

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

<b>UNITED STATES OF AMERICA</b>	)	
	)	
v.	)	<b>No. 1:21-cr-28 (APM)</b>
	)	
<b>KENNETH HARRELSON,</b>	)	
	)	
<b>Defendant.</b>	)	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S  
MOTION FOR RECONSIDERATION OF CONDITIONS OF RELEASE**

Defendant Kenneth Harrelson should remain detained pending trial. Like his co-defendant Kelly Meggs (as “Gator 1”), Defendant Harrelson (as “Gator 6”) was one of the leaders of the group of Oath Keepers who organized and plotted with coconspirators to stop the certification of the Electoral College vote, prepared to use violence if necessary, and stormed the Capitol. Afterwards, he attempted to delete incriminating evidence and falsely distance himself from the Oath Keepers, and then he perjured himself at his detention hearing.

For these reasons, the Court should maintain the order that the defendant be detained pending trial and deny the defendant’s motion (ECF 143).

**I. Background**

Video recorded on January 6, 2021, captured the defendant among a “stack” of more than a dozen individuals dressed in camouflaged para-military gear moving in a deliberate and organized manner toward the Capitol building. An additional recording shows the stack moments later embedded near the front of a violent mob that is attempting to break open the doors of the Capitol building. The video depicts the doors later opening and the subsequent flow of people into the building, to include the defendant and members of the stack. Selfies and surveillance video taken inside of the Capitol Rotunda further evince Defendant Harrelson’s and his coconspirators’ presence inside.

Co-defendant Jessica Watkins characterized their insurgent effort to breach the Capitol building as “forcing entry into the Capitol building” and said that it was “[f]orced. Like Rugby.” On the afternoon and evening of January 6, co-defendant Graydon Young wrote on Facebook that “[w]e stormed and got inside.” Co-defendant Kelly Meggs wrote in a Signal chat, “Ok who gives a damn who went in there.... We are now the enemy of the State.” An hour later, Kelly Meggs wrote to the same Signal chat: “We aren’t quitting!! We are reloading!!”

Based on his actions described above, on March 10, 2021, Defendant Harrelson was arrested on a complaint charging him with conspiracy, in violation of 18 U.S.C. § 371 (a felony); destruction of government property, in violation of 18 U.S.C. § 1361 (a felony); obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2) (a felony); entering a restricted building without lawful authority, in violation of 18 U.S.C. § 1752(a) (a misdemeanor). Defendant Harrelson made his initial appearance in the Middle District of Florida the following day and was detained pending a hearing pursuant to 18 U.S.C. § 3142(f).

On March 12, 2021, a federal grand jury in Washington, D.C., indicted Defendant Harrelson (along with nine co-defendants) on the same four counts from the complaint.<sup>1</sup>

On March 15, 2021, Magistrate Judge Embry J. Kidd of the Middle District of Florida conducted a detention hearing and ordered that Defendant Harrelson be detained pending trial. (ECF 7; Case 6:21-mj-01221-EJK (M.D. Fla.).)

Defendant Harrelson testified at the detention hearing.<sup>2</sup> He admitted that he shot his neighbor’s dog in August 2004, was arrested for drug possession in 2003, and was arrested for

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<sup>1</sup> On March 31, 2021, the grand jury handed up a third superseding indictment, adding defendants 11 and 12 but leaving the charges as to Defendant Harrelson unchanged.

<sup>2</sup> A copy of the transcript is attached as Exhibit 1.

battery in 2001. (3/15/21 Tr. at 24.) He denied taking any photos or videos while inside the Capitol on January 6, 2021:

24 Q. Did you take photos and videos when you were inside the  
25 Capitol on your telephone?

26

1 A. No.  
2 Q. You did not?  
3 A. Well, there's -- it didn't -- nothing was recorded.  
4 Q. Did you take photographs?  
5 A. No.  
6 Q. Did you see the picture of yourself inside the Capitol  
7 holding the phone up?  
8 A. Yes, ma'am.  
9 Q. And it's your testimony that nothing recorded on your  
10 phone.  
11 A. It was -- it didn't record for some reason. There was  
12 issues with the phone.

(3/15/21 Tr. at 25-26).

Judge Kidd found that the presumption of detention in Section 3142(e) applied, and that evaluating the factors under Section 3142(g) led to the conclusion that Defendant Harrelson would be a danger to the community if released. (*Id.* at 51.) Judge Kidd found that the evidence was

strong, that Defendant Harrelson has strong community ties, that the arrest for battery is “really concerning” but did not result in a conviction, that there is no indication of failing to appear for court, and that there is some indication of drug and alcohol abuse. (*Id.* at 49-50.) Judge Kidd also found that the charges against Defendant Harrelson – for which the grand jury has found probable cause – show that Defendant Harrelson has “an absolute disregard for the validity of official proceedings that are being held by the United States government. So that, to me, is very troublesome.” (*Id.* at 51.)

On April 6, 2021, Defendant Harrelson filed the instant motion. (ECF 143.)

## **II. Legal Standard**

### **a. Detention Hearing**

Defendant Harrelson is apparently moving for “revocation or amendment” of Magistrate Judge Kidd’s detention order under Section 3145(b). As the defendant indicates in his motion, the court’s review is *de novo*. (ECF 143 at 2); *see also United States v. Munchel*, No. 21-3010, 2021 WL 1149196, at \*5 & n.3 (D.C. Cir. Mar. 26, 2021) (noting that Chief Judge Howell conducted a *de novo* review of a release order under Section 3145(a), and that district courts have “broad discretion” to review magistrate judges’ detention decisions) (citation omitted).

Upon holding a detention hearing, the Court “shall order” a defendant detained if it “finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). Here, there are no conditions that could assure the latter; in other words, releasing the defendant would present a “danger to the community.” *United States v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019).

“When the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community,” the Supreme Court has

explained, “a court may disable the arrestee from executing that threat.” *United States v. Salerno*, 481 U.S. 739, 751 (1987). Notably, “the threat need not be of physical violence, and may extend to ‘non-physical harms such as corrupting a union.’” *Munchel*, 2021 WL 1149196, at \*7 (quoting *United States v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988)). “In assessing whether pretrial detention is warranted for dangerousness, the district court considers four statutory factors: (1) ‘the nature and circumstances of the offense charged,’ (2) ‘the weight of the evidence against the person,’ (3) ‘the history and characteristics of the person,’ and (4) ‘the nature and seriousness of the danger to any person or the community that would be posed by the persons’ release.’” *Id.* at \*4 (quoting 18 U.S.C. § 3142(g)).

At a detention hearing, the government may present evidence by way of a proffer. *United States v. Smith*, 79 F.3d 1208, 1209-10 (D.C. Cir. 1996).

**b. Application of Presumption and Factors To Be Considered**

Defendant Harrelson is wrong to contend that the presumption of detention in Section 3142(e) does not apply.

Under Section 3142(e)(3)(C), the presumption arises if the offense – here, felony destruction of property under Section 1361 – is “listed in [S]ection 2332b(g)(5)(B)” and carries “a maximum term of imprisonment of 10 years or more.” Nothing more. Section 3142(e)(3)(C) does *not* reference Section 2332b(g)(5)(A), and thus to obtain the presumption the government has no obligation to show that the “offense was calculated to influence or affect the conduct of government by intimidation or coercion.”<sup>3</sup>

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<sup>3</sup> However, to show that the offense is a “[f]ederal crime of terrorism” to be considered as part of the “nature and circumstances of the offense” under Section 3142(g)(1), the government must meet both of Section 2332b(g)(5)’s prongs: (A) purpose of offense and (B) enumeration of offense. The conduct of Defendant Harrelson and his coconspirators – invading and temporarily taking over the national legislature while it was convening, pursuant to federal law, to formally count the ballots for the presidential election – was clearly “calculated to influence or affect the conduct of

Regardless, the government submits that, here, it has shown that the offense of felony destruction of property with which Defendant Harrelson has been indicted is a federal crime of terrorism that carries a maximum term of imprisonment of 10 years or more and that was calculated to influence or affect the conduct of government by intimidation or coercion. In other words, the offense of felony destruction of property *both* gives rise to the presumption of detention under Section 3142(e)(3)(C) *and* constitutes a federal crime of terrorism as part of the nature and circumstances of the offense to be considered under Section 3142(g)(1).

Here, the government is not relying on the strength of the evidence as to the Section 1361 violation to support Defendant Harrelson's detention. In fact, once the grand jury has found probable cause that Defendant Harrelson violated Section 1361 (felony) – and here, it has – then under the guidance of *United States v. Singleton*, 182 F.3d 7, 12 (D.C. Cir. 1999), the government has satisfied its burden under Section 3142(f)<sup>4</sup> to trigger a detention analysis under Section 3142(g).

### **III. Argument**

Defendant Harrelson cannot rebut the presumption of detention under Section 3142(e)(3)(C). And the factors to be considered under Section 3142(g) support Defendant Harrelson's continued detention.

#### **a. Preparation: Defendant Harrelson's Actions Prior to Storming the Capitol**

Defendant Harrelson was a leader of this group of Oath Keepers who came to Washington, D.C., prepared to do violence, and then stormed the Capitol.

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government by intimidation or coercion" under Section 2332b(g)(5)(A). And because the offense is enumerated in Section 2332b(g)(5)(B), the definition of "[f]ederal crime of terrorism" has been satisfied.

<sup>4</sup> The same rationale would apply to the detention analysis under Section 3142(e)(3)(C).

**i. Training and Access to High-Powered Firearms**

In the fall of 2020, Defendant Harrelson, wearing Oath Keepers garb, and along with co-defendants Kelly and Connie Meggs, and others, participated in a “gunfight oriented training” with an AR-platform firearm. (See ECF 106.) Indeed, on March 10, 2021, the FBI located an AR-15-style rifle inside a gun safe at Defendant Harrelson’s house:



**ii. Leadership Role**

**1. GoToMeeting**

Between September 30, 2020, and January 3, 2021, Defendant Harrelson, using the names “gator 6,” “hotel 26,”<sup>5</sup> or “kenneth harrelson,” attended or organized approximately 30 meetings on Go To Meeting that appear to be related to the Oath Keepers:

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<sup>5</sup> The government identified Defendant Harrelson as “gator 6” and “hotel 26” in part from his IP address and in part from communications recovered from his phone, in which he refers to himself as “Gator 6” and also tells others that his email address contains the words “hoteltwosix,”

	session_subject	session_ty	session_da	session_duratic	participant_name	participant_ty	participant_ip	participant_city	participant_state
13	dc planning call	scheduled	2021-01-03	54.48	gator 6	organizer	184.90.105.158	titusville	florida
163	friday free for all	scheduled	2020-12-19	67.18	gator 6	organizer	184.90.105.158	titusville	florida
190	monday night florida chapter call	scheduled	2020-12-29	66	gator 6	organizer	107.77.216.118	miami	florida
226	monday night call	scheduled	2020-12-22	103.27	gator 6	organizer	184.90.105.158	titusville	florida
245	monday night call	scheduled	2020-12-22	103.27	gator 6	attendee	184.90.105.158	titusville	florida
295	dc discussion and cpt teams	scheduled	2020-12-23	33.78	gator 6	organizer	184.90.105.158	titusville	florida
317	warrior wednesday with gator 6	scheduled	2020-12-17	50.47	gator 6	organizer	184.90.105.158	titusville	florida
340	florida dc op planning chat	scheduled	2020-12-31	31.93	gator 6	organizer	184.90.105.158	titusville	florida
357	oath keepers friday night free for all	scheduled	2020-12-05	56.62	gator 6	organizer	184.90.105.158	titusville	florida
404	ok florida	recurring	2020-12-15	66.3	hotel 26	attendee	184.90.105.158	titusville	florida
448	miami review and positions	scheduled	2020-12-12	34.2	gator 6	organizer	184.90.105.158	titusville	florida
464	ok florida	recurring	2020-12-08	75.28	gator 6	attendee	184.90.105.158	titusville	florida
512	oath keepers dc call	recurring	2020-11-14	57.23	hotel-26	attendee	184.90.105.158	titusville	florida
575	fitness and health	scheduled	2020-12-10	36.78	gator 6	organizer	184.90.105.158	titusville	florida
599	warrior wednesday with gator 6	scheduled	2020-12-03	41.47	gator 6	organizer	184.90.105.158	titusville	florida
703	ok florida	recurring	2020-12-01	79.85	gator 6	attendee	184.90.105.158	titusville	florida
725	oath keepers national call - members only	recurring	2020-11-07	112.25	hotel-26	attendee	184.90.105.158	titusville	florida
781	ok florida	recurring	2020-11-17	102.62	hotel-26	attendee	184.90.105.158	titusville	florida
831	oath keepers national call - members only	recurring	2020-11-08	105.3	hotel-26	attendee	184.90.105.158	titusville	florida
845	new meeting	scheduled	2020-12-01	20.62	gator 6	organizer	184.90.105.158	titusville	florida
944	ok national call - post dc	scheduled	2020-11-19	134.18	hotel-26	attendee	184.90.105.158	titusville	florida
987	ok florida	recurring	2020-11-03	81.65	kenneth harrelson	attendee	184.90.105.158	titusville	florida
1008	ok florida	recurring	2020-11-24	87.17	gator 6	attendee	184.90.105.158	titusville	florida
1064	oath keepers national call - members only	recurring	2020-11-06	73.72	kenneth harrelson	attendee	184.90.105.158	titusville	florida
1100	ok florida	recurring	2020-10-29	51.83	kenneth harrelson	attendee	184.90.105.158	titusville	florida
1214	oath keepers national call - members only	recurring	2020-11-12	86.95	hotel-26	attendee	184.90.105.158	titusville	florida
1279	ok florida	recurring	2020-10-13	75.55	kenneth harrelson	attendee	184.90.105.158	titusville	florida
1327	ok florida	recurring	2020-10-20	81.35	kenneth harrelson	attendee	184.90.105.158	titusville	florida
1393	oath keepers national call - members only	recurring	2020-11-10	125.8	hotel-26	attendee	184.90.105.158	titusville	florida
1604	ok florida	recurring	2020-10-06	62.52	kenneth harrelson	attendee	184.90.105.158	titusville	florida
1648	ok georgia	recurring	2020-09-30	85.1	kenneth harrelson	attendee	184.90.105.158	titusville	florida
1649									
1650									

Tellingly, prior to the presidential election on November 3, 2020, Defendant Harrelson often logged in using his own name (and twice with the name “hotel 26”), and always participated as an “attendee.” But following the election, he never logged in under his own name, he most frequently used the moniker “gator 6” (but occasionally “hotel 26”), and starting in December 2020, was far more frequently an “organizer” rather than an “attendee.” Notably, for the meeting titled “dc planning call” on January 3, Defendant Harrelson (as “gator 6”) was one of the three “organizers”; a second organizer was co-defendant Kelly Meggs (as “gator 1”).

## 2. Signal

Several members of the conspiracy – as well as other members and affiliates of the Oath Keepers – participated in at least two Signal chats, titled “DC OP: Jan 6 21” (hereinafter, “National Signal Chat”) and “OK FL DC OP Jan 6” (hereinafter, “Florida Signal Chat”). The chats show that the participants were planning and anticipating to use force on January 6. Notably, Defendant Harrelson was a member of both chats (as “Gator 6”), as were co-defendants Jessica Watkins and Kelly Meggs (as “OK Gator 1”).

In the Florida Signal Chat, co-defendant Kelly Meggs told others that Defendant Harrelson would be “run[ning] the ground team” and coordinating and managing the others state teams:

				Jessica you have 4 working the detail from Ohio. REDACTED you have 6 confirmed for detail from SC. If correct that gives us 27 man team I like it!! Perfect mi with 4-5 medics in the group. I'll keep working on overall contact between Natl/congress team and stop the steal team for scheduling etc...Gator 6 runs the ground team. REDACTED and REDACTED will assist him especially when we are moving!
53	OK Gator 1	1/4/2021	10:41:00 AM	
54	OK Gator 1	1/4/2021	10:42:00 AM	Other state leaders can be in direct contact with GATOR 6 and then you handle your team as he needs.

Per the explicit instructions from Kelly Meggs, Defendant Harrelson would be “assisted” by others, but would both be in charge and would tell the other state team leaders how to “handle” their own teams.

The only two people with “admin” privileges (who added other users) on the Florida Signal Chat appear to be Defendant Harrelson and co-defendant Kelly Meggs, again suggesting Defendant Harrelson’s leadership role.

### iii. Quick Reaction Force (QRF) and Stashing Firearms

The evidence suggests that Defendant Harrelson was both aware of the presence of an armed Quick Reaction Force and likely contributed weapons to it. This evidence is drawn primarily from the communications in the Florida Signal Chat, Defendant Harrelson’s cell site location information (CSLI), hotel surveillance video, and information about Person Three.

Person Three (who was a member of the National Signal Chat) stayed at the Comfort Inn Ballston, as confirmed by surveillance video there and the fact that Person Three paid for one of the rooms at the hotel.<sup>6</sup> As recounted in the third superseding indictment, on December 30, 2020, co-defendant Caldwell wrote to co-defendant Watkins: “Talked to [Person Three].... [H]e is trying

<sup>6</sup> As recounted in the third superseding indictment, Kelly Meggs paid for two other rooms at the Comfort Inn that had been reserved in Person Three’s name. (ECF 127 at ¶ 45.)

to book a room at Comfort Inn Ballston/Arlington because of its close-in location and easy access to downtown because he feels 1) he's too broken down to be on the ground all day and 2) he is committed to being the quick reaction force an[d] bringing the tools if something goes to hell.” (ECF 127 at ¶ 45.)

On January 4, in the Florida Signal Chat, co-defendant Watkins asked the group, “Where can we drop off weapons to the QRF team? I'd like to have the weapons secured prior to the Op tomorrow.”

On the morning on January 5, in the Florida Signal Chat, Defendant Harrelson asked the group for the location of the “QRF hotel,” and co-defendant Kelly Meggs responded by asking for a direct message<sup>7</sup>:

134	GATOR 6	1/5/2021	8:02:00 AM	We get that QRF hotel address yet?
135	OK Gator 1	1/5/2021	8:07:00 AM	Dm

Defendant Harrelson's CSLI shows that on January 4, he drove from Florida to North Carolina (where he stayed the night on or near the property of Person Five, a known leader of the North Carolina Oath Keepers), and that he left North Carolina early on the morning of January 5 to drive to the Washington, D.C., area. About three hours after sending the above message, Defendant Harrelson arrived in the area of the Comfort Inn Ballston, where he remained for about an hour before driving into Washington, D.C. It is reasonable to believe that during this hour, Defendant Harrelson was dropping off his weapons with Person Three and the QRF.

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<sup>7</sup> Note that that Defendant Harrelson and co-defendant Kelly Meggs treated the location of the QRF with some level of additional secrecy, insisting on a “direct message” for its address rather than putting the address in the Florida Signal Chat (which was itself an encrypted app requiring an invitation to join). Moreover, while the government was able to extract data from the cell phones of both Defendant Harrelson and co-defendant Kelly Meggs, the government has not located the “direct message” between the two men, suggesting that both deleted it.

Defendant Harrelson’s CSLI shows that after he left the area of the Comfort Inn Ballston at around 12:30 p.m., he spent the remainder of January 5, all day on January 6, and the early morning of January 7 in downtown Washington, D.C. Given that co-defendant Kelly Meggs and other known Oath Keepers paid for multiple rooms at the Hilton Garden Inn in Washington, D.C., and that Defendant Harrelson’s CSLI places him in that area overnight of January 5 and 6, it is reasonable to believe that Defendant Harrelson similarly stayed at the Hilton Garden Inn while he was in the Washington, D.C., area.

On the morning of January 7, in response to Defendant Harrelson asking about the location of his “shit,” another member the Florida Signal Chat asked if he had left it at the Comfort Inn:

				So we're just leaving DC and I would like to know where my shits at since it
504	GATOR 6	1/7/2021	8:55:00 AM	seems everyone's gone already
505	REDACTED	1/7/2021	8:55:00 AM	We are headed out now
506	REDACTED	1/7/2021	8:56:00 AM	[Responding to GATOR 6] Did u leave it at Comfort Inn in that room?

Defendant Harrelson’s CSLI shows that he was in the area of the Comfort Inn about twenty minutes later, from 9:08 am through 9:48 am, before starting his drive southward. Indeed, surveillance video from the Comfort Inn shows what appears to be Defendant Harrelson rolling what appears to be at least one rifle case down a hallway and towards the elevator:



In other words, it is reasonable that Defendant Harrelson dropped his weapons off with the QRF at the Comfort Inn Ballston on January 5, and then retrieved those weapons on the morning of January 7 as he left the Washington, D.C., area. Defendant Harrelson's reference to needing to locate his "shit" on the morning on January 7 is most naturally read as a reference to his weapons, given that his clothing and other personal effects would have been with him at the Hilton Garden Inn (where he appears to have spent the nights of January 5 and 6). Especially in light of the fact that co-defendant Kelly Meggs had previously advised that "Dc is no guns," (ECF 127 at ¶ 39), the most logical inference is that Defendant Harrelson left the guns with his comrades just over the border in Virginia in anticipation of an opportunity to use them later in the nation's capital.

**b. Obstructing the Certification: Defendant Harrelson's Actions on January 6**

In the National Signal Chat, in which Defendant Harrelson was also a member, on January 6, at approximately 1:38 p.m., Person One wrote to the group, "All I see is Trump doing is complaining. I see no intent by him to do anything. So the patriots are taking it into their own hands. They've had enough." At 2:14 p.m., an individual leading the coordination of the security details run by the Oath Keepers on January 5-6 stated in the National Signal Chat, "The have taken ground at the capital[.] We need to regroup any members who are not on mission." Person One then reposts that message and instructs the group: "Come to South Side of Capitol on steps" and then sends a photograph showing the southeast side of the Capitol. At 2:41 p.m., Person One posted another photograph in the National Signal Chat showing the southeast side of the Capitol with the caption, "South side of US Capitol. Patriots pounding on doors[.]" At around the same time, Defendant Harrelson – with several of his coconspirators – was breaching the Capitol itself.

Defendant Harrelson arrived at the Capitol by 2:00 p.m. on January 6: At that time, he

recorded a video (IMG\_1396)<sup>8</sup> outside the Capitol. At around 5 seconds, a man is heard stating, “They’re storming the fucking Capitol building.” At around 23 seconds, a man is heard stating, “I think we should go.” When the video pans to the east side steps of the Capitol, it is clear that the rioters have not yet ascended the steps (and that the Capitol Police have been able to hold the line).

Defendant Harrelson likely recorded another video and then deleted it, because the next video is IMG\_1398. In IMG\_1398, recorded at 2:21 p.m., Defendant Harrelson is on the top of the steps on the east side of the Capitol. The video shows that the steps and veranda have been overrun (over the prior 20 minutes) with rioters.

At around the same time (2:20 p.m.), the U.S. Capitol Police locked down the Senate chamber to protect Vice President Pence, the senators, and staffers from the rioters that had begun to storm the Capitol and from the mob that was enveloping the building. At around 2:30 p.m., law enforcement began to evacuate Vice President Pence and senators from the Senate chamber. Over the prior ten minutes, Defendant Harrelson had assumed a position with an optimal vantage point: Defendant Harrelson stood on the top of the steps on the east side of the Capitol, facing away from the Capitol (and towards the growing crowd). Defendant Harrelson then signaled to and waved at the stack of Oath Keepers to join him at the top of the steps.

A New York Times article “Tracking the Oath Keepers Who Attacked the Capitol”<sup>9</sup> shows Defendant Harrelson (red arrow) facing the military-style “stack” formation of individuals moving up through the crowd towards the door of the Capitol:

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<sup>8</sup> Three pertinent video files from Defendant Harrelson’s phone – IMG\_1396, IMG\_1398, and IMG\_1399 – are described below and are being provided to the Court on a disc as Exhibit 2.

<sup>9</sup> <https://www.nytimes.com/interactive/2021/01/29/us/oath-keepers-capitol-riot.html>.



And video footage from AP News<sup>10</sup> shows Defendant Harrelson (red circle) interacting with these stack members as they move towards his position of prominence:



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<sup>10</sup> See <https://apnews.com/article/ex-military-cops-us-capitol-riot-a1cb17201dfddc98291e5badc257/gallery/0ecd1781c66d437f92c61b3f4848a74e> (at slide 10).

Towards the top of the stops, Defendant Harrelson joined the co-conspirators in the “stack” formation, with hands on each other’s backs or flak jackets, some with obvious Oath Keeper insignias visible on their clothing. The group, as captured on video, moved further up through the crowd onto the veranda, towards the doors of the Capitol.<sup>11</sup>

These individuals, who are wearing helmets, reinforced vests, and clothing with Oath Keeper logos and insignia, can be seen moving in an organized and practiced fashion and forcing their way to the front of the crowd gathered around a set of doors:



A close-up view of the badges on the vest of one of these individuals seen just under the Oath Keepers emblem on his shirt, displays the Oath Keepers motto, “Not On Our Watch.” The badge also says, “I don’t believe in anything. I’m just here for the violence.”



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<sup>11</sup> The video is available at the following link, at slide 10: <https://apnews.com/article/ex-military-cops-us-capitol-riot-a1cb17201dfddc98291e5badc257>.

Defendant Harrelson started recording an almost-three-minute-long video (IMG\_1399) at 2:39 p.m., as he and his coconspirators actually forcibly breached the Capitol.<sup>12</sup> The blaring alarms should have made it be obvious to Defendant Harrelson that the Capitol was under attack and the rioters were not welcome to enter.

At around 2:40 p.m., as captured by surveillance video, Defendant Harrelson, as part of the stack, and with seven of his current co-defendants, rushed through the Capitol doors and past a police officer trying to keep the crowd at bay:



A photojournalist captured Defendant Harrelson (red oval) storming from the just-breached east doors into the Rotunda, at the front of a pack of several of his coconspirators<sup>13</sup>:

<sup>12</sup> As described in the section below about Defendant Harrelson's obstructive conduct, he later shared this video via text message.

<sup>13</sup> See <http://www.kentnishimura.com/january-6-2021-siege-trump-supporters-storming--us-capitol-attack>.



In the video from Defendant Harrelson’s phone (IMG\_1399), starting at around 1:21 on the counter, the crowd loudly chants, “Treason! Treason!” At the 1:45 mark, a person – it’s unclear if it’s Defendant Harrelson or someone standing near him – yells, “This is our fucking house!” At the 2:00 mark, tear gas was deployed by the police to repel the rioters. Defendant Harrelson did not leave the Capitol. At the 2:15 mark, Defendant Harrelson interacts with co-defendant Watkins and another member the stack, at the mouth of a hallway leading north towards the Senate. He then moves back into the Rotunda. At the 2:27 mark, a person – again, it’s unclear if it’s Defendant Harrelson or someone standing near him – states, “We took the fucking Capitol.” At the 2:47 mark, just before Defendant Harrelson stops recording, he links up with other members of the stack. Defendant Harrelson’s video stops at around 2:42 p.m., yet he does not exit the Capitol for another 15 minutes.

Surveillance and public source video shows that, with some of his coconspirators, once inside the Capitol, Defendant Harrelson first attempted to go north, towards the Senate. Some of the coconspirators were part of a group of rioters who pushed down a hallway connecting the Rotunda to the Senate chamber. Thankfully, a group of police officers in riot gear was able to

push the rioters back into the Rotunda (and away from the Senate chamber) by deploying a chemical irritant. Defendant Harrelson, with other members of the conspiracy, including notably co-defendant Kelly Meggs, then moved south, back across the Rotunda, in the direction of the House of Representatives.

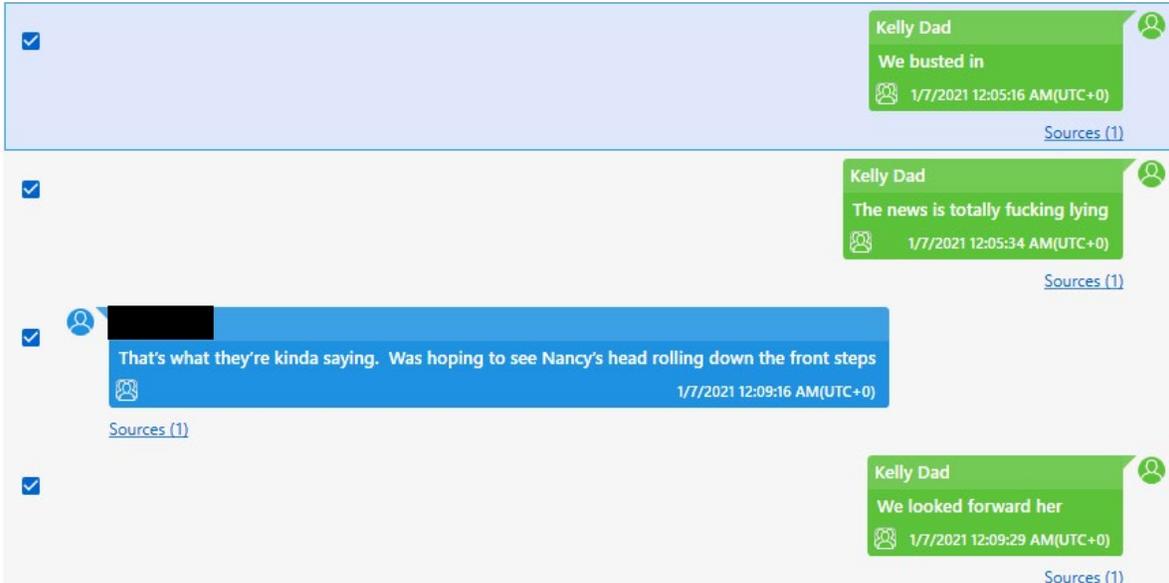
The coconspirators' movements and statements are relevant to their intent, and their dangerousness. While trying to go north towards the Senate, the rioters chanted phrases such as "Fuck McConnell."<sup>14</sup> After apparently being sprayed with a chemical irritant, one man who is wearing Oath Keepers gear (and who appears to have been part of the stack) waves other rioters towards the line of police and yells "the fight's not over!"<sup>15</sup> Then, when Defendant Harrelson moved south in the direction of the House chamber, it is reasonable to infer that he and his coconspirators may have been going to look for Speaker Nancy Pelosi. Indeed, on the evening of January 6, co-defendant Caldwell (who remained outside the Capitol but apparently was in communication with coconspirators inside) wrote: "Proud boys scuffled with cops and drove them inside to hide. Breached the doors. One guy made it all the way to the house floor, another to Pelosi's office. A good time." And co-defendant Kelly Meggs,<sup>16</sup> with whom Defendant Harrelson appears to have been travelling while inside the Capitol, had the following exchange with another person on the night of January 6 on Signal about having sought out Speaker Pelosi:

---

<sup>14</sup> See [https://www.liveleak.com/view?t=9ZobJ\\_1610107203](https://www.liveleak.com/view?t=9ZobJ_1610107203).

<sup>15</sup> See the broadcast of the French news show *Quotidien*, at around the 5:02 mark on the clip available at <https://www.tf1.fr/embedplayer/13760032/?startAt=0>.

<sup>16</sup> In the extraction from his cell phone, co-defendant Kelly Meggs's name appears as "Kelly Dad." Also, the time zone is UTC, which in January was five hours ahead of Eastern Time.



Defendant Harrelson remained inside the Capitol for about 17 minutes in total, until finally leaving with several of his coconspirators at around 2:57 p.m. Near the doors, prior to leaving, Defendant Harrelson had what appears to be verbal exchange with a Capitol Police officer in riot gear, with Defendant Harrelson initially facing the officer and then the officer raising his riot shield and placing it between himself and Defendant Harrelson:



While Defendant Harrelson eventually left the Capitol, he did not leave the area. At around 4:00 p.m., a large group – including Defendant Harrelson and co-defendants Kelly Meggs, Connie Meggs, Graydon Young, and Laura Steele, other members of the stack, and other individuals

wearing “Oath Keepers” clothing and insignia who stormed the Capitol – gathered around Person One and stood around waiting for at least ten minutes in that location.

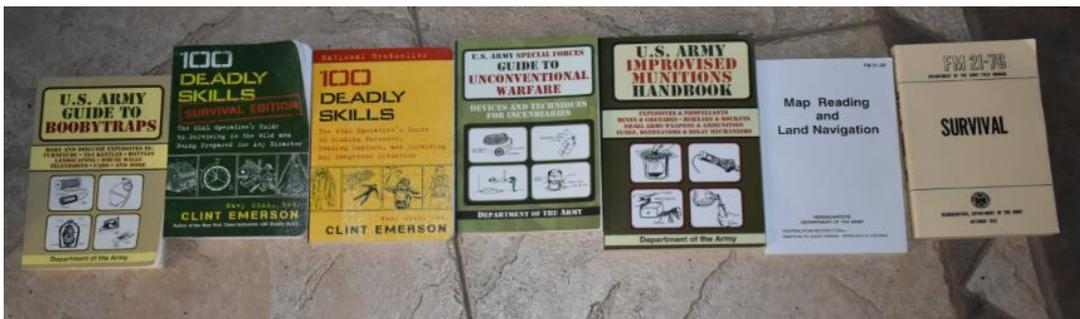
**c. Future Dangerousness: Defendant Harrelson’s Actions After the Attack**

Evidence collected from Defendant Harrelson’s iPhone and premises demonstrate his risk of future dangerousness. Specifically, Defendant Harrelson has gone to great lengths to evade law enforcement detection – including deleting potentially inculpatory information and distancing himself from the Oath Keepers organization. Evidence recovered from his premises also strongly suggests Defendant Harrelson was prepared, if necessary, to evade detection even further, as he had a “go bag” (a bag designed for quick escape) filled with a flip phone, gun, ammunition, and survival books. Taken together, this evidence counsels in favor of detention and undermines any assurances that he would comply with conditions of release necessary to assure the safety of the community.

**i. Access to Firearms and a “Go Bag”**

On March 15, 2021, the FBI located three firearms inside Defendant Harrelson’s house. An AR-15-style rifle<sup>17</sup> and a revolver were inside the large gun safe, and a semi-automatic handgun with two magazines was inside what appears to have been a “go bag.”

The gun safe, shown below, also contained seven survival guides, including one on “eluding pursuers and evading capture”:



<sup>17</sup> A photo of the rifle is above, in Section III.a.i.



Defendant Harrelson's "go bag," in addition to the handgun (with a light attachment) and two magazines, contained a "burner" cell phone (i.e., a flip phone that was not Defendant Harrelson's usual iPhone), an iPad, a holster, and three books<sup>18</sup>:



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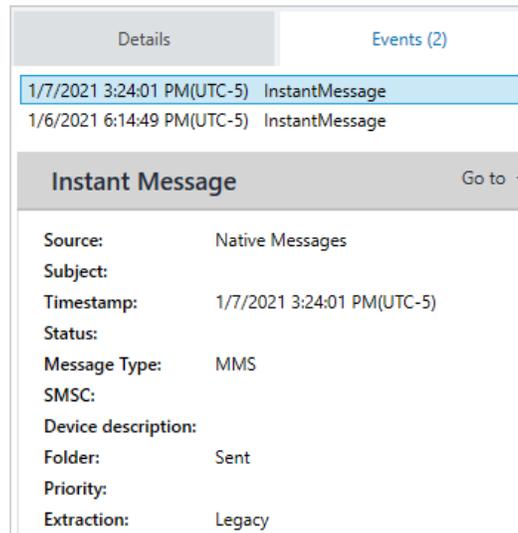
<sup>18</sup> The titles of the books are *The Book of Five Rings*; *The Bushcraft Field Guide to Trapping, Gathering, and Cooking in the Wild*; and *Technological Slavery: The Collected Writing of Theodore J. Kaczynski, a.k.a. "The Unabomber."*

These materials are consistent with someone seeking to evade detection.

## ii. Deleting Messages

Defendant Harrelson's iPhone shows that he deleted almost all of his text messages and Signal messages through late February 2021. This obstructive conduct suggests additional inculpatory evidence existed – which Defendant Harrelson took steps to remove.

His deletion of the messages through which he sent video of the breach (IMG\_1399) is particularly acute. Records show that he sent the video of the breach via text message on the evening of January 6 (at 6:14 p.m.) and on January 7 (3:24 p.m.):



Neither of those text messages are present in Defendant Harrelson's phone, suggesting that he deleted them. The text message sent on January 6 at 6:14 p.m. was sent, at minimum, to co-defendant Kelly Meggs. The government was able to confirm that fact by reviewing records from Meggs's cellphone, which show this same video (with a creation date of January 6 at 6:11 p.m.) residing on Meggs's phone:



But the message through which this video was sent from Defendant Harrelson to co-defendant Kelly Meggs is missing from both men's phones, suggesting that they both deleted it.

Moreover, Defendant Harrelson re-saved the video twice on his phone on January 12, both times in a "trimmed" smaller file size. This means that, at minimum, Defendant Harrelson accessed the video on January 12, and likely also sent the video (in this smaller trimmed format) to others. Again, there is no record of any messages whatsoever on Defendant Harrelson's phone during this time frame, suggesting he deleted these messages along the remainder of his incriminating messages.

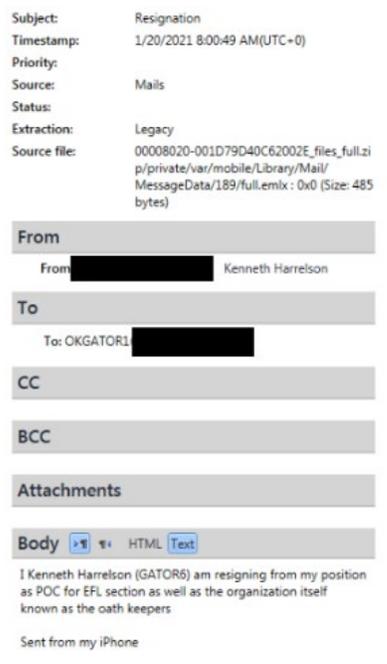
### iii. Affiliation with the Oath Keepers

The evidence also suggests Defendant Harrelson was worried his affiliation with the Oath Keepers would be detected and subsequently took steps to distance himself from the organization. These efforts, however, appear intended to obfuscate his affiliation when in fact he has remained in contact with the leadership of the Oath Keepers. In the National Signal Chat, on the night of January 6, Defendant Harrelson deleted multiple messages he had previously sent (and that the government has not yet recovered) and then wrote: "Didn't realize I was in a unsecured chat with

a bunch of shit bags. And blue falcons.”<sup>19</sup> Defendant Harrelson made his comments after the following exchange in the National Signal Chat from earlier in the evening on January 6, suggesting that Defendant Harrelson was worried that at least one other member of the group was going to turn on him:

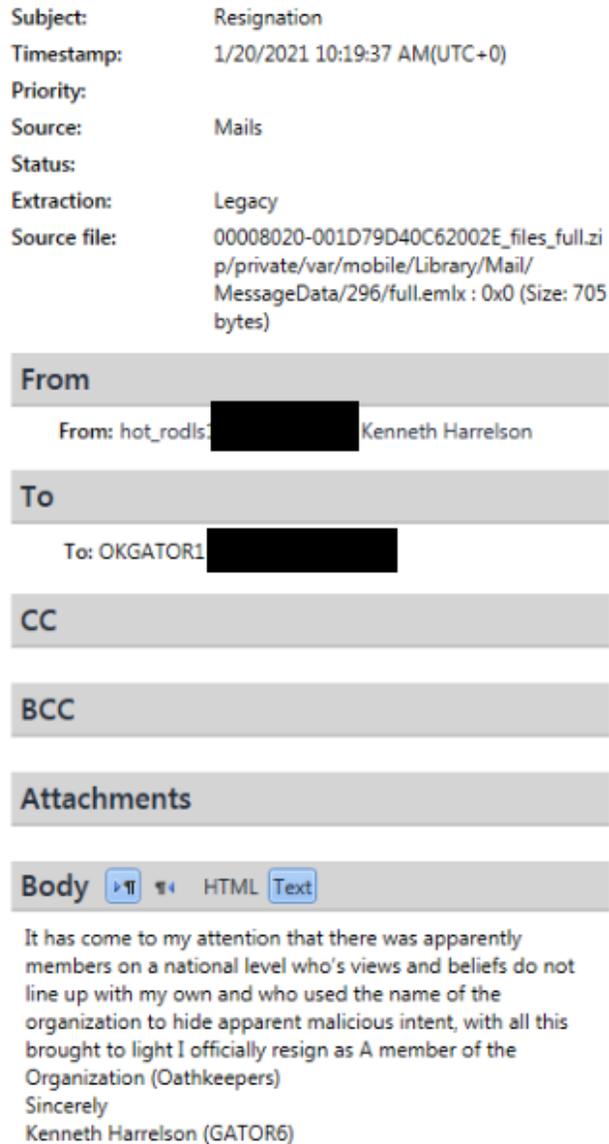
Person One	Look, I WAS THERE. I WAS RIGHT OUSIDE. Patriots stormed in. Not Antifa. And I don’t blame them. They were justifiably pissed off.
Kelly Meggs	Ok who gives a damn who went in there. If it’s Obama himself it doesn't matter[.] What matters is where we are now and decisions that have to be mad. We are now the enemy of the State
Person Eleven	As I figured. This organization is a huge fuckin joke. You [Name of Person One] are the dumbass I heard you were. Good luck getting rich off those Dumb ass PSD donations you fuck stick.

On January 20, 2021 – inauguration day – Defendant Harrelson sent an email to co-defendant Kelly Meggs purporting to resign from the Oath Keepers itself, as well as from being the “POC” for “EFL” (likely the “point of contact for east Florida”):



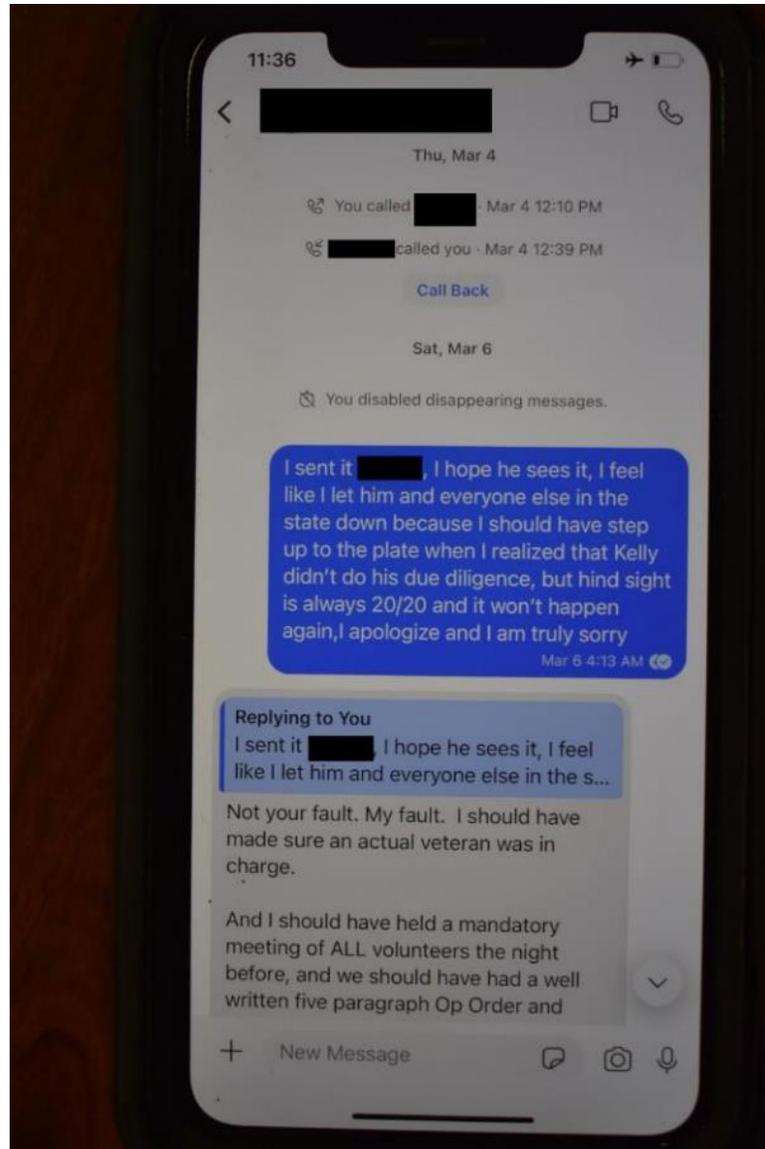
<sup>19</sup> A “blue falcon” is likely military jargon for a backstabbing comrade.

Two hours later, he sent a similar “resignation” message, apparently attempting to distance himself from the “national” organization whose beliefs allegedly did not align with his own and whose members had “malicious intent”:



But this attempt at distance appears to have been a farce. In early March 2021, Defendant Harrelson exchanged phone calls with Person One – the leader of the Oath Keepers – and then he

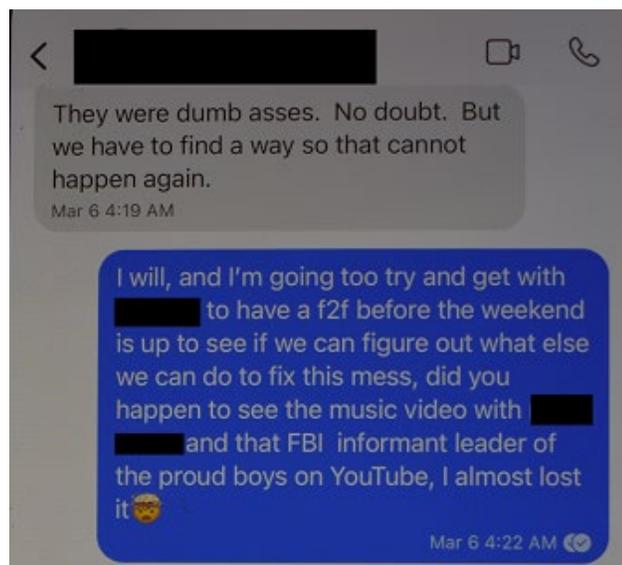
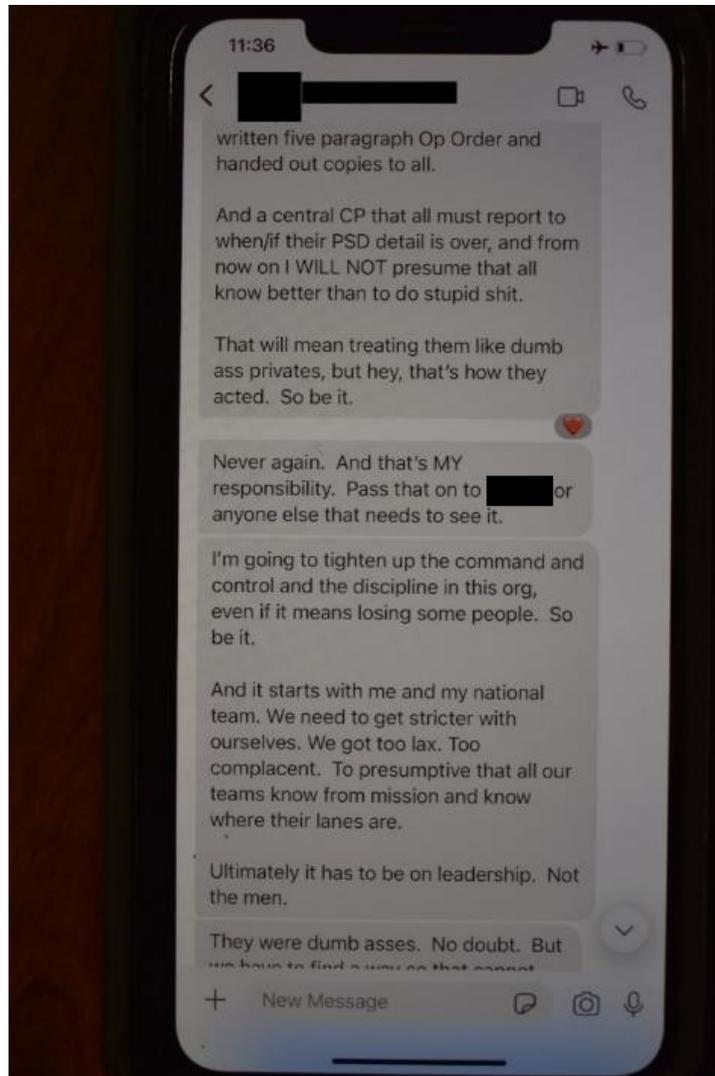
sent a message through Signal on March 6 directly to Person One, apologizing for not having done a better job of monitoring the job Kelly Meggs was doing<sup>20</sup>:



Person One sent Defendant Harrelson a long message about reforming the organization, and asked Defendant Harrelson to transmit it to others. Defendant Harrelson both “hearted” the message and agreed to pass it on:

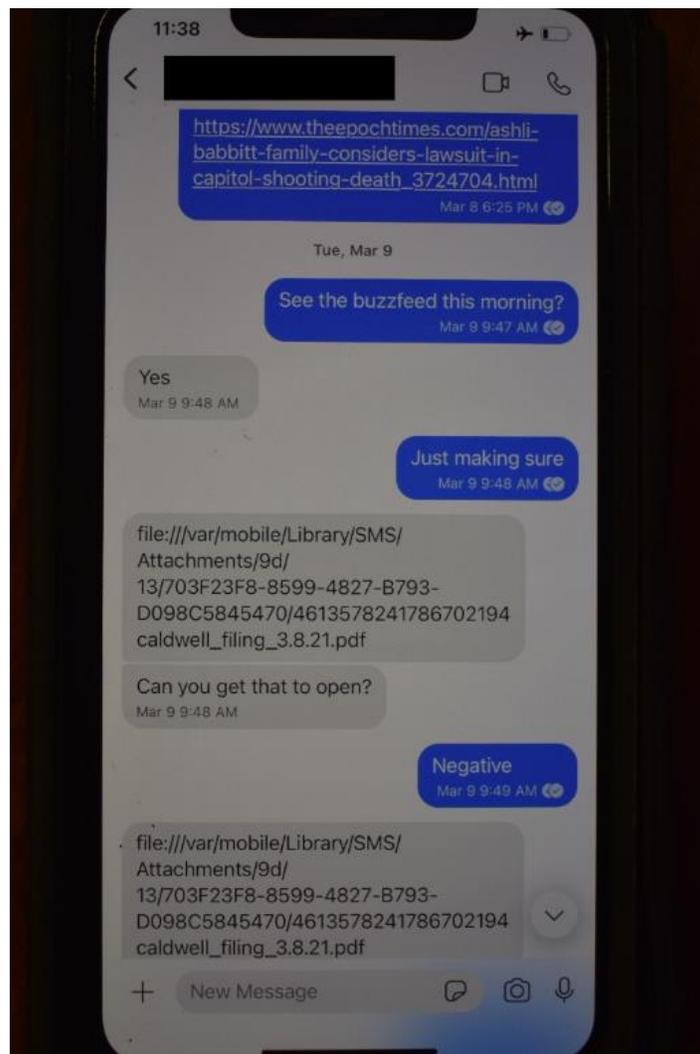
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<sup>20</sup> Kelly Meggs had been arrested a few weeks earlier, on February 17. In the Signal messages embedded herein, Defendant Harrelson’s comments are on the righthand side, in blue.



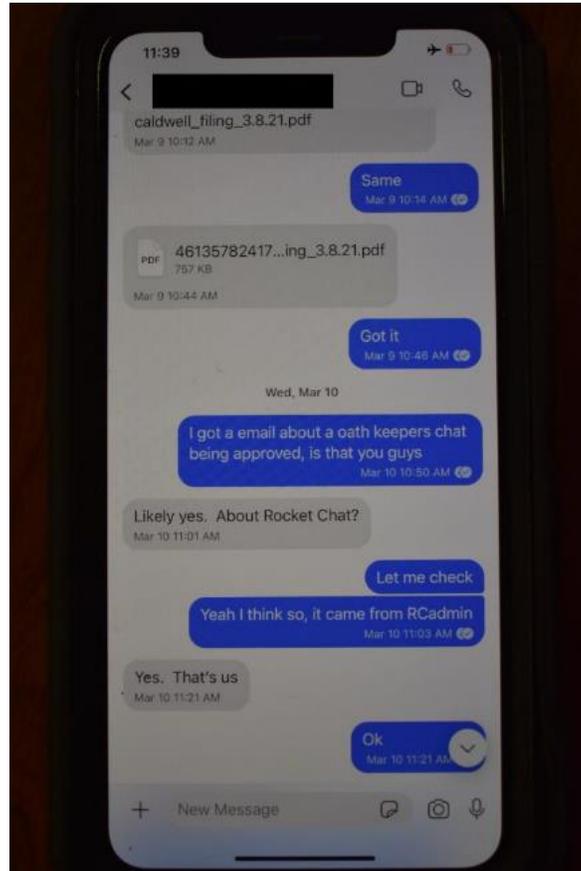
Defendant Harrelson then discussed setting up a “face to face” meeting with another person affiliated with the Oath Keepers, and also referenced an allegation about the Proud Boys leader being an “FBI informant.”<sup>21</sup> The import of Defendant Harrelson’s statement appears to be that one should be careful around this individual, based on his supposed assistance to the FBI.

On March 7, Defendant Harrelson and Person One exchanged Signal messages about filings made in this very case:



<sup>21</sup> Kelly Meggs had told others that Meggs had been in contact with the same leader of the Proud Boys in the weeks leading up to January 6. (See Gov’t Opp. to Meggs’s Motion for Release, ECF 98 at 10.)

And the following day, Person One and Defendant Harrelson exchanged Signal messages that show Defendant Harrelson's true power within the organization. When Person One started a chat on Rocket Chat, it was Defendant Harrelson who received a notification<sup>22</sup>:



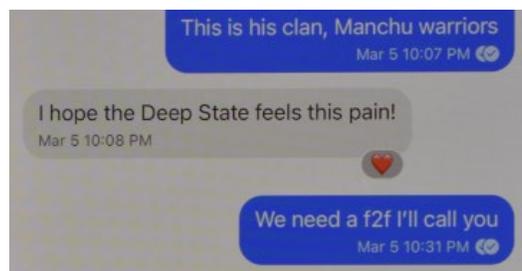
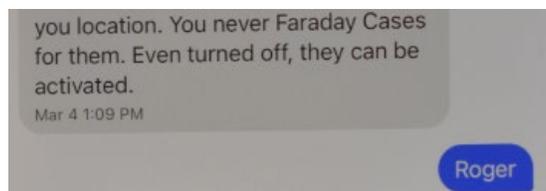
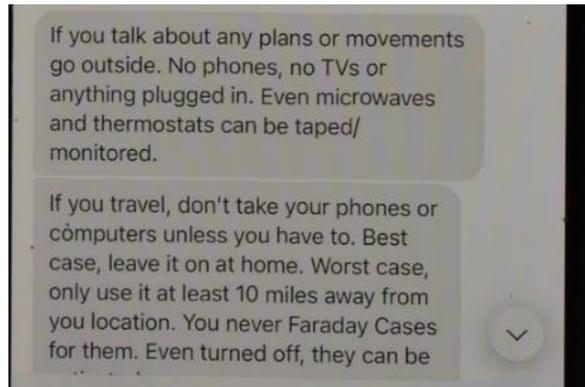
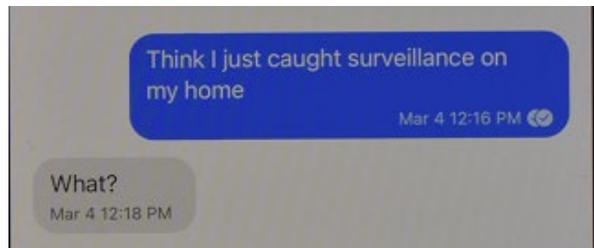
At least as of November 2020, oathkeepersnational[.]org hosted a Rocket Chat server that housed chat threads apparently advocating violence and attacks on the media.<sup>23</sup>

<sup>22</sup> Notably, Defendant Harrelson references receiving an email, but that email was not located on his iPhone, suggesting that it went to one of his two known secure, encrypted ProtonMail accounts. Rocket Chat provides this description of its software: “Rocket.Chat is a free and open source team chat collaboration platform that allows users to communicate securely in real-time on web, desktop or mobile and to customize their interface with a range of plugins, themes and integrations with other key software. Anyone in the world can download and run a Rocket.Chat server at any time.” See <https://docs.rocket.chat/legal/guidelines-for-law-enforcement>.

<sup>23</sup> See <https://unicornriot.ninja/2020/its-time-to-start-killing-the-news-media-live-on-air-oath-keepers-private-chats-show-increased-desire-for-post-election-violence>.

Defendant Harrelson's administrative control of an Oath Keepers chat as of just last month – after he purported to “resign” from the organization and tried to disassociate himself from the actions of national leadership – demonstrates that he is a continued threat to the community.

Moreover, Defendant Harrelson had additional Signal communications with another Oath Keeper member in March 2021 regarding supposed government surveillance on Defendant Harrelson's house, the need to be careful about electronic monitoring, the need for “face to face meetings,” and hoping that the “Deep State feels this pain!”:



#### iv. Lying at the Detention Hearing

As indicated above, Defendant Harrelson took the stand at his detention hearing in Orlando on March 15, 2021, and testified under oath that he did not take any videos while inside the Capitol. (3/15/21 Tr. at 25-26.) That was a lie. He not only took a video, but also sent it via message to multiple people on January 6, 7, and 12.

Moreover, Defendant Harrelson sponsored his wife's testimony at the same detention hearing, and she testified that there was never an assault rifle in the house. (3/15/21 Tr. at 16-17.) The FBI's documentation of a real AR-15-style rifle – not the "AirSoft" rifle that Defendant Harrelson's wife referenced – belies this statement.

Perjuring oneself at a detention hearing is an appropriate consideration under Section 3142(g)(3), which focuses on the defendant's characteristics, including specifically a defendant's "record concerning appearance at court proceedings." If a court should consider a defendant's *appearance* at court proceedings, the court can surely consider a defendant's *conduct* at those proceedings. *See, e.g., United States v. Feldman*, No. 11-20279-CR, 2016 WL 8505085, at \*2 (S.D. Fla. Aug. 1, 2016) (holding that a defendant's perjury during a court proceeding "demonstrated his total lack of trustworthiness" and "ma[de] him a flight risk" under Section 3142(f)(2)); *United States v. Djoko*, No. CR19-0146-JCC, 2019 WL 4849537, at \*4 (W.D. Wash. Oct. 1, 2019) (holding that a defendant's "apparent willingness to destroy evidence and lie to authorities creates a serious risk that he may attempt to obstruct justice in some other way"). Indeed, in *United States v. Robertson*, 608 F. Supp. 2d 89, 92 (D.D.C. 2009), the court held that the defendants should be detained because their release "would pose an unreasonable risk of obstruction of justice," based on their prior obstructive conduct.

Here, Defendant Harrelson's obstructive conduct – evidenced both through planning and entering the Capitol, and then lying under oath to the magistrate – makes him unlikely to follow

any combination of conditions designed to ensure his appearance or the community's safety. "It is ultimately the responsibility of this Court to ensure the integrity of its own judicial proceedings." *Id.* Indeed, since the January 6 attack on the Capitol, Person One has ordered Oath Keepers to continue to engage in undetected communications and to disobey laws and orders enforced by an administration deemed illegitimate. Defendant Harrelson's continued participation in the Oath Keepers, despite claims to the contrary, and willingness to commit obstruction and perjure himself show that he is an adherent of this approach.

Appellate courts have routinely upheld the obstruction enhancement under U.S.S.G. § 3C1.1 for lying to a magistrate judge during a detention hearing in an effort to escape detention. *See, e.g., United States v. Harkness*, 305 F. App'x 578, 585-86 (11th Cir. 2008); *United States v. Harrison*, 42 F.3d 427, 431 (7th Cir. 1994); *United States v. Mafanya*, 24 F.3d 412, 415 (2d Cir. 1994). If making false statements to a judicial officer during a detention hearing is serious enough to warrant an enhancement under the Guidelines, it is surely also serious enough weigh in favor of a defendant's detention itself.

Defendant Harrelson's preparation for a potentially armed escape, his multipronged efforts to evade detection, and his perjury refute any assures the Court may have that Defendant Harrelson would comply with its release conditions.

#### **IV. CONCLUSION**

For all these reasons, the government submits that Defendant Harrelson has not rebutted the presumption under Section 3142(e)(3)(C) that he be detained pretrial, as there are no conditions that will reasonably assure the safety of the community. Defendant Harrelson's motion should therefore be denied.

Respectfully submitted,

CHANNING D. PHILLIPS  
ACTING UNITED STATES ATTORNEY

By:   
\_\_\_\_\_  
Jeffrey S. Nestler  
Assistant United States Attorney  
D.C. Bar No. 978296  
Ahmed M. Baset  
Troy A. Edwards, Jr.  
Jeffrey S. Nestler  
Kathryn Rakoczy  
Assistant United States Attorneys  
U.S. Attorney's Office for the District of Columbia  
555 4th Street, N.W.  
Washington, D.C. 20530

/s/ Alexandra Hughes  
\_\_\_\_\_  
Alexandra Hughes  
Justin Sher  
Trial Attorneys  
National Security Division  
United States Department of Justice  
950 Pennsylvania Avenue  
NW Washington, D.C. 20004



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T A B L E O F C O N T E N T S

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P R O C E E D I N G S

1  
2 March 15, 2021

1:01 p.m.

3 - - -

4 COURT SECURITY OFFICER: All rise. United States  
5 District Court in and for the Middle District of Florida is now  
6 in session, the Honorable Embry J. Kidd, United States  
7 Magistrate Judge, presiding.

8 Please be seated.

9 COURTRoom DEPUTY: Case No. 6:21-mj-1221, United  
10 States of America versus Kenneth Harrelson.

11 Counsel, please state your appearance for the record.

12 MS. GABLE: Good afternoon, Your Honor. Karen Gable  
13 on behalf of the United States. I'm appearing with Special  
14 Agent Kelsey Harris of the FBI.

15 THE COURT: Good afternoon.

16 MR. BARLOW: Good afternoon, Judge. Ken Barlow of  
17 Law Office of Corey Cohen for Mr. Harrelson, who is seated to  
18 my right.

19 THE COURT: Good afternoon.

20 Mr. Harrelson, we were originally scheduled to have a  
21 preliminary hearing and a detention hearing in your case today.  
22 However, I've been informed that a grand jury from the District  
23 of Columbia has returned a second superseding indictment  
24 charging you and nine others with various federal crimes.

25 Ms. Gable, can you advise us of the charges against

1 Mr. Harrelson, as well as potential penalties?

2 MS. GABLE: Yes, Your Honor.

3 Pursuant to the indictment, a grand jury has charged  
4 the defendant with 18, United States Code, Section 371,  
5 conspiracy. For that offense the defendant faces a maximum  
6 term of imprisonment of five years.

7 He has also been charged with a violation of 18,  
8 United States Code, Sections 1512(c)(2) and aiding and abetting  
9 obstruction of an official proceeding. For that offense the  
10 defendant faces a statutory maximum term of 20 years in prison.

11 He is also charged with a violation of 18, United  
12 States Code, Sections 1361 and 2, which is aiding and abetting  
13 in the destruction of government property. For that offense  
14 the defendant faces a mandatory -- or a statutory -- a maximum  
15 statutory term of imprisonment of ten years.

16 He is also charged with a violation of 18, United  
17 States Code, Section 1752(a)(1), which is unlawfully entering  
18 and remaining in a restricted building or grounds. For that  
19 offense, if he is convicted, he faces a maximum term of  
20 imprisonment of one year.

21 THE COURT: Thank you.

22 Mr. Harrelson, have you received a copy of the  
23 indictment?

24 THE DEFENDANT: Yes, Your Honor.

25 MR. BARLOW: Judge, I have received it. However,

1 Mr. Harrelson's just received a copy here from me in open  
2 court. He has not had a chance to read it.

3 THE COURT: Well --

4 MR. BARLOW: I attempted -- Judge, I attempted to  
5 meet with him before the proceeding today, but based upon the  
6 amount of time it was taking to get me into the secure  
7 interview area and my desire not to be late, I had to abandon  
8 that attempt and come on up.

9 THE COURT: All right. Well, Ms. Gable has just  
10 summarized the charges against you, as well as the potential  
11 penalties.

12 We can allow time for you to review this second  
13 superseding indictment if you wish, or we can proceed. But  
14 because the grand jury has found that there's probable cause to  
15 believe that you've committed these offense -- offenses, you're  
16 no longer entitled to a judicial determination of probable  
17 cause by way of a preliminary hearing, so we will not be having  
18 a preliminary hearing today.

19 Is the United States still seeking Mr. Harrelson's  
20 detention?

21 MS. GABLE: We are, Your Honor.

22 THE COURT: And does the presumption still apply?

23 MS. GABLE: Yes, it does.

24 THE COURT: All right, Mr. Harrelson. So the United  
25 States is still seeking your detention, so we will still have a

1 detention hearing today.

2 But, Mr. Barlow, would you like a few minutes to  
3 review the indictment with Mr. Harrelson?

4 MR. BARLOW: Yes, please.

5 THE COURT: All right. So we'll recess for 15  
6 minutes. I will come back on the record at 1:20 p.m.

7 MR. BARLOW: Thank you, sir.

8 COURT SECURITY OFFICER: All rise.

9 (Recess from 1:04 p.m. until 1:20 p.m.)

10 COURT SECURITY OFFICER: All rise. This Honorable  
11 Court is back in session.

12 Please be seated.

13 THE COURT: All right, Mr. Barlow. We're back on the  
14 record.

15 Did you have an opportunity to review the second  
16 superseding indictment with your client?

17 MR. BARLOW: Yes, Your Honor. Thank you.

18 THE COURT: All right. And, Mr. Harrelson, do you  
19 understand the charges against you, as well as the potential  
20 penalties?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. So as for the detention  
23 hearing, Mr. Barlow, how would you like to proceed?

24 MR. BARLOW: Judge, I would start by calling Angel  
25 Harrelson as a witness.

1 THE COURT: All right, ma'am. Please step forward  
2 and be sworn.

3 MR. BARLOW: Judge, may I inquire from counsel table,  
4 or do you want me at the podium?

5 THE COURT: It will be easier from the lectern.

6 MR. BARLOW: All right.

7 COURTROOM DEPUTY: Please raise your right hand to be  
8 sworn.

9 Do you solemnly swear or affirm that the testimony  
10 you give in this case is the truth, the whole truth, and  
11 nothing but the truth?

12 THE WITNESS: Yes.

13 COURTROOM DEPUTY: Please be seated.

14 MR. BARLOW: I did not notice any of the COVID  
15 protocols I've seen in the other courtroom. That's why I was  
16 wondering.

17 THE COURT: Well --

18 COURTROOM DEPUTY: Could you please state your name  
19 for the record.

20 THE WITNESS: Angel Harrelson.

21 ANGEL HARRELSON, DEFENDANT'S WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. BARLOW:

24 Q. Ma'am, would you please spell your first and last name for  
25 the record.

1 A. A-n-g-e-l, H-a-r-r-e-l-s-o-n.

2 Q. And do you know the accused in this instance, Kenneth  
3 Harrelson?

4 A. Yes.

5 Q. How do you know him?

6 A. He's my husband.

7 Q. How long have you been married?

8 A. 11 years.

9 Q. And do you share children with him?

10 A. Yes.

11 Q. How many?

12 A. Two.

13 Q. What are their names?

14 A. Nathan and Amy Harrelson.

15 Q. What are their ages?

16 A. 14 and 17.

17 Q. And do you and Mr. Harrelson reside in the same residence?

18 A. Yes, sir.

19 Q. Where is that located?

20 A. 2885 St. Marks Drive, Titusville, Florida.

21 Q. And if Mr. Harrelson were released on some type of a bond,  
22 is that where he would reside?

23 A. Yes, sir.

24 Q. Are there any firearms in that home?

25 A. No, sir. They're gone.

1 Q. There were? There were some?

2 A. They're AirSoft.

3 Q. Yeah. And everything's been removed?

4 A. Yes.

5 Q. Is there a handgun anywhere in that house?

6 A. No, gone.

7 Q. Is there a rifle anywhere in that house?

8 A. No.

9 Q. Shotgun?

10 A. No.

11 Q. All right. What other weapons, if any, did you remove  
12 from the house?

13 A. My pistol.

14 Q. All right. So there are no weapons anywhere within the  
15 house?

16 A. No.

17 Q. How about large hunting knives or things of that nature?

18 A. No.

19 Q. You removed those as well?

20 A. Yes.

21 Q. Kitchen knives?

22 A. No. I need those.

23 Q. You have kitchen knives, then.

24 A. I have kitchen knives.

25 Q. All right. Do you know whether or not Kenneth Harrelson

1 has a passport?

2 A. No, he doesn't.

3 Q. And you're sure of that?

4 A. Yes, sir.

5 Q. All right. In the time that you have known him, have you  
6 and he ever traveled outside the continental United States --

7 A. No, sir.

8 Q. -- the lower 48?

9 A. No.

10 Q. Do you or he have any relatives outside of the United  
11 States?

12 A. No.

13 Q. Any friends?

14 A. No.

15 Q. No place to go outside the United States?

16 A. No.

17 Q. Do you know where Mr. Harrelson's family is located?

18 A. Yes.

19 Q. And where is that?

20 A. Well, one of them's at my house right now.

21 Q. All right.

22 A. And in Georgia. That's it.

23 Q. Whereabouts in Georgia?

24 A. St. Marys.

25 Q. All right. Just over the line, then.

1 A. Yes.

2 Q. All right. That's near, what, Kings Bay?

3 A. Yes.

4 Q. Are you aware of your husband, Mr. Harrelson's current  
5 medical condition?

6 A. Yes.

7 Q. Does he take medication?

8 A. Yes.

9 Q. And since he has been incarcerated, has his regimen of  
10 treatment been interrupted?

11 A. Yes.

12 Q. Is this contrary to a doctor's instructions?

13 A. I'm sorry?

14 Q. The interruption.

15 A. It interrupted it.

16 Q. Have you made any attempt to provide these medications --

17 A. Yes.

18 Q. -- to the U.S. Marshals Service?

19 A. Yes.

20 Q. All right. And the U.S. Marshals let you into the  
21 building so you could make arrangements to turn those over,  
22 correct?

23 A. Yes.

24 Q. At the end of the day were you able to give those  
25 medications to be provided to your husband?

1 A. No.

2 Q. Why is that?

3 A. Because I was told the county wouldn't accept outside  
4 medication.

5 Q. The county being what -- which county?

6 A. Seminole County Jail.

7 Q. All right. And that is where Mr. Harrelson's being housed  
8 currently?

9 A. Yes, sir.

10 Q. Do you know if stopping this medication is detrimental to  
11 your husband's health?

12 A. Yes.

13 Q. And is it?

14 A. Yes.

15 Q. If the Court were to grant a monetary bond, would you be  
16 able to raise funds with family and friends to post that bond?

17 A. Yes.

18 Q. If the Court were to allow bond, would you ensure that  
19 Mr. Harrelson appeared at any court date?

20 A. Yes.

21 Q. If it appeared that he was not going to appear at any  
22 court date, would you cooperate with federal and local law  
23 enforcement to make sure that he did, in fact, appear?

24 A. Yes.

25 Q. In regards to this particular proceeding, has his

1 continued incarceration had a negative impact on your minor  
2 children?

3 A. Yes.

4 Q. Can you describe that for the Court, please.

5 A. They're afraid to go to school. They've already been  
6 asked about his -- their father.

7 Q. In the time that you have known your husband, have you  
8 ever known him to be a violent person?

9 A. No.

10 Q. Have you ever known him to be involved in a fistfight or a  
11 fight or anything of that nature?

12 A. No.

13 Q. Do you know whether or not he served in the military?

14 A. Yes.

15 Q. And was he discharged honorably or dishonorably?

16 A. Honorably.

17 Q. And does he receive any type of payment from the  
18 government in regards to his service?

19 A. Veteran, VA disability.

20 Q. All right. And his disability is what?

21 A. A hundred percent.

22 Q. Do you know whether or not he has high blood pressure?

23 A. Yes.

24 Q. Does he?

25 A. Yes.

1 Q. The medication that he receives that you were not able to  
2 get to him because of Seminole County Jail's policy, does that  
3 affect his blood pressure?

4 A. Yes.

5 Q. It helps to regulate it?

6 A. If his hormones are unstable right now, they -- his blood  
7 pressure's going to be unstable.

8 Q. If, as a condition of release, the Court were to order  
9 Mr. Harrelson to attend any type of medical or psychological  
10 treatment, would you participate and/or support that?

11 A. If he does, yes.

12 Q. Do you know whether or not Mr. Harrelson's disability from  
13 the VA includes a diagnosis of PTSD?

14 A. Yes.

15 Q. Okay. Has the VA determined that that needed treatment?

16 A. No.

17 Q. They just said that it was there?

18 A. Yes.

19 Q. Has the VA prescribed any particular set of treatment for  
20 any of his disabilities?

21 A. Not that I know of. He's been through the treatments,  
22 through the surgeries.

23 Q. And if released on bond, you will make every effort to  
24 ensure that he appears at every court proceeding, regardless of  
25 where it be, in Washington, D.C., or here?

1 A. Yes, sir.

2 MR. BARLOW: Nothing further at this time, Judge.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MS. GABLE:

6 Q. Good morning, ma'am -- or good afternoon, ma'am.

7 Did you know that the defendant participated in the  
8 riots at the Capitol on January 6th of 2021?

9 A. It's -- he wasn't there for the riot.

10 Q. My question is, did you know that he participated in the  
11 riots on January 6th?

12 A. On the riot, no.

13 Q. Did you know that he was inside the Capitol?

14 A. Not until I talked to him.

15 Q. And was that when he was in Washington, D.C.? Is that  
16 when he talked to you about that?

17 A. I talked to him, yes.

18 Q. And did you -- did you see any pictures or video on his  
19 telephone that he recorded when he was inside the Capitol?

20 A. No.

21 Q. And did you report that activity to law enforcement?

22 A. No.

23 Q. Okay. Regarding the defendant's violent character, are  
24 you aware that in November of 2012 his sister called the police  
25 because he threatened to shoot her and her kids?

1 A. That's not his sister.

2 Q. Excuse me?

3 A. It wasn't his sister.

4 Q. So are you aware that someone did call the police  
5 because --

6 A. That is not his sister.

7 Q. -- he threatened to shoot --

8 A. And, yes, I'm aware of that, and that didn't happen.

9 Q. And are you aware that in 2004 he shot his neighbor's dog?

10 A. No.

11 Q. And that he admitted to shooting him and not just -- that  
12 his intent was to scare the dog, not shoot him?

13 A. No.

14 Q. Are you aware that in 2001 he was arrested for battery?

15 A. Yes, I'm aware of that, but all that was expunged.

16 Q. You talked about weapons in your home.

17 A. Uh-huh.

18 Q. Did you --

19 A. And all of them have been removed.

20 Q. -- have an assault rifle in your home?

21 A. No.

22 Q. And did you have a pistol in your home?

23 A. They're no longer there. I got rid of them.

24 Q. And -- so the assault rifle, you did have that in your  
25 home?

1 A. It's not an assault rifle. As far as I know, that was an  
2 AirSoft, and I got rid of them.

3 Q. Okay.

4 A. I even got rid of my -- my son's AirSoft pistol.

5 Q. The defendant is not currently working; is that correct?

6 A. Correct.

7 Q. And you currently work, correct?

8 A. Not anymore. I lost my job that day.

9 Q. And, ma'am, again, did you see any videos or photos of the  
10 defendant --

11 A. No.

12 Q. -- inside the Capitol on his telephone?

13 A. No. Only on YouTube videos.

14 MS. GABLE: Thank you, ma'am. No further questions.

15 THE COURT: Any redirect?

16 MR. BARLOW: Yes. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. BARLOW:

19 Q. Ms. Harrelson, when you make reference to AirSoft items,  
20 are you talking about items that look like real firearms but  
21 are nonlethal and shoot rubber projectiles?

22 A. Little plastic pellets.

23 MR. BARLOW: Thank you, Judge. That's all.

24 THE COURT: All right, ma'am. You may step down.

25 THE WITNESS: Thank you.

1 THE COURT: Do you have any additional witnesses?

2 MR. BARLOW: Yes, Judge.

3 Defense would call Mr. Kenneth Harrelson.

4 THE COURT: All right, Mr. Harrelson. Step forward  
5 to the stand and raise your right hand, as best you can, to be  
6 sworn.

7 COURTROOM DEPUTY: Do you solemnly swear or affirm  
8 that the testimony you give in this case is the truth, the  
9 whole truth, and nothing but the truth?

10 THE DEFENDANT: Yes.

11 COURTROOM DEPUTY: You may be seated.

12 KENNETH HARRELSON, DEFENDANT'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. BARLOW:

15 Q. Please state your name and spell your first and last name  
16 for the record.

17 A. Kenneth Harrelson, K-e-n-n-e-t-h, H-a-r-r-e-l-s-o-n.

18 Q. All right. Mr. Harrelson, you have seen today, this  
19 afternoon, the four-count indictment charging you in this  
20 proceeding; is that correct?

21 A. Yes.

22 Q. If the judge were to release you on bond, will you appear,  
23 whether it be here or in Washington, D.C., or such other place  
24 as designated, as ordered by the Court?

25 A. Yes.

1 Q. Do you have any access or knowledge of any weapons other  
2 than those that your wife has testified have been removed from  
3 your home?

4 A. No.

5 Q. Where are you -- when you're not here in court with us,  
6 where are you being housed?

7 A. Currently in a quarantine unit in Seminole County.

8 Q. Seminole County Jail?

9 A. Yes, sir.

10 Q. And that would be the John E. Polk Correctional Facility?

11 A. Yes, sir.

12 Q. When you are in that facility, are they depriving you of  
13 your legal correspondence and items from this court?

14 MS. GABLE: Your Honor, excuse me. Objection,  
15 relevance.

16 THE COURT: Mr. Barlow?

17 MR. BARLOW: The relevance has to do with preparation  
18 of defense, preparation for this hearing, and preparation of  
19 any future calls now that he's been charged.

20 THE COURT: All right. Go ahead.

21 THE DEFENDANT: I have not had any correspondence.

22 BY MR. BARLOW:

23 Q. All right. What about the papers you brought back from  
24 court? Did they take those from you?

25 A. Yes, they did.

1 Q. Do you have any expectations of what will happen with your  
2 copy of the indictment when you return?

3 A. I imagine they'll be taken like the others were.

4 Q. Do you have any medical conditions at the current time?

5 A. I have hypertension, PTSD. Currently I have two back  
6 surgeries and a shoulder surgery. I have several herniated  
7 discs in my spine.

8 Q. And are you being treated for any of those matters in the  
9 Seminole County Jail?

10 A. Just checking blood pressure twice a day.

11 Q. All right. And why are they checking your blood pressure  
12 twice a day?

13 A. Because I told them that I had hypertension, and they said  
14 they wanted to monitor it.

15 Q. Prior to your arrest were you under the care of a doctor?

16 A. Yes.

17 Q. And did that doctor prescribe various injectable  
18 medications to you?

19 A. Yes, he did.

20 Q. And how often were you supposed to take these medications?

21 A. Twice a week.

22 Q. And in regards to those medications, were you told and  
23 instructed not to discontinue those medications without his  
24 instruction?

25 A. Yes.

1 Q. Since you have been incarcerated, have you been permitted  
2 or allowed to have this medication?

3 A. No.

4 Q. Has this failure to allow you to be medicated affected  
5 your hypertension?

6 A. I believe so, yes.

7 Q. What have you experienced in regards to your hypertension  
8 since being incarcerated?

9 A. I've had some --

10 MS. GABLE: Again, Your Honor, I'm going to object on  
11 the basis of relevancy.

12 THE COURT: I will -- I will allow some leeway.

13 Go ahead.

14 THE DEFENDANT: In speaking with my wife, we've  
15 noticed some confusion. I had issues filling out paperwork,  
16 not remembering her mother's name, my mother's name, ages. I  
17 had issues recalling my sister's name.

18 BY MR. BARLOW:

19 Q. Did you discuss this with the medical staff at the  
20 Seminole County Jail?

21 A. I had not at the time of processing, no.

22 Q. Since that time have you?

23 A. No. They've just been in to check blood pressure, and  
24 that's it.

25 Q. Okay. Do you know what your blood pressure was the last

1 time they checked it?

2 A. It was around 169 over 100.

3 Q. And for you that is high?

4 A. Yes.

5 Q. In regards to your diagnosed mental illness or PTSD  
6 diagnosis from the VA, have they at any time directed you to  
7 treatment for that?

8 A. No, they have not.

9 Q. Do you have any particular work skills?

10 A. I'm a certified welder on both aerospace, structural. I'm  
11 qualifi- -- certified in precious metal welds, Inconel,  
12 stainless steel, aluminum, so forth.

13 Q. Prior to your arrest were you able to find part-time  
14 employment?

15 A. On and off, yes. The pandemic has kind of hampered that a  
16 little bit, but it's -- comes and goes.

17 Q. And if you are released from custody, would you attempt to  
18 procure part-time employment?

19 A. Yes.

20 Q. Do you possess a passport?

21 A. No, I do not.

22 Q. Have you ever been outside of the continental United  
23 States?

24 A. No, I have not.

25 Q. Do you have any family members, friends, or other contacts

1 outside of the United States?

2 A. No.

3 Q. Where is your family located?

4 A. Other than here, in Southeast Georgia.

5 Q. All right. Do you have any family members in Texas?

6 A. Yes, I do.

7 Q. Who?

8 A. My aunt and uncle.

9 Q. All right. The rest are all in Southeast Georgia?

10 A. Yes.

11 Q. Where in Southeast Georgia?

12 A. Camden County, Kings Bay, St. Marys.

13 Q. All right.

14 MR. BARLOW: Thank you, Judge. That's all I have.

15 THE COURT: All right. Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. GABLE:

18 Q. Mr. Harrelson, the medication that you keep referring to  
19 during your testimony, it's testosterone, correct?

20 A. Yes.

21 Q. And there's no other medication besides that that you're  
22 referring to, correct?

23 A. The HCG and the estrogen blockers.

24 Q. Okay. So these are hormones, correct?

25 A. Say again?

1 Q. These are hormones?

2 A. Yes. I have hormone issues because of the pain management  
3 I was put through through the VA for four years on 180 10  
4 milligram Lortabs a month. It destroyed my endocrine system,  
5 and I have the testosterone of an 80-year-old man, which  
6 affects my blood pressure, my sleeping habits, and a few other  
7 things.

8 Q. And, Mr. Harrelson, it's true that in August of 2004, you  
9 shot your neighbor's dog, correct?

10 A. Yes, but there's --

11 Q. Mr. Harrelson, yes or no?

12 A. Yes.

13 Q. And, sir, it's true that in January of 2003 you were  
14 arrested for drug possession, correct?

15 A. Yes.

16 Q. And in 2001 you were arrested for battery?

17 A. Yes.

18 Q. Then while in the Army, you were cited for using  
19 marijuana, correct?

20 A. No, drinking.

21 Q. And also for failure to follow orders, correct?

22 A. Not (unintelligible), no.

23 Q. And you also used marijuana as recently as three weeks  
24 ago?

25 A. Yes.

1 Q. And you don't have a prescription for marijuana, correct?

2 A. No, ma'am, I do not.

3 Q. And so you're currently not working right now, correct?

4 A. No, ma'am.

5 Q. When you unlawfully entered the Capitol on January 6th of  
6 2021, did you talk to your wife?

7 MR. BARLOW: Objection, Judge. Outside the scope.

8 Also assumes facts not in evidence.

9 THE COURT: Ms. Gable?

10 MS. GABLE: Your Honor, he's been placed under direct  
11 examination. His wife testified, as a third-party custodian,  
12 that he did contact her when he was up in Washington, D.C. I'm  
13 asking him simply to confirm that.

14 THE COURT: I'll allow it.

15 BY MS. GABLE:

16 Q. You can answer the question.

17 A. Can you repeat the question, please?

18 Q. Yes. When you were up in Washington, D.C., and you  
19 unlawfully entered the Capitol on January 6th of 2021, did you  
20 notify your wife?

21 A. No.

22 Q. Did you talk to her that night?

23 A. Yes.

24 Q. Did you take photos and videos when you were inside the  
25 Capitol on your telephone?

1 A. No.

2 Q. You did not?

3 A. Well, there's -- it didn't -- nothing was recorded.

4 Q. Did you take photographs?

5 A. No.

6 Q. Did you see the picture of yourself inside the Capitol  
7 holding the phone up?

8 A. Yes, ma'am.

9 Q. And it's your testimony that nothing recorded on your  
10 phone.

11 A. It was -- it didn't record for some reason. There was  
12 issues with the phone.

13 Q. And do you know Kelly Meggs?

14 A. Yes.

15 Q. And Connie Meggs?

16 A. Yes.

17 MR. BARLOW: Objection, Judge. Outside the scope.

18 THE COURT: Ms. Gable?

19 MS. GABLE: Your Honor, he's been placed under oath  
20 to testify regarding this detention hearing. One of the issues  
21 that the Court needs to consider is the nature and the  
22 circumstances of the offense.

23 THE COURT: Do you have a response?

24 MR. BARLOW: Yes, Judge. That does not include  
25 trying to build their case against him, you know, what would

1 amount to a discovery deposition.

2 My client does have a Fifth Amendment right not to  
3 answer questions about his involvement in the alleged offense.  
4 He has contested his innocence. He's pled not guilty at this  
5 point.

6 And the cross-examination should be limited only to  
7 those matters gone directly into during direct, which are in  
8 regards to his medical condition, his ability to flee the  
9 country, i.e., doesn't have a passport, the fact that he has no  
10 contacts outside the country, things that are relative to bond,  
11 not relative to the government's case in chief, which will  
12 proceed in the District Court in the District of Columbia.

13 THE COURT: Well, Mr. Harrelson is certainly entitled  
14 to his Fifth Amendment rights. However, he did take the stand  
15 today with regard to the detention issue, and whether anything  
16 that's said on the stand will be subsequently admissible at  
17 trial, I assume you'll take that up with the judge at that time  
18 with regard to this detention hearing.

19 But in addition to risk of flight, I do have to  
20 consider also danger to the community, as well as the other  
21 statutory factors in Section 3142.

22 So I will allow the United States a bit of leeway to  
23 make some inquiry into those matters.

24 BY MS. GABLE:

25 Q. Do you know Graydon Young?

1 A. I -- not exactly, no.

2 Q. Were you with him on January 6th, 2021, inside the  
3 Capitol?

4 A. I'm not sure.

5 Q. And did he have his arm on you and his hand on your  
6 shoulder as you were illegally inside the Capitol?

7 A. I don't know.

8 Q. And, Mr. Harrelson, did you travel to Washington, D.C.,  
9 with the express purpose of participating in that rally?

10 A. No.

11 Q. And did you travel to Washington, D.C., for the express  
12 purpose of participating in the riot?

13 A. No.

14 Q. Did you plan with other members of the Oath Keepers to go  
15 to D.C. to attend the rally?

16 A. No.

17 Q. Do you know -- are you a member of the Oath Keepers?

18 A. I was, yes.

19 MS. GABLE: I have no further questions, Your Honor.

20 Thank you.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. BARLOW:

24 Q. Mr. Harrelson, you were asked about an incident with  
25 your -- about a neighbor's dog?

1 A. Yes.

2 Q. Do you wish to explain what happened in that instance?

3 A. Yes, I do.

4 Q. Proceed.

5 A. On that afternoon I heard -- my ex-wife had left to go get  
6 groceries. I heard a substantial amount of noise in the yard.  
7 I came out and the neighbor's dog was chasing my ex-wife around  
8 the yard, attempting to bite her.

9 So I went inside and got my handgun and came back  
10 out, and I cracked a shot off at it. I didn't hit the dog, but  
11 it scared it over to the yard.

12 And then we went over -- the neighbors called the  
13 law. The law came to the house. We explained to them what  
14 happened. And the law said that, you know, not to crack rounds  
15 off because people were out, and it -- you know, if it happened  
16 again, to call animal control and the sheriff's department, and  
17 they would handle it.

18 Q. Did you receive any criminal conviction from that  
19 instance?

20 A. No.

21 Q. Have you received any criminal convictions?

22 A. No, sir.

23 Q. During your time incarcerated, you were contacted by an  
24 individual by the name of Juan Cabrera from the U.S. pretrial  
25 services department?

1 A. Yes.

2 Q. And you spoke with him and disclosed these matters?

3 A. Yes.

4 Q. Thank you.

5 MR. BARLOW: Nothing further, Judge.

6 THE COURT: All right, Mr. Harrelson. You can take  
7 your seat.

8 Do you have any additional witnesses?

9 MR. BARLOW: No, Judge.

10 THE COURT: All right. Any evidence by way of  
11 proffer?

12 MR. BARLOW: No, Your Honor.

13 THE COURT: Okay. All right. Ms. Gable?

14 MS. GABLE: Your Honor, we would only proffer from  
15 the criminal complaint affidavit and the indictment, which we  
16 can do by way of argument to the Court.

17 THE COURT: Okay. Why don't you go ahead.

18 MS. GABLE: The government?

19 THE COURT: Yes.

20 MS. GABLE: Your Honor, as the Court is aware, under  
21 18, United States Code, 3142(e)(3)(C), a presumption of  
22 detention exists in this case. It is the government's position  
23 that the defendant has not rebutted the presumption that he is  
24 both a danger to the community and a flight risk.

25 Turning to the nature and circumstances of the

1 offense charged, Your Honor, the Court shall consider the  
2 nature of the offense here.

3           The defendant is charged with both a crime of  
4 violence and a federal crime of terrorism under Section  
5 2332b(g)(5) in the sense that he is charged with an offense  
6 that was calculated to influence or affect the conduct of  
7 government by intimidation or coercion or to retaliate against  
8 government conduct.

9           And he has been charged with an enumerated offense  
10 under 2332b(g)(5)(B), which is destruction of government  
11 property. So the Court is to consider that he has been charged  
12 with both a crime of violence and a federal crime of terrorism.

13           Turning to the weight of the evidence against the  
14 person, Your Honor, we would suggest to the Court that the  
15 weight of the evidence against the defendant is quite strong.

16           As set forth in the criminal complaint affidavit and  
17 the indictment, the defendant is a member of the Oath Keepers,  
18 which is a right-wing militia organization.

19           From at least as early as November 3rd of 2020  
20 through January 6th of 2021, the defendant, along with his  
21 codefendants, planned to use violence to breach the Capitol and  
22 obstruct congressional proceedings to certify the vote of the  
23 electoral college of the 2020 United States presidential  
24 election.

25           During the period of the conspiracy, the defendant

1 participated and/or hosted meetings of the Oath Keepers on  
2 GoToMeeting. On January 3rd of 2021, he, along with Kelly  
3 Meggs, hosted a meeting titled "D.C. Planning Call." 18  
4 participants were on the line during this call.

5 The government has linked the defendant to these  
6 meetings by his name, cell phone, his e-mail, and his IP  
7 address.

8 According to messages obtained from social media  
9 accounts, these conspirators planned to storm the Capitol and  
10 coordinated with a group of co-conspirators who agreed to serve  
11 as a quick reaction force to monitor the attack at the Capitol  
12 from a distance and be prepared to travel to the Capitol in the  
13 event they were called upon, possibly while armed.

14 One of the conspirators, Mr. Caldwell, also provided  
15 maps informing this quick reaction force, or QRF, team how to  
16 most effectively reach the Capitol from their staging area.

17 On January 6th of 2021, the defendant's  
18 co-conspirators stormed the Capitol -- the defendant and his  
19 co-conspirators stormed the Capitol. The video and photo  
20 evidence provided in the complaint affidavit shows the  
21 defendant congregating outside the Capitol with some of his  
22 co-conspirators, to wit, Mr. Young, Ms. Meggs, and Mr. Steele  
23 [verbatim].

24 Then the video evidence shows some of the  
25 conspirators aggressively moving through the crowd and toward

1 the entrance of the Capitol in a military stack formation with  
2 their hands on the shoulders of the individuals in front of  
3 them. They were dressed in paramilitary gear, with one of  
4 those participants wearing a sign that said "I don't believe in  
5 anything. I'm just here for the violence."

6 Furthermore, they were outfitted in clothing that had  
7 the Oath Keepers logos and insignia on it.

8 As the stack of Oath Keepers moved through the crowd,  
9 the defendant was seen in front of them, interacting with them.  
10 Video from inside the Capitol then shows the stack of Oath  
11 Keepers and other members of the crowd shortly after they  
12 breached the Capitol and damaged the doors to the Capitol.

13 In the video Mr. Harrelson is in front of the group  
14 of the Oath Keepers, and it appears that he forcibly entered  
15 before them.

16 When they pushed through that door, Your Honor, they  
17 pushed -- they passed at least -- or pushed through at least  
18 one law enforcement officer who was trying to stop the crowd  
19 from breaching the Capitol.

20 The Capitol doors that the Oath Keepers and  
21 Mr. Harrelson -- through which they breached were significantly  
22 damaged. Multiple panes of glass were smashed, and a door  
23 handle was missing or broken off.

24 The stack of Oath Keepers, Your Honor, then  
25 congregated inside the north section of the rotunda, as seen

1 from surveillance footage. The defendant is among that group.  
2 The video shows his co-conspirator Graydon Young, in Oath  
3 Keeper attire, with his hand on the defendant's shoulder, as  
4 the defendant records the event with his phone.

5           During the attack, based on communications from a  
6 Zello channel called "Stop the Steal," which the conspirators  
7 had planned to use and communicate with before they breached  
8 the Capitol -- the FBI has recovered some of those  
9 communications.

10           And in those communications, one of the  
11 co-conspirators, Ms. Watkins, communicates, "We have a good  
12 group. We have 30 or 40 of us. We are sticking together and  
13 sticking to the plan."

14           Then an unknown male states, "You are executing  
15 citizen's arrest. Arrest this assembly. We have probable  
16 cause for acts of treason, election fraud."

17           Watkins then replies, "We are in the mezzanine. We  
18 are in the dome right now. We are rocking it."

19           And then the individual on the channel responds:  
20 "Get it, Jess. Do your f'ing thing. This is what --  
21 everything we f'ing trained for."

22           One of the co-conspirators, Caldwell, also received a  
23 Facebook message which stated, quote, "All members are in the  
24 tunnels under Capitol. Seal them in. Turn on gas."

25           When Caldwell posted inside, he received messages

1 such as, "Tom, take that b-i-t-c-h over. All of the  
2 legislators are down in the tunnels three floors down. Do like  
3 we had to do when I was in the corps. Start tearing out  
4 floors. Go from top to bottom and go through back house  
5 chamber doors facing north, left down the hallway, down steps,"  
6 indicating that other members were watching the TV and were  
7 communicating with individuals inside and providing them  
8 positions of the legislators inside the Capitol.

9 Mr. Young posted later that evening, "We stormed and  
10 got inside."

11 In the course of these riots, Your Honor, 139 law  
12 enforcement officers were assaulted, and the Capitol suffered  
13 millions of dollars in damage.

14 The weight of the evidence against this defendant is  
15 strong. There is video evidence. There is photographic  
16 evidence of this defendant. He participated in planning  
17 meetings. And the e-mail evidence, his phone evidence, the IP  
18 address evidence, all of that evidence is very weighty and  
19 shows that this defendant not only -- participated in this  
20 conspiracy to obstruct government or to obstruct Congress.

21 And essentially, Your Honor, this -- the offense was  
22 so serious, it was really one that was designed to challenge  
23 over 244 years of our constitutional democracy.

24 Turning to the history and characteristics of the  
25 person, the defendant admittedly has a mental health -- has

1 mental health issues. He has PTSD, for which he is not  
2 receiving treatment.

3 He has substance abuse issues, according to the  
4 pretrial services investigation report, to include marijuana  
5 and alcohol, which he has been dealing with, apparently, since  
6 his early 20s.

7 It is also concerning that at age 31, while in the  
8 Army, he was charged with wrongful use of marijuana and failing  
9 to obey a general order. And I would just note, Your Honor,  
10 given the nature of the offense charged here, the defendant has  
11 not shown a respect for the law or a likelihood to follow court  
12 orders.

13 Finally, Your Honor, turning to the nature and  
14 seriousness of the danger to any person or the community that  
15 would be posed by his release, the defendant has simply not  
16 rebutted the presumption of danger, Your Honor.

17 This defendant is not like the others that have come  
18 before this Court. As Judge Lammens said when detaining the  
19 defendants -- codefendants Kelly Meggs and Connie Meggs, Judge  
20 Lammens wrote: "This case isn't just about breaking the law.  
21 We see those cases every day. This case is different. It is  
22 more. It is about challenging the very existence of the law.  
23 It is about a challenge to the very institution responsible  
24 for" -- "responsible for making the law while it was in the  
25 process of carrying out its lawful duty. These members of

1 Congress were carrying out a duty that their oath required them  
2 to fulfill.

3 "When the Court considers the seriousness of the  
4 charges and the weight of the evidence, there is only one  
5 conclusion. The defendant is a danger to the community and  
6 must be detained."

7 Likewise, Your Honor, in this case, this case just  
8 involves a concerted activity by these -- the defendant and his  
9 codefendants to obstruct congressional proceedings. There was  
10 planning before, during, and after the events had occurred.

11 And as a result, the members of Congress were  
12 evacuated from their respective chambers. The disruption  
13 resulted in assault of more than a hundred law enforcement  
14 officers, millions of dollars of damage to the Capitol, and  
15 death to several individuals.

16 For those reasons, Your Honor, we would ask the Court  
17 to detain the defendant.

18 In addition, Your Honor, regarding the defendant's  
19 proposed custodian, she -- the defendant's wife admitted that  
20 she (unintelligible) some information regarding the defendant's  
21 participation in these events, and as such, she is not a  
22 suitable custodian, Your Honor.

23 It is possible that she will be a witness in this  
24 case, given her knowledge of the events, but more importantly,  
25 she didn't report what occurred to law enforcement. And so she

1 is not a suitable custodian.

2 So we would ask the Court to detain this defendant.

3 Thank you.

4 THE COURT: All right. Mr. Barlow?

5 MR. BARLOW: Yes, Judge.

6 I presume that the Court has a copy both of the  
7 indictment as well as the criminal complaint in this matter?

8 THE COURT: I do.

9 MR. BARLOW: And I find the government's argument  
10 somewhat interesting in that if you look at the criminal  
11 indictment, the conduct discussed by my esteemed opponent is  
12 attributable to codefendants Caldwell, Crowl, Watkins, Parker,  
13 Bennie Parker, Young, Steele, Meggs, both Connie and Kelly.

14 Mr. Harrelson doesn't appear in this indictment till  
15 paragraph 56. And it does charge participation in a  
16 ComeToMeeting [verbatim] video or ComeToMeeting electronic  
17 meeting, on, I believe, January the 3rd. So I would concede  
18 that that charge exists.

19 But what we're talking about, showing up in combat  
20 gear and things of that nature, the evidence that's been  
21 provided to the Court by the government kind of contradicts  
22 that.

23 The photographic evidence of Mr. Harrelson allegedly  
24 at the Capitol Building, shows him in civilian clothing, no  
25 combat gear, shows him not in any stack going into the Capitol

1 Building.

2           And as it happens, I've had the occasion to go to the  
3 Capitol Building. Those doors don't open inward; they open  
4 outward. There's no evidence that's been put before this Court  
5 that Mr. Harrelson touched a door, touched a barricade, touched  
6 a person, moved a fence.

7           They have established, I believe, that he was  
8 present. They have established that he knows Kelly Meggs, but  
9 knowing a co-conspirator does not necessarily make one a  
10 co-conspirator.

11           At the foundation of our country, there were lots of  
12 people that knew John Adams. There were lots of people that  
13 knew Thomas Jefferson. There were lots of people who knew our  
14 founding fathers. That did not mean that they participated in  
15 any attempt to overthrow the British government.

16           Likewise, the allegations asserted against my client  
17 here today are allegations only. They lack any proof. Quite  
18 frankly, when we look at the indictment, Mr. Harrelson starts  
19 to appear -- I think 56 is the first one. He appears again in  
20 71 through 75, dealing with obstruction of an official  
21 proceeding.

22           In Count Three at page 82 [verbatim], he appears  
23 alleging damage of government property, but there's no specific  
24 government property that he's alleged to have touched, harmed,  
25 or anything, so I'm not exactly sure what they're talking about

1 in that regard.

2           There's the allegation -- there's no doubt there was  
3 damage done to the Capitol Building, but nothing that the  
4 government has offered here today is indicative that this man  
5 did any of that, other than the fact he was present.

6           They also say that he entered and remained in a  
7 restricted building or grounds. Judge, there may be some basis  
8 in that. They have a picture of a person that they believe is  
9 Mr. Harrelson, that they say is Mr. Harrelson -- again, not in  
10 combat gear, not part of any stack -- standing next to some  
11 people that quite -- very -- that are, without a doubt.

12           And in one of the photographs that they've made  
13 allusion to, one of the persons in combat gear has reached out  
14 in the direction -- well, at page 15 of the criminal complaint,  
15 in paragraph 41, there is a picture of an individual that the  
16 government suggests is Mr. Harrelson with his phone in the  
17 air -- Mr. Harrelson said it didn't capture anything -- with a  
18 person in combat gear with a beard and mustache that appears to  
19 be white or gray behind him that they say is touching him on  
20 the shoulder.

21           And this is a black and white picture. It's hard to  
22 say if he is or not. But even if he is, that does not mean  
23 that he's part of any grand conspiracy.

24           Under the First Amendment of the United States  
25 Constitution, an individual in this country has the right of

1 redress, of protest, and being present at a protest where  
2 someone else commits a criminal act does not, in and of itself,  
3 make one a co-conspirator.

4 Presence alone is not enough, and the government has  
5 put forth nothing before this Court but allegations and not any  
6 presumptive proof other than their claims. We've not heard  
7 from the FBI agent who's investigated this cause, who is  
8 present. We've heard nothing but the charging document, which  
9 is nothing but claims not substantiated by proof.

10 Additionally, we've had testimony from both the  
11 defendant and his wife, and he does not have a passport. His  
12 family lives either in south -- Southeast Georgia, in the area  
13 of St. Marys, Georgia, or here in Florida.

14 He has ties to the community. He does have a  
15 diagnosed mental disorder for PTSD that the -- is apparently  
16 not sufficiently worrisome to the VA that they require -- or  
17 give him any treatment for it.

18 But more importantly, as he's being held currently at  
19 the Seminole County Jail, it's endangering his health. He's  
20 not been allowed to have his medication. Now, granted, the  
21 U.S. Marshals Service was willing to accept the medications and  
22 make the attempt, but the holding facility has denied action.

23 I would submit that this Court is empowered to  
24 consider the effect on the defendant's health in considering  
25 whether or not bond is appropriate.

1 I would also suggest that if the Court is not  
2 inclined to grant bond, that the Court perhaps order the  
3 Seminole County Jail to accept his medication so that he can  
4 have it.

5 The undisputed and uncontroverted testimony at this  
6 point is that because of medications the VA gave him in the  
7 past, his endocrine system is shot, and he has to have these  
8 medications to control his blood pressure.

9 If he doesn't have his blood pressure controlled,  
10 there's a danger of stroke, and I would submit to the Court  
11 that one of the preliminary signifying symptoms of that is  
12 negatively impacted memory.

13 This is important because it also impacts upon his  
14 ability to cooperate with counsel in regards to the preparation  
15 of a defense or, if he were to participate with the government,  
16 his ability to assist them in their prosecution of others as  
17 well.

18 So it's important that his medical issues be taken  
19 care of, and they can more easily be taken care of while out on  
20 bond.

21 It's also important to note, Judge, that when  
22 pretrial services met with Mr. Harrelson, they were aware of  
23 the facts as alleged by the government.

24 And yet their recommendation, based upon his physical  
25 health, his mental health, the nature of the charges, his risk

1 of potential -- identified risks of nonappearance, which are  
2 essentially the same things argued by the government, their  
3 recommendation is that Mr. Harrelson be released on an  
4 unsecured bond in an amount to be determined by the Court, with  
5 conditions that he report to pretrial services as directed; he  
6 not possess firearms, destructive devices, or ammunition; he  
7 refrain from use or unlawful possession of any narcotic drug or  
8 any controlled substance defined in 21 U.S.C. 802 unless  
9 prescribed by a licensed medical practitioner; that he refrain  
10 from the excessive use of alcohol; he submit to abuse --  
11 substance abuse testing as directed by pretrial services; and  
12 submit to mental health evaluation and treatment as directed by  
13 pretrial services, with costs to be borne by the defendant as  
14 determined by pretrial services.

15 Now, that was March 11th, 2021, and that's government  
16 pretrial services. So at least one branch of the federal  
17 government believes that Mr. Harrelson can remain at large  
18 without being an inherent danger to the community or to others  
19 or to other property, whether it be public or private.

20 Mr. Harrelson has said -- stated under oath that he  
21 will participate, and he will appear. It is our position that  
22 the government has not put forth sufficient factual evidence to  
23 establish that a presumption should apply.

24 They have certainly alleged it, but you haven't  
25 received any evidence from the government at all other than the

1 accusations.

2 And for that reason it is the defense position that  
3 setting bond, as suggested by pretrial services, is appropriate  
4 and that the concerns of the government can be adequately  
5 covered for or eliminated by the terms and conditions of  
6 release by the Court.

7 They could include things such as home confinement,  
8 GPS monitoring, the substance abuse, and those type things that  
9 pretrial services is suggesting.

10 So with all due respect to the government's  
11 arguments, we are asking the Court to find that the defense has  
12 overcome the presumption sought by the government and set bond  
13 in a reasonable amount, with the conditions that are suggested  
14 by pretrial services and any others that the Court finds  
15 appropriate.

16 Mr. Harrelson will appear as ordered, whether it be  
17 in this district or in the District of Columbia, as ordered.

18 Thank you, Judge.

19 THE COURT: Thank you, Mr. Barlow.

20 Are you contesting that the presumption does apply  
21 based on the nature of the charges, or is your argument to me  
22 that it just -- the circumstances are not such that would  
23 warrant an application of the presumption?

24 MR. BARLOW: Judge, I do not believe that the  
25 circumstances are as such as the presumption should apply. I

1 would not dispute that if -- as to the other codefendants,  
2 based upon what's in the paperwork that's been provided to me.

3 But when I read this indictment, it looks as  
4 Mr. Harrelson might have been added as an afterthought.

5 THE COURT: Well, I understand your argument there,  
6 but minus just a very technical argument, do you disagree that  
7 statutorily the presumption applies based on the nature of  
8 the -- based on the charges that are set forth in the second  
9 superseding indictment? Because if there's a dispute over  
10 that, then we might need to address that.

11 MR. BARLOW: I believe, in tender to the Court, that  
12 an argument can realistically be made by the government. I  
13 note that there was argument in regards to, you know, terrorism  
14 and terroristic type things, but I haven't seen any disclosures  
15 to that effect.

16 None of the charges, per se, allege any terroristic  
17 conduct by Mr. Harrelson, other than being present, and there  
18 is the conspiracy count that talks about the one GoToMeeting.

19 But when we look at the -- at the big picture, we've  
20 got all these machinations by the other codefendants from which  
21 Mr. Harrelson is noticeably absent from, except that one  
22 GoToMeeting.

23 THE COURT: Well, I understand your argument as to  
24 the sufficiency of the evidence. Just as to the application of  
25 the statutory presumption -- you know, there are a lot of

1 factors for me to consider, but I just need to know -- make  
2 sure we're on the same page at the outset, that the presumption  
3 does apply.

4 MR. BARLOW: Judge, I have no statutory authority to  
5 give you that suggests that it doesn't.

6 THE COURT: Okay. I understand.

7 MR. BARLOW: But I don't agree that it applies, but I  
8 can't cite to any --

9 THE COURT: Okay.

10 MR. BARLOW: -- controlling or compelling argument.

11 THE COURT: All right. Thank you, Mr. Barlow.

12 All right. Mr. Harrelson, as the attorneys have been  
13 discussing, my consideration is governed by statute, Title 18  
14 of the United States Code, Section 3142.

15 Because you have been charged -- and recognizing that  
16 you're innocent until proven guilty, but nevertheless, there is  
17 a charging instrument from the grand jury setting forth charges  
18 of 18, U.S.C., Section 1512(c)(2), which I believe is the one  
19 that triggers the presumption because it is one of the offenses  
20 listed in Section 2332b(g)(5)(B) of Title 18, that a  
21 presumption of your detention should apply.

22 There are two aspects of it. One is risk of flight.  
23 The statute says subject to rebuttal by the person, it shall be  
24 presumed that no condition or combination of conditions will  
25 reasonably assure the appearance of the person as required.

1 That's risk of flight. But then there's also the safety of the  
2 community.

3 I do believe that you've met your burden for  
4 production as to risk of flight. I don't think there's really  
5 any argument that you're a serious risk of flight. You have  
6 ties to the community. You don't possess a passport. You  
7 haven't traveled outside the United States.

8 But that's only one aspect of it. The other aspect  
9 is danger to the community.

10 I think -- I've not heard very much, at least in  
11 terms of production from the defense, that addresses danger to  
12 the community other than the sufficiency of the evidence for  
13 the charges.

14 Nevertheless, I will assume that you've met your  
15 burden of production as to danger to the community and still  
16 consider the factors set forth in 18, U.S.C., Section 3142(g),  
17 the first of which is the nature and circumstances of the  
18 offense charged, including whether it is a crime of violence.

19 I think the United States makes a good argument that  
20 this should be considered a crime of violence, but it is  
21 certainly a -- a federal crime of terrorism, so there are two  
22 factors that go against you there.

23 Second, the weight of the evidence against you,  
24 understanding that this still has to go to a jury trial, so a  
25 jury will ultimately make the determination as to whether

1 there's sufficient evidence to find you guilty beyond a  
2 reasonable doubt.

3           But as to my consideration, I do have to consider  
4 that there does appear to be photographic and video evidence of  
5 you at the Capitol. The United States apparently has evidence  
6 of your conspiring with others by way of these meetings that  
7 occurred through the app, some of which you apparently helped  
8 organize and some of which perhaps you did not but were  
9 nevertheless affiliated with the Oath Keepers and their actions  
10 with regard to the Capitol on that day.

11           So in terms of the conspiracy charge, to me, that  
12 seems fairly strong.

13           As to the other charges, obstruction of an official  
14 proceeding and aiding and abetting, based on the information  
15 set forth in the complaint and in the indictment, it certainly  
16 seems like that was the purpose of what occurred on the Capitol  
17 that day, so that evidence -- and to the extent that you were  
18 involved in the planning of that and the participation of that,  
19 the evidence of that count seems fairly strong.

20           Destruction of government property, the complaint  
21 sets forth several items and portions of the Capitol that were  
22 destroyed as a result of the actions that were taken that day.  
23 As for whether you specifically destroyed any, that's something  
24 that the government's going to have to prove.

25           Then the final count of which you're charged,

1 restricted building or ground, I don't think there's really any  
2 contention there that you were in restricted building and  
3 grounds, that is, posted, cordoned off, or otherwise restricted  
4 area within the United States Capitol and its grounds, without  
5 lawful authority to do so.

6           So overall, I find that the evidence against you is  
7 fairly strong but, again, recognizing that you're certainly  
8 entitled to presumption of innocence and a jury trial. But at  
9 this stage of the proceedings, based on the information before  
10 me, the evidence does seem fairly convincing.

11           Your history and characteristics, I do note your  
12 physical and mental condition, the -- that you were in the  
13 military and that you suffer from PTSD -- although it's not  
14 currently being treated, I do note the diagnosis -- your  
15 physical condition with regard to the medication that has been  
16 prescribed and that you need and that you haven't been  
17 receiving.

18           Financial resources, you don't appear to have -- so  
19 you're receiving disability benefits from the VA. It does not  
20 appear that you have significant means with which to flee.

21           Community ties, as I noted, were fairly strong. You  
22 have a wife and family here, as well as in South Georgia.

23           Your past conduct, the United States has pointed out  
24 several instances in the past. I don't give very much weight  
25 to things like -- at least in terms of this context, to the dog

1 incident. You've explained the circumstances of that.

2 The battery is really concerning, the other instances  
3 of police being called. But I do note that, as your attorney  
4 pointed out, that the charges were ultimately dismissed, so you  
5 don't have a criminal history to speak of.

6 A record concerning appearance in court proceedings,  
7 I don't have any indication that you've ever failed to appear  
8 at any court proceeding, so that is also in your favor.

9 Drug or alcohol abuse, I did note that in your past  
10 there were some instances involving alcohol, as well as  
11 marijuana, which, if you were to be released, you would not be  
12 allowed to -- to use marijuana.

13 And then finally, the nature and seriousness of the  
14 danger to any person of the community that would be posed by  
15 your release, and that brings us back to the presumption, which  
16 even if you meet your burden of production, it's nevertheless a  
17 factor that I have to consider, as Congress has decided that  
18 the nature of the charges that you're facing are such that the  
19 Court should presume that you should be detained.

20 And I do take the description of the incidents that  
21 the United States has proffered and that's contained in the  
22 criminal complaint are certainly very concerning, certainly to  
23 a Court, and the circumstances under which you'd be appearing  
24 before the Court, which are, in themselves, official  
25 proceedings.

1           And yet the criminal complaint describes conduct that  
2 is -- that shows an absolute disregard for the validity of  
3 official proceedings that are being held by the United States  
4 government. So that, to me, is very troublesome.

5           And I think that in light of the nature of the  
6 violence that was -- that has been described by the United  
7 States and as set forth in the complaint, in light of your  
8 actions with regard to organizing some of these events  
9 surrounding it, your affiliation with the organization the Oath  
10 Keepers that was involved in perpetrating a lot of this  
11 violence, and certainly organizing in a paramilitary style in  
12 order to interfere with these official government proceedings,  
13 that gives me great pause.

14           When I consider that, along with the statutory  
15 presumption that you shall be detained based on the nature of  
16 the charges, I do find that there are no conditions or  
17 combination of conditions that will reasonably assure the  
18 safety of the community if you were to be released.

19           So I will order that you be remanded to the custody  
20 of the United States Marshal pending further proceedings.

21           You will be transferred to the District of Columbia,  
22 where you will face charges in that jurisdiction.

23           Was there anything else to take care of today from  
24 the United States?

25           MS. GABLE: No, Your Honor.

1 THE COURT: From the defense?

2 MR. BARLOW: Yes, Judge.

3 In light of the fact that Mr. Harrelson is to be  
4 continued detained, will the Court entertain an ore tenus  
5 motion to order the Seminole County Jail to accept his  
6 medication so that he can receive the treatment that he needs?

7 THE COURT: I'm not going to order the jail to accept  
8 the medication without more briefing. I will request that the  
9 United States Marshals look into it and -- and see what the  
10 issue is with the jail.

11 I certainly agree that Mr. Harrelson should be  
12 receiving his prescribed medication, but I understand that the  
13 jail also has their own medical staff and that he is being seen  
14 by that medical staff.

15 So I will request that the marshals look into it, but  
16 if you believe that Mr. Harrelson continues not to receive the  
17 medication that he needs, I'd encourage you to file a motion on  
18 that, and we'll have a briefing on the issue.

19 MR. BARLOW: Thank you, Judge.

20 THE COURT: All right. Is there anything else?

21 MR. BARLOW: No, Your Honor.

22 THE COURT: All right. Thank you. This hearing is  
23 adjourned.

24 COURT SECURITY OFFICER: All rise.

25 (The proceedings were concluded at 2:21 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT )  
MIDDLE DISTRICT OF FLORIDA )

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

DATED this 23rd day of March, 2021.

s/Shelli Kozachenko  
Shelli Kozachenko, RPR, CRR, CRC  
Official Court Reporter

## **Exhibit 2**

**Disc containing three video files:**

**IMG\_1396**

**IMG\_1398**

**IMG\_1399**