

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

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 21-CR-177 (CRC)**
 :
 :
 DANIEL D. EGTVEDT :

**DEFENDANT’S MOTION TO REVOKE ORDER OF DETENTION OF U.S.
MAGISTRATE JUDGE AND TO MODIFY BOND CONDITIONS**

The Defendant, Mr. Daniel D. Egtvedt, by and through his attorney Kira Anne West, files this appeal of his detention pursuant to 18 U.S.C. § 3145 (b) and respectfully requests that he be released with certain conditions and supervision through the High Intensity Supervision Program (HISP) with GPS monitoring by Greenbelt, Maryland Pretrial Services. Mr. Egtvedt would also be amenable to house arrest if the Court deemed it necessary. In support of this motion, the Defendant submits the following:

BACKGROUND

The Defendant, Mr. Egtvedt, is fifty-seven years old and a father, brother, and son. He is a graduate of Michigan State University. Mr. Egtvedt worked successfully for twenty-two years as a pharmaceutical salesman. He is currently retired and recently moved from Virginia to Western Maryland to assist in caring for his 85-year-old mother who is suffering from moderate. Alzheimer’s disease. Both Mr. Egtvedt and his brother Rick, a retired Air Force Colonel and Lutheran minister, have taken on her caregiving. Mr. Egtvedt is also a father to Logan, who is currently in his senior year at Virginia Commonwealth University scheduled to graduate in May. Mr. Egtvedt’s health is affected by certain medical issues but his conditions are controlled

through the use of medication and a BiPAP machine. Mr. Egtvedt has zero criminal history.

PROCEDURAL HISTORY

On February 13, 2021, Mr. Egtvedt was arrested in Western Maryland and charged by criminal complaint with Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority pursuant to 18 U.S.C. §§ 1752(a)(1), (a)(2); Violent Entry and Disorderly Conduct on Capitol Grounds pursuant to 18 U.S.C. §§ 5104(e)(2)(D) and (e)(2)(G); and Obstructing a Law Enforcement Officer During a Civil Disorder pursuant to 18 U.S.C. § 231(a)(3). No search warrant was done on his home because presumably there was no danger to the community.

At Mr. Egtvedt's initial appearance, the Government argued for detention pursuant to 18 U.S.C. § 3142(f)(2)(B). A detention hearing was held February 23rd, 2021, wherein Mr. Egtvedt was represented by another defense attorney and although pretrial services recommended conditions that would assure his presence at trial and the safety of the community, the Magistrate Judge ultimately granted the detention motion. *See* Ex. 1, Pretrial Services Report.

On March 3, 2021, Mr. Egtvedt was charged by indictment with multiple counts arising out of his alleged participation in the events that occurred at the United States Capitol on January 6, 2021.

STATEMENT OF FACTS

A. Storming of the Capitol on January 6, 2021

On January 5, 2021, Mr. Egtvedt drove by himself from Western Maryland to the District and stayed at a hotel. The following day, Mr. Egtvedt walked to the "Save America" rally at the Ellipse in President's Park to listen to various speakers, including former President Donald Trump. On January 6, 2021, Mr. Egtvedt attended the "Save America" rally where former

President Donald Trump spoke. During his speech, President Trump encouraged attendees to march to the Capitol to protest the Electoral College certification of the results of the 2020 Presidential Election. Mr. Egtvedt was unaware of any march on the Capital until the President of the United States told his supporters to “peacefully and patriotically make your voices heard” and “we are going to the capital.” Sam Cabral, *Capitol riots: Did Trump’s words at rally incite violence?*, BBC NEWS (Feb. 14, 2021), <https://www.bbc.com/news/world-us-canada-55640437>.

Mr. Egtvedt was at the Ellipse to protest an election which Trump claimed had been fraudulently stolen. He wore street clothes and carried no weapons or any items whatsoever. He did not wear any clothing with political slogans or symbols. Following Trump’s long speech, Mr. Egtvedt marched with the crowd to the perimeter of the Capitol. On January 6, 2021, the Capitol was first breached at around 1:00 p.m., a full hour and forty-seven minutes before Mr. Egtvedt allegedly arrived on the scene, not at 2:47 as the government stated in their summary FBI affidavit signed by Magistrate Judge Faruqui. *See* ECF. No. 1, ¶ 12. Laurel Wamsley, *What We Know So Far: A Timeline of Security Response At The Capitol On Jan. 6*, NPR (Jan. 15, 2021, 5:00 AM), <https://www.npr.org/2021/01/15/956842958/what-we-know-so-far-a-timeline-of-security-at-the-capitol-on-january-6>.

The government claims that the defendant assaulted police officers. The person the government claims is Mr. Egtvedt is violently assaulted by police officers, not once, but twice. *See* Ex. 3, Hall of Columns MP4 (1:03)¹; Ex. 4, South door vestibule.mp4 (2:00). As Mr. Egtvedt was pushed down by at least nine different police officers, his head ricocheted off a marble column and he fell to the ground. He remained unconscious and motionless for several

¹ Mr. Egtvedt never said to anyone “to shoot him” as described in ¶16 of the affidavit, ECF No. 1.

seconds,² if not minutes. When Mr. Egtvedt finally came to, he was bleeding and he asked for medical attention, but was not offered any assistance by any person.³ The AUSA describes Mr. Egtvedt as then being “move[d] out of the Capital building, ...”. *Id.* at 9. In reality, Mr. Egtvedt was picked up and tossed through the doors by two police officers as if he were a rowdy patron being kicked out of a nightclub. Again, during all of this he is bleeding and pleading for help. He got none. *See* Ex. 4. Immediately preceding this assault, in one of the videos he is seen pointing to officers telling them “God Bless all of you.” *See* Ex. 5 DaCruz BWC.mp4 (0.15).⁴

B. Time Following Storming of the Capitol

From January 6, 2021, to the date of his arrest, February 13, 2021, the defendant went about living his life as he has the almost previous two years. On the date of his arrest, February 13, 2021, Mr. Daniel Egtvedt was distressed that his mother was getting the vaccine because his brother Richard had agreed previously to discuss it with him. His brother Rick told the defendant if he didn’t agree with their mother getting the vaccine, he would call the police. The defendant pleaded with him not to give their mother the vaccine. Rick Egtvedt then called the police. Several officers responded to the call. Officers talked to both parties, then left the premises that day leaving Daniel Egtvedt home without filing charges or even hinting that Mr.

² Defense counsel cannot discern seconds vs. minutes here because although she has requested the entirety of these videos and BWC, they have not been turned over yet by the government.

³ The little discovery defense counsel has has come in piecemeal without one complete video so it is impossible to create a timeline of events. There are no time stamps on most of the discovery.

⁴ The FBI getting the facts wrong in affidavits is nothing new. Describing what happened to Carter Page, a revered judge of this Court stated the following: “The frequency with which representations made by FBI personnel turned out to be unsupported or contradicted by information in their possession, and which they withheld information detrimental to their case, calls into question whether information contained in other FBI applications is reliable.” *In re Accuracy concerns regarding FBI matters submitted to the FISC*, 411 F. Supp. 3d 333 (D.D.C. 2019)(J. Collyer). So not trusting your government is not so unusual.

Egtved could later be charged with anything. Defendant never raised a hand or his voice. His brother took his mother for her shot. Later that afternoon, defendant took his mother shopping as he often did.

Mr. Egtvedt does not have severe “mental issues” as prior defense counsel stated in her presentation to the Magistrate Judge.⁵ This, unfortunately, was not fully investigated or defined for the Magistrate Judge at the hearing⁶. He has not taken the vaccine for COVID-19 which poses an additional risk to his health.

ARGUMENT

A. Pretrial Release Is Proper In This Case Because Conditions Are Available Which Will Reasonably Assure The Defendant’s Presence At Trial And The Safety Of The Community.

The Bail Reform Act, 18 U.S.C. § 3142 et.seq., authorizes the detention of defendants awaiting trial on a federal offense only under certain, limited circumstances. 18 U.S.C. § 3142. Under the Act, a judicial officer may issue order that, pending trial for a federal offense, a defendant be: (1) released on personal recognizance or upon an execution of an unsecured bond; (2) released on a condition or combination of conditions, (3) temporarily detained; or (4) detained. The Act mandates pretrial release on personal recognizance or unsecured bond ("shall order the pretrial release. . . .", 18 U.S.C. § 3142(b)) unless the court determines that no condition or combination of conditions will reasonably assure the person's appearance or the

⁵ If released there will be no problems getting Mr. Egtvedt back into care. If he cannot return to treatment within several weeks, by policy he will have to be discharged according to the WVU Health and Wellness Behavioral Center in Oakland, MD. A discharge will result in a greater delay in placing him back into subsequent treatment.

⁶ The government also claims that there was discussion at the home between defendant’s brother Richard Egtvedt and the police about involuntarily committing the defendant. This is patently false.

safety of any other person and the community. 18 U.S.C. § 3142(e). When personal recognizance or an unsecured bond is determined to be inadequate to guarantee appearance or safety, the Act still mandates release ("shall order the pretrial release. . . .", 18 U.S.C. § 3142(c)) subject to specified conditions. The conditions must be the least restrictive conditions necessary to reasonably assure the defendant's appearance and the community's safety. *United States v. Fortna*, 769 F.2d 243 (5th Cir. 1985), cert. denied, 479 U.S. 950 (1986).

1. The Bail Reform Act

The Act provides that if the Court finds by clear and convincing evidence 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, such judicial officer shall order detention of the person before trial.” 18 U.S.C. §§ 3142(e)(1), (f)(2)(g). However, there is a strong presumption against detention. *See United States v. Hassanshahi*, 989 F. Supp. 2d 110, 113 (D.D.C. 2013) (citing *United States v. Hanson*, 613 F. Supp. 2d 85, 87 (D.D.C. 2009); *United States v. Salerno*, 481 U.S. 739, 755 (1987) (“[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”). Courts have held that a finding that defendant is a danger to the community or a serious flight risk is a basis of detention. *See United States v. Anderson*, 177 F. Supp. 3d 458, 461 (D.D.C. 2016) (citing *United States v. Salerno*, 481 U.S. 739, 755 (1987)). The finding must be based on clear and convincing evidence that the defendant poses a danger to the community or a preponderance of the evidence to support the defendant’s likelihood to flee. *See id.*; *see also United States v. Xulam*, 318 U.S. App. D.C. 1, 84 F.3d 441, 442 (1996) (citing *United States v. Simpkins*, 826 F.2d 94, 96 (D.C. Cir. 1987)).

Congress enacted the Bail Reform Act of 1984 to give courts the authority to consider factors

such as the likelihood of flight and community safety in making release determinations. In passing the Act, Congress did not intend to authorize the wholesale pretrial incarceration of all persons accused of criminal offenses. Indeed, the Act expressly provides that "[n]othing in this section shall be construed as modifying or limiting the presumption of innocence." 18 U.S. Code § 3142(j). To the contrary, the passage of the pretrial detention provision of the 1984 Act bespeaks a recognition that "there is a small but identifiable group of particularly dangerous [persons] as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community or other persons. It is with respect to this limited group ... that the courts must be given the power to deny release pending trial." S. Rep. No. 225, 98th Cong., 1st Sess. 6-7, reprinted in U.S. Code Cong. & Ad. News 3189 (emphasis supplied).

The legislative history of the Act also stresses that "[t]he decision to provide for pretrial detention is in no way a derogation of the importance of the [accused's] interest in remaining at liberty prior to trial. It is anticipated that [pretrial release] will continue to be appropriate for the majority of federal defendants." *Id.* at 7, 12, reprinted in, 1984 U.S. Code Cong. & Ad. News 3189. Courts have recognized that, consistent with the intent expressed in the 1984 Act's legislative history, the statutory scheme of Section 3142 continues to favor release over pretrial detention. *See, United States v. Orta*, 760 F.2d 887, 890-892 (8th Cir. 1985); *United States v. Miller*, 625 F. Supp. 513, 516-17 (D.Kan. 1985).

Notwithstanding the charges at issue, Mr. Egtvedt should not be considered to be within that limited group for whom pretrial detention is appropriate. It is apparent from the Act's legislative history, as well as the statutorily mandated consideration of the least restrictive alternatives to detention, that Congress contemplated pretrial detention of only a small percentage of the

individuals awaiting trial. Mr. Egtvedt is among that majority for whom a combination of conditions short of detention without bond can be fashioned to "reasonably assure" the safety of the community and his appearance for trial. *United States v. Orta*, 760 F.2d 887 (8th Cir. 1985); *see also* 18 U.S.C. §3142(c)(1)(B) (judicial officer shall order the pretrial release of an accused "subject to the least restrictive further condition or combination of conditions, that such judicial officer shall determine will reasonably assure the appearance of the person as required and the safety of any other person and the community") (emphasis supplied)). In the instant case Defendant's continued detention without bond is not the least restrictive alternative case; there are conditions available that will assure the community's safety and his return for future court dates. *See U.S. v. Xulam*, 84 F.3d 441 (D.C. Cir. 1996) (holding that the pretrial detention provisions of the 1984 Bail Reform Act were not intended to apply to "first-time offender accused of a nonviolent crime with strong community ties and respected members of that community willing to supervise his release").

Title 18 U.S.C. Section 3142(e) provides for pretrial detention if the government is able to show that no condition of release will reasonably assure the accused's appearance as required and the safety of any other person or the community. *See, United States v. Salerno*, 481 U.S. 739, 741 (1987). Here there are conditions available which will reasonably assure the defendant's presence and safety of the community. There is no reason to believe that a person with no prior record of criminal activity, violence, or flight, who is currently retired and serving as caretaker for his 85-year-old mother suffering from Alzheimer's disease, must be preventively detained because his release poses an unreasonable risk of flight or danger to the community.

2. Considerations by the Court

To determine whether the conditions of release will reasonably assure a defendant's future presence in court, the following factors are considered: "(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... (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142(g)(1)-(4).⁷ Mr. Egtvedt submits that when considering these four factors, the order of detention should be vacated and this Court should set conditions of release in this case. There are several factors in the instant case which demonstrates there are conditions of release that would both guarantee Mr. Egtvedt's appearance and assure the safety of the community.

A. The nature and circumstances of the offense charged....

This Court must consider the seriousness of the offense. See 18 U.S.C. § 3142(g)(1). Because of the unique nature of the alleged crime, the particular conduct of each defendant for purposes of pretrial detention is considered under many factors. *See, e.g., Chrestman*, 2021 WL 765662, at *7–9. Those factors include whether a defendant (1) has been charged with felony or misdemeanor offenses; (2) engaged in prior planning before arriving at the Capitol; (3) carried or used a dangerous weapon during the riot; (4) coordinated with other participants before, during, or after the riot; or (5) assumed a formal or informal leadership role in the assault by encouraging other rioters' misconduct; and (6) the nature of the defendant's words and movements during the

⁷ 18 U.S.C. § 3145(b) does not specify the standard of review to be applied by a district court reviewing a magistrate judge's detention order, and "the D.C. Circuit has not yet addressed the issue." *United States v. Hunt*, 240 F. Supp. 3d 128, 132–33 (D.D.C. 2017). That said, both the BRA and the Federal Magistrates Act, 28 U.S.C. § 636, support the conclusion, reached by every circuit to have considered the question, that a district court reviews a magistrate judge's release or detention order de novo. *See United States v. Chrestman*, 21-mj-218 (BAH), 2021 WL 765662, at *5–6 (D.D.C. Feb. 26, 2021). And courts in this District routinely apply that standard. *See id.* at *6; *Hunt*, 240 F. Supp. 3d at 132–33.

riot, including whether the defendant damaged federal property, threatened or confronted law enforcement, or celebrated efforts to disrupt the certification of the Electoral College vote. *Id.* Here, those circumstances weigh in favor of release. Mr. Egtvedt has not been identified in any of the videotapes or photographs. Assuming the government can identify him, Mr. Egtvedt never caused any damage to the Capitol area and never committed any act of violence. Although Mr. Egtvedt is charged with both misdemeanors and felonies, at no time did Mr. Egtvedt use violence against anyone.⁸ On the contrary, he himself was assaulted by the police, not once, but twice. He was bleeding and requested medical help and received none from any officer. He is also seen on videos telling the officers that they were “heroes.” *See* Ex. 5. He is charged primarily with offenses that relate to being on restricted Capitol grounds. These are non-violent offenses and the video sequences show his actions to be non-violent. Importantly, he went to the Capitol by himself, had no leadership role, did not engage in prior planning, was not part of any conspiracy, did not coordinate with anyone, and was not aligned with any group before or after January 6, 2021. Unlike others, he did not have a weapon, handcuffs, flex cuffs, or any other type of object that could be used against another person. He simply went to hear the speeches and exercise his constitutional right to protest. He never encouraged misconduct by others, but encouraged them to come protest. He never damaged federal property, never threatened law enforcement and had nothing to say about the Electoral College. What the video exhibits show

⁸ The Bail Reform Act defines “crime of violence” as (A) “an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another, “ (B) “any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense,” or (C) “any felony under chapter 77, 109A, 110, or 117.” 18 U.S.C. § 3156(a)(4).

is that the proffer by the government at the detention hearing and the affidavit in support of the complaint and arrest of Mr. Egtvedt are full of misrepresentations.

B. The Weight Of The Evidence Against The Person

The evidence is not as the government has alleged against Mr. Egtvedt. So far, what the government has provided to the Court regarding January 6, 2021 are still shots taken from various videos. They are taken out of context. When this Court watches the approximately ten minutes of video footage provided by the defense, the Court will see that the police actually assaulted Mr. Egtvedt and that he was peaceful. No police officer came to his aid although he was on the floor unconscious and bleeding. In fact, the video depicts a lack of concern or empathy by any law enforcement officer. Other than perhaps a common law trespass, the other charges will not hold up at trial. Unlike others, he neither took anything from any desk, went into an office, nor did he damage any part of the Capitol. The weight of the evidence leans in favor of release.

At his detention hearing, the Government stated that Mr. Egtvedt was part of a “violent mob” as well as a part of the “initial wave...overwhelming law enforcement.” *See Ex. 2, Transcript of detention hearing, Transc. @ p. 5.* On the contrary, there is no evidence that Mr. Egtvedt was part of a violent mob. Rather, he found himself surrounded by thousands of people protesting and at that time, he still believed he was engaged in a peaceful protest. Mr. Egtvedt has not yet been identified and the arguments put forth here are not a waiver of his identification.

Contrary to the FBI affidavit, no officers are seen injured in any of the videos⁹ (finally given to defense counsel after numerous requests on March 17, 2021) wherein the government

⁹ The video exhibits will be filed under seal until the Court grants the new protective order which should be filed within a couple of days of the filing of this motion.

claims to identify Mr. Egtvedt. Furthermore, there is no video evidence that the Hall of Columns was being used to escort people out of the capitol.

The facts as described by the government at the detention hearing regarding the vaccine situation in Garrett County are much different than what police reports indicate. Daniel Egtvedt was left at home on February 13, 2021, by police after the disturbance call by his brother. Later that afternoon, he took his mother shopping after she returned home from getting her vaccine. If his brother Richard believed him to be a danger, he would never have allowed that. Rick told defendant that he would call the police about their disagreement regarding his mother's vaccine and he did. Defendant was not "unruly and so physically preventing the family member from taking that elderly family member to the Covid vaccination...." as the AUSA described. Ex. 2 @ p. 12. No police report from that day describes him as unruly or states that he "physically" prevented anyone from going anywhere. Reports and notes from all officers on the scene of his arrest regarding the vaccine incident with his mother say nothing of physical acts or violence—only that they were talking calmly to Mr. Egtvedt. The Government's argument that Mr. Egtvedt tried to alter his appearance because he "grew a beard" is unfounded. Ex. 2 @ p. 15. Half of the men in America have grown beards during the last year in response to the pandemic. It is also patently false that Mr. Egtvedt didn't before drive his deceased father's vehicle. It was the farm vehicle and he was moving his things back and forth. Unfortunately, these issues were not subject to cross-examination because the government was allowed to proffer their entire case. Here the government omits facts critical to understanding what really went on that day. Instead of doing an investigation, it reaches for unsupported allegations and conclusions.

C. History And Characteristics Of The Person, Including...The Person's Character, Physical And Mental Condition, Family Ties, Employment, Financial Resources, Length Of Residence In The Community, Community Ties, Past Conduct, History Relating To Drug Or Alcohol

Abuse, Criminal History And Record Concerning Appearance At Court Proceedings.

These facts heavily favor release. He has no criminal history. After January 6, Mr. Egtvedt stayed in the area of his home and took his mother shopping even after being questioned by law enforcement earlier on the day of his arrest. His behavior between January 6, 2021 and February 13, 2021 did not change. His actions do not indicate an intent to flee or any danger. There is nothing in his history nor in the history of his actions in this case that show an inclination to flee or towards danger to the community. He has never abused drugs or alcohol. He has sufficient financial resources. The Government introduced the fact that Mr. Egtvedt was driving the “farm” vehicle and didn’t shave against him, claiming that he did so as an attempt to hide his identity. This is preposterous. Mr. Egtvedt often doesn’t shave and drove the farm vehicle frequently, and at this time to move items back and forth from his home to the farm. Again, these facts were not properly developed. The government has couched this behavior as a one-time action, which is false. Virtually all of Mr. Egtvedt’s familial, professional, and social ties are in the area of Western Maryland where he currently resides. He lived in Virginia until two years ago when he sold his home and retired. Since his ties to the community are substantial, there is no reason to think that he would flee or not return to court when given notice to do so.

Notwithstanding that others find the Defendant’s beliefs to be irrationally based, it is clear that the he was not acting out of criminal intent. In the heat of the moment, after you’ve likely suffered a concussion, you may forgo reason and listen to those around you. It is easy to substitute passion for reason. Many people can’t abstractly reason in different circumstances and this situation is no exception. When people cannot apply reason to a concept, they stop reasoning. People do this all the time: you can give them a reasoning process, and especially if they are suffering from a head injury, they can’t apply it rationally. *See John Locke, An Essay*

Concerning Human Understanding (1690).

D. The Nature And Seriousness Of The Danger To Any Person Or The Community That Would Be Posed By The Person's Release.

Again, Mr. Egtvedt is a nonviolent person and this does not apply.

B. The Defendant Should Be Released Because The Proffer Made By The Government At The Pretrial Detention Hearing Was Not Based On Facts.

Although the rules allow the Government to proceed by proffer in a detention hearing, the statements made by the Government are patently false and assume facts not in evidence. Mr. Egtvedt is innocent until proven guilty, but the government has painted every person arrested in the January 6, 2021 storming of the capital as a domestic terrorist which is not only incorrect, but unconstitutional. Mr. Egtvedt absolutely denies being part of a “violent attempted overthrow of the U.S. Government” or that “he, himself, was trying to bring about an overthrow of the government.” Ex. 2 @ p. 3. This is patently false. There is absolutely no evidence that Mr. Egtvedt was associated in any way with anyone at the Capitol, let alone any information that before that day he planned any type of overthrow or violence. This averment by the government is absurd. In fact, Mr. Egtvedt was himself assaulted not once, but twice by the police. Mr. Egtvedt never assaulted any police officers. Mr. Egtvedt never caused any injury to any officer. This is clearly shown in the videos. *See* Exhibit 3, Capitol Hall of Columns Video.

C. Conclusion

Mr. Egtvedt sought no personal or pecuniary gain from his actions. Rather, he acted out of the sincere belief that he was a “patriot” protesting for his country. Like thousands of others, Mr. Egtvedt was responding to the entreaties of the then Commander-in-Chief, former President Donald Trump. The President maintained that the election had been stolen and it was the duty of loyal citizens to “stop the steal.” Defendant did not act out of criminal intent but out of sense of

conscience. His solitary action in this case, measured against his history of being a law-abiding citizen for the last 57 years, safely predicts that he is more likely to resume behaving as a law abiding citizen if released pending trial. His history does not suggest that he is likely to resume the type of alleged behavior that brings him before this Court. Notwithstanding that Mr. Egtvedt has been indicted he is still presumed innocent. His ability to prepare a defense will be hampered by his pretrial incarceration and currently it is nearly impossible to speak to Mr. Egtvedt more than once a week because the jail staff are overwhelmed with requests for video calls. Reviewing the evidence alongside a client during the COVID-19 pandemic is a near impossibility because undersigned counsel cannot travel to the jail and because of the protective order in place.

WHEREFORE for the foregoing reasons, and any others which may appear at a full hearing on this matter, and any others this Court deems just and proper, Defendant through counsel, respectfully requests that he be released on personal recognizance. If that request is denied Defendant requests as an alternative that he be released on Third Party Custody and placed into the High Intensive Supervision Program of the Pretrial Services Agency conditioned on reasonable conditions.

Respectfully submitted,

KIRA ANNE WEST

By: _____ /s/

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CERTIFICATE OF SERVICE

I hereby certify on the 24th day of March, 2021, a copy of same was delivered to the parties of record, by email pursuant to the Covid standing order and the rules of the Clerk of Court.

/S/

Kira Anne West

EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)	Criminal Action
)	No. 1:21-mj-00212-ZMF-1
Plaintiff,)	
)	<u>Detention Hearing</u> (via Zoom)
vs.)	
)	
Daniel Dean Egtvedt,)	Washington, D.C.
)	February 23, 2021
Defendant.)	Time: 2:45 p.m.

Transcript of **Detention Hearing** (via Zoom)
Held Before
The Honorable G. Michael Harvey
United States Magistrate Judge

A P P E A R A N C E S

For the Plaintiff:	Colleen D. Kukowski
(via Zoom)	U.S. ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA 555 Fourth Street, Northwest Suite 12101 Washington, D.C. 20530
For the Defendant:	H. Heather Shaner
(via Zoom)	LAW OFFICES OF H. HEATHER SHANER 1702 S Street, Northwest Washington, D.C. 20009
Also Present:	Richard Egtvedt
(via Zoom)	Da'Shanta' Valentine-Lewis, Pretrial Services Officer

Stenographic Official Court Reporter:	
(via Zoom)	Nancy J. Meyer Registered Diplomate Reporter Certified Realtime Reporter United States Courthouse, Room 6509 333 Constitution Avenue, Northwest Washington, D.C. 20001 202-354-3118

P R O C E E D I N G S

(REPORTER'S NOTE: This hearing was held during the COVID-19 pandemic restrictions and is subject to the limitations of technology associated with the use of technology, including but not limited to telephone and video signal interference, static, signal interruptions, and other restrictions and limitations associated with remote court reporting via telephone, speakerphone, and/or videoconferencing.)

THE COURTROOM DEPUTY: Your Honor, this is Case 21-mj-212, United States of America v. Daniel Egtvedt. This is scheduled to be a detention hearing held by video.

Would the parties please introduce themselves to the Court, beginning with the government.

MS. KUKOWSKI: Good afternoon, Your Honor. AUSA Colleen Kukowski for the United States.

MS. SHANER: Good afternoon, Your Honor. Heather Shaner with Mr. Egtvedt, also appearing by video from the jail.

THE PRETRIAL SERVICES OFFICER: Good afternoon, Your Honor. Da'Shanta' Valentine-Lewis, Pretrial Services Agency.

MR. RICHARD EGTVEDT: Good afternoon, Your Honor. It's Reverend Richard Todd Egtvedt, Air Force retired officer.

THE COURT: Good afternoon, Mr. Egtvedt.

And, Mr. Daniel Egtvedt, can you hear me? I want to make sure your audio is working.

THE DEFENDANT: Yes, I can.

THE COURT: All right. Sir, I'm going to ask that

1 you please just keep your microphone off, muted. If at any
2 time you wish to say something, just raise your hand. I'm not
3 going to let you say anything, but I'll let you speak to your
4 attorney. So that's how you'll indicate, and I'll make sure I
5 give you an opportunity to do that; all right?

6 So this matter has been scheduled for a detention
7 hearing. Is the government ready to proceed?

8 MS. KUKOWSKI: Yes, Your Honor.

9 THE COURT: Ms. Shaner, are you ready to proceed on
10 behalf of the defendant?

11 MS. SHANER: Yes, Your Honor.

12 THE COURT: And, Ms. Shaner, does the defendant waive
13 his right to an in-person hearing here today, and is he
14 prepared to proceed by -- by video to protect his health and
15 safety and the health and safety of other court participants?

16 MS. SHANER: Yes, Your Honor.

17 THE COURT: Okay. Government, go right ahead.

18 MS. KUKOWSKI: Thank you, Your Honor.

19 On January 6th of 2021, the defendant, in both word and
20 deed, was part of a violent attempted overthrow of the U.S.
21 government. The specific words -- this is the people's house
22 and it's been taken over -- show what his intent was that day.
23 His actions, furthermore, show that he acted on that intent and
24 that he, himself, was trying to bring about an overthrow of the
25 government.

1 He himself engaged in physically violent behavior
2 rushing into the Capitol building as a part of a mob and then
3 assaulting several police officers, refusing to leave the
4 grounds multiple times, causing injury to those officers.

5 The Court's received our detention memo, and the Court
6 is well aware at this point that the government is not asking
7 for detention in every single case that comes before the Court.
8 This case we are, and we're doing that because we -- when the
9 Court looks at the four factors that the Court should be
10 considering here: the nature and circumstances of the offenses
11 that are charged, the weight of the evidence against the
12 defendant, the defendant's history and characteristics, and
13 then the nature and seriousness of the danger to any person or
14 to the community that would be posed by the defendant's
15 release, I would submit to the Court that all four of these
16 factors weigh in favor of the defendant being held.

17 What I want to do is take the next couple of minutes to
18 highlight just a few parts of the defendant's conduct that day
19 and to talk about these four factors, because I think there's
20 elements to the defendant's case that really distinguishes him
21 from others who have been brought before the Court.

22 And I just want to start with when the defendant first
23 entered the Capitol. As the Court knows, the attempted
24 overthrow of the U.S. government that day started just about
25 after 2 o'clock -- 2:00 p.m., on January 6th. More

1 specifically, at 2:20, 2:30 p.m. is when the U.S. Capitol
2 Police ordered the Vice President and Members of Congress to
3 start evacuating the building. I say that because that time
4 frame and that time point is critical.

5 It's 2:37 p.m. when the defendant's phone first started
6 pinging off towers in the vicinity of the U.S. Capitol, putting
7 him in or near the U.S. Capitol building the very moment when
8 U.S. Capitol Police and officers are trying to evacuate our
9 congressmen and democratically elected leaders out of the
10 building because protesters -- rioters, I should say -- were
11 storming into the Capitol.

12 What we see from video evidence is that at 2:47, the
13 defendant was part of a violent mob that was trying to force
14 its way into the Capitol building. Now, for context purposes,
15 again, 2:47 is just moments after the U.S. Capitol Police saw
16 that rioters were breaking into House Speaker Nancy Pelosi's
17 office and after one individual was shot fatally as she was
18 attempting to break into the House Chamber.

19 2:47 p.m. when the defendant's captured on video trying
20 to enter the Capitol is also when rioters were trying to break
21 into the U.S. Senate Chamber. Everything the defendant is
22 doing at that point is part and parcel of that initial wave
23 that was overwhelming law enforcement inside the building and
24 posing a direct threat to our lawmakers, onto our represented
25 members of Congress.

1 When the defendant entered the building, moreover, he
2 wasn't someone who took advantage of the situation and waltzed
3 in. He was very much part of a violet mob. When he was
4 entering, the video footage that -- captures showing him
5 walking in -- shows Capitol -- or doors to the Capitol extended
6 open with broken windows. And in the background you hear
7 people yelling, "This is the next rush. We go with
8 resistance." And you see the defendant pushing his way in.

9 Once he's in the hallway himself, you see, again, more
10 video footage and, in fact, another video interview that he
11 participates in with an individual known as Baked Alaska when
12 he's talking and extolling others to come, imploring them to
13 come down to the building, come down to their house. So that's
14 the context of when he broke and forced his way into the
15 building.

16 He wasn't someone that capitalized on an opportunity
17 once the first waves had already gone in, walked in and took a
18 selfie and left. He very much was a part of that first wave
19 that directly disrupted Congress's actions.

20 So, next, turning to the context of the assaults
21 themselves. The assaults began at 3:11 p.m. We know from
22 watching various videos from MPD body-worn camera that officers
23 were stationed in the Hall of Columns, which is on the south
24 side of the building, of the U.S. Capitol. Around 3:04 you
25 start to hear across the radio traffic -- or across loudspeaker

1 traffic within the Capitol that individuals were pinned in
2 doors and trapped by rioters.

3 Now, this is a point when multiple members of law
4 enforcement who are stationed in that hallway, that hallway
5 that's being used to escort rioters out of the building, go
6 running further into the rotunda. So those that are in the
7 hall already now are down numbers. And at the same time that
8 this is happening, these moments leading up to 3:11, is when
9 you see at one point a stretcher being rolled into that hall.
10 And you also see officers being escorted and helped out by
11 other officers that are walking slowly. They appear -- but we
12 can't confirm at this point -- to be injured.

13 So this is a hallway that's serving a critical purpose
14 at this point. It's getting rioters out -- of the building --
15 at the most critical juncture of these -- of the attempted
16 overthrow, but then, moreover, it's a place where officers are
17 going to get treatment and move in and out themselves. They're
18 coordinating their efforts at this point in figuring out how to
19 stop the rioters who have just begun running amuck.

20 So when we first start to see the defendant then in the
21 Hall of Columns, this is the greater context of when the
22 officers encounter him. He walks down the hallway, which is a
23 hallway that multiple other rioters, like I said, was being
24 used to be escorted out of the building. And so when he leaves
25 the building and then comes back in and is told by an FBI agent

1 in SWAT gear and by U.S. Capitol Officer M.M. to leave again,
2 you see others are still trying to leave around him at this
3 point.

4 He then tries to push past Officer M.M., assaulting her
5 in the process. And as he continues to do that and continues
6 to charge at her and charge back into the building is when even
7 more officers have to be taken off this line to go and try and
8 forcefully remove him at this point. He was acting with such
9 force and charging at her to such a degree that at one point it
10 appeared as though there were at least five different officers,
11 from U.S. Capitol Police, Metropolitan Police Department, all
12 trying to remove him out of the building. Yet, he continued
13 charging -- attempting to charge in.

14 He eventually fell to the ground, taking down another
15 officer, Metropolitan Police Officer M.D., in the process,
16 severely injuring M.D.'s arm. When Officer M.D. is able to get
17 up, he walks away. And his body-worn camera footage shows that
18 as he walks away, he walks up to another one of his colleagues,
19 reaches out his arm to his colleague and says, "Please pull
20 hard." And the colleague yanks it with all his weight, and you
21 hear Officer M.D. grimace as he's happening -- as it's
22 happening.

23 Meanwhile, as Officer M.D. is going off to get
24 treatment, the colleagues, the other members of the
25 Metropolitan Police Department and U.S. Capitol Police then

1 force the defendant, who was still at that point on the ground
2 refusing to get up and leave, they help lift him to his feet
3 and then finally move him out of the Capitol building, out of
4 the set of double doors to the vestibule that was attached at
5 the bottom of the U.S. Capitol's Hall of Columns there.

6 So at that point they push him finally through. And
7 what does the defendant do? He falls again, gets back up, and
8 tries to charge back in. Once again, Officer M.M. from Capitol
9 Police is standing there in her bike uniform, and she is, once
10 again, stopping the defendant, putting out her arm to
11 physically stop him. And he is, again, swatting at her, making
12 contact with her, hitting her, trying to go back into the
13 building again.

14 He is finally escorted out, and then we hear, again,
15 more interviews from him, more commentary where he's talking
16 about what he was doing and what he hoped for others to do.
17 And what he says in this commentary and in the interview that's
18 posted and available on YouTube, he says, "I told them, I said
19 you are in violation of the Constitution, this is the people's
20 house, and it has been taken over. And I said, the
21 Constitution says to preserve and protect against all enemies,
22 foreign and domestic. You are in violation of that, sirs."
23 That's what the defendant says about law enforcement and those
24 individuals who are serving their duty inside the Capitol.

25 So that's the context at issue, Your Honor. The conduct

1 itself, I believe, certainly in the nature of these offenses,
2 certainly weighs in favor of his continued detention.

3 The seriousness of the conduct is also reflected in the
4 potential sentences that the defendant could receive. He's
5 charged with, among other charges -- to include 18 U.S.C. 1512,
6 which carries a prison sentence of up to 20 years, in addition
7 to multiple assault charges because multiple officers were
8 assaulted and physically injured during the course of this.

9 I also want to just take a brief note about the broader
10 effects of the defendant's actions that day. As I mentioned,
11 the officers were using the -- that hallway as a means to steer
12 rioters out of the building. When the defendant began his
13 assaultive conduct, they couldn't do that anymore. So what
14 does that mean? That means more rioters were stuck in the
15 building and officers who are not responding directly to the
16 defendant then had to reroute others and try to recalibrate
17 their way of getting these violent protesters, these rioters,
18 out of the building.

19 It also had a human effect and a toll of those officers
20 who were directly attacked by the defendant, particularly
21 Officer M.M. and Officer M.D. They had to keep working that
22 day. The crisis had only at that point just begun, and they
23 continued serving long hours both that day and then had to wake
24 up the next morning and go to work as well.

25 Eventually both of them, after the threat and the crisis

1 had subsided, were able to go home, and they both were out for
2 extended periods of time. I believe Officer M.M. has still not
3 returned to work. Officer M.D. has not returned to work, but
4 that is, in part, due to a family situation that's ongoing.

5 But -- so there's collateral effects here, Your Honor.
6 These officers were who carrying out their sworn duty then were
7 not only injured but had to continue carrying on with the
8 weight of this as they were going about. You can imagine what
9 Officer M.D. was going through. He had to have another officer
10 essentially pull his arm, his shoulder, back out so he could
11 continue going on with his activities, and then he's expected
12 the rest of the day to deal with additional actions and actors
13 like the defendant.

14 Those are the actions that happened on January 6th.
15 What I wanted to do also is just briefly proffer to the Court a
16 few other elements about the defendant's personal
17 characteristics and his history as to why he should continue to
18 be held and held pending trial.

19 As the Court saw, the way the defendant was initially
20 arrested, and his location was identified so that he could come
21 into law enforcement custody, came out of an incident that
22 occurred at a family member's house in Garrett County in
23 Maryland in a somewhat remote area where police had to be
24 called because a family member was attempting to take an
25 elderly family member to an appointment to receive a COVID

1 vaccination. The defendant came over to the house and was so
2 unruly and so physically preventing the family member from
3 taking that elderly family member to the COVID vaccination that
4 the family member was forced to call law enforcement.

5 Law enforcement came, was able to defuse the situation
6 so that the elderly family member could go on to receive the
7 COVID vaccination, but what the defendant said to law
8 enforcement during the course of that encounter, I think, is
9 particularly notable and probative here, which was that he was
10 going to have to be arrested before she left to go and get her
11 vaccination.

12 And then, two, the other thing that he mentioned and
13 stated to law enforcement, that the vaccine itself, which is
14 part of a government initiative to try and curb a global
15 pandemic, was, in fact, going to alter her DNA and to cause
16 population deaths across the population as a part of a
17 government plan to control the population.

18 I highlight this because I would submit to the Court the
19 government [sic] has no respect or recognition for the
20 authority of the U.S. government. He does not trust what the
21 U.S. government is doing, and his actions and his words show
22 that he will go to violent lengths to subvert actions done by
23 the U.S. government.

24 Again -- and I just want to highlight and conclude on
25 this note. He himself -- regards himself, I should say, as

1 part of the broader movement here. After the defendant had
2 been arrested and taken into custody in Maryland, he was
3 initially held in Garrett County and he wrote two letters to
4 the sheriffs that are out there. And these are part of the
5 government's filings as Exhibits 4 and 5.

6 And in those letters, in what was Exhibit 1 [sic], he
7 refers to there were extenuating circumstances for a
8 once-in-a-lifetime historical event, and in the second letter,
9 which is Exhibit 5, he, again, states and refers to his
10 circumstances that relate to historical events currently in
11 play. And I want to emphasize the words "currently in play"
12 there, because in the defendant's mind this is not over. This
13 is --

14 THE COURT: When was --

15 MS. KUKOWSKI: I'm sorry, Your Honor.

16 THE COURT: When was he arrested?

17 MS. KUKOWSKI: The defendant was arrested on
18 Saturday -- it was February 13th.

19 THE COURT: Okay. Continue. You were saying.

20 MS. KUKOWSKI: Thank you.

21 And I wanted to highlight the fact that he said
22 continuing in play. This is a month and some odd days after
23 the events of January 6th. And this is where his mentality
24 still is.

25 And then, finally, I just want to conclude on the fact

1 that in both of these letters, in both the government's
2 Exhibits 4 and 5, the defendant states, "If you release me to
3 federal agents at this moment, you could place me as a
4 political prisoner in a foreign land." Your Honor, that is a
5 direct and bold pronouncement twice that this defendant does
6 not recognize the authority of the federal government, which by
7 its very definition would include the authority of this Court.

8 His actions show that he has been violent in the past.
9 His most recent actions during the course of his arrest show he
10 is still willing to engage in violence. His actions have hurt
11 other people, and they could continue to hurt other people.
12 And we know what his intent was that day; his intent was to
13 overthrow the government. And we know that up until today and
14 through at least him writing these letters immediately after
15 his arrest, he does not recognize the federal government. He
16 considers it to be a foreign land.

17 And so for those reasons, Your Honor, I would submit to
18 the Court there is no set of conditions that could be fashioned
19 here to ensure the safety of the community and then,
20 furthermore, to ensure the safety of others.

21 THE COURT: What about risk of flight? Are you
22 arguing risk of flight here or not?

23 MS. KUKOWSKI: Yes, Your Honor. I -- we discussed
24 risk of flight in our memo. And just briefly here, to
25 highlight it again, what I would submit is the defendant has

1 changed his appearance. It's a little bit difficult to see at
2 the moment because of the -- because of the defendant's mask.
3 But you did actually, in fact, see the defendant then pointing
4 to his face. He grew a beard. This is notable because, as the
5 Court could see, it was in Government's -- hold on for one
6 moment -- Government's Exhibit 3B and 3A -- and I can actually
7 share my screen to show -- put these up on the screen for the
8 Court here.

9 So in Government's Exhibit 3A, this is a still shot from
10 the interview that he gave outside on YouTube where he is
11 talking about how it is the people's house that has been taken
12 over. And then Government's Exhibit 3B is his arrest
13 photograph that was taken by the Metropolitan Police Department
14 when he was arrested. You see he's grown a beard here, and I
15 also submit his hair is a bit shorter. But the beard is
16 particularly notable because his own brother acknowledged that
17 he has never seen his brother ever in 50-some-odd years grow a
18 beard before.

19 And it's not just limited in terms of change of
20 appearance to his beard. He changed the way that he moved as
21 well. The defendant drove to D.C., I would submit -- the
22 evidence would support this -- in his own vehicle, in a Toyota
23 Highlander. There is a license plate reader that -- from the
24 DEA that showed the vehicle entering the District of Columbia
25 from the Key Bridge on January 5th. The defendant stopped

1 driving that vehicle and instead started driving his deceased
2 father's vehicle instead, a vehicle that he, again, was never
3 known to drive before. He did this after January 6th once
4 more.

5 And then I would suggest that on top of these two
6 critical actions that the defendant took, there's other factors
7 here that show he is a risk of flight. Specifically, we know
8 he has unstable housing right now. He has proffered that he
9 previously sold his house. He was at one point living with a
10 brother, was no living there, and then was living in a
11 different residence owned by his brother.

12 He is unemployed, and we know for a fact that he
13 considers himself, again, to be a political prisoner in, quote,
14 a foreign land, which shows he does not perceive this to be his
15 home. And I would submit that these affirmative actions that
16 he took to change his appearance, change the way he's moving
17 about in society, coupled with his own instability and his lack
18 of ties to the community and then, again, his mindset right
19 now, he is still a risk of flight.

20 THE COURT: Okay. Thank you very much.

21 Ms. Shaner.

22 MS. SHANER: Your Honor, is the affidavit in support
23 of criminal complaint and arrest warrant in evidence?

24 THE COURT: Ms. Shaner, you can proffer whatever you
25 want. I certainly read it.

1 MS. SHANER: All right. I would put that into
2 evidence, Your Honor.

3 THE COURT: Okay.

4 MS. SHANER: The government affidavit indicates that
5 at 2:47 Mr. Egtvedt appeared to have recently been sprayed with
6 some kind of chemical irritant, and he's seen on the video
7 before entering the Capitol trying to wipe this off his eyes.
8 He is not heard screaming anything. What the government
9 attributes to him were statements made by other individuals.

10 On video, Mr. Egtvedt is --

11 THE COURT: Explain what you were referring to,
12 Ms. Shaner. You mean when the government says this is the next
13 rush and --

14 MS. SHANER: Yes.

15 THE COURT: -- with the resistance?

16 MS. SHANER: Yes.

17 THE COURT: Well, I never understood the
18 government --

19 (Indiscernible simultaneous cross-talk.)

20 MS. SHANER: Well, okay. I'll go through it.

21 THE COURT: Okay.

22 MS. SHANER: The government indicates that --
23 attributes to this defendant things said by other individuals;
24 that is, here's the next rush, there's a push with resistance.
25 And he is pushed in, along with everyone else.

1 At 3:08 he is seen walking. He is never seen with
2 anything in his hands. He is never seen with a stick, with a
3 flag, with anything that is used to destroy anything inside the
4 Capitol or to injure anyone. Later he is seen appearing to
5 leave, and he is stopped by Officer M.M., and he does touch
6 her, apparently, in the photograph. The FBI agent does not
7 describe the conduct of this man as violent or as forcible
8 assault. He describes him on page 5 as generally noncompliant,
9 screaming, and incoherent.

10 On page 6 they indicate not that he assaulted
11 Officer M.D., but that as officers jump on Mr. Egtvedt in an
12 attempt to push him out of the building, the defendant falls.
13 Officer M.D. falls as well. Officer M.D. did not recall being
14 pulled by the defendant. His injury was an accident when this
15 large individual, Mr. Egtvedt, was knocked down by the police.

16 Again, at paragraph 19, officers describe him as being
17 noncompliant. Had he been violent and dangerous to them, this
18 affidavit very clearly would have used those kinds of words.
19 Again, on page 6 at paragraph 20, he -- he -- the defendant has
20 fallen, and he is on the ground. When they try to pick him up,
21 he is noncompliant. Multiple officers then ask him, looking at
22 him, is he in need of medical treatment. That's not the -- the
23 officers to the other officers. That's the officers to
24 Daniel Egtvedt.

25 At 3:11 he's seen to be walking out, and then he's

1 engaged by law enforcement who ordered him to leave. If you
2 look at the photograph on page 8, Your Honor, you'll see him
3 walking down the middle of the corridor, and there are about 20
4 law enforcement officers out there. He gets to the door. You
5 see him in the photograph on page 9. He is talking to a -- law
6 enforcement who is pointing him to the door.

7 At paragraph 26 when he is surrounded by officers, it
8 indicates he resists. It doesn't indicate he goes to the
9 officers. It doesn't indicate he is assaultive or aggressive
10 towards the officers. It -- on page 10, paragraph 26 says more
11 officers came. He resisted and flailed his arms. At page 11,
12 paragraph 26, it shows where Officer M.D. fell while the
13 officers were pushing the defendant.

14 In no photo does it show Mr. Egtvedt with anything in
15 his hands. Finally, Officer A.D. -- at the bottom of
16 page 12 -- and Officer C.R. assist him where he's fallen and
17 walk him out through the south door. He falls to the ground
18 again, and then they, again, offered him medical assistance,
19 and finally he leaves.

20 Clearly his behaviors by entering the Capitol and
21 remaining there after he's told to leave support probable cause
22 that he entered, he was disorderly, and he remained inside the
23 Capitol after being told to leave. I think it's a little less
24 clear that he used force, as is required by 18 U.S.C. 111, to
25 forcefully assault a federal officer.

1 So while I would concede, Your Honor, that as to the
2 initial two prongs, the strength of the case, there's evidence
3 that there was law violation. I'm not sure whether there's
4 proof beyond a reasonable doubt. There is evidence against the
5 defendant, and the offense charged and the circumstances of
6 that charge were very upsetting to most people in the
7 United States of America, but I think in weighing the four
8 factors in 3142(g), the Court could find that there are
9 circumstances -- and should find that there are
10 circumstances -- that would allow him to return to his
11 brother's home.

12 Number one, this is a 60-year-old man who -- this is a
13 nearly 60-year-old man who has never been arrested. He has
14 never injured anyone. He has never had any law enforcement
15 problems. While he was inside the Capitol, he did not
16 forcefully injure anyone. He did not desecrate the Capitol.
17 He did not break anything. He did not steal anything. He was
18 loud. He is large, and he is described as being screaming and
19 incoherent at times.

20 Most of that is the result of, I mean, some behavioral
21 issues and the fact that he did not take the medicine that he
22 has been prescribed for the days preceding January the 6th.
23 This is a 58-year-old man who's a college graduate who has
24 lived his entire life doing good works in the community. He
25 moved in with his brother and his mother in 2019. His housing

1 is stable. He -- the house -- the apartment that he lives in
2 now is 100 feet across the street from his brother's home. He
3 can move back into his brother's home if the Court would
4 require that.

5 Pretrial services found that his brother, Richard
6 Egtvedt, is eligible for third-party custodianship. If the
7 Court wants location monitoring, they would request courtesy
8 supervision from Greenbelt, Maryland. Pretrial services
9 indicated that his home at 2140 Boy Scout Road, Oakland,
10 Maryland, where he lives with his mother, his brother could
11 live in there, or he could live across the street in a condo,
12 which is less than a hundred yards from his house. Pretrial
13 services has recommended he's released with supervision by
14 Greenbelt.

15 This is a man who has some physical and mental issues.
16 Were he to be released to the custody of his brother, he would
17 get psychiatric and mental health help at Garrett Regional
18 Medical Center where he is a patient. His brother would make
19 sure he takes his medicine twice a day, would make sure he sees
20 his doctors and his counselors as required, and he would make
21 sure that he does not leave the area or come into
22 Washington, D.C. He could have GPS monitoring. He could have
23 curfew. There certainly are conditions that the Court could
24 set.

25 I would argue that there is no actual threat of flight.

1 He has a son who's a college student in the Virginia area. His
2 brother and mother, who are his only family, share a home with
3 him. And I would proffer his brother to the Court as an
4 appropriate third-party custodian, and I would ask him a few
5 questions, if the Court would allow it.

6 THE COURT: Go right ahead.

7 MS. SHANER: Mr. Egtvedt, please state your name for
8 the Court.

9 MR. RICHARD EGTVEDT: The Reverend Richard Todd
10 Egtvedt, colonel, United States Air Force.

11 Dan, you need to turn off your mike.

12 THE DEFENDANT: It's off.

13 MS. SHANER: Turn it off. It's not off.

14 Okay. When -- when did you first enter the Air Force?

15 MR. RICHARD EGTVEDT: It would be 1984.

16 MS. SHANER: And when did you retire from the
17 Air Force?

18 MR. RICHARD EGTVEDT: It would have been effective
19 31 March 2010.

20 MS. SHANER: Okay. While you were in the Air Force,
21 did there come a time when you worked along with law
22 enforcement in the Washington area?

23 MR. RICHARD EGTVEDT: I worked with the FBI in the
24 Southern Maryland Metropolitan Resident Agency, as well as with
25 the Customs National Aviation Center located in Oklahoma City,

1 Oklahoma, working counternarcotics activity.

2 MS. SHANER: Since you retired from the Air Force,
3 how have you been employed?

4 MR. RICHARD EGTVEDT: Since retiring from the
5 Air Force, I entered into seminary and after four years --
6 three years of academics and one internship in western PA, I
7 was ordained and called to serve a congregation where I'm
8 currently serving located in McHenry, Maryland, called Shepherd
9 of the Hills Lutheran Church.

10 MS. SHANER: Up until the 6th of January of this
11 year, have you ever known your brother to use force or violence
12 against you?

13 MR. RICHARD EGTVEDT: No, that -- I have not had
14 force or violence directed towards me, even on the events prior
15 to his arrest on the 13th.

16 MS. SHANER: Up until January the 6th, had you ever
17 heard that he was involved in any kind of lawlessness or
18 violence?

19 MR. RICHARD EGTVEDT: I am not aware of any
20 lawlessness or violence, no.

21 MS. SHANER: When your brother first started taking
22 psychotropic drugs, who gave them to him?

23 MR. RICHARD EGTVEDT: Upon his arrival in my
24 residence, I arranged for his medical care, both a primary care
25 physician, as well as counselors in order to get that

1 initiated. And he included me in his treatment sessions
2 through the first four to five months of that procedure.

3 MS. SHANER: In January were you supervising his use
4 of medicine?

5 MR. RICHARD EGTVEDT: January of this year, I was
6 not -- not supervising. January of the previous year I would
7 have been, but not this year.

8 MS. SHANER: If the Court would exercise its
9 discretion and release your brother to you, would you promise
10 the Court that you would be sure your brother takes all of his
11 psychiatric medication?

12 MR. RICHARD EGTVEDT: Yes, on my honor, I'll do my
13 best.

14 MS. SHANER: And do you believe you would be able to
15 ensure that he would take his medication?

16 MR. RICHARD EGTVEDT: I believe I can, yes, ma'am.

17 MS. SHANER: Are there any firearms in your home?

18 MR. RICHARD EGTVEDT: I live in the middle of the
19 woods. As such, I do, but those will be removed if that is --
20 if Dan is able to return to this area.

21 MS. SHANER: Okay. Would you be willing to serve as
22 a third-party custodian for your brother?

23 MR. RICHARD EGTVEDT: Yes, ma'am, I would be willing
24 to do so.

25 MS. SHANER: That would require you to bring him back

1 and forth to court for all court appearances, if they were ever
2 in person.

3 MR. RICHARD EGTVEDT: I understand that, yes, ma'am.

4 MS. SHANER: Could you explain to the Court whether
5 there was any violence or threat of violence involved when you
6 called the sheriff on the day your brother was arrested?

7 MR. RICHARD EGTVEDT: I was the one that called the
8 sheriff on the day my brother was arrested. He had concerns
9 about the inoculation. My mother had had a rough morning
10 getting things ready. I was -- got her ready, but I hadn't --
11 was still in my pajamas. And because of what was going on, I
12 was afraid that she might not realize that going with him
13 had -- might have an inference with her getting her
14 inoculation. And so that's what transpired.

15 MS. SHANER: Okay.

16 THE COURT: My mother has some dementia. I will just
17 say that for the Court. That's why we're power of attorney.

18 MS. SHANER: Nothing further, Your Honor.

19 THE COURT: Thank you.

20 Government?

21 MS. KUKOWSKI: Your Honor, may I be permitted to ask
22 Mr. Egtvedt a few questions?

23 THE COURT: Sure.

24 MS. KUKOWSKI: Thank you.

25 Mr. Egtvedt, what do you do for your, quote, 9:00 to

1 5:00, Monday to Friday?

2 MR. RICHARD EGTVEDT: Ms. -- I'm sorry.

3 MS. KUKOWSKI: Kukowski.

4 MR. RICHARD EGTVEDT: AUSA Kukowski. Thank you. The
5 simple, easy answer is whatever the Lord calls of me, but my --
6 my schedule is very flexible. I'm with a small congregation.
7 We do mission outreach in this area.

8 Besides regular things within the parish, I'm also
9 involved with senior housing in this area, which is part of the
10 Appalachian portion of Maryland; senior housing, both
11 subsidized and nonsubsidized, and I also work with veterans in
12 the area. I've worked with the -- I've been a representative
13 of my denomination to the Veterans Administration in the
14 development of the rural clergy training program, which is now
15 called the Community Clergy Training Program. I'm a trained
16 trainer, and I was the second person to hold a course for --
17 this is designed for medical and clergy personnel to better
18 understand, especially people with PTSD, how they can take
19 it -- what are the resources that are available through the VA
20 and how we can best help those folks to obtain the care that
21 they're required to have.

22 MS. KUKOWSKI: It's fair to say in your ministry you
23 have a full plate as part your ministry.

24 MR. RICHARD EGTVEDT: Yes, but we don't have a
25 church, and so I work out of my house.

1 MS. KUKOWSKI: And I'm assuming, though, you are
2 required to go and interact with your constituents with
3 administering -- go leave the house from time to time; is that
4 right?

5 MR. RICHARD EGTVEDT: We have worship. We are
6 currently worshipping both online and in person on Sundays, and
7 we do have online worship during Lent, Wednesday evenings at
8 6 o'clock, if anyone would like to join us.

9 MS. KUKOWSKI: And I think you probably get -- my
10 question here is: Are you able to stay with Mr. Egtvedt
11 24 hours a day, 7 days a week?

12 MR. RICHARD EGTVEDT: Well, I promise you, AUSA, that
13 I will not be in his bed with him.

14 MS. KUKOWSKI: I -- I leave that to the best of your
15 discretion. But my point is is you do have a relatively full
16 plate and you have commitments to include taking care of your
17 mother already; is that correct?

18 MR. RICHARD EGTVEDT: That is correct.

19 MS. KUKOWSKI: And it's -- is it true that when law
20 enforcement came to your house on February 13th as a part of
21 the disturbance and the issues with your mother going to
22 receive her vaccine that you inquired about processes for
23 having your brother civilly committed?

24 MR. RICHARD EGTVEDT: I inquired about process -- no.
25 Let me -- no. Let me restate -- let me restate that whole

1 question, if you'll allow me to do so, Your Honor.

2 What I was told by the deputy is that regardless of what
3 transpired that I might want to go talk to the district court
4 magistrate out here to see if there's something we can do to
5 make sure -- because the -- the -- I believe it's a state
6 police officer. I -- they were -- both them and the county
7 sheriff. So I'm a little confused which one -- I think -- but,
8 in any case, they told me that's what I should do as we go
9 forward. So part of the -- part of the issue was it was
10 obvious to him, as he told me, that there were medication
11 issues.

12 MS. KUKOWSKI: And then just prior to February 13th
13 and the months leading up to it -- I know Ms. Shaner asked you
14 questions about you were not actively supervising your
15 brother's medications at that point in time, your brother's
16 mental health treatment. How often were you interacting with
17 him?

18 MR. RICHARD EGTVEDT: I would interact with my
19 brother as things were going on. He would come over and spend
20 time with Mom, do things. There were times when he would help
21 me out with something when I had to do something, in order to
22 be with Mom, just to make sure everything was taken care of in
23 that regards, and so we worked together on -- on doing things
24 along those lines, yes.

25 MS. KUKOWSKI: Thank you.

1 THE COURT: Okay. Thank you.

2 Ms. Shaner, anything further?

3 Thank you, sir.

4 MR. RICHARD EGTVEDT: Yes, Your Honor.

5 MS. SHANER: Only one more issue, Your Honor. In
6 addition to the fact while Mr. Egtvedt is at the jail, he will
7 not be receiving mental health services. I don't know whether
8 or not he will be receiving medication. He also has sleep --

9 THE COURT: Well, he can get his medication.

10 MS. SHANER: He --

11 THE COURT: I hope.

12 MS. SHANER: I hope. He also has sleep apnea for
13 which a physical machine is required, and I understand that
14 they do not supply that at the jail. He is also obese, which
15 puts him at a higher risk for COVID at the jail.

16 THE COURT: Okay. Government.

17 MS. KUKOWSKI: Just a couple quick points of argument
18 here, Your Honor. I have --

19 THE COURT: Ms. Kukowski, before you respond, let
20 me just get the position of pretrial on -- on the record.
21 What -- what -- what is pretrial's recommendation, having heard
22 the hearing here, what's been said during the hearing here
23 today?

24 THE PRETRIAL SERVICES OFFICER: Good afternoon,
25 Your Honor. Pretrial still recommends the conditions that are

1 set forth in the pretrial services report.

2 THE COURT: Okay.

3 THE PRETRIAL SERVICES OFFICER: Okay. I have
4 spoken --

5 THE COURT: No, I see them. I see them. I didn't
6 know if your position had changed. So thank you.

7 Government, go ahead.

8 MS. KUKOWSKI: Thank you, Your Honor.

9 While I have no doubt that Reverend Egtvedt would do his
10 absolute best to ensure his brother is not a danger to others
11 or to the community and follow the directives of the Court, I
12 would respectfully submit that it is simply beyond his powers.
13 He already was in regular contact with his brother at the time
14 of the events of January 6th when his brother traveled down to
15 Washington, D.C., and he continued to be in contact with his
16 brother.

17 As things unfolded over the coming weeks, when -- and
18 ultimately up to the point where his brother came over and was
19 preventing their mother from going to get her COVID shot, I
20 would submit it is not fair and not -- just, frankly, would not
21 be a successful endeavor.

22 Mr. Egtvedt has shown he has intent to overthrow the
23 government and through his words he still does not trust the
24 government and through his actions he will take physical action
25 to stop the government from acting. I don't believe he's going

1 to continue to comply with any conditions that the Court would
2 impose. I don't believe that it is something that is within
3 Reverend Egtvedt's control, frankly. I think this is too much
4 for a man who is already taking care of yet another relative to
5 add on to his plate.

6 I don't believe that the defendant is going to comply
7 with any orders and -- I mean, while Reverend Egtvedt joked
8 about he's not going to be in bed with his brother, yet at the
9 same time isn't going to be able to force feed him his
10 medications or things along those lines. This is a grown man
11 who has shown he has incredible power and incredible obstinacy
12 is shown by the number of times he refused to follow any
13 directives to leave the Capitol, how he kept charging back in
14 after he had fallen to the ground in trying to reenter the
15 Capitol.

16 And I simply would submit that he -- his behavior and
17 his personal characteristics show that even with his brother's
18 best intentions, this third-party situation is not going to be
19 enough to secure his release to -- or his return to the Court
20 or to ensure he abides by the Court directives or to ensure the
21 safety of the community.

22 THE COURT: Okay. Thank you. Mr. Tran, How long do
23 we have this room?

24 THE COURTROOM DEPUTY: Checking, Judge. I don't see
25 any other matters after us so we should have it until 5:00.

1 THE COURT: Okay. Well, I'm going to take a moment
2 to think about this, and I'm not certain if I'm going to be
3 prepared to rule on this today or not, but let me -- let me
4 take a moment. I'll return in -- as soon as I can.

5 (Recess taken.)

6 THE COURT: Ms. Shaner, did you have any -- I don't
7 know why you were meeting with him. I don't need to know, but
8 do you have anything further you want to say? Did he want to
9 talk to you for some reason, something more you want to provide
10 the Court?

11 MS. SHANER: No.

12 THE COURT: Okay. All right.

13 Well, I did want to take a few minutes to think about
14 this case. These cases are -- are challenging for the Court
15 and the decisions that -- that we have to make.

16 The government has not sought detention in all of these
17 cases. Indeed, in the majority of them, they have not. That's
18 my impression. I don't have those numbers in front of me, but
19 I handled a great deal of these cases and a great deal of
20 proceedings where the individuals have been released on
21 conditions.

22 Most of those individuals, however, have been charged
23 with misdemeanors, individuals who have not been charged with
24 assaultive conduct, individuals for which if the government
25 did not seem to have direct evidence of, you know, the intent

1 of the individuals, individuals who were not involved in an
2 actual breach of an entryway or door or window into the
3 Capitol -- into the Capitol -- most of those individuals
4 entered later in the proceeding -- the proceeding -- the
5 events, I should say, at the Capitol, went inside, took photos
6 and left. Describes a lot of the individuals who have been
7 released on conditions.

8 That's not the situation in this case. Mr. Egtvedt is
9 being charged with significant federal felonies, assault on a
10 police officer. It sounds like ultimately if this case is
11 going to be indicted, there's going to be multiple assault --
12 not just one, but multiple assaults, each of which would carry
13 eight years -- up to eight years in jail. Civil disorder,
14 which is another federal felony offense, carries with it five
15 years in jail; and then this obstruction of an official
16 proceeding, an unusual charge, but one that's showing up
17 increasingly in these cases. The more serious ones, it carries
18 up to 20 years in jail.

19 So he does face very serious charges, and the Bail
20 Reform Act requires the Court to look at both the charges
21 themselves but also the nature and circumstances of what it is
22 that he's alleged to have done. In this case, in the
23 complaint -- and I went back a moment ago, Ms. Shaner, to
24 reread the complaint.

25 And Ms. Shaner, as always, she made a valiant effort to

1 emphasize all of the language that's in the complaint, which is
2 less problematic and perhaps it's more ambiguous as to what
3 exactly the defendant did that day. But I have no problem in
4 reviewing the complaint and, of course, the government's
5 proffer with respect to this detention request to say that he's
6 alleged -- probable cause to believe that he engaged in
7 multiple instances of assaultive conduct, by anyone's
8 definition: charging, hitting, swatting, pushing law
9 enforcement officers who are clearly doing their job in trying
10 to remove him from the Capitol.

11 So as I read the complaint, it does not describe his
12 passive participation in those events or even his mere
13 resistance. I think it describes multiple assaults on law
14 enforcement that were trying to do their job that day. He also
15 appears to me, as the government indicated, part of a group of
16 an initial wave of a violent mob that went into the Capitol,
17 reached one of the entrances into the Capitol; that this
18 defendant was part of that group.

19 He did a lot of the assaults on the law enforcement --
20 or all of them appears happened after he had been peppered
21 sprayed, once, maybe twice, and he persisted in engaging in
22 violence at the Capitol.

23 It ultimately took five officers -- appears,
24 approximately five officers -- I've seen the screenshots. I
25 have not seen the video -- to wrestle him to the ground, and

1 that officer was harmed, injured in the process. He was then
2 literally shown the door, and he attempted to come back in and,
3 again, assaulted another officer when he did so.

4 So as I read it, the alleged conduct does not suggest
5 some momentary lapse of reason, some being caught up in the
6 mob, but an individual who engaged in active, sustained violent
7 conduct at the beginning and -- and looks like the 30 to 45
8 minutes after the beginning of the assault on the Capitol. So
9 I do think that those are circumstances that distinguish this
10 case from many of the others and, I do think, support his
11 detention in this case.

12 The defendant would appear to have been and to be an
13 individual who is inclined towards violence, unable to control
14 himself, no respect for law enforcement. The government's
15 evidence is strong in this case. I have not seen the videos.
16 I've just seen the screenshots, but apparently there are
17 multiple videos, both security cameras within the Capitol,
18 body-worn cameras worn by the police officers who were
19 attempting to get Mr. Egtvedt out of the Capitol. I've just
20 seen the screenshots, but they seem compelling to me.

21 We also have the fact that this defendant was -- has
22 been identified by multiple witnesses who knew him well as
23 being in those videos, say nothing of the law enforcement
24 officers who seem to be able to -- at least some of them --
25 able to identify the defendant as well.

1 The government has electronic evidence, too, placing him
2 at or inside the Capitol that day. Indeed, the defendant
3 conducted interviews, it sounds like, when the assault was
4 going on. I think that that is very strong -- indeed,
5 overwhelming -- evidence, which is one of the factors I'm to
6 consider.

7 As for history and characteristics, I -- I hear
8 Ms. Shaner and I can see the record here. The defendant has no
9 prior contact -- no prior convictions or even contact with the
10 criminal justice system, no history of noncompliance because he
11 hasn't had any contact at all. So that certainly weighs in his
12 favor, and I have thought about that, and I've considered it.

13 He does seem to be -- be struggling with some mental
14 health issues, an inability to control himself when -- perhaps
15 when he's off his meds, perhaps when he's on. I don't know.
16 But I take that into account too, but I'm not certain if it's
17 helpful to him today. I would not detain someone just because
18 they have mental health issues, but it is something that I can
19 and should consider. And I do consider to the extent there's a
20 record. And I do think there's a record here -- that the
21 defendant has a very hard time controlling himself. That
22 concerns the Court.

23 I mean, ultimately I'm trying to figure out if there's
24 something that could be done to reasonably assure the safety of
25 the community. I am concerned about the government's evidence

1 with respect to this defendant's intent, those interviews, and
2 the letters that he submitted even following his arrest, five,
3 six weeks later, all of which, I think, suggest, as the
4 government has indicated, this defendant does not even
5 recognize at this point the present administration and the
6 authority of the federal government. That's apparently,
7 according to his own words, what drove him that day to do what
8 he did.

9 He believes the members of Congress who were doing their
10 duty were traitors and justified what he did that day. Again,
11 I'd be less concerned if it was just a momentary lapse of
12 reason, but it doesn't appear to be. According to the
13 government's evidence, the letters that have been submitted,
14 the defendant persists in his belief that there are, to use his
15 words, historical events currently in play. That has led him
16 to believe he's a political prisoner in a foreign land. The
17 current status of the Washington, D.C. -- of Washington, D.C.,
18 that has left him feeling that he is a political prisoner in a
19 foreign land. So nothing has changed. The same events
20 apparently that have caused him to do what he's done continue.

21 So I combine all this together, and I -- I believe that
22 there are no conditions that can reasonably assure the safety
23 of the community at this time. If the defendant believes what
24 he believes, the mental health issues that he's struggling
25 with, with the government's evidence that -- little over a

1 month ago that led him to be part of the initial wave into the
2 Capitol in violent conduct against law enforcement once he was
3 inside.

4 I don't know what to make of his growing a beard, change
5 of car. I could be convinced that perhaps living with his
6 brother would avoid him fleeing, but I am concerned about him
7 living with his brother, controlling him, a danger that I think
8 he represents, especially given the circumstances of his
9 arrest, what happened that day, and that was just a few weeks
10 ago -- less than a week ago, I guess.

11 So I appreciate that his brother showed up and is
12 willing to be a third-party custodian, but I can't conclude
13 based on the record that's before me, including the events on
14 the Capitol, what happened the day of his arrest, that his
15 brother can reasonably assure the safety of the community and
16 can control Mr. Egtvedt, and it might be unfair even to ask him
17 to do that.

18 So for all these reasons, I do find that the defendant
19 should be held pending trial. I do find by clear and
20 convincing evidence that I cannot fashion conditions or
21 combination of conditions that would reasonably assure the
22 safety of the community. And it's on that basis that I'm going
23 to order that he be held pending trial in this case.

24 Ms. Shaner, I want to talk about a next date with
25 respect to ascertainment of counsel. What's the latest status

1 on that, and what date do you think we should set to do that,
2 when he'll be in a position to tell me who his counsel is or if
3 you're going to be his counsel or what's going to happen?

4 MS. SHANER: Your Honor, I believe the family is
5 negotiating with Kira West.

6 THE COURT: Ah.

7 MS. SHANER: And that's why she observed today. They
8 have to figure out how to access funds which -- may I ask
9 Mr. Egtvedt if he has an idea when he would be able to do that,
10 and then could I set a date, Your Honor.

11 THE COURT: Okay. Mr. Rick Egtvedt?

12 MS. SHANER: Yes, sir.

13 THE COURT: Okay. Yep.

14 MR. RICHARD EGTVEDT: Sorry, Your Honor. I thought
15 it was off. It was on. I apologize.

16 I believe there -- I believe we will have money
17 available to -- to get a check to the lawyer tomorrow. Of
18 course, we're three hours away from her. So unless I need to
19 drive it down tomorrow to give it to her, it'll be in the mail
20 tomorrow, in any case.

21 THE COURT: Okay. All we're trying to do is figure
22 out when's the best next date. So what do you suggest -- when
23 do you think you'll be in a position to have a hearing where
24 you can say or Dan Egtvedt can say this -- Ms. West is my
25 counsel? That's really just the nature of the next hearing.

1 MR. RICHARD EGTVEDT: The nature of the next
2 hearing. I -- let's see. Today is Tuesday. Your Honor, if I
3 have to drive down the check tomorrow, I will deliver the
4 check to Ms. West tomorrow, and then -- then it's her
5 preparation time -- oh, if it's just an appearance, then it
6 would be her --

7 THE COURT: It's clearly -- it takes a moment, yeah.

8 MR. RICHARD EGTVEDT: Yeah, it's her schedule. So I
9 can't speak to that, and she had a 4 o'clock appointment with
10 another client that she had to leave for; otherwise she could
11 answer that question directly. I apologize.

12 THE COURT: Okay. Ms. Shaner, what are you going to
13 propose?

14 MS. SHANER: I'm going to propose March the 5th.

15 THE COURT: Okay.

16 MS. SHANER: Friday, March the 5th for ascertainment
17 of counsel.

18 THE COURT: All right. That will give you plenty of
19 time, sir, to get everything squared away.

20 We also need to set a preliminary hearing. He's held.
21 So that could impact the state too. So it needs to be two
22 weeks from his first appearance. I don't have that in front of
23 me.

24 MS. KUKOWSKI: I believe it was the 16th, Your Honor.

25 THE COURT: Okay. So that would take us up to

1 March -- I'm sorry. The 16th. That'll take us out to the 2nd.

2 MS. KUKOWSKI: March 2nd.

3 THE COURT: Why don't we --

4 MS. SHANER: Your Honor, why don't I waive the time
5 and allow Ms. West to set a date after she enters her
6 appearance on March the 5th.

7 THE COURT: Okay.

8 MS. SHANER: And should she be able to enter her
9 appearance earlier, she can notify chambers.

10 THE COURT: Well, why don't we do this: Why don't we
11 set the 5th as the ascertainment of counsel and a preliminary
12 hearing.

13 MS. SHANER: Okay.

14 THE COURT: And if -- you know, he may be indicted
15 before then. It may be that she'll show up and say I need more
16 time, but at least we'll keep this case on track.

17 MS. SHANER: That's fine, Your Honor.

18 THE COURT: So let's find a time on the 5th. This
19 will actually be before -- well --

20 MS. SHANER: I won't allow you to set this in front
21 of any other judge.

22 (Laughter.)

23 THE COURT: No, I better hold on to this if it's
24 going to be a potential preliminary hearing, although I suspect
25 there won't be one. But let's go ahead. We'll set it for

1 11:00 a.m. on March 5th.

2 Does that work for the government?

3 MS. KUKOWSKI: Yes, Your Honor.

4 THE COURT: All right. Ms. Shaner, does that -- all
5 right. 11:00 a.m. That's going to be for ascertainment of
6 counsel and a preliminary hearing.

7 Mr. Egtvedt, Rick Egtvedt, you just raised your hand.
8 Yes, sir?

9 MR. RICHARD EGTVEDT: Yes, Your Honor. I'm sorry. I
10 just want to be -- because he -- I am concerned regardless of
11 being able to get any other medications ready, if they are
12 unable to give him a -- it's not just a CPAP. He requires a
13 BiPAP. In order for him to be able to be fully cognizant, I
14 encourage the Court to see if we can find some way to enable
15 that capability. I -- I can -- his pressures and all that
16 are -- are available, and I can connect with the appropriate
17 pretrial or whoever it is involved in order to make sure we get
18 that correct.

19 THE COURT: I had a case about two months ago where
20 this issue came up, and I reached out to the general counsel.
21 I reached out to the marshals service. Truly it's the marshals
22 service, as I understand it, who would be responsible for this.
23 So it is a possibility.

24 Unfortunately, it takes some time, and I -- I fully
25 appreciate that this is important. Sleep apnea is -- is a

1 serious issue that needs to be addressed every night. Does he
2 have a machine, though? Could I -- I'm happy to reach out to
3 the marshals service. I'm happy to reach out to the general
4 counsel of the Department of Corrections, like I did before.
5 But do you have a machine that literally you could get to the
6 jail and say here's his machine?

7 MR. RICHARD EGTVEDT: Your Honor, we do have his
8 machine. The jail up here would not take it because, of
9 course, it has an electrical cord or -- or hose associated with
10 it. And, I mean, those are the issues that I know. I --
11 working with folks as I have, I understand the challenges
12 there, but I know this is -- if we're going to be able to try
13 to get him back on a good path, this is one of the important
14 steps that has to be made.

15 THE COURT: Okay. So -- I'm sorry. Where are you?
16 You are how far away from D.C.?

17 MR. RICHARD EGTVEDT: I'm a three-hour drive west, in
18 extreme west -- western Maryland in Garrett County.

19 THE COURT: Okay.

20 MR. RICHARD EGTVEDT: I'm so far west the water flows
21 from the -- where I'm at to the Ohio River.

22 THE COURT: Okay. Well, I will -- I mean, I will
23 offer your machine. I don't want you to give it to authorities
24 up there. It's getting to the D.C. jail. That's where he's
25 going to be. So it may be if I can arrange -- and I know

1 there's an issue with hoses and cords and all the rest.

2 Sometimes it's just there's no outlet, you know.

3 MR. RICHARD EGTVEDT: Understood.

4 THE COURT: But I'm going to offer to him that
5 you would be willing to, however you're going to do it, get
6 the -- get his machine to the jail. You would be prepared to
7 do that?

8 MR. RICHARD EGTVEDT: Your Honor, yes, I would be
9 prepared to do that. And I can even -- I -- I work as a
10 chaplain for World and National Scout jamborees. And as such,
11 I have batteries that go with my machine that -- that perhaps
12 we can find some way to work with his. I don't know yet. I'll
13 have to figure that part out.

14 THE COURT: Well, work on that. I'm going to tell
15 them his requires a cord, but I'll keep in mind that maybe
16 there's a battery option. I didn't know there was a battery
17 option.

18 MR. RICHARD EGTVEDT: There are, but whether my
19 batteries will work with his machine, I can't guarantee that
20 right now, and I may have to do a quick order to try to make
21 sure that happens.

22 THE COURT: Okay. Well, I think you start working on
23 that. I will let Ms. --

24 MR. RICHARD EGTVEDT: Yes, Your Honor.

25 THE COURT: -- Shaner know or Ms. West. I don't

1 know who's going to -- I -- I'm going to ask the government
2 right now, I'm going to reach out to -- as I said, to general
3 counsel's office, to the U.S. marshal. I'm going to ask, if
4 possible, for Ms. Shaner and Ms. West to join me. I don't
5 think the government needs to be involved in that call, but
6 I did want to let you know that those calls will be happening.

7 MS. KUKOWSKI: Thank you, Your Honor. If the Court
8 feels as though we should be involved, we are happy to do so,
9 but for a medical matter like this, I don't believe it's
10 necessary.

11 THE COURT: Okay. Ms. Shaner, you also have a
12 medical alert form that you're going to submit?

13 MS. SHANER: I submitted one with the medicines. I
14 will submit another with the sleep apnea. If you could ask
15 Mr. Tran to send me another. I'm sorry. I thought I might
16 have one on my computer, but if Mr. Tran is --

17 THE COURT: He's going to send it to you.

18 MS. SHANER: Okay. Thank you.

19 THE COURT: Mr. Egtvedt, I don't know this other
20 term. I know -- I know the CPAP machine. What does he need?
21 A BiPAP? What?

22 MR. RICHARD EGTVEDT: It's a BiPAP. His upper
23 pressure is so high that if -- if it -- it if kept blowing
24 while he's trying to exhale, he would not be able to properly
25 exhale. And so it has two pressures. The upper one is to

1 clear the airway, and the lower one is to allow the air to come
2 back out.

3 THE COURT: Okay.

4 MR. RICHARD EGTVEDT: That's how severe his condition
5 actually is.

6 THE COURT: Okay. BiPAP. It's a new word for me.
7 I'll be asking for that.

8 MR. RICHARD EGTVEDT: Thank you, sir.

9 THE COURT: Okay. So we've set the next date. And
10 that will be for ascertainment of counsel, for a preliminary
11 hearing.

12 Ms. Shaner, I'm going to try to set up a call as soon
13 as -- I've got another meeting. I'm actually involved in a
14 mediation. It's been a crazy day, but I will let you know when
15 I have that call set up. And I would like for you or someone
16 to join me just so that, you know, I will put the fire
17 underneath them, but you may need to continue to press more
18 than I'm going to have time to do.

19 MS. SHANER: Yes, Your Honor.

20 THE COURT: All right then. Anything further,
21 Government?

22 MS. KUKOWSKI: Nothing further from the government,
23 Your Honor.

24 THE COURT: Ms. Shaner?

25 MS. SHANER: When is it that -- you want to make the

1 call directly after court?

2 THE COURT: Oh, I don't -- that's my problem, when
3 it's going to be. My -- my clerk will let you know. We have
4 to figure it out.

5 MS. SHANER: Okay.

6 THE COURT: All right. Thank you. Parties are
7 excused.

8 (The proceedings concluded at 4:25 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Nancy J. Meyer, Registered Diplomate Reporter,
Certified Realtime Reporter, do hereby certify that the above
and foregoing constitutes a true and accurate transcript of my
stenograph notes and is a full, true, and complete transcript
of the proceedings to the best of my ability.

Dated this 9th day of March, 2021.

/s/ Nancy J. Meyer
Nancy J. Meyer
Official Court Reporter
Registered Diplomate Reporter
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