentioned earlier, does Mr. Calhoun connect himself with a
20 group he refers to as Patriots?

21 A. Yes, ma'am.

22 MS. McEWEN: Government's Exhibit 28, please, ma'am.

23 BY MS. McEWEN:

24 Q. Now, where did this particular post come from? What
25 platform?

1 A. I believe this is Facebook.

2 Q. Okay. And when, approximately, do you believe that
3 Mr. Calhoun posted this particular item?

4 A. On or about January 6th, the day of the riots.

5 Q. And read it into the record and describe what's shown.

6 A. "These were first 200 or so of us to
7 actually get inside the Capitol. There was a
8 group outside who made the initial
9 breakthrough (not shown) and a few of them
10 got hurt pretty good, but it didn't matter.
11 Those of us coming up filled the ranks and we
12 pushed on through and headed to the next
13 barricade without stopping. That's what
14 you're seeing here."

15 And there's a partial picture of a building, a window. It's
16 hard to see exactly what it is.

17 Q. And then finally Government's Exhibit 29. What platform
18 was this taken from?

19 A. I believe this is Twitter.

20 Q. Okay. And does it display a date?

21 A. I'm sorry, ma'am?

22 Q. Does it display a date?

23 A. No, ma'am.

24 Q. Okay. Can you read it into the record.

25 A. "We do not stop at words! We get set for the

1 green light which will be the day the Supreme
2 Court ratifies this bullshit stolen election,
3 then AND ONLY then do we go to war, and when
4 we go to war we are going to kill every last
5 fucking communist that stands in Trump's
6 way!"

7 MS. McEWEN: Okay. Now, if we could take that down
8 from the screen for a moment.

9 BY MS. McEWEN:

10 Q. You mentioned earlier in your testimony during the
11 preliminary examination that you had taken a search warrant for
12 Mr. Calhoun's residence in Americus; is that correct?

13 A. That's correct.

14 Q. So I want to talk with you a bit about the timing of
15 certain events last week, leading up to Mr. Calhoun's arrest,
16 if we could.

17 A. Okay.

18 Q. Did you receive notice from the District of Columbia that
19 a warrant had been issued early in the week?

20 A. For his arrest or for the search?

21 Q. For his arrest.

22 A. Yes, ma'am.

23 Q. And were you aware at that point that Mr. Calhoun had made
24 it back from Washington to the Americus area prior to your
25 learning that the warrant had been issued for his arrest?

1 A. Yes, ma'am.

2 Q. Were you aware that he had been going about his usual
3 business with respect to making court appearances on behalf of
4 his clients in that area?

5 A. Yes, ma'am.

6 Q. Now, at some point during the week, perhaps Wednesday or
7 Thursday, were you conducting surveillance in preparation of a
8 joint execution of the arrest warrant and the search warrant at
9 his residence in Americus?

10 A. We were.

11 Q. And were you able to keep track of him in the Americus
12 area or was he not present?

13 A. On Wednesday of last week, he was present. He attended a
14 court hearing at the Superior -- at the courthouse in Sumter
15 County. After the court hearing, he proceeded home to 423
16 South Lee Street. He stayed there for a period of time. And
17 we did not observe him leave that residence, but we later
18 determined that he had left.

19 Q. And, ultimately, were you able to locate him for purposes
20 of executing the arrest warrant in Americus, Georgia?

21 A. We were not able to locate him in Americus, no.

22 Q. Where did you locate him?

23 A. In Macon, Georgia.

24 Q. And after locating him in Macon, Georgia, did you take him
25 into custody?

1 A. We did.

2 Q. Describe the room in which you found the defendant,
3 Mr. Calhoun, at the time you took him into custody.

4 A. He appeared to be staying in what I would say is a spare
5 bedroom, and he had been staying there. Upon entering the
6 room, there was a camouflage, like, backpack and other items.
7 There were some guns -- or gun bags that appeared to have
8 something in them laying on the floor.

9 There was a pistol in a -- or a handgun inside of a
10 holster next to a -- on the night stand, next to the bed, along
11 with a pair of brass knuckles.

12 There were approximately -- I believe it's eight rifles
13 and shotguns, I think it was four and four, in the closet,
14 along with a large quantity of ammunition in the closet.

15 Q. Okay. And also did you find any items of evidence that
16 were responsive to your original warrant to search his
17 residence in Americus?

18 A. Yes, ma'am. We found the ball cap we believe he was
19 wearing the day he entered the Capitol, along with the scarf
20 that he had around his neck.

21 Q. Now, are you familiar with two photographs currently
22 labeled Government's Exhibits 31 and 32 depicting the interior
23 of the bedroom you just described for the Court?

24 A. Yes. 32 is inside the closet inside that bedroom. 31 is
25 a picture of the bed, just inside the bedroom, with the brass

1 knuckles and the handgun laying on top of the computer next to
2 the bed.

3 Q. And do you believe each of those Exhibits 31 and 32 are
4 fair and accurate depictions of the portions of the spare
5 bedroom that you just described Mr. Calhoun was taken into
6 custody inside of?

7 A. Yes, ma'am.

8 MS. McEWEN: Your Honor, I would tender those two
9 exhibits, 31 and 32, at this time and ask that they be
10 published to the Court.

11 MR. SAVIELLO: No objection.

12 THE COURT: All right, they are admitted.

13 (Government Exhibits 31 and 32 admitted into evidence at
14 11:32 a.m.)

15 BY MS. McEWEN:

16 Q. If we could begin with Number 31, please. Now, if you
17 could, just going across the photograph from left to right,
18 describe for the Court what items you see depicted here in this
19 photograph.

20 A. From left to right, on the far left, over here in the
21 closet, you see a shotgun, two AR-15 style rifles, and I
22 believe another shotgun is sticking out just below the door
23 here. These are ammo cans filled with various types of
24 ammunition. I believe this -- this camouflage stuff here is,
25 like, a backpack or something, if I remember correctly.

1 And then, as you move across, there's the brass knuckles
2 on the night stand, the Glock 19 handgun that was recovered,
3 and then on the bed is the ball cap that he was pictured with
4 at the Capitol.

5 Q. And is it your understanding that these are items of
6 firearms and ammunition that were brought by Mr. Calhoun into
7 this residence when he came there last week?

8 A. Yes, ma'am.

9 Q. Moving forward then to Government's Exhibit Number 32, if
10 we might display that. Tell the Court what is shown here.

11 A. So, there's two additional shotguns here. And then this
12 is -- this was also pictured in the last picture. These were
13 all pictured in the last picture. They are ammo cans full of
14 ammunition as well as this one here, and then these other --
15 the weapons that you saw in the last picture, as well.

16 Q. And at this time, are you able to give the Court any
17 estimate of the number of rounds of ammunition that are shown
18 in the various cans in Government's Exhibit Number 32.

19 A. Hundreds if not over a thousand.

20 MS. McEWEN: Your Honor, I have no further questions
21 of this witness with respect to the issue of detention.

22 THE COURT: Mr. Saviello?

23 MR. SAVIELLO: Thank you.

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1 RECROSS EXAMINATION

2 BY MR. SAVIELLO:

3 Q. Agent Armentrout, I would like to ask you a few questions
4 about the social media posts found in Government's I believe 9
5 through 29. Okay.

6 A. Yes, sir.

7 Q. All right. So, did you capture these social media posts?
8 Are you the one that made the screenshots?

9 A. No, sir.

10 Q. Okay. Are you familiar with how Twitter works?

11 A. I don't have a Twitter account, but I generally understand
12 it, yes.13 Q. Okay. Is it fair to say that many of these posts,
14 Government 9 through 29, are in fact part of a conversation
15 that takes place on Twitter?

16 A. Possibly.

17 Q. Okay. Well, let's look at a few of them and see if that
18 helps clarify for you. If we can see on the screen, please,
19 Government's 11. Just under the name, "McCall Calhoun," and
20 his Twitter handle at the time there, you see a sentence that
21 begins with, "Replying..."?

22 A. Yes, sir.

23 Q. Can you tell me what that reads.

24 A. "Replying to @TheJaneway, @lamthesandman13, and 3 others."

25 Q. Okay. And underneath that is Mr. Calhoun's post; correct?

1 A. That's correct.

2 Q. And what is the first sentence of that post?

3 A. "You get help you commie hag."

4 Q. Why don't you just go ahead and read the whole thing for
5 us.

6 A. I'm sorry, sir?

7 Q. Please read the whole thing for us.

8 A. "You get help you commie hag.

9 "Bring your rioting BLM-Antifa crime wave to
10 my city and the body bags with you morons are
11 going to get stacked up high.

12 "In GA we have the right to self-defense you
13 idiot."

14 Q. So is it fair to say that the post Mr. Calhoun made here
15 is, in fact, a response to something that was said by either
16 this person "@TheJaneway" or one of the three others?

17 A. Yes, yeah, it's possible he's responding to a post there,
18 I guess.

19 Q. But we don't know what those previous posts were that he
20 was responding to; correct?

21 A. Correct.

22 Q. Because it is not captured by the government in this
23 exhibit?

24 A. That's correct.

25 Q. But we know that it's possible to do that; don't we? That

1 is, to capture the previous post to which there is a response?

2 A. It could be possible, yes.

3 Q. Why don't we look at Government's 26 to see how that
4 looks. 26, please. Thank you. Okay. So here, as you
5 testified, we have a post by The W; correct?

6 A. Correct.

7 Q. To which Mr. Calhoun responded; correct?

8 A. That's correct.

9 Q. And at least in this instance, the government was able to
10 capture the original post and then Mr. Calhoun's response;
11 right?

12 A. Correct.

13 Q. And that provides some context to Mr. Calhoun's response;
14 doesn't it?

15 A. It does.

16 Q. Because if Mr. Calhoun's response was left alone, it would
17 read just, "Let's just slaughter the motherfuckers because
18 they're coming for us!"; correct?

19 A. Correct.

20 Q. And Ms. McEwen asked you who that post was referring to;
21 right?

22 A. Correct.

23 Q. And you believed it was Antifa, Democrats, BLM, any of
24 those sorts of folks; right?

25 A. Correct.

1 Q. We wouldn't know what that was a response to without the
2 original post; right?

3 A. I'm sorry, I didn't understand your question.

4 Q. We wouldn't know what Mr. Calhoun's response was unless we
5 knew what the original post was; correct?

6 A. Correct.

7 Q. So we do know it's possible because here in Government's
8 26 we see it; correct?

9 A. That's correct.

10 Q. And so we have the appropriate context in which to
11 evaluate Mr. Calhoun's response; right?

12 A. Yes.

13 Q. Okay. Let's look at the next one, Government's 27. Okay.
14 And this one is only Mr. Calhoun's post; correct?

15 A. Yes.

16 Q. Okay. But he's clearly responding to @letsgoducks756;
17 correct?

18 A. Yes, sir.

19 Q. Again, we see Mr. Calhoun's response, but there's no
20 context because we don't see Letsgoducks756's response; right?

21 A. Correct.

22 Q. Okay. Now, regarding these social media posts, primarily
23 the Twitter ones that appear in Government's 9 through 27,
24 although there is not -- on some of them the actual date is not
25 available, is it fair to say that many of them come from the

1 fall of 2020? That is, October?

2 A. That is correct.

3 Q. Okay. And do you have any evidence that Mr. Calhoun acted
4 violently towards anyone during the fall of 2020?

5 A. I don't have any -- in the fall of 2020, no, there was no
6 reports of him conducting any violent actions.

7 Q. Okay. So despite the fact that during the fall of 2020 he
8 was engaging with people on Twitter and speaking about body
9 bags and ARs and shooting and things of that sort, there's no
10 evidence that he actually did anything; right?

11 A. That's correct.

12 Q. Okay. And then on January 6th, you testified and we've
13 seen the exhibits about what Mr. Calhoun was doing on
14 January 6th in terms of being at the Capitol; correct?

15 A. Correct.

16 Q. And there's no evidence that Mr. Calhoun engaged in any
17 individual violence on that day -- when I say "individual
18 violence," what I mean is Mr. Calhoun specifically engaging
19 with another person in a violent way -- is that fair to say?

20 A. We don't visibly see him in any videos, but his statements
21 are "we pushed past police barricades and past the police,"
22 which I would argue, if you're crossing a barrier line made
23 with police --

24 Q. Okay.

25 A. -- that that may constitute -- it may not be a violent

1 action, but certainly one that is not -- that you shouldn't be
2 taking part in.

3 Q. Okay. So, again, then, there's no evidence that you have
4 of him engaging individually with another person in a violent
5 way. He is not assaulting anyone that you can prove; correct?

6 A. That's correct.

7 Q. And as we discussed earlier, his posts used the terms "we"
8 and "us"; correct?

9 A. That's correct.

10 Q. They don't use the word "I"; correct?

11 A. Correct.

12 Q. And let's move forward, then, to -- well, even beyond
13 that. After January 6th, it is my understanding, then, that
14 you were aware of Mr. Calhoun's posts and his presence in DC,
15 and you engaged in some investigation relating to him; correct?

16 A. Correct.

17 Q. And there's no evidence that you have that Mr. Calhoun,
18 after January 6, before his arrest on the 15th, that he engaged
19 in any violent acts; correct?

20 A. I am not aware of any violent acts. He did have an
21 interaction with the assistant district attorney in Sumter
22 County. The assistant district attorney asked him to wear a
23 mask in court. He refused, and later texted the assistant
24 district attorney saying the judge didn't wear a mask, he
25 wasn't wearing a mask. The mask was all basically proven to

1 not work and that -- kind of in keeping with his other posts --
2 that this was all BS.

3 Q. Is that a violent act?

4 A. A violent act as far as towards someone else, no. But I
5 would say it's in keeping with his posts.

6 Q. So I'll ask again. After January 6th, before his arrest
7 on January 15th, do you have any evidence that Mr. Calhoun
8 engaged in any violence toward any individual person?

9 A. No.

10 Q. Okay. Now, let's move forward to that week. So it's my
11 understanding from your testimony, then, that on the 13th you
12 were surveilling Mr. Calhoun in the Americus area; is that fair
13 to say?

14 A. Yeah, I believe -- is Wednesday the 13th?

15 Q. Wednesday is the 13th.

16 A. Yes.

17 Q. So it's your testimony that you saw him go to Sumter
18 County Superior Court; is that correct?

19 A. We did not see him go there. We located his vehicle
20 outside of the courthouse. He had already arrived.

21 Q. Did you confirm that he, in fact, was representing clients
22 in court that day?

23 A. Yes.

24 Q. Okay. And then you followed him, you said, back to the
25 house at -- 423 was the street address; is that correct?

1 A. Correct.

2 Q. And that -- the residence at that location, that is both
3 his personal residence and his law office; is that correct?

4 A. That's correct.

5 Q. Okay. And so it's my understanding that you were
6 watching, but you did not see him leave; is that right?

7 A. That's correct.

8 Q. Okay. Consequently, you were not able to effect the
9 arrest warrant that day; right?

10 A. At that point in time, we did not have an arrest warrant
11 in hand.

12 Q. On the 13th you did not?

13 A. On the morning of the 13th we did not.

14 Q. When did you get the arrest warrant?

15 A. I believe the evening of -- the 13th? The evening of the
16 13th.

17 Q. Okay. And that arrest warrant was issued pursuant to the
18 signed Complaint that was filed in the District of Columbia; is
19 that correct?

20 A. Correct.

21 Q. Okay. And so then you located Mr. Calhoun on Friday, the
22 15th, in Macon; is that right?

23 A. Correct.

24 Q. And you located him at his sister's home; isn't that
25 right?

1 A. That is correct.

2 Q. And I am going to ask a few questions about when you went
3 to the house. Who was at home when you got there?

4 Well, first of all, sorry, what time was it?

5 A. Approximately 1:00 p.m.

6 Q. "1:00 p.m."?

7 A. Correct.

8 Q. And who was home?

9 A. Mr. Calhoun and his sister.

10 Q. Okay. And you learned that that is his sister's permanent
11 residence?

12 A. Correct.

13 Q. Okay. Who answered the door?

14 A. The sister. Her name is Mary.

15 Q. And Mr. Calhoun was inside the house; correct?

16 A. Correct.

17 Q. And he cooperated with the arrest?

18 A. He did.

19 Q. He cooperated with the search --

20 A. He did.

21 Q. -- incident to the arrest?

22 A. Correct.

23 Q. He identified the guns as his; correct?

24 A. He did.

25 Q. Identified the ammunition as his?

1 A. Correct.

2 Q. The other items that were in the bedroom he was staying
3 in?

4 A. Correct.

5 Q. And he didn't try to run in any way?

6 A. I'm sorry?

7 Q. He didn't try to run?

8 A. No, sir.

9 Q. He didn't resist in any way?

10 A. No, sir.

11 Q. Okay.

12 MR. SAVIELLO: Just one moment, Agent, Your Honor.

13 THE WITNESS: Yes, sir.

14 (Aside with Defendant at 11:45 a.m.)

15 MR. SAVIELLO: No more questions, Agent.

16 Thank you, Your Honor.

17 THE COURT: Redirect from the government?

18 MS. McEWEN: No, Your Honor.

19 THE COURT: All right. Agent Armentrout, you may
20 step down.

21 (Witness stepped down at 11:45 a.m.)

22 MS. McEWEN: The government has no other witnesses or
23 evidence with respect to detention.

24 THE COURT: All right. Mr. Saviello, anything from
25 the defense?

1 MR. SAVIELLO: Yes, Your Honor. I previously
2 provided the items that I am going to offer to the government,
3 with the exception of one that I just got today, if I can
4 approach Ms. McEwen briefly.

5 (Aside between counsel at 11:46 a.m.)

6 MR. SAVIELLO: Your Honor, first -- and I have
7 digital copies for the Court after the hearing, as well, per
8 the local rules, but I also have paper copies.

9 First, I would like to offer Defense Exhibit 1, which
10 is a series of affidavits attesting to -- I'm sorry, Exhibit 1
11 is a series of emails that were sent to Mr. Calhoun's business
12 email address. That is, his law practice email address. And
13 these emails are harassing and threatening.

14 I do have one addition to that exhibit, Your Honor,
15 which includes an email from yesterday, which is why it was not
16 prepared before today. These have been provided to the
17 government previously.

18 And then Exhibit Number 2, Your Honor, is a series of
19 affidavits from people who know and care about Mr. Calhoun.
20 And I offer these affidavits as their own observations of his
21 character and their belief that, should the Court grant bond,
22 that he will both not flee or be a danger to society.

23 So, I anticipate no objection to the character
24 affidavits.

25 MS. McEWEN: (Eyebrows raised.)

1 MR. SAVIELLO: I could be wrong. So, I guess I will
2 get into that before I pass them to the Court.

3 MS. McEWEN: With respect to Defendant's
4 Exhibit Number 1, it is the government's position that those
5 emails are irrelevant to the decision before the Court today,
6 which is whether to detain Mr. Calhoun or impose conditions.

7 THE COURT: All right. I will overrule that
8 objection. We will admit those into evidence.

9 (Defense Exhibit 1 admitted into evidence at 11:48 p.m.)

10 MS. McEWEN: With respect to the global, as he calls
11 it, exhibit of affidavits, there's a number of those which the
12 government contends contain wholly irrelevant affidavits,
13 things that don't go to the questions before the Court at all,
14 and I'm prepared to list those by name as it relates to the
15 persons who gave the statement.

16 And then there are some which partially contain
17 things that might go to the issues before the Court but which I
18 believe should be redacted because there are quite a number of
19 assertions within those affidavits which do not go to the
20 issues before the Court.

21 So if the Court would like me to state which
22 affidavits within Government's (sic) Exhibit Number 2 I think
23 should be stricken entirely? That's the affidavits of last
24 name Gilfoil, Turner, Breedlove, Israel first initial C,
25 Lesueur, Joan Waller, Johnnie Waller, Daniel, M. Hawkins,

1 Labeda, Shumake, R. Hawkins, Reddish, LaBella, and Stapleton.

2 THE COURT: Well, you know, there's really no way I
3 can determine what's relevant or irrelevant without reading
4 those affidavits. So, I would admit them into evidence and
5 we'll figure out what's relevant and what's not.

6 What are you talking about wanting to redact?

7 MS. McEWEN: So, the remainder of the affidavits, for
8 example, might have five paragraphs; three of the paragraphs
9 may be responsive to the issues before the Court (i.e., how
10 does the witness know Mr. Calhoun and what does the witness
11 think about Mr. Calhoun's peaceableness versus danger or
12 likelihood to flee or not), but there are other things that are
13 set forth in the affidavits which are just not germane to the
14 issues before the Court.

15 And so I think that there are portions of those
16 affidavits of Ms. Vickers; Ms. Ansley; last name Sanders; last
17 name Wall, first initial N; Larkin; Wall first initial S; and
18 Evans, which should be redacted.

19 THE COURT: Well, again, we don't have a jury here,
20 and I've got to read them to decide what's relevant or not, so
21 I'll admit them into evidence and we'll sort that out.

22 MS. McEWEN: Yes, Your Honor.

23 (Defense Exhibit 2 admitted into evidence at 11:50 a.m.)

24 MR. SAVIELLO: Your Honor, I will offer in -- Defense
25 Exhibit 1 is the emails and Defense Exhibit 2 is the character

1 affidavits. And, again, because there is an additional page to
2 Exhibit 1, which I just got today, so I've got the original,
3 and before I submit it I would like to make the appropriate
4 redactions.

5 THE COURT: Give those to the clerk. I will take
6 those, thank you.

7 MR. SAVIELLO: Your Honor, next the defense would
8 offer Defense Exhibits 7, 8, 9 and 10. And 7 and 8, 9 and 10,
9 Your Honor, are audio recordings of voicemails that were left
10 on Mr. Calhoun's office voicemail system. These have
11 previously been provided to the government as well.

12 And I offer these -- Your Honor, again, these are
13 harassing and threatening voicemails. And they are specific in
14 that they both reference knowing about Mr. Calhoun's
15 business -- that is, having seen it personally -- as well as
16 threatening both him personally and his family.

17 And they are relevant, Your Honor, as I'll discuss
18 when we get to argument, as to why Mr. Calhoun was in Macon and
19 not in Americus. That is the reason he wasn't home when he was
20 arrested and why if the Court were to grant him bond we would
21 ask that he be allowed to stay with his sister in Macon;
22 specifically, to avoid these confrontations. I understand the
23 government might have some objection.

24 MS. McEWEN: The same objection that I don't believe
25 they're relevant, Your Honor.

1 THE COURT: All right. Well, it sounds like there's
2 some relevance to them, and I'll -- again, we'll sort that out
3 when we sort out all the issues, so I'll admit those as well.

4 (Defense Exhibits 6, 7, 8, 9 and 10 admitted into evidence
5 at 11:52 a.m.)

6 MR. SAVIELLO: So, I'm prepared to play 6 through 10,
7 Your Honor. And just for the record, I am not an audio
8 engineer; however, I was able to redact personal information
9 because some of these callers left their name and phone number,
10 suggesting that he call them back and confront them directly.
11 So you will hear a portion where it's muted. I wasn't able to
12 get a beep in there, but I got it muted so that part is
13 redacted. All right. So we'll start with 6.

14 (Audio played at 11:52 a.m.)

15 MR. SAVIELLO: All right, That was 6.

16 This is Defense 7.

17 (Audio played at 11:53 a.m.)

18 MR. SAVIELLO: Your Honor, I will stop that one
19 there. It goes on for another minute and a half in that same
20 vein, but you get the gist.

21 Defense Exhibit 8, Your Honor.

22 (Audio played at 11:54 a.m.)

23 MR. SAVIELLO: In that call, of course, you can hear,
24 Your Honor, the caller referencing that she's seen --

25 MS. McEWEN: Your Honor, I object to his commentary

1 on the evidence at this point.

2 THE COURT: I'll overrule that. I don't think we're
3 going to get into argument.

4 MR. SAVIELLO: I just offer that one to show that
5 people are looking at the house physically, Your Honor, which
6 is a bit different from people calling from out of state.

7 This is Defense Exhibit Number 9.

8 (Audio played at 11:55 a.m.)

9 MR. SAVIELLO: Whether true or not, Your Honor, the
10 suggestion that that person is calling from the New York State
11 Penitentiary is unusual at best, concerning at worst.

12 This is Defense 10, Your Honor.

13 (Audio played at 11:55 a.m.)

14 MR. SAVIELLO: And one brief comment before I play
15 that one again, because it's a little softer. But what the
16 caller says is I'm going to have your family because McCall is
17 locked up.

18 (Audio replayed at 11:56 a.m.)

19 MR. SAVIELLO: So, again, there we have threats
20 towards Mr. McCall's family as well, Your Honor.

21 Next, Your Honor, we would offer an affidavit from
22 Mr. Calhoun's former office secretary. And the affidavit
23 describes what her job was like between January 6th and
24 January 12th of 2021, before she quit the office. Including an
25 interaction on January 7th where a person physically came to

1 the office, looking for Mr. Calhoun. And so we would offer
2 that Defense Exhibit 3.

3 MS. McEWEN: Again, I object on the grounds of
4 relevance. I understand the Court's prior ruling.

5 THE COURT: All right. Very good. I will admit that
6 and overrule the objection.

7 (Defense Exhibit 3 admitted into evidence at 11:57 a.m.)

8 MR. SAVIELLO: Then, Your Honor, Defense Exhibits 4
9 and 5 -- and this is housekeeping of a sort -- I was not aware
10 that Agent Armentrout and others were surveilling Mr. Calhoun
11 on the 13th and saw him at the Sumter County Courthouse
12 practicing law. I obtained affidavits from two lawyers who
13 were present in Sumter County court that day, and their
14 affidavits simply state that they were there in court and saw
15 Mr. Calhoun there, in court, representing his clients. That's
16 Defense 4 and Defense 5.

17 Your Honor, and that would be all the documentary
18 evidence the defense would offer at this point.

19 We would, however, have testimony from one witness --
20 that is Mary Calhoun, Mr. Calhoun's sister -- on the point of
21 should the Court release Mr. Calhoun under conditions, he would
22 ask to remain here in Macon and reside at her house. So we
23 offer her to tell you about her house and herself and the
24 conditions under which he would be there.

25 THE COURT: All right, very good.

1 Exhibits 4 and 5 are admitted, by the way.

2 (Defense Exhibits 4 and 5 admitted into evidence at
3 11:58 a.m.)

4 COURTROOM DEPUTY: If you will, raise your right
5 hand. Do you solemnly swear that the testimony you are about
6 to give is the truth, the whole truth, and nothing but the
7 truth, so help you, God?

8 THE WITNESS: I do.

9 COURTROOM DEPUTY: Please state and spell your name
10 for the record, please.

11 THE WITNESS: Mary Calhoun, M-a-r-y C-a-l-h-o-u-n.

12 MARY CALHOUN

13 called by Defendant at 11:59 a.m., having first been duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SAVIELLO:

17 Q. Good afternoon, barely, Ms. Calhoun. How are you related
18 to William McCall Calhoun?

19 A. I am one of his sisters.

20 Q. And where do you live?

21 A. I live here in Macon.

22 Q. Do you live in a house or an apartment?

23 A. A house.

24 Q. Who else lives there with you?

25 A. My daughter.

1 Q. And how old is she?

2 A. She's twenty-one.

3 Q. How long have you lived at this house in Macon?

4 A. We're -- this is my third year living there.

5 Q. Is there room for one more occupant of that house?

6 A. Yes, there is.

7 Q. Okay. How many -- I am going to ask a few questions just
8 generally about your immediate family. How many siblings do
9 you have?

10 A. I have one brother, two sisters, and also I do have a
11 stepsister and two stepbrothers.

12 Q. Okay. Are your parents alive?

13 A. My mother is alive; my father is deceased.

14 Q. Where does your mother live?

15 A. My mother lives in Americus, Georgia.

16 Q. Okay. Do all your other family members live in Georgia?

17 A. Yes, sir, they do.

18 Q. During the pandemic, like so many of us, have you been
19 working from home?

20 A. Yes, sir. I have, I have been working remotely.

21 Q. Okay. And do you use a computer when you work from home?

22 A. Yes, sir, I do.

23 Q. Is that your personal computer or is that a work-issued
24 computer?

25 A. It's work-issued.

1 Q. Is it password-protected?

2 A. Yes, sir, it is.

3 Q. All right. So do you have a smart phone?

4 A. Yes, sir, I do.

5 Q. And is that smart phone your personal phone or your
6 work-issued?

7 A. Really both. It's personal, but I use it for work
8 purposes as well.

9 Q. Okay. Is that phone password-protected?

10 A. Yes, sir, it is.

11 Q. All right. Does your daughter work or does she go to
12 school?

13 A. Actually, both.

14 Q. Okay. Does she -- is she at college or university?

15 A. Yes, she is.

16 Q. Is she going to school physically or is she taking classes
17 online?

18 A. Now, physically.

19 Q. Does she have a computer at home?

20 A. Yes, she does.

21 Q. Does she use that for school and work?

22 A. She uses it for her schoolwork. Yes, she does.

23 Q. Do you know, is that computer password-protected?

24 A. Yes, sir, it is.

25 Q. Does she have a smart phone?

1 A. Yes, sir, she does.

2 Q. And do you know if that smart phone is password-protected?

3 A. Yes, sir, it is.

4 Q. Okay. Um, do you understand that we're here today for the
5 judge to consider whether or not to let your brother out of
6 jail while this case is pending?

7 A. Yes, sir.

8 Q. And if the judge were to let him out, would he be able to
9 come live at your house?

10 A. Yes, he would.

11 Q. Okay. And prior to his arrest last Friday, had he been
12 staying at your house for the previous week or so?

13 A. Yes, sir. He had, at my invitation. Because -- may I
14 elaborate on that?

15 Q. Yes, you may.

16 A. Because of the harassing phone calls and the death threats
17 to our family and my brother, you know, I chose to ask him if
18 he would, you know, please come stay with us.

19 Q. Okay. And does your brother -- do you know, does your
20 brother practice law?

21 A. Yes, sir.

22 Q. How long has he been in the practice of law?

23 A. Oh, goodness, thirty years. I mean, it's been a really --
24 all of his life, you know, after college.

25 Q. Okay. And during this past -- the last week when he was

1 staying with you, do you know, did he continue to represent his
2 clients and make court appearances?

3 A. Yes. Yes, he did. Yes.

4 Q. Now, if the judge were to allow your brother out on bond
5 and direct him to live at your house, speaking -- I am going to
6 ask some specifics, but just speaking generally, would you be
7 willing to do your best to make sure that he met the
8 responsibilities that he had under those conditions?

9 A. Yes, sir. I definitely would. First of all, I give good
10 advice, and I have to say that I would make sure that he met
11 all of his required appointments, you know, whether it was --
12 anything: going to court or, you know, if he had to meet with
13 you or any -- even a probation officer, anything like that. I
14 would make sure that -- that he did what was expected.

15 Q. Okay. One of the conditions the judge would have to
16 consider using would be something called home confinement,
17 which would be an order that your brother stay at your house
18 except for certain conditions. And that might be to go to
19 work--that is, to court if he had to, to come visit me, to come
20 to court for his own case, or to the hospital if necessary. Is
21 that something that you would be comfortable with?

22 A. Yes, sir, it is.

23 Q. That means that he would be home all the time, and you
24 would be all right with that?

25 A. Oh, yes, absolutely.

1 Q. Okay. Another condition that the judge could have to
2 consider is that he could limit your brother's access to the
3 internet; and that is, order him not to have access to a
4 computer or smart phone that would be able to connect with the
5 internet. Is that something that you feel that you could
6 handle at your house?

7 A. Yes. I definitely could. There is no problem there. I
8 definitely would follow that rule.

9 Q. All right. Another condition, if he was on supervised
10 release -- or on pretrial release and at your home, would be
11 that Probation would be authorized to come to your home and
12 search it without having to get a search warrant. Is that
13 something that you would be okay with?

14 A. Yes, I would. That would be fine.

15 Q. All right. Another condition would be that your brother
16 not have access to any firearms or weapons. Would you be okay
17 with that as well?

18 A. Yes. Definitely.

19 Q. Okay. Is there anything else, Ms. Calhoun, that you would
20 want the judge to know about what it would be like if he were
21 to allow your brother to come live with you during the pendency
22 of this case?

23 A. I can say that I love my brother and so does my daughter.
24 And I know personally -- just because I've known him all my
25 life and I know his true nature, I know that, you know, he's --

1 I know he's -- he wouldn't hurt anyone. I know that we would
2 be glad to have him in our home. I welcome him there. And we
3 love him very much.

4 I know that I will provide a safe and secure environment
5 for him and, like I've said before, giving him good advice
6 and -- and just supporting him through this. And I welcome him
7 into my home, and I hope that you will allow him to come.

8 MR. SAVIELLO: I have no further questions, Your
9 Honor.

10 Thank you, Ms. Calhoun.

11 THE COURT: All right. Any questions from the
12 government?

13 MS. McEWEN: Yes, Your Honor.

14 CROSS EXAMINATION

15 BY MS. McEWEN:

16 Q. Can you tell us what day he arrived at your home?

17 A. I think it was maybe two days after the 6th. So maybe it
18 was the 8th. It could have been the 7th. Maybe the night of
19 the 7th. I remember when he came, he came because he was going
20 to pick up his dog. We were babysitting his dog. And -- but I
21 believe it was -- I believe it's the night of the 7th.

22 Q. How long had you had his dog?

23 A. Well, let's see. I guess maybe -- I don't know, maybe the
24 5th? Maybe -- I guess it was the 5th he brought him, possibly.
25 I didn't really keep up with it, but that's a possibility.

1 Q. When he brought the dog, did you know he was on his way to
2 Washington?

3 A. Yes, I did.

4 Q. And you said a couple of times on direct examination that
5 you believe you give him good advice?

6 A. Yes, ma'am.

7 Q. Did he ask your advice about whether he should take this
8 trip for this purpose?

9 A. Well, actually, we did discuss it. We did discuss it.

10 Q. And did you try to discourage him?

11 A. Well, what I did was I asked him some questions, and -- I
12 knew that he was going. But I also knew that so many people
13 from around the country were going. And -- but I did ask him
14 if he was taking any weapons. I did ask him that. And he said
15 to me, "No," he said, "Because it's against the law." He
16 said -- and he told me exactly what the restrictions are. And
17 he said that, you know, he was not allowed to, so he wasn't.
18 So that is one thing that we discussed.

19 And I felt like it was going to be okay, you know, simply
20 because of that. You know, he wasn't going to, you know, shoot
21 anyone. You know, he wasn't going to harm anyone. And because
22 that was not his intention.

23 Q. And so I guess, then, my original question of did you try
24 to discourage him, the answer was no?

25 A. No, because I didn't think there was anything to

1 discourage him from.

2 Q. And when he arrived I believe you said the night of the
3 7th, did he arrive with any of his personal property?

4 A. "Personal property"? Well, he would have had -- he would
5 have had his bag that -- but, like, a backpack-type bag.

6 Q. Okay. Did you see the photographs of the bedroom?

7 A. Yes, ma'am.

8 Q. And did you see those guns and ammo cans?

9 A. Yes, ma'am.

10 Q. Were those things that you had in that room before he got
11 there?

12 A. No, ma'am.

13 Q. So did he bring those to your home?

14 A. He did. He did. And he actually had asked me about that.
15 We did discuss it, and it was at some point when -- between him
16 going back down to his office and going to court and the
17 different times he had gone to the courthouse, he asked
18 permission to bring them. And we discussed it.

19 And so we thought that it would be best -- I mean, I
20 agreed that he can bring them because I knew that he legally
21 owned them, and I thought that it would be better if he did
22 bring them because of the threats and the harassing phone calls
23 and even, I was told, people on his front porch. That's
24 another thing his secretary had said. And so I thought, well,
25 yes, you should bring them up here, you know, so that nobody

1 did steal them, you know, if they kicked the door in or
2 something. So I thought that that would be best if he did
3 bring them.

4 Q. Did you, yourself, know the nature of these emails and
5 phone calls prior to asking him to come stay with you? Had you
6 read them? Listened to them?

7 A. I don't think that first night I had. I'm really not for
8 sure. I don't really know when my sister first told me that it
9 happened, but shortly after that I did. I think I just asked
10 him to spend the night, you know, because he had been driving.

11 But then after that, very quickly, you know, we became
12 aware of what was going on with the phone calls and the people
13 on the front porch and all of that. And so that -- and that
14 was very disturbing. So I did want him to stay with me when I
15 heard the threats against my brother and my family.

16 Q. So do you consider emails saying things like, "I will be
17 seeking your immediate disbarment," to be a threat?

18 A. Well, I didn't say that. I didn't say that.

19 Q. But you know that's the type of thing that the emails
20 conveyed; don't you?

21 A. Well, when I hear things like phone conversations saying,
22 "I'm coming after you and your family," that really sticks in
23 my mind. Not so much, you know, something that's referring to
24 his position as an attorney. Although, you know, I don't like
25 hearing that, but that what really just sticks in my mind is

1 threatening to hurt my child, to be honest. Or my mother,
2 who's eighty-six.

3 Q. When was it that you first heard that call that you just
4 referred to? Was it in court today or sometime prior to that?

5 A. I've heard prior to. I've heard prior to.

6 Q. Okay. Can you tell us when in relation to when you asked
7 him to come stay at your house?

8 A. Just really off and on, throughout the time period. My
9 sister, who also has worked in my brother's office, she's
10 shared some of the information with me about it. I can't
11 really tell you the exact day. If I could think of it I'd tell
12 you.

13 Q. Okay. Do you consider emails that say, "You are the scum
14 of the earth, you'll rot in hell," to be a threat?

15 A. Um, I guess I consider that as just someone's description
16 of him. If they -- you know, or maybe what they want to happen
17 to him, which is extremely drastic. I mean, rotting in hell,
18 that's kind of a scary thing to think about. But I certainly
19 don't consider them friendly.

20 Q. Right. What about a person who emails hoping that he's
21 going to get ten years in prison? Do you consider that a
22 threat?

23 A. Well, I would say that there definitely -- their
24 intentions are not good if that's what they're focusing on.
25 So. It's a bit disturbing.

1 Q. Um-hum. But you know that none of the emails that were
2 tendered into evidence as Government's Exhibit 1 threaten to do
3 any harm to your brother or anyone else; don't you?

4 A. No. I don't really know that, because, to be honest -- I
5 mean, this is overwhelming. And I am not really -- I can't
6 really say that I'm -- I'm not an attorney myself. And so I
7 guess maybe what I think might be disturbing to me might not be
8 to you, for instance. And so I really -- it's kind of hard for
9 me to answer that the way that you're asking it.

10 Q. None of the emails or even the phone messages that we've
11 heard here in court use any of the phrases like "execute,"
12 "slaughter," "sling hot lead," or, "stack up body bags," like
13 your brother used in his posts; isn't that right?

14 A. Not to my knowledge.

15 MS. McEWEN: Nothing further, Your Honor.

16 MR. SAVIELLO: Nothing further.

17 Thank you, Ms. Calhoun.

18 THE COURT: You may step down. Thank you.

19 THE WITNESS: Thank you.

20 (Witness was excused at 12:14 p.m.)

21 MR. SAVIELLO: Your Honor, the defense would have no
22 more evidence but we would be prepared to argue.

23 THE COURT: All right. Well, let's -- does anybody
24 need a break?

25 (No affirmative responses.)

1 THE COURT: Very good. Let me hear from the
2 government first by way of argument. Ms. McEwen?

3 MS. McEWEN: Your Honor, I think when the Court
4 considers the factors at 3142(g) in this case, it's
5 particularly apparent that the defendant poses a danger to the
6 community. We've seen approximately 20 of the hundreds of
7 posts that he has made that do use words like "execute,"
8 "slaughter," "sling hot lead," "make head shots," "go to war,"
9 and "stack up body bags."

10 Now, Mr. Saviello would point out to the Court, well,
11 this might be in response to something someone else said and
12 that we must consider the context in which these statements
13 were made. And that's certainly true.

14 And, in fact, in one of those that was put before the
15 Court, the statement that was made by someone was concerning
16 whether or not a certain number of votes would be found by
17 persons counting votes in Pennsylvania. And Mr. Calhoun's
18 response was, "Let's slaughter the motherfuckers." So I think
19 taking it in context points out just how dangerous the type of
20 conduct that Mr. Calhoun has been promoting and suggesting that
21 he would participate in is to this community.

22 And it's not just that he said it, but that all of
23 the things that he talked about, he's followed through on to
24 this point. He said: That's why we have ARs, so that we can
25 open up cans of whoop ass, so that we can make head shots, so

1 that we can stack up body bags. He had ARs. He said he had
2 plenty of ammo that he intended to use at the range and on
3 people. And he had plenty of ammo. And not only did he have
4 it, but when he felt like he needed to relocate for whatever
5 reason -- which the Court may believe was because the FBI was
6 after him or because he was getting what might be considered
7 harassing phone calls or emails at his office in Americus -- he
8 took that amount of ammo and that number of firearms with him
9 when he relocated.

10 He said he was going to go to Washington. He said he
11 was going to storm the Capitol. He said he was going to try to
12 obstruct the electoral college vote being certified. And he
13 did that. Everything that he has said that he would do in
14 those posts, short of executing, slaughtering, and stacking up
15 body bags, he has done.

16 So the question is, what if anything can this Court
17 do to keep him from doing that? The suggestion is that he
18 would stay with his sister. I suggest that's simply not enough
19 for the Court to feel assured that Mr. Calhoun's not a danger
20 to this community.

21 There's a significant concern as well of him being a
22 flight risk in this case in that he intentionally relocated
23 himself for the purpose, we contend, of evading his own arrest
24 in this case. And the Court certainly has to take into
25 consideration what, if anything, it could do to ensure that he

1 would appear for future court appearances.

2 So it's our suggestion that there are no conditions
3 that this Court can put in place that would satisfy the
4 necessary standards that the Court has before it to ensure his
5 return to court and the safety of this community. And for that
6 reason we ask that he be detained, Your Honor.

7 THE COURT: Mr. Saviello?

8 MR. SAVIELLO: Thank you, Your Honor. Speaking about
9 standards, why don't we start there. As the Court is aware,
10 there is a statutory presumption in favor of release in this
11 case, and that the government must overcome that presumption,
12 and I think that they have failed to do so.

13 Now, the standard by which you must judge that is,
14 first of all, they must prove that there is either a serious
15 risk of flight or a serious risk of danger to the community.
16 The government believes that both are in place, and I would
17 disagree.

18 More importantly, the standard that they must reach
19 is that they must prove to a preponderance as to flight; that
20 is, that there is no conditions that will reasonably assure he
21 will come to court. As to danger, they must prove by clear and
22 convincing evidence that there are no conditions you can impose
23 which would reasonably assure the safety of the community.

24 And so, I'd like to be a little more specific than
25 the government in addressing those. 3142(g), Your Honor,

1 outlines the factors which you must consider when thinking
2 about this issue:

3 Number 1, the nature and circumstances of the
4 offenses as charged.

5 Two, the weight of the evidence against the person,
6 and that brings us back to my argument as to probable cause,
7 Your Honor. I understand you found there was probable cause.
8 But I do believe that considering their ability to prove a
9 couple of the elements of the 1512(c)(2) violation are not
10 quite as clear as the government might think they are.

11 But Number 3, Your Honor, I think is important. That
12 is part of 3142(g)(3), and that is the history and
13 characteristics of the person. And that's why we submitted all
14 the affidavits. We have his sister here to testify to let you
15 know about him. And they include the person's character. And
16 the affidavits will attest that many, many people think that
17 Mr. Calhoun is a person of character in relation to whether he
18 will follow the court's orders and whether he is a danger to
19 anyone. His physical and mental condition.

20 Your Honor, as the Court is aware from the pretrial
21 services report, Mr. Calhoun has prostate cancer for which he
22 is undergoing treatment. And so we would argue that that, in
23 fact, motivates him to follow any conditions of the Court that
24 would allow him to be released so that he can continue to get
25 the medical care on the outside as opposed to rely on county

1 jail to provide medical care. So that's incentive for him to
2 follow the rules should you let him out.

3 His family ties: Your Honor, the testimony in his
4 own statements in the pretrial report are clear that his family
5 is generationally tied to Georgia. He doesn't live anywhere
6 else and he hasn't for his adult life. He is a UGA graduate,
7 multiple times over. He's a Georgia person through and
8 through.

9 His employment: Your Honor, he's a lawyer. He's
10 been practicing for thirty years and was practicing up until
11 his arrest. And the fact that he was going to court, meeting
12 his obligations, and representing his clients I think is
13 another thing that the Court can consider when considering
14 whether he is going to do as the Court would order.

15 His financial resources: As the Court is aware, he
16 has his combination residence and law office in Americus.
17 There is a rental property in Columbus. Again, those tie him
18 to the community as well. In terms of financial resources,
19 without belaboring the point, Your Honor, he is not cash rich
20 such that he would have the funds to flee and finance a
21 lifestyle on the run. And that is clear also from the pretrial
22 report.

23 Another one is past conduct. And I don't have -- I
24 have been told there is an updated bail report that suggests he
25 might have had a DUI arrest while he was in college. But other

1 than that, Your Honor, the man has no arrests, much less any
2 convictions. He is a licensed lawyer, stayed in good standing
3 with the Bar of Georgia. And if we look at past conduct as a
4 predictor of the future, then I think you will find him to be a
5 law abiding person.

6 History related to drug and alcohol abuse: He is at
7 best a social drinker. No indication of any of those problems
8 that need to be addressed or cause the Court any concern.

9 Again, no criminal history.

10 And then last factor in 3142(g)(3) is a record
11 concerning appearance at court proceedings. We are in an
12 unusual situation, Your Honor, where not only are there no
13 indications of failure to appear as a defendant, because he's
14 never been a defendant, but, instead, there's no record
15 indicating that he doesn't appear in court for his clients when
16 he is supposed to. So, Mr. Calhoun is the rare defendant who
17 understands what it means to go to court when you are required
18 to go to court, and I think the Court can find that he would do
19 that.

20 As to danger, Your Honor, 3142(g)(4) directs the
21 Court to consider the nature and seriousness of the danger to
22 any person or the community that would be posed by the person's
23 release. And when considering the conditions of release, the
24 Court can consider all of those and create any other ones that
25 you might think are appropriate to satisfy any concerns.

1 So, I'd like to briefly talk about flight, Your
2 Honor, and the risk of flight, remembering that the standard is
3 that there must be a serious risk of flight proved to a
4 preponderance. And I would disagree with the government.

5 First of all, I think the question would be for Your
6 Honor, what would be Mr. Calhoun's motivation in regards to
7 appearing in court if he got out. And I think his motivation,
8 if there is a debit/credit analysis, would all be debits. That
9 is -- I'm sorry, would all be credits. That he is motivated to
10 come to court and will do so, one, to avoid prosecution for
11 bail jumping, right. He understands what it means to jump bail
12 in federal court, and that is a separate federal offense, and
13 that is a felony offense, and that is essentially a status
14 offense. And if he wants to continue to practice law, he will
15 be motivated to avoid a felony conviction.

16 Secondly, Your Honor, he had every reason to expect
17 that charges were coming in this case. Right. He gave an
18 interview to the *AJC* in which he admitted to trespass,
19 understanding what it meant and understanding the consequences
20 of that when he did so.

21 And the government's suggestion that by coming to
22 live at his sister's house was him fleeing arrest or fleeing
23 investigation I think is just simply not borne out by the
24 evidence or by common sense. If he were fleeing investigation
25 and fleeing arrest, Your Honor, he would not continue to appear

1 in court on schedule. Because even the most rudimentary
2 investigation would say why don't we find out when he's
3 supposed to appear in court for his clients, and we'll wait for
4 him in the parking lot.

5 And so, he wasn't fleeing arrest or fleeing
6 investigation. Instead, he was doing exactly what the Court
7 would expect and hope someone would do in that situation; that
8 is, facing harassing and -- if the government disagrees that
9 some of those voicemails are threatening, that's their
10 prerogative. Nevertheless, the voicemails and the emails and
11 the people showing up at his office, Your Honor, were doing one
12 thing, and that is trying to promote a confrontation with
13 Mr. Calhoun.

14 And so Mr. Calhoun would have been well within his
15 rights to continue to be at home, to sit on his front porch and
16 invite anyone who wanted to talk about those issues to come
17 talk to him face to face. That would cause a confrontation
18 that could turn violent and turn dangerous for himself or
19 anyone else. Did he do that? No, he did not do that. Instead
20 he removed himself from Americus and he began staying with his
21 sister, at her home in Macon, which is a safe place where
22 people wouldn't know where he was, so they couldn't come see
23 him there, and then the voicemails and the emails could be
24 managed from the safety of the computer or the voice -- or the
25 voicemail system.

1 And so that's the kind of responsible behavior that I
2 think the Court should look to to see how he would behave if
3 you, in fact, granted him bond. He was trying to avoid
4 confrontation under those circumstances, Your Honor; not
5 fleeing from investigation or arrest.

6 His whole family is in Georgia. His whole life is in
7 Georgia. His business is in Georgia. And he has clients
8 depending on him, Your Honor. We have chosen not to introduce
9 records from his office up to the twenty or so cases that will
10 have matters pending in court over the next five to six weeks,
11 including final adoption approval where the parent he is trying
12 to --

13 MS. McEWEN: Your Honor, I object to any discussion
14 of anything that's not before the Court in evidence.

15 MR. SAVIELLO: All right. That's fine, Your Honor.
16 The evidence is that he has a thriving law practice and is
17 expected in court and has been going to court. So, Your Honor,
18 I don't think the government has met its burden to show that
19 there is any risk that he will flee, much less a serious risk
20 that he will flee.

21 And if the Court does find that there is a serious
22 risk, I think there are ample conditions you can impose that
23 would mitigate that risk: That would be, order him to stay at
24 his sister's, which we believe is a safe environment, and the
25 evidence is that there is space for him there, he is welcome

1 there; home confinement or electronic monitoring like GPS
2 monitoring with the normal limits. I think all of those things
3 can satisfy any concern there might be about flight.

4 Moving on, then, to discuss the risk of danger. And
5 reminding the Court that, of course, the Court must prove that
6 there is a serious risk of danger to the community by clear and
7 convincing evidence. And in this case, Your Honor, I think
8 reading between the lines, the question is what is the problem?
9 What is the real danger?

10 I don't think the government is suggesting -- if they
11 are, I don't think there's any evidence to support it -- that
12 he will commit violent acts. To quote Ms. McEwen in her
13 argument, all of these things he said he followed up on, well,
14 that's just not true nor accurate. Because through the fall he
15 was posting on Twitter in response to people that he was
16 engaged in conversations and in response to their posts talking
17 about head shots at 200 yards and stacking bodies like
18 cordwood. And the evidence is amply clear that he never
19 engaged with anyone in a violent fashion, much less using a
20 firearm, taking shots at anybody, or even showing up with a
21 weapon anywhere.

22 And so the idea that he -- all of these things he
23 said he followed up on is just not accurate. Instead, what the
24 evidence is, is that he was engaged, like many people, in
25 partisan and loud rhetorical comments on social media. But the

1 idea that there is danger to any individual person I think is
2 not there.

3 Words do not equal action. What he was doing was
4 posting on social media. And any individual threats that were
5 made prior to January 6th, such as those in court -- or in
6 evidence in court, we don't have the context for them. You
7 know, the Twitter posts about, you know, "you're a snowflake
8 and I can beat your ass," we don't know where that person was.
9 They could be in California, they could be in Canada, they
10 could be in Italy for all we know. There's just no context to
11 that and no indication that he ever followed up on any of that
12 sort of stuff.

13 But what we do know is that the social media is what
14 the government is relying on to suggest that he's a threat.
15 Yes, he had a number of weapons. Again, the testimony before
16 the Court is he behaved responsibly regarding those weapons and
17 the ammunition; that is, he asked his sister, "Can I bring
18 those things to your house here in Macon so that they don't get
19 stolen from the house in Americus because people might be
20 coming to break in?" She said, "Yes."

21 When law enforcement showed up, he said, "Here they
22 are." He helped them catalogue them, helped them take seizure
23 of them, was cooperative in every way. All of them were legal.

24 So the issue really boils down to posting on social
25 media as a way to threaten people, not his actions, because he

1 has not acted on any of those posts.

2 Well, there's many ways to solve that problem. First
3 of all, Facebook solved part of that problem because they
4 banned him from Facebook, so he can no longer post on Facebook.
5 Same thing with Twitter. Parler, which already -- there are a
6 couple posts from Parler in the government's evidence -- they
7 have been shut down. I understand that they may be trying to
8 get up again through Russian web hosting services, but I
9 checked this morning, Your Honor, and as far as I know they are
10 still not active.

11 But beyond that, you can make it a condition that he
12 not access the internet and post on social media through the
13 internet, cell phone, or on a computer or any other way. So
14 that's a condition that you can impose. And if he is not able
15 to do that, then it is essentially him talking to his sister,
16 maybe talking on the phone with some of his friends, those
17 sorts of things.

18 You can limit his ability to travel. He does not
19 have a passport. You could order home confinement with
20 electronic monitoring and allow him to do the work he needs to
21 do for his clients, to see his oncologist, to come see his
22 lawyer, to make court appearances, as necessary.

23 You can limit his ability to have weapons, which is
24 standard. In this case all the weapons are gone. And you
25 could make sure -- and his sister testified that she understood

1 that that could be a condition, and that was not a problem as
2 well. And that the Probation could come search the house any
3 time they wanted.

4 And so, Your Honor, again, these things can be
5 mitigated, particularly the social media. And I think there's
6 a point to be made. The government's relying on those social
7 media posts to say that he is actually dangerous as opposed to
8 just having a big mouth. And here's what we know. I will
9 offer to the Court, although Agent Armentrout didn't know
10 specifically how many followers Mr. Calhoun had, but we can
11 make a comparison between Mr. Calhoun and Former President
12 Trump in terms of social media posting and actions to follow.

13 If they are arguing that Mr. Calhoun is influencing
14 people and that he could encourage others to commit acts of
15 violence, we know that on January 6th, President Trump at the
16 time had almost 89 million Twitter followers. And part of the
17 result of his actions on Twitter was that tens of thousands of
18 people showed up to protest at the Capitol and ended up
19 entering the Capitol Building. We don't know how many
20 followers Mr. Calhoun had on that day, but I dare say it was
21 some miniscule fraction of 89 million.

22 But we look at January 20th, and what we know on
23 January 20th, which was the Inauguration yesterday, was that
24 Former President Trump had zero Twitter followers. And what we
25 also know then is that there were zero meaningful protests at

1 the Capitol in Washington, D.C. So you take away the ability
2 to post on social media, if there was an audience, then you
3 take away the reason for those people to follow. So, there are
4 things that the Court can do to mitigate any concerns they
5 might have about it.

6 And I think more importantly, Your Honor, is to think
7 about changing Mr. Calhoun's environment. And I would argue
8 that the evidence suggests that when Mr. Calhoun was by
9 himself, living in Americus, he found himself engaging in lots
10 of social media posting and, you know -- howling at the moon of
11 sorts -- engaging with other people who are equally as angry as
12 he was. But if we change his environment, I don't think we'll
13 see that. If he were living with his sister, not having access
14 to social media or the internet, he would not have those same
15 incentives. He would be in a different environment, and I
16 believe his behavior would be different.

17 Your Honor, he has a large support network, as
18 indicated by the fact that he has a large family, all in the
19 area, and the friends and professional colleagues who submitted
20 affidavits to the Court. And I believe the evidence before the
21 Court is all of them are motivated to assist Your Honor in
22 making sure that Mr. Calhoun follows the rules -- that is, he
23 appears where he needs to be relating to this court case and
24 that he not get into any trouble; that is, not act in any way
25 that would cause a danger to anyone either individually or by

1 encouraging others.

2 He's got a safe and supportive place to live. He's
3 got a way to make a living and a thing to keep him busy; that
4 is, to continue to represent his clients. Those clients are
5 relying on him. He has every motivation to show up, deal
6 responsibly with his position, and not cause further trouble.
7 Because a felony conviction for him means the loss of his law
8 license and the loss of his ability to make a living. So I
9 think the Court can find that he is motivated to handle this
10 case in a professional way.

11 I am reminding the Court that the government has to
12 overcome the presumption of release in this case and show by
13 clear and convincing evidence that there are no conditions
14 which you could impose which would mitigate the danger. And,
15 first, there is a risk of flight, which I disagree that there
16 is, but even if there is, they have to show that there are no
17 conditions which will sufficiently mitigate that as well. And
18 I think it's clear that there are conditions that will do that,
19 and the law thus requires you to set conditions of release that
20 would allow him to do that. Thank you.

21 THE COURT: Anything further from the government?

22 MS. McEWEN: Just briefly. Your Honor, there's been
23 an argument brought forward that Mr. Calhoun's actions in
24 removing himself to his sister's home were responsible.
25 Mr. Saviello also said that Mr. Calhoun had every reason to

1 expect that charges were coming. And a person in his position,
2 especially after having given this interview to the Atlanta
3 newspaper, when acting responsible would have gone to people he
4 interacts with every day, people like Chief of Police Scott in
5 Americus, and said, "I need to let you know, I feel like I've
6 been threatened by emails and phone calls that have come into
7 my office. As a result of that, I'm relocating. But if you
8 hear from the FBI that they are looking for me, let me tell you
9 where I am. You always know how to get in touch with me,
10 Chief. You have my phone number."

11 That is not what he did. That is how a responsible
12 person, expecting and having every reason to expect charges
13 were coming, would have behaved.

14 I point the Court to the testimony of his sister with
15 respect to this one particular issue. When I asked her if she
16 was aware he intended to travel to Washington for the purpose
17 of attending these protests outside the Capitol, she, herself,
18 asked him was he taking a gun. And when he assured her he was
19 not, she was no longer concerned that he might shoot someone.
20 What that says is she's concerned he might shoot someone. Just
21 like he said he would do.

22 We have seen his history and his characteristics in
23 these repeated posts that he has put up where he has said he
24 would execute, slaughter, go to war, stack up body bags, put
25 out head shots, and sling hot lead. That is in addition to the

1 violent act that he participated in in breaching the United
2 States Capitol for the purpose of attempting to overturn the
3 results of the election in this country.

4 And I think that the Court can clearly see that we
5 have met our burden to demonstrate that there are no conditions
6 that can be imposed to keep him from being a danger to the
7 community. And, again, we're asking that he be detained.

8 THE COURT: I would like to take a moment to review
9 all these. I didn't get a chance to look over the exhibits
10 that have been submitted, so we were talking about their
11 relevance.

12 MR. SAVIELLO: Yes, sir.

13 (Court in recess from 12:38 to 12:49 p.m.)

14 THE COURT: Based on the evidence that's been
15 presented here today and taking into consideration the factors
16 at 18 U.S.C. Section 3142(g), as the parties have fairly
17 thoroughly outlined, I do find by clear and convincing evidence
18 that there is no combination of conditions of release or
19 conditions of release that can secure the safety of the
20 community, so I am going to order that the defendant be
21 detained pending indictment and/or trial in this case.

22 I will just outline to some extent -- of course, the
23 parties have argued this fairly clearly, but just let me
24 outline what the basis of my ruling is. That we do have -- and
25 I read every word of every one of these, and I -- quite a

1 number of affidavits from people in the community attesting to
2 the defendant's history in the community and history of
3 practicing law in that community. And as the defense has
4 pointed out, there is no criminal history -- significant
5 criminal history in the case.

6 What is of concern in this case is the events of the
7 last six months in this defendant's life, and I don't -- from
8 the previous 23 years or 35 years or whatever these different
9 affidavits refer to, clearly something has changed.

10 And what we have, first of all, is we have the
11 defendant's own statements, made publicly on social media,
12 extensively, which reveal, first of all, that he has been
13 corrupted by or seduced by dangerous and violent ideology that
14 considers the United States to be in a state of civil war,
15 considers everyone who voted for a Democrat to be worthy of
16 execution, considers government officials and agents to be
17 members of a Deep State that has to be opposed by so-called
18 Patriots.

19 The language used in those posts is extremely
20 violent. I won't repeat the terms, but we've been through them
21 multiple times, about "slaughtering" and "head shots" and the
22 threats against -- to hang President Biden, to tear Nancy
23 Pelosi to shreds.

24 Now, as Mr. Saviello pointed out, we know that
25 everybody on the internet is full of -- you know what.

1 Everybody is a liar on the internet. And the internet does
2 encourage this kind of language. So I have to take into
3 account that the possibility that this might just be a -- some
4 kind of rhetorical act or showmanship.

5 But we also have the defendant's actions. First of
6 all, we have the fact when he was arrested he was found to be
7 heavily armed with multiple weapons and hundreds, if not
8 thousands, of rounds of ammunition. But the biggest issue is,
9 you were in the Capitol on January the 6th, 2021. We've seen
10 the video. You have admitted it multiple times. You bragged
11 about it. You've said it was your patriotic duty to do.

12 You crossed a sacred, sacred line. That was an act
13 of extreme violence by every single person who went in there.
14 I look in this courtroom -- this is not my courtroom, my
15 courtroom is much more humble than this. We build buildings
16 like this to reflect the majesty of the law and the
17 Constitution of the United States. We don't rely entirely on
18 the force of arms, but on the -- the symbolism, the sacredness
19 of the law and of the government of the United States.

20 And the Capitol Building is the pinnacle of that.
21 And when you and your friends went in there and tore the place
22 to shreds, killed five people, including a police officer, you
23 showed that you were willing to -- that there was nothing that
24 would hold you back except force. That's why we had 25,000
25 National Guard members at our Inauguration yesterday. It's a

1 shame and a scandal for our entire country.

2 And if you don't respect the Capitol Police and you
3 don't respect the Capitol Building of the United States, I
4 don't have any reason to believe that you'll respect anything
5 that I tell you to do. And certainly, if you think that every
6 agent and officer of the government is part of some Deep State,
7 involved in some gigantic conspiracy, then I have no comfort in
8 sending a probation officer to your house to meet with you. I
9 would be afraid for their life -- I would be afraid for my
10 life -- from what you've said and what you've done.

11 So based on that evidence, I find that no condition
12 or combination of conditions of release will be sufficient to
13 secure the safety of the community pending the outcome of this
14 case. I am going to enter an order directing that you be
15 detained by the United States Marshal Service. I will also
16 enter an order directing the Marshal Service to arrange for
17 your transportation to the District of Columbia for custody in
18 that District while you are pending proceedings in this case.

19 I will enter an Order of Removal directing the Clerk
20 of the Court transfer all the papers in this case to the Clerk
21 of Court for the District of Columbia. I will also note that
22 you will be requesting appointed counsel when you arrive in
23 that District, and the Court can make further arrangements as
24 necessary in the case.

25 Is there anything else we need to discuss here today,

1 Mr. Saviello, from the defense?

2 MR. SAVIELLO: Your Honor, two things. Please note
3 my objection, first. Secondly, could Your Honor favor us with
4 a ruling on flight risk.

5 THE COURT: I do also find by a preponderance of the
6 evidence -- although flight is less of a concern for me than
7 danger to the community, but I think there is a preponderance
8 of the evidence that there's no condition or combination of
9 conditions of release that would be sufficient to secure the
10 defendant's appearance at trial.

11 I note that he, as you mentioned, is a resident of
12 the state of Georgia and has a life-long history here, but I
13 also note that he was found at his sister's house, he missed a
14 court date. You mentioned he showed up at court every time.
15 Except for one day when he knew the FBI was looking for him.
16 He slipped their watch. Showed up at his sister's house.
17 Armed to the teeth.

18 I also am concerned that he's got a network of
19 friends and social media followers that could assist him if he
20 were going to try to evade proceedings in this case, and I
21 don't think I can trust him to make arrangements to appear in
22 the District of Columbia for proceedings in that court. So as
23 an alternate ruling, I do find that there's no condition of
24 release that would secure his appearance at trial.

25 I should also note it also comes back to my finding

1 that because of the corrupting and dangerous ideology that has
2 poisoned this man's mind, that he has no respect for the laws
3 of the United States, for the people who enforce those laws,
4 and I don't -- I wouldn't trust him to show up or do anything
5 that I told him to do. Because he probably thinks that I'm
6 human scum or that I should be the victim of a head shot
7 because I work for the federal government. So, no. I am not
8 going to release him.

9 MR. SAVIELLO: Please note my objection on the flight
10 ruling as well, Your Honor. Thank you.

11 THE COURT: Yes, sir. Anything else from the
12 government?

13 MS. MCEWEN: No, Your Honor.

14 THE COURT: All right. Very good. That concludes
15 our business for this morning. Court will be in recess until
16 2:30 this afternoon.

17 COURT OFFICER: All rise.

18 (Proceedings concluded at 12:57 p.m.)

19 END OF RECORD
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1 CERTIFICATE OF OFFICIAL REPORTER
2
3
4

5 I, Darlene D. Fuller, Federal Official Realtime Court
6 Reporter, in and for the United States District Court for the
7 Middle District of Georgia, do hereby certify that pursuant to
8 Section 753, Title 28, United States Code, that the foregoing is
9 a true and correct transcript of the stenographically reported
10 proceedings held in the above-entitled matter and that the
11 transcript page format is in conformance with the regulations of
12 the Judicial Conference of the United States.

13
14 Dated this 26th day of January, 2021

15 *Darlene D. Fuller*
16 

17 _____
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