

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL NO. 21-CR-117(KBJ)  
 :  
 :  
 ALEX HARKRIDER :

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

The Defendant, Mr. Alex Harkrider, 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 Tyler, Texas Pretrial Services. Mr. Harkrider would also be amenable to conditions of house arrest if the Court deemed it necessary. In support of this motion, the Defendant asks for a hearing and submits the following:

**BACKGROUND**

The Defendant, Mr. Harkrider, is thirty four years old and a Texan, a father, a brother, an uncle, and a son. He has one brother and one sister. He is a graduate of Carthage High School. He also did one semester at St. Phillips in San Antonio, Texas. At the time of his arrest on January 18, 2021, he was a full time volunteer serving as a search and rescue volunteer for a non-profit started by his co-defendant, Mr. Nichols. See Ex. 4, photos of volunteer rescues. A veteran, having served twice in both Iraq and Afghanistan for four years, he is 100% disabled from the Marine Corps. He was honorably discharged. He lives on his military disability check. Mr. Harkrider is also a father to Alex, Jr. , who is currently a sophomore in High School. Mr.

Harkrider pays child support to his son's mother each and every month and provides more than what is required of him.

Mr. Harkrider's mental health was affected by certain medical issues suffered as a result of the service to our country but his conditions have been controlled through the use of medication and his volunteer work which he uses as therapy. He has minimal criminal history; a DWI charge from more than ten years ago. *See* Ex. 1, Pretrial Services Report, filed under seal. As such, Pretrial Services recommended his release. *Id.*

### **PROCEDURAL HISTORY**

On January 17<sup>th</sup>, Mr. Harkrider and Mr. Nichols were charged by criminal complaint with "Conspiracy and unlawful entry with dangerous weapon" pursuant to 18 U.S.C. §§ 1752(a), b(1)(a); Violent Entry and Disorderly Conduct on Capitol Grounds pursuant to 18 U.S.C. §§ 5104(e)(2)(D) and (e)(2)(G); and aiding and abetting in violation of 18 U.S.C. § 2(a).

On January 18<sup>th</sup>, 2021, at about 6:00 o'clock a.m., Mr. Harkrider was arrested at his small home in Carthage, Texas by a large contingent of police officers. Mr. Harkrider estimates at least 15 officers were present. He was awakened by a crash, banging on the door (police kicked it in), and two flash bangs were set off. He was in a daze and instantly had flashbacks of his time as a Marine where he saw daily combat which included shooting and killing. With tears in his eyes, he begged the officers not to shoot his dog, Opie. They had a search warrant. They took several items from Mr. Harkrider's home. They also questioned Mr. Harkrider first without giving him his Miranda warning. He was "in custody." Mr. Harkrider cooperated with the officers.

At Mr. Harkrider's initial appearance, the Government argued for detention pursuant to 18 U.S.C. § 3142(f). A detention hearing was held jointly with his co-defendant, Nichols, on

January 22, 2021, wherein Mr. Harkrider was represented by a defense attorney in Texas.

Although Pretrial Services recommended conditions that would assure his presence at trial and the safety of the community,<sup>1</sup> the Magistrate Judge ultimately granted the detention motion. *See* Ex. 1, Pretrial Services Report; Ex. 2, transcript of detention hearing.

On February 12, 2021, Mr. Harkrider and his co-defendant were charged by indictment with multiple counts arising out of his alleged participation in the events that occurred at the United States Capital on January 6, 2021.

## STATEMENT OF FACTS

### A. Storming of the Capitol on January 6, 2021

On January 5, 2021, Mr. Harkrider was a passenger in a truck driven by his co-defendant Nichols.<sup>2</sup> They drove from Texas to Virginia where they stayed overnight in a hotel. The following day, January 6, 2021, Mr. Harkrider and Mr. Nichols took an uber to the “Save America” rally at the Ellipse in President’s Park to listen to various speakers, including former President Donald Trump. 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. Like so many, Mr. Harkrider 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>. There was talk amongst the crowd of a “big reveal” by the President, but

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<sup>1</sup> Pretrial initially recommended a \$25,000 unsecured bond. This initial report was signed by a veteran services officer and two supervisory probation officers. However, the next day, an addendum to that initial report was issued recommending location monitoring. His mother agreed to be a 3<sup>rd</sup> party custodian if needed.

<sup>2</sup> Mr. Harkrider’s statements in this motion in no way waive the government’s burden of proving his identification.

there was none. There were also reports in the weeks leading up to this event that Antifa and BLM protesters would be present. Therefore, Mr. Harkrider had a tomahawk for self-defense and no other reason.

Mr. Harkrider was at the Ellipse to protest an election which Trump claimed had been fraudulently stolen. He wore what in Texas would be considered street clothes, with the addition of a protective vest. He did not wear any clothing with political slogans or symbols. Following Trump's long speech, and plea to march to the Capitol, Mr. Harkrider marched with the crowd to the perimeter of the Capitol. The Capitol was first breached at around 1:00 p.m., long before Mr. Harkrider allegedly arrived on the scene. *See* 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>.

When Mr. Harkrider arrived at the Capitol, guards out front (presumably Capitol Police) were waiving people in on the sides and in the front of the building. There were guards standing up on the steps in front of the Capitol in riot gear. People were taking selfies with the police officers. It was peaceful in the beginning. Then, tear gas cannisters were being set off but it is unknown if it was the police, the protesters or both. People were hanging from the scaffolding that was set up for the Inauguration. Somebody broke a window, and people behind Mr. Harkrider were yelling "get in." People were pushing him forward and he could not navigate. People started crawling through the broken window. People continued going in and out of the window. At one point, Mr. Harkrider stepped into the window to flee the tear gas. It was hard to breathe. No one told Mr. Harkrider to leave, but after a few minutes, Mr. Harkrider and Mr. Nichols decided to leave the Capitol. They walked to the uber pick up zone and went back to

their hotel. There was a great deal of confusion that day.

**B. Investigation following the arrest and detention of Mr. Harkrider**

From January 7th, 2021, to the date of his arrest, January 18th, 2021, the defendant went about living his life as he had always done, in and around Carthage, Texas. Mr. Harkrider is alleged to have taken a table leg from the capital. Pursuant to the search warrant,<sup>3</sup> officers took a table leg from his home which Mr. Harkrider described and explained to them how it came into his possession. He did not break any furniture, or initially take anything from the Capitol. Mr. Harkrider allegedly sent text messages to a friend, Pauly Bartel. Mocking the recent press reports, he jokingly stated “who is yall’s favorite domestic terrorist.” This term was widely used by all news media outlets after January 6, 2021.

Detective Gregory Harry testified for the government at the detention hearing. He testified about a snapchat photo depicting Mr. Harkrider, yet said “I’m not sure exactly which place we got this from.” Ex 2 @ 8. He went on to describe another photo offered as exhibit 9 and when asked about a title typed on the screenshot, he said “I actually think we recovered this from another source, as well, but I am not sure as I sit here.” *Id.* at 9. When asked about a piece of wood he said “well, the testimony ended up being that it was taken from the Capitol, but I’m not sure exactly where it came from.” *Id.* at 13.

Mr. Harkrider is alleged to have carried a Tomahawk with him and pictures of a tomahawk were admitted at the detention hearing to show Mr. Harkrider was in possession of same. There was no testimony or evidence that the tomahawk ever was out of its sheath, flaunted nor was it ever used in any way. *Id.* at 14-15. There were firearms found at his residence and in his vehicle. *Id.* at 15. There was a picture of Mr. Harkrider allegedly passing an OC cannister

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<sup>3</sup> Defense counsel has asked but not received a copy of the search warrant for Mr. Harkrider’s home.

but again, the detective testified that he didn't "know for sure that it is the same canister" used by Mr. Nichols. *Id.* at 65.

## ARGUMENT

### **A. Pretrial Release Is Proper In This Case Because Conditions Are Available Which Will Reasonably Assure Mr. Harkrider's Presence At Trial And The Safety Of The Community.**

#### 1. The Bail Reform Act and the D.C. Circuit's *Munchel* opinion

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 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).

In *United States v. Salerno*, 481 U.S. 739, 755 (1987), the Supreme Court stated "[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)).

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).

Notwithstanding the charges at issue, Mr. Harkrider 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. Harkrider 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 determines 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"); *United States v. Munchel*, No. 21-3010, 2021 WL 1149196 (D.C. Cir. Mar. 26, 2021)(court must consider whether defendants present an "identified and articulable threat" to the community).

#### 1. 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).<sup>4</sup> Mr.

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<sup>4</sup> 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. The Circuit in *Munchel* did consider it and essentially considered a *de novo* review based on additional evidence presented to the District Court that the Magistrate Judge did not have. 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; *United States v. Hunt*, 240 F. Supp. 3d 128, 32–33 (D.D.C. 2017).

Harkrider 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. Harkrider'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 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. Although Mr. Harkrider is charged with both misdemeanor and felonies just like Munchel, Munchel, *see supra*, carried with him a taser which he actively showed the crowd, he actively communicated with Oath Keepers, both defendants took zip ties from the Capitol, and both were seen inside the Senate Gallery. The Circuit gave great weight to the fact that defendants in *Munchel* turned themselves in (*See* Katsas, J., dissenting). However in the present case, Mr. Harkrider had no idea that there was even a warrant for his arrest or he would have turned himself in. What the Circuit found most troubling by the District Court was that although the government has the burden to present “an

identified and articulable threat to the community,” there was none presented nor found by the District Court. *See Munchel v. United States*, p. 16-17, No. 21-3010 2021 WL 1149196 (D.C. Cir. Mar. 26, 2021). The Circuit further held that the threat must be considered in context *Id.* at p. 17, and that the defendants did not engage in any act of violence and did not enter the capitol by force. *Id.*

Here, as previously argued by the defendant, there is no threat of future violence (*See Katsas, J., dissenting, p. 4*), no history of violence, no criminal history and no affiliation with any group such as the Oath Keepers or Proud Boys. Thus when considering Mr. Harkrider's behavior in the context of what happened on January 6<sup>th</sup>-Trump's empty assurance of "I'll be with you," it is not remarkable that several non-violent protesters found themselves in the Capitol alongside the few that were violent.

Mr. Harkrider did not engage in prior planning, did not use a dangerous weapon during the riot, did not coordinate with anyone other than his co-defendant, had no leadership role in the assault by encouraging other rioters and he did not damage federal property, nor confront law enforcement officers.

Mr. Harkrider has not been positively identified in any of the videotapes or photographs. Assuming the government can identify him, he never damaged anything. He never caused any damage to the Capitol area and never committed any act of violence. Although Mr. Harkrider is charged with both misdemeanors and felonies, at no time did he use or encourage violence against anyone.<sup>5</sup> He is charged primarily with offenses that relate to being on restricted Capitol

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<sup>5</sup> 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

grounds. These are non-violent offenses and the video sequences show his actions to be non-violent. Importantly, he went to the Capitol at the invitation of his co-defendant, 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 use or flaunt any weapon; he did not have handcuffs, flex cuffs, or promote their use. He simply went to hear the speeches and exercise his constitutional right to protest. He never encouraged misconduct by others. He never damaged federal property, never threatened law enforcement and had nothing to say about the Electoral College. The evidence submitted by the government is full of misrepresentations and assumptions.

#### The Weight Of The Evidence Against The Person

The affidavit filed by the FBI lays out the fact that Mr. Nichols was clearly the driving force behind this trip. Strangely, the affidavit mentions “W-1” as a person who they first received information from even though “W-1 does not know either Nichols or Harkrider personally but identified both as friends of someone known to W-1.” See Ex. 3 @ 6. This “identification” will not hold up in Court, nor will the affidavit when challenged because neither W-1 nor W-2 were even investigated by the FBI so that they could be found “reliable and credible” as the law requires in an affidavit. See *Illinois v. Gates* 462 U.S. 213 (1983). The government may argue this case has already been indicted so this point is moot. What’s important for the Court here to see is how the investigation was done by the FBI-sloppily.<sup>6</sup> And

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course of committing the offense,” or (C) “any felony under chapter 77, 109A, 110, or 117.” 18 U.S.C. § 3156(a)(4).

<sup>6</sup> 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,

Mr. Harkrider is not 32 years old as the affiant states, but 34. Ex. 3 @ 6. A minor mistake, but if you can't get that right, what else could go wrong? Plenty. The government relied heavily at the detention hearing on the fact that Mr. Harkrider allegedly had a "baton" (Affidavit p. 2) or "tomahawk" as was later discovered at the search of his home. Importantly, Mr. Harkrider led agents to the place in his home where he kept the tomahawk. Mr. Harkrider did not believe he'd done anything wrong as he had googled whether it was legal to have such a tomahawk in the District and it was legal.<sup>7</sup> Finally, the detective testifying could not name one instance of violence by Mr. Harkrider. Ex. 2 @ 53.

Finally, the snapchat could be easily doctored. The detective had no idea how the writing got on the photo. The evidence is not as the government has alleged against Mr. Harkrider. So far, what the government has provided to the Court regarding January 6, 2021 are still shots and short videos. They are taken out of context. When this Court watches the video footage the Court will see that Mr. Harkrider was peaceful. Although he is seen motioning to the crowd, it is not as the government has described it. What the government describes as a slashing gesture, the defense describes as pointing to the crowd. Other than perhaps a common law trespass, the other charges will not hold up at trial. The weight of the evidence leans in favor of release.

There is no evidence that Mr. Harkrider 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. Harkrider has not yet been properly identified and the

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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).

<sup>7</sup> The government took Mr. Harkrider's phone when so the defense is unable to submit proof to the Court that Mr. Harkrider googled legal tomahawks in DC from his phone. However, a knife with a blade less than 3 inches is legal to possess in D.C. See D.C. Code Section 22-4514. Defense counsel believes without seeing the phone that this must be the statute Mr. Harkrider googled.

arguments put forth here are not a waiver of his identification.

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.

Mr. Harkrider is a man who loves his country so much that he left his family and the comfort and beauty of Texas to fight for his country. These facts heavily favor release. The only violence he has ever done was in defense of his country. As a combat veteran, Mr. Harkrider was given medication for his PTSD. He has successfully treated his condition and he is a valued member of his community. *See* Ex. 5, letters. He spends his spare time as a volunteer who rescues people when unforeseen weather strikes. He cooperated with police from the minute he was flash banged. He has negligible criminal history. After January 6, Mr. Harkrider stayed in the area of his home. His behavior between January 7, 2021 and January 18, 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 meager financial resources. All of Mr. Harkrider's familial, professional, and social ties are in Carthage, Texas, where he currently resides. 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. His mother also agreed to be third party custodian.

The assumption by law enforcement that Mr. Harkrider expressed a suicidal ideation is preposterous. Mr. Harkrider simply made a joke and said it in a joking manner, which BWC footage, when finally turned over, will reveal. Mr. Harkrider has had no mental health issues for the last couple of years and those he did have previously were a direct result of his service to our country. Even the detective that testified at the detention hearing acknowledged that "he tried to

play it off as a joke.” Ex. 2 @ 19.

Notwithstanding that others find the Defendant’s political 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 “heard the call” from your President, you may forgo reason and listen to those around you.

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

Again, Mr. Harkrider is a nonviolent person and this does not apply. However, the *Munchel* dissent summarily dismisses the later news reports of other possible future protests because there was no evidence that the individual defendant had anything to do with them. (*Munchel*, Katsas, J., dissenting).

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

Mr. Harkrider 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. There is absolutely no evidence that Mr. Harkrider was associated in any way with any violent or far right group at the Capitol or at any time. Mr. Harkrider never assaulted any police officers or caused any injury to any officer. And he is not suicidal.

**Conclusion**

Mr. Harkrider 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. Harkrider 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 duty. His solitary action in this case, measured against his history of being a law-abiding

citizen, 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. Harkrider 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. Harkrider 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,

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By: \_\_\_\_\_ /s/

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**CERTIFICATE OF SERVICE**

I hereby certify on the 1<sup>st</sup> day of April, 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 EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

UNITED STATES OF AMERICA )  
 ) DOCKET NO. 6:21mj28  
-vs- )  
 ) Tyler, Texas  
 ) 4:57 - 6:24 p.m.  
ALEX KIRK HARKRIDER ) January 22, 2021

TRANSCRIPT OF PRELIMINARY HEARING AND DETENTION HEARING  
BEFORE THE HONORABLE K. NICOLE MITCHELL,  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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25	(GOVERNMENT'S 1-8 INCLUDED IN THIS HEARING FROM 6:21MJ29.)		

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

2 THE COURT: Please be seated.

3 All right. Ms. Hardwick, if you will call the next  
4 case, please.

5 THE CLERK: Yes, Your Honor.

6 Court calls Criminal Action 6:21mj28, United States  
7 of America vs. Alex Kirk Harkrider.

8 THE COURT: Announcements?

9 MR. LOCKER: Good afternoon, Your Honor. Ryan  
10 Locker for the Government, and ready to proceed.

11 MR. WALDRON: Your Honor, good afternoon. Greg  
12 Waldron and David Moore for Mr. Harkrider. And we are ready  
13 to proceed.

14 THE COURT: All right. We are here today,  
15 Mr. Harkrider, for a preliminary hearing and a detention  
16 hearing. We are going to determine whether there is probable  
17 cause to believe that an offense has been committed and that  
18 you have committed it, and also to determine whether you will  
19 be released on bond or detained pending trial.

20 Mr. Locker, will the Government be calling any  
21 witnesses?

22 MR. LOCKER: Yes, Your Honor. But before we do,  
23 however, I would ask the Court to take judicial notice of the  
24 entire proceedings of the last hearing.

25 THE COURT: Mr. Waldron, any objection to that?

1 MR. WALDRON: Judge, I do. Understanding that --  
2 and I will step to the podium here and get this mask off.

3 THE COURT: Thank you.

4 Mr. Harkrider, you may have a seat. Thank you.

5 MR. WALDRON: Oh, it feels good to get that off.

6 Judge, I did have some objections. I understand  
7 that the Rules of Evidence do not apply. The biggest concern  
8 I have is a lot of the documents, evidence, exhibits that  
9 were offered, videos that were offered, applied and were  
10 Mr. Nichols. They were not Mr. Harkrider.

11 I know specifically the bullhorn statements were  
12 Mr. Nichols. I understand the Court has the ability to parse  
13 as to each individual. I would just object to the relevance  
14 of any of those bullhorn statements, as they are not  
15 applicable to Mr. Harkrider or not attributable to  
16 Mr. Harkrider.

17 That was in some -- it was a text message document  
18 and attached. I don't know that it was offered as an exhibit  
19 number. That is what we were trying to figure out as the  
20 Court walked in, what the exhibit numbers were. But I would  
21 object to that as far as the hearing against my client in  
22 regards to his detention.

23 THE COURT: Mr. Locker, let me get a response on  
24 that.

25 Is your objection to the exhibit in its entirety

1 because it references the bullhorn statements?

2 MR. WALDRON: Yes. The -- I don't know if it is an  
3 exhibit, the text messages now between my client and  
4 Mr. Nichols. The bullhorn statements is the front page of  
5 that document. I would object to that as being irrelevant to  
6 the detention hearing of Mr. Harkrider.

7 MR. LOCKER: Your Honor, my response would be that  
8 these are co-Defendants who are charged with aiding and  
9 abetting each other. And while we agree that it is  
10 Mr. Nichols who spoke those words into the bullhorn,  
11 Mr. Harkrider is standing next to him at the time, enabled  
12 him to maintain that high ground over the crowd, and,  
13 therefore, is assisting him in presenting the -- his point to  
14 the crowd in allowing him to continue to speak without  
15 interference from other members of the crowd.

16 So I agree he did not state them, but they are not  
17 the subject of elements of the offense, but they do indicate  
18 his state of mind in his assistance of Mr. Nichols. And so,  
19 while I agree they are less relevant, it does not make them  
20 irrelevant.

21 MR. WALDRON: And, Judge, and my response to that  
22 is we are not talking about elements of the offense. What we  
23 are talking is flight risk and danger. Specifically, as to  
24 danger I believe would be the concern by these statements.  
25 And I would just ask that the Court not consider those in

1 regards to the detention of my client, who did not make those  
2 statements.

3 THE COURT: The Court will take judicial notice of  
4 the last hearing, but the Court understands and is fully  
5 aware that those were not the statements of Mr. Harkrider.  
6 Okay?

7 MR. WALDRON: And there are several like that,  
8 Judge, and they would be the same objection.

9 THE COURT: Right. Okay. If you want to point  
10 them out specifically, but I understand your objection.

11 MR. WALDRON: Okay. Thank you, Judge.

12 THE COURT: Thanks.

13 All right. Mr. Locker, you may call your first  
14 witness.

15 MR. LOCKER: Thank you, Your Honor.

16 I call Detective Harry.

17 THE COURT: Detective Harry, I am just going to  
18 remind you that you are still under oath.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right.

21 I am sorry it is warm in here. We are trying to  
22 get it cool.

23 GREGORY HARRY, GOVERNMENT WITNESS, PREVIOUSLY SWORN,

24 DIRECT EXAMINATION

25 BY MR. LOCKER:

1 Q. For the benefit of the record, you are the same  
2 Detective Harry that previously testified in this case -- or  
3 in the co-Defendant's case?

4 A. Yes, sir, I am.

5 Q. In addition to all of the evidence that you have already  
6 testified about regarding Mr. Harkrider's co-Defendant,  
7 Ryan Nichols, was there other evidence in addition to that  
8 that specifically and particularly implicates Mr. Harkrider's  
9 conduct and state of mind surrounding these events?

10 A. Yes.

11 Q. Was there a Snapchat post that Mr. Harkrider posted from  
12 inside the Capitol that is relevant to the Court's  
13 consideration regarding the seriousness of the conduct,  
14 detention, and also probable cause for the offenses for which  
15 he is charged?

16 A. Yes, there is a Snapchat. However, I can't say for sure  
17 that he posted it while he was in the Capitol, but the image  
18 depicting him is from inside the Capitol. I just want to  
19 make that distinction.

20 Q. Thank you for that clarification. By that you mean that  
21 based on the location where a certain image was taken from  
22 inside, it is possible that he did not post it until after he  
23 left?

24 A. Correct.

25 Q. But the text of the post indicates that it probably was

1 from within; is that correct?

2 A. That's my inference, yes.

3 MR. LOCKER: Permission to publish Government's 9.  
4 I suppose it is probably cleaner for us to -- a continuous  
5 exhibit numbering between these two exhibits?

6 THE COURT: If we are going to incorporate all of  
7 the prior exhibits through judicial notice, then, yes. But  
8 are you offering Exhibit No. 9?

9 MR. LOCKER: I am, Your Honor. It is the Snapchat  
10 post.

11 THE COURT: Is there any objection to that,  
12 Mr. Waldron?

13 MR. WALDRON: Judge, may I take the witness on voir  
14 dire?

15 THE COURT: You may, sure.

16 VOIR DIRE EXAMINATION

17 BY MR. WALDRON:

18 Q. Detective Harry, in regards to this Snapchat post, tell  
19 the Court how you obtained that post.

20 A. Mr. Waldron, I'm not sure exactly which place we got  
21 this from. All of the images -- well, excuse me. Most of  
22 the images that we have and certainly most of the images that  
23 we presented in addition to the Snapchat post here -- that we  
24 are going to present here, I believe -- well, I know we  
25 obtained through open source.

1           This one, if my memory serves me correctly, we  
2 found on a Twitter page for some woman whose name escapes me  
3 at the moment. I apologize. She shares the post, and I  
4 believe she actually tags it at the FBI. She names him. We  
5 came across it on her Twitter page.

6 Q.    Okay. So some woman obviously has to take a screenshot  
7 of a Snapchat post; is that correct?

8 A.    That's correct. I don't know if she is the one who took  
9 it. Somebody took -- captured the image that we are talking  
10 about here. And we -- and the version that we have was  
11 captured from her Twitter page. I don't know who actually  
12 screenshotted it, though I do believe her reference is that  
13 she did.

14 Q.    Okay. There is typing on this picture, a statement made  
15 on this picture; is that correct?

16 A.    Yes, sir.

17 Q.    Do we have any way to know that that woman that  
18 screenshotted it, did not type in that statement on the  
19 page?

20 A.    I actually think we recovered this from another source,  
21 as well, but I am not sure as I sit here. So, no, I have not  
22 gotten the statement from her. So, no, I can't for sure 100  
23 percent verify that your client typed the text.

24 Q.    Okay. So we don't know if that is Alex Harkrider's  
25 words on this Snapchat post?

1 A. I can't definitively say that.

2 MR. WALDRON: Okay. Your Honor, I would object to  
3 relevance.

4 MR. LOCKER: Your Honor, my response is that, while  
5 that may go to the weight of the exhibit, I don't think it  
6 goes to its admissibility.

7 THE COURT: Well, I am going to overrule the  
8 objection. I am going to admit it. And you may proceed.  
9 That is Government's No. 9.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. LOCKER:

12 Q. Detective Harry, can you read the text at the bottom of  
13 this image?

14 THE COURT: I don't see this image.

15 MR. LOCKER: Oh, I'm sorry.

16 THE COURT: That is what I was trying to figure  
17 out. Thank you. No.

18 MR. LOCKER: The source from my computer -- I'm  
19 sorry. I think it is the ELMO. There we go.

20 THE COURT: I'm sorry.

21 A. I'm sorry?

22 BY MR. LOCKER:

23 Q. Could you read the text at the bottom of the image?

24 A. The text says: We are in. Two people killed already.  
25 We need all of the patriots of this country to rally the fuck

1 up and fight for our freedom before it is gone forever. Give  
2 us liberty or give us death. We won't stand for it.

3 Q. Detective Harry, we saw a video earlier that depicted  
4 approximately an hour and a half of the conduct outside the  
5 Capitol. There is a shorter video that specifically shows  
6 Mr. Harkrider emerging from the window; is that correct?

7 A. Yes, there is actually a couple of videos.

8 MR. LOCKER: I'd like to display that and admit it  
9 as Government's Exhibit 10 now.

10 THE COURT: Mr. Waldron, any objection?

11 MR. WALDRON: Judge, I don't know which one he is  
12 presenting.

13 THE COURT: Why don't y'all confer at Mr. Locker's  
14 laptop about which video this is before we show it?

15 Ms. Hardwick, will you take it down briefly?

16 Thanks. I just want them to confer.

17 THE CLERK: Okay.

18 MR. WALDRON: I know what video now, Judge. No  
19 objection.

20 THE COURT: Mr. Locker, you may show it.

21 MR. LOCKER: Thank you, Your Honor. Let me turn up  
22 the volume. I had it muted earlier.

23 (Video played.)

24 (Video stopped.)

25 BY MR. LOCKER:

1 Q. We see Mr. Harkrider emerge from the window and make a  
2 throat-slashing gesture, along with some other gestures. Do  
3 you interpret that to be a call to violent action to the  
4 remainder of the crowd?

5 A. Yes.

6 Q. Is there a text message threat that you discovered on  
7 Mr. Harkrider's phone the day after, indicative of his views  
8 on whether or not he had done the right thing or whether or  
9 not he was proud of his actions?

10 A. Yes, sir.

11 Q. And this is a group text with some other men, including  
12 a person named Pauly Bartel?

13 A. Yes, sir, that's correct.

14 Q. And does he have a back-and-forth with Mr. Bartel?

15 A. He does.

16 Q. Can you describe that for the Court?

17 A. The first message in that exchange from Pauly: Alex,  
18 you all good, Bud?

19 Harkrider response: Yeah.

20 Pauly: Glad to hear it.

21 Mr. Harkrider responds: Who is y'all's favorite  
22 domestic terrorists? And then he inserts a laughing face  
23 emoji.

24 Q. When you executed the search warrant for Mr. Harkrider's  
25 phone, did you find a souvenir that had been pilfered from

1 the Capitol?

2 A. We did.

3 Q. What was that item?

4 A. It is a -- actually, I haven't seen it, but to the best  
5 of my understanding, it is a little -- it's a piece of a  
6 wooden leg or maybe a table from -- well, the testimony ended  
7 up being that it was taken from the Capitol, but I'm not sure  
8 exactly where it came from. But it is a little piece of  
9 wood.

10 Q. To be clear, that is an inference that we are making  
11 based on where Mr. Harkrider was located, its location in his  
12 home, and then also viewing the video that we have seen that  
13 Mr. Harkrider was present in a window where individuals were  
14 pilfering furniture and we see table legs or chair legs, some  
15 type of furniture legs being passed out the same window that  
16 Mr. Harkrider exits from?

17 A. That's correct. He also admitted that it came from the  
18 Capitol.

19 Q. So he made a statement to that effect to agents?

20 A. Correct, pursuant to his arrest.

21 Q. Let's talk about the weapon that Mr. Harkrider took into  
22 the Capitol. Do you have that with you in the courtroom  
23 today?

24 A. I do, sir.

25 Q. Can you hold that up for the Court?

1 A. So it is currently in its sheathe. Can I take it out?

2 Q. Please unsheathe it?

3 A. This is a sheath we believe was affixed to the vest, and  
4 this is a tomahawk.

5 MR. LOCKER: I'd like to admit that as Government's  
6 Exhibit 11. And I will go ahead and request leave of the  
7 Court that at the conclusion of the hearing to substitute an  
8 image of that for the physical exhibit.

9 THE COURT: Any objection?

10 MR. WALDRON: No objection, Your Honor.

11 THE COURT: All right. It will be admitted. And,  
12 yes, you may swap it for an image upon the conclusion of this  
13 hearing.

14 BY MR. LOCKER:

15 Q. And does that same tomahawk appear in multiple images  
16 with the Defendant attached to his plate carrier or molle  
17 vest or tactical vest?

18 A. It does. The image we are more familiar with is  
19 probably when it is in its sheath, but you can't see the part  
20 at the bottom. But you can see the end here with this  
21 lanyard and the camo handle is the image that you most  
22 commonly see in all of the footage and images of  
23 Mr. Harkrider.

24 Q. It appears upon the right side of his chest, is that  
25 correct, sort of with the handle facing up towards his

1 face?

2 A. Correct.

3 Q. When he was arrested, did Mr. Harkrider surrender any  
4 weapons to you that were recovered during the execution of  
5 the search warrant?

6 A. There were several weapons that were located. None were  
7 taken, but there were several other weapons, firearms,  
8 located in the residence and his vehicle.

9 Q. When interviewed, did Mr. Harkrider make statements  
10 about whether or not he took firearms with him to D.C.?

11 A. Yes, sir. My understanding of the interview is that his  
12 statement to agents at the time of his arrest was that he  
13 took a -- I believe it was a CZ pistol and a .30-30 rifle --  
14 or .30-06 -- I think it was a .30-30 rifle, a bolt -- a  
15 lever-action rifle.

16 Q. And just to be clear, we don't see him in any images at  
17 the Capitol carrying either of those. We don't know that he  
18 took those. We just know from his own admissions that he  
19 took them on his trip to D.C.

20 A. That's correct.

21 MR. LOCKER: At this time I would like to show --  
22 display an image and offer as Government's Exhibit 11 -- 12,  
23 an image. And this is the image of Mr. Harkrider holding the  
24 OC canister over his head.

25 That you and I discussed, Mr. Waldron.

1 THE COURT: Any objection, Mr. Waldron?

2 MR. WALDRON: I'm sorry, Judge. I was --

3 THE COURT: I'll have him repeat that.

4 Can you describe that image one more time,  
5 Mr. Locker?

6 MR. LOCKER: It is the image of Mr. Harkrider  
7 holding the OC can in his right hand that we talked about --  
8 I believe you have it.

9 MR. WALDRON: No objection.

10 THE COURT: All right. It will be admitted.

11 BY MR. LOCKER:

12 Q. Detective Harry, the image that we see here on the  
13 screen in the middle, is that Mr. Harkrider holding over his  
14 head an OC canister?

15 A. Yes. And the blue -- the cap with the blue back and the  
16 white -- or gray bill.

17 Q. And that is consistent with the video that we have  
18 already seen; is that correct?

19 A. Yes, that actually -- yes.

20 Q. And we don't know for certain it is the same OC  
21 canister. It just appears to be the same type and model as  
22 the one that Mr. Nichols used?

23 A. I don't know for sure that it is the same canister. I  
24 also am not for sure that this is the same instance as we  
25 watched earlier. I haven't had time to marry those videos up

1 to verify that.

2 Q. There is a lot of footage of the -- at the Capitol at  
3 this point in time; is that right?

4 A. From a lot of different angles, yes.

5 Q. Now, you had already testified about the text message  
6 conversation that he had with Mr. Nichols prior to their trip  
7 to Washington, D.C.; but related to weapons, Mr. Harkrider,  
8 although he is the recipient of most of those text messages,  
9 he responded with a very specific one to Mr. Nichols  
10 regarding bringing firearms with him, did he not?

11 A. Yes.

12 Q. What did he tell Mr. Nichols in response?

13 A. Just when they were talking about legally transporting  
14 guns to D.C., Mr. Harkrider's response to: I will bring  
15 every freedom blaster I own then.

16 Q. Do you know freedom blaster to be a colloquial term,  
17 slang term for a firearm?

18 A. That's my understanding.

19 Q. In addition to the firearms that were -- that  
20 Mr. Harkrider admitted to taking on his trip to Washington,  
21 were there other firearms located in his home at the time  
22 that the search warrant was executed?

23 A. The combination between in his home and in his vehicle,  
24 I am not sure which were where, as I sit here.

25 Q. At the searched premises?

1 A. That's correct.

2 Q. Did that include a Winchester rifle and a .22 revolver,  
3 and then there are also four firearms including that .30-30  
4 rifle that had been discussed, in his truck?

5 A. Six total?

6 Q. Yes.

7 A. That's my understanding as I sit here. I was not at  
8 that search team and have not seen those search reports  
9 yet.

10 Q. Because of the simultaneous execution of the search  
11 warrants, you were actually at Mr. Nichols' house when a  
12 separate team was at Mr. Harkrider's house; is that  
13 correct?

14 A. That's correct.

15 Q. Do you believe that Mr. Harkrider may present a danger  
16 to himself or others on account of mental health issues?

17 A. I do.

18 Q. Are you aware of his admission of being a 100 percent  
19 disabled veteran on account of PTSD?

20 A. Yes, sir, I am.

21 Q. Did Mr. Harkrider make statements to law enforcement  
22 regarding suicidal ideation?

23 A. Yes, sir, he did. That is the information that I  
24 have.

25 Q. In fact, did he make a specific statement to FBI agents

1 when he was arrested about what he wished had happened in  
2 Washington?

3 A. So he made a statement where he referenced that he  
4 wished he had been shot at the door. There is some debate  
5 between the two investigators that were there as to whether  
6 that statement, because it was pursuant to his arrest, was  
7 referencing his time at the Capitol or whether it was  
8 actually upon his arrest by the SWAT team. So they are not  
9 sure which two of those things he meant.

10 Q. In either of those two options --

11 A. Correct.

12 Q. -- he is still expressing potentially a suicide-by-cop  
13 desire?

14 A. That's correct.

15 Q. Which, just to be clear, that kind of endeavor doesn't  
16 only endanger the individual but also the law enforcement  
17 officers involved?

18 A. Correct.

19 Q. When he was booked into jail, did he also make  
20 additional statements as to whether or not he had been  
21 contemplating suicide?

22 A. My understanding from the investigators that were there  
23 that it was asked, posed: Are you feeling suicidal? And his  
24 answer was in the affirmative, but he tried to kind of play  
25 it off as a joke.

1           Still, having said that, the investigators that  
2 were there booking him in did not take that statement as a  
3 joke and actually marked on the paperwork that they submitted  
4 that he did express that he was feeling suicidal.

5 Q.    In addition to his statements that he was feeling  
6 suicidal, during an interview did he also state that he had  
7 suicidal ideation in the past?

8 A.    That's my understanding, yes.

9 Q.    Regarding drug usage, Mr. Harkrider reciprocated in that  
10 conversation with Mr. Nichols about the use of psychedelic  
11 drugs on their trip to Washington, D.C.; is that correct? He  
12 responded -- participated by sending a GIF that was  
13 psychedelic in nature talking about taking LSD; is that  
14 correct?

15 A.    Yes.

16 Q.    To take acid to see reality GIF?

17 A.    I'm sorry. Yes, I was looking for it.

18 Q.    Just to be clear, that is mostly a one-way conversation;  
19 that is mostly Mr. Nichols telling Mr. Harkrider what he  
20 plans to do. But when he says, "I'm going to bring some  
21 goodies, some goodies you haven't had before," the context  
22 indicates that he is expecting Mr. Harkrider to be a  
23 participant because he has been a participant in similar  
24 activities in the past?

25 A.    Correct. Mr. Harkrider -- he is the one who brings up

1 the drugs there.

2 Q. Does Mr. Harkrider have any connection to the District  
3 of Columbia other than his criminal conduct on this time  
4 frame?

5 A. Not to my knowledge.

6 Q. Did Mr. Harkrider make -- have a text message  
7 conversation with someone else indicating that he was going  
8 to avoid being an -- avoid being home, specifically related  
9 to him being a suspect in these events?

10 A. He did, yes.

11 Q. And what was that conversation, and when did it take  
12 place?

13 A. That exchange, as we saw it, was with a subject by the  
14 name of Randy Smith -- or at least it was in his phone as  
15 Randy Smith.

16 Randy sends a message: You make it back home?

17 Mr. Harkrider responds: Yeah, I'm back. I've been  
18 in Shreveport with my mom hiding out. Ha. Ha.

19 Q. So we don't know the full context of that, but at least  
20 he is telling his buddy that he is out of town intentionally  
21 for the purpose of not -- of being scarce?

22 A. Correct.

23 Q. Are you aware of Mr. Nichols' -- Mr. Harkrider's  
24 employment situation?

25 A. I don't believe he has an employment situation.

1 Q. He is unemployed?

2 A. That is my understanding -- it is my understanding. He  
3 collects disability, is my understanding.

4 Q. Did agents interview Mr. Harkrider's roommate?

5 A. Yes, they did.

6 Q. And are you aware that that roommate appears to be  
7 moving out?

8 A. I was not aware of that.

9 Q. Let's talk about the charges that Mr. Harkrider is  
10 facing. They are largely the same as Mr. Nichols, with two  
11 notable absences.

12 Mr. Harkrider is charged in Count 1 with violation  
13 of Title 18, United States Code, Section 1752(a) and  
14 1752(b)(1)(A), that being conspiracy and unlawful entry with  
15 a dangerous weapon.

16 Is a tomahawk a dangerous weapon?

17 A. Yes, sir.

18 Q. And do we know from the video footage that Mr. Harkrider  
19 entered the Capitol carrying a dangerous weapon?

20 A. Yes, we do.

21 Q. And, in fact, more than dangerous weapon, we would  
22 classify that as a deadly weapon; is that fair?

23 A. I would feel absolutely comfortable calling it that.

24 Q. Count 2 charges the Defendant with violation of 40,  
25 United States Code, Section 5104(e)(2), 5104(e)(2)(D) and

1 (G), that being violent entry and disorderly conduct on  
2 Capitol Grounds.

3 It is a violation for an individual or group of  
4 individuals to willfully and knowingly utter loud,  
5 threatening, or abusive language, or engage in disorderly or  
6 disruptive conduct, at any place in the Grounds or any area  
7 of the Capitol Buildings with the intention to impede,  
8 disrupt, or disturb the orderly conduct of a session of  
9 Congress.

10 As we have discussed before, Mr. Harkrider's  
11 conduct squarely fits those elements; is that correct?

12 A. Yes, I believe it does.

13 Q. You believe there is probable cause to support each and  
14 every element of those offenses?

15 A. I do.

16 Q. And then Count 5 charge -- I'm sorry. As to this  
17 Defendant, Count 3 charges the Defendant with 18, United  
18 States Code, Section 8 -- Section 2, that being aiding and  
19 abetting, which charges that anyone whoever aids, abets,  
20 counsels, commands, induces, or procures the commission of a  
21 federal offense is punishable as a principal.

22 Having viewed this footage with Mr. Harkrider  
23 repeatedly, does it appear that he and Mr. Nichols cast their  
24 lots together, in that their endeavor in Washington was a  
25 joint endeavor?

1 A. Yes. In almost every instance of evidence that we have,  
2 they are two peas in a pod; they are right next to each  
3 other.

4 Q. They are battle buddies, as they would say in the  
5 military?

6 A. Absolutely.

7 Q. They are looking out for each other?

8 A. Yes.

9 Q. It is a dangerous situation there, is that correct, even  
10 for them?

11 A. Yes.

12 Q. And they are looking out for each other by ensuring that  
13 one can get through an entryway and one is doing okay. They  
14 know each other's location at all times. Does it appear that  
15 way in the footage?

16 A. I certainly believe they are there watching out for each  
17 other and have each other's back, yes.

18 Q. Based on the evidence that you have seen, does it appear  
19 that Mr. Harkrider regularly not only engaged in his own  
20 criminal conduct, but encourages and aids and abets that of  
21 Mr. Nichols?

22 A. Yes.

23 Q. So do you believe that there is probable cause to  
24 support each and every element of all three of these charges  
25 against Mr. Harkrider in this case?

1 A. I do.

2 MR. LOCKER: Pass the witness.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. WALDRON:

6 Q. Thank you, Your Honor.

7 We've been here a while today. You've gotten to  
8 testify quite awhile. I have probably a lengthy --

9 A. That's okay.

10 Q. -- amount of questions, so just have patience with me  
11 here.

12 A. No problem.

13 Q. Let's start with just going over what you testified here  
14 in the hearing against my client, Mr. Harkrider.

15 Specifically, on the Snapchat we talked about it  
16 briefly and I, on cross-examination previously, I asked you  
17 did you know who typed that message on the picture that was  
18 shown. And you said you did not.

19 A. That's correct.

20 Q. Okay. Clearly, it appears to be a picture of  
21 Mr. Harkrider.

22 A. It is a picture of Mr. Harkrider.

23 Q. Okay. Do you think you can tell he is inside the  
24 Capitol -- there is no doubt. We can see on the video, at  
25 some point he is in a room in the Capitol; is that right?

1 A. That's right.

2 Q. What room is that?

3 A. I couldn't tell you.

4 Q. Inside that room you have no idea what the ingress or  
5 egress is to the rest of that building, do you?

6 A. That is totally fair, I do not know.

7 Q. You do not know if he is in the middle of the building  
8 hundreds of yards away from the Senate or the House, do  
9 you?

10 A. I do not know. That's correct.

11 Q. Okay. You don't -- how long would you say he was in the  
12 building?

13 A. As I discussed with Mr. Files, I am really not  
14 comfortable -- best guess, I am thinking a couple of minutes.  
15 I don't have any -- I don't have any good, hard data for you  
16 on that, but that's my guesstimate is -- you know, somewhere  
17 between probably two and 10 minutes at the very most, but  
18 probably less.

19 Q. Okay.

20 A. We just have not had a chance to sit -- I presume that  
21 there is going to be footage from the Capitol building that  
22 should hopefully show that room that would probably give us  
23 an answer to that, but I don't have it as we sit here. I'm  
24 just guessing.

25 Q. And we don't have that?

1 A. That's correct.

2 Q. So we don't know if he went anywhere besides that one  
3 room?

4 A. I do not know that, that's correct.

5 Q. In fact, the photos that you have seen -- I don't know  
6 who posted those -- the photos that you have seen of him in  
7 that room looks like he is standing still in that room; is  
8 that correct?

9 A. Yes, sir, whatever room that is, yes.

10 Q. All right. Likewise, from the standpoint of  
11 Mr. Harkrider, do you ever see him, in that room or outside,  
12 tear up, destroy any property of the Federal Government there  
13 on the grounds?

14 A. I would say no -- other than they are rocking with the  
15 group; but, no, certainly nothing of him breaking a chair or  
16 smashing a window, I have not seen any footage of anything  
17 like that.

18 Q. In fact, you can see the guy smashing the window out,  
19 the top window out of that room that they go into?

20 A. Yes. That's a much longer video, and a lot of people  
21 took part in that in breaking that -- the one we just watched  
22 was that guy who succeeded at the top. But, no, I have  
23 nothing to indicate that Mr. Harkrider bashed any of those  
24 windows at all.

25 Q. Okay. And, likewise, you have no information, either

1 video or witness statements or any other information, that  
2 Mr. Harkrider used a weapon against anyone, including  
3 officers, do you?

4 A. The only thing that comes to mind when we say "weapon"  
5 is just passing the OC canister. I have nothing, as I sit  
6 here, to indicate that he physically used that, as I sit  
7 here.

8 Q. Okay. Well, let's talk about that. That is on the  
9 video. You recall that, right?

10 A. Yes, sir, it is captured a couple of times.

11 Q. And you see someone tap him on his shoulder and hand him  
12 that over the shoulder, do you not?

13 A. In one of the -- yes, in one of the videos, yes, that is  
14 what happens.

15 Q. He never drops it down. In fact, within a matter of  
16 seconds, he is giving it to somebody else; and that is the  
17 extent of him touching that OC canister?

18 A. In that frame, yes, that's correct.

19 Q. And you have no other evidence of him touching an OC  
20 canister?

21 A. As I said -- I want to be careful how I say this because  
22 there is the -- the long -- the hour-long,  
23 hour-and-a-half-long video when Mr. Locker actually paused  
24 it, that was, to be honest with the Court, that was the first  
25 time I even noticed that particular set of footage actually

1 caught it in his hand.

2 I am not comfortable saying that that is the same  
3 footage -- that that action is the same action that is caught  
4 in the other video with the still shot that we watched,  
5 because that is from a video as well. It probably is. But  
6 there is a lot of stuff moving through the crowd.

7 Q. Okay. So you can't say there were two separate times?

8 A. Not as I sit here, that's correct.

9 Q. All right. I know there was some testimony in the  
10 previous hearing about Mr. Harkrider exiting his body out the  
11 window, and I think the statement was he makes a slashing  
12 symbol or something like that?

13 A. Correct.

14 Q. I know Mr. Files cross-examined you about did the crowd  
15 increase their chanting or whatever. We can see now, we  
16 watched it a second time, that didn't happen, did it?

17 A. I'm not comfortable saying that he directly is the one  
18 who enticed or -- again, I'm not comfortable saying that.

19 Q. In fact, they were singing the National Anthem when he  
20 comes out; is that right?

21 A. I actually think the crowd behind him was, though I  
22 think his intention was to rile them up. But I can't say for  
23 sure that that worked.

24 Q. Okay. All right. Nobody was paying attention to  
25 that -- I mean, nobody saw what he was doing --

1 A. Well, certainly the camera man was fixated on that  
2 window.

3 Q. Yes.

4 MR. WALDRON: All right. Judge -- and I am going  
5 to get into some about statements. I would point out at this  
6 stage I have not received a copy of my client's recorded  
7 interview. I have not received a copy of the roommate's  
8 recorded interview or the results of search warrant, any of  
9 those reports.

10 I know that some are available now just prior to  
11 the hearing. Others are not available yet. I want to say I  
12 reserve the right to reopen this hearing if new evidence is  
13 learned once I am available to review those.

14 THE COURT: You have that right. Thank you.

15 BY MR. WALDRON:

16 Q. Let's talk about the tomahawk. What -- all right.  
17 Let's talk about that. When did you first discover or first  
18 learn that he, in fact, was in possession of a tomahawk at  
19 the Capitol?

20 A. To when we knew it was a tomahawk?

21 Q. Yeah.

22 A. When we recovered it during the search warrant.

23 Q. In fact, the affidavit says he had a baton in his  
24 jacket, right?

25 A. We weren't sure what it was, that's correct.

1 Q. Okay.

2 A. Because all you could see was just the handle.

3 Q. So the only way you learned he even has a tomahawk is  
4 through his cooperation during that interview with your guys  
5 when he was first arrested?

6 A. No. I think we would have made that conclusion when we  
7 found it during the search warrant. It is very unique.

8 Q. Did you have a search warrant for the house?

9 A. We did.

10 Q. Okay.

11 A. It was executed at that time.

12 Q. I thought that was a voluntary consent. Am I wrong on  
13 that? I have not seen a search warrant for the house.

14 A. We were there on a search warrant.

15 MR. WALDRON: Okay. Judge, I'd also request a copy  
16 of that, obviously at some point so I can review for a later  
17 date and see if I need to reopen.

18 MR. LOCKER: Your Honor, no objection. The  
19 discovery is an ongoing process. I don't think I have  
20 misrepresented how we were in Mr. Harkrider's home to  
21 Mr. Waldron. I've been doing my best to keep up with  
22 discovery obligations. Given our constrained time table, it  
23 has been a challenge, but I don't think at any point I  
24 misrepresented the way by which we located these items or  
25 were in Mr. Harkrider's home.

1 MR. WALDRON: I don't think he did. That's my  
2 client representing that he consented. They came to the  
3 door, and he let them in, is what he has told me. I may be  
4 wrong about that.

5 BY MR. WALDRON:

6 Q. How was the approach to his house; do you know?

7 A. A SWAT team was used to take him into custody.

8 Q. Did they knock the door in?

9 A. I don't have any answers. I'm not sure. I was not at  
10 that site. I don't know, as I sit here. I'm sorry.

11 Q. Okay. Where was he interviewed?

12 A. My understanding is that he was interviewed at I believe  
13 the Panola County Sheriff's Office or Carthage PD. It was a  
14 law enforcement facility. I think it was the sheriff's  
15 office. I could be wrong on that.

16 Q. He was taken from site to Panola County; is that  
17 right?

18 A. I believe so.

19 Q. Okay. And --

20 A. I haven't seen the report either.

21 Q. Have you listened to the interview?

22 A. I have not, sir, no.

23 Q. You don't know how long it is?

24 A. No, sir, I do not.

25 Q. But you are aware that he told law enforcement that is

1 what he had in his jacket?

2 A. That was what was represented to me from the  
3 investigators that I spoke with. He did acknowledge it was a  
4 tomahawk.

5 Q. Did he also advise law enforcement he took no other  
6 weapon to the Capitol?

7 A. Into -- yes, to the Capitol, yes, that's correct.

8 Q. And did he advise law enforcement that he, in fact, took  
9 Uber to the Capitol from his hotel?

10 A. I do feel like I remember hearing that. I believe that  
11 is correct. To my understanding, that sounds right.

12 Q. Okay.

13 A. I am sorry I am not more familiar with the interview.

14 Q. So a vehicle with potential weapons would have been left  
15 at the hotel, and then an Uber is taken; is that correct?

16 A. I believe that is correct from another source as well,  
17 from Mr. Nichols' dad mentioned the same thing, that they had  
18 parked maybe 10 miles away, 10 minutes away, something like  
19 that.

20 Q. Okay. And isn't it true he told law enforcement that  
21 the reason he had the tomahawk was the concern that Antifa or  
22 other Black Lives Matter and other groups may be there to  
23 oppose them or attack them?

24 A. My recollection from what the investigators told me was  
25 that it was a personal protection device, not meant to be an

1 offensive weapon. I don't remember -- I don't remember being  
2 told specifically that it was for the purposes of Antifa or  
3 Black Lives Matter.

4 Q. Isn't it true that he told investigators that when he  
5 went to Washington, he had no intent of storming or going  
6 into the Capitol?

7 A. I don't recall having that -- or asking that specific  
8 question, Mr. Waldron, to the detectives who interviewed him.  
9 I am really not comfortable speculating on that. I just  
10 don't know the answer to that question, as I sit here. I'm  
11 sorry.

12 Q. Isn't it true he told investigators he started his day  
13 wherever the speeches were being given by the President and  
14 Rudy Giuliani and whoever else stirred this crowd up?

15 A. I do believe that's correct. Yes, that's my  
16 understanding.

17 Q. And you watched this hour-and-a-half video, correct?

18 A. In pieces, yes, sir.

19 Q. The very first 30 seconds, which were cut off, what is  
20 on that first 30 seconds?

21 A. It is President Trump speaking to that crowd.

22 Q. And what does he tell them to do?

23 A. I did not watch his speech live. I'm not sure exactly  
24 what he told the crowd to do.

25 Q. Well, it's on that video where he says -- tells them to

1 go down to the Capitol, and I will be there with you. Is  
2 that right?

3 A. I have heard that, but I have not watched that. I  
4 didn't watch it in real time. I actually haven't watched a  
5 recording of his speech since. I can't speak to what he  
6 said.

7 Q. Are you aware this is some mile, mile and a half away  
8 from where the Capitol is?

9 A. I am not. If you say it is, I believe it.

10 Q. Are you aware of the crowds that were there for those  
11 speeches and the protests that day?

12 A. I have heard the estimates were as many as 114,000  
13 people.

14 Q. Okay. So we have 114,000 people that started out down  
15 the street, maybe a mile, listening to speeches of the  
16 President and Rudy Giuliani and the Trump kids. Is that  
17 correct?

18 A. Again, I am not sure of who spoke. But that sounds  
19 right.

20 Q. The videos that you have watched online, you see the  
21 crowd then walking, marching, whatever it may be --

22 A. Correct.

23 Q. -- to the Capitol?

24 A. Yes, sir.

25 Q. After being told to do so?

1 A. I concede the crowd started somewhere else and moved to  
2 the Capitol. We are in agreement there.

3 Q. And outside the perimeter of the Capitol, they are met  
4 with limited resistance by law enforcement; is that  
5 correct?

6 A. I am not sure.

7 Q. Okay. And I say outside the perimeter. I am not  
8 talking right at the building. There is law enforcement out  
9 there saying, hey, look, let's not get crazy. And the people  
10 approached the plaza area of the Capitol; is that right?

11 A. Again, I'm not sure what -- about the Capitol, sorry.

12 Q. Do you know if people entered the Capitol from all  
13 sides?

14 A. I don't have an answer to that. I don't know.

15 Q. Okay. The people that were involved that we see -- in  
16 these videos we see, we don't see the guy with the Viking  
17 helmet, do we?

18 A. Correct, no, we do not.

19 Q. We don't see any evidence where we can point to of the  
20 female that got shot that got in, correct?

21 A. No, sir, not in anything --

22 Q. Okay. So those people had to have come in from some  
23 other location; would you agree?

24 A. That's what I believe to have happened, yes.

25 Q. Okay. Right now we are just focused on this one

1 entrance.

2 Does anybody get past law enforcement in that  
3 entrance there?

4 A. I don't have -- as far as the doors?

5 Q. The doors.

6 A. I don't know.

7 Q. Okay. And you don't know what happens inside -- if  
8 anyone got outside that room, do you?

9 A. Where the picture was taken?

10 Q. Yes. Where the picture was taken?

11 A. I don't, no, sir.

12 Q. So the people that are going in that window, not just  
13 Mr. Harkrider and not just Mr. Nichols, but the other people  
14 that go in, we also see most of them coming back out that  
15 window also, correct?

16 A. I would say there is as steady of a flow in as there is  
17 a steady of a flow out.

18 Q. But you see a lot of the same faces going in and coming  
19 out?

20 A. Uh-huh.

21 Q. Pretty good indication that there is some barrier or  
22 something that prevents them from coming too deep in there  
23 because they are coming right back out the window; would you  
24 agree with that?

25 A. It could be a series of rooms that they had access to

1 and just like you -- no doubt they ran into some sort of  
2 blockade or something somewhere that they couldn't pass go,  
3 so they had to come back out. I think that is fair.

4 Q. Okay. All right. Mental health. Have you read the  
5 bond report? Have you seen the Pretrial Services Report?

6 A. We discussed it briefly this morning with Mr. Locker. I  
7 have not reviewed it. That is not typically something that  
8 is given to us.

9 Q. All right. You are aware he is retired military --  
10 I guess we would say retired. He was forced retirement based  
11 on PTSD, mental disability. Is that right?

12 A. I was not aware he was force retired. I was aware he  
13 was a former Marine and has 100 percent disability for  
14 PTSD.

15 Q. Have you heard or are you aware that he did tours in  
16 both Afghanistan and Iraq?

17 A. Yes, sir, I have heard that.

18 Q. You are aware he was an infantryman?

19 A. Yes, sir.

20 Q. So he was involved in firefights?

21 A. I'm sure he was.

22 Q. Okay. So he is not the only one that is involved in  
23 firefights and an infantryman that served tours of duty that  
24 had PTSD; is that correct?

25 A. Certainly not.

1 Q. In fact, there were many veterans that were there at  
2 Washington that day; is that correct?

3 A. That's my understanding, yes, sir.

4 Q. So, as we sit here today, he has been in jail since  
5 Monday, have you received any information of him attempting  
6 suicide or attempting to harm himself since he has been in  
7 jail or in custody since Monday?

8 A. I don't have any information to that, no, sir.

9 Q. Okay. I want to talk about the cell phone and the text  
10 messages.

11 A. Okay.

12 Q. You and I had a conversation earlier about this printout  
13 on these text messages, and I asked you prior to being on the  
14 record, do we have this in a time sequence as to how these  
15 text messages went down? And your response was, you don't  
16 right now; you just took messages off his phone.

17 A. Correct. As I sit here, I'm not sure of the cadence or  
18 the sequence or timestamps or anything like that.

19 Q. Have you dumped his phone yet?

20 A. No, sir.

21 Q. All right. So I don't have copies of his phone either,  
22 right?

23 A. Neither of us.

24 Q. Okay. So when we are looking at those text messages,  
25 which you and I said -- we both agreed cadence is important

1 to know and understand the context of these messages?

2 A. Absolutely.

3 Q. 12:31, the text messages before the Court, there is only  
4 a text message from Mr. Nichols, is that correct, where he  
5 sends a picture to Harkrider?

6 A. That's the only one that we are presenting. I don't  
7 want to misrepresent that there are other text messages  
8 possibly on December 31st.

9 Q. If Harkrider had responded, would you have put that in  
10 here?

11 A. I did not prepare this document. If I believed it was  
12 exculpatory or in any way helped or hurt him, if it had  
13 evidentiary value, I certainly would have put it in here.

14 Q. Okay. So looking at this document that you didn't  
15 prepare, you have no evidence that Harkrider responded to him  
16 on 12/31?

17 A. As I sit here, I do not know if he responded, that's  
18 correct.

19 Q. So based on the fact that we have responses on other  
20 dates, we can assume that he did not; would that be a fair  
21 assumption?

22 A. I'm not prepared to say that. Only that I didn't think  
23 that it either helped or -- helped our cause or was  
24 beneficial to the Defense. Obviously, we would have provided  
25 it if it was exculpatory in some sort of manner. I'm not

1 prepared to say that.

2 Q. And I am not going to argue with you about that as far  
3 as who gets to determine what is exculpatory.

4 A. Sure.

5 Q. But right now we have nothing in here where  
6 Mr. Harkrider responded?

7 A. Correct. In this document, that's correct.

8 Q. And on January 1st where Nichols sends three text  
9 messages to Mr. Harkrider, which you have read to the Court  
10 about needing first aid kits and we need to speak in person,  
11 Harkrider never responds to any of those messages, according  
12 to this document, does he?

13 A. Again, not that we are presenting. I am not comfortable  
14 saying that he didn't. I also have not looked at the  
15 phone.

16 Q. Okay. And --

17 A. With respect to these particular messages. I'm sorry.

18 Q. Okay. The first evidence that we see in the documents  
19 presented of text messaging between -- where Mr. Harkrider  
20 responds is when they are talking about a movie called Soul,  
21 which is a cartoon movie, correct?

22 A. I haven't seen it, but I presume that is what it is,  
23 yes, sir.

24 Q. Well, I've seen it. I can represent to you it is a  
25 cartoon movie.

1 A. My kids aren't there yet.

2 Q. So that's the first time he responds is when he is  
3 talking about a movie, not talking about going to D.C. Is  
4 that right?

5 A. For this document yes, sir, that's correct.

6 Q. Okay. You talk about drug usage, and you base that on  
7 this "I have got goodies for the trip, goodies you have  
8 requested."

9 Do you have any evidence from any of the  
10 photographs or any other information that they, in fact, took  
11 anything with them?

12 A. No, sir, not as I sit here.

13 Q. Do you have any information that Mr. Harkrider took any  
14 drugs while in Washington, D.C.?

15 A. No, sir, not as I sit here.

16 Q. Okay. You have talked a little bit about the group  
17 messages. And both comments you say attribute to  
18 Mr. Harkrider that you gave said: Who is y'all's favorite  
19 domestic terrorists? With an S, and he has a laughing face  
20 emoji?

21 A. Yes, sir.

22 Q. And this is the day after they were up in D.C.?

23 A. Correct.

24 Q. How did every news media portray anybody that was  
25 there?

1 A. Domestic terrorist.

2 Q. So, basically, it was an admission he was there, and  
3 look at the news media, look how they have labeled us?

4 A. Correct.

5 Q. Likewise, you say -- you make it back home. Yeah, I am  
6 back. Been in Shreveport with my mom hiding out. Ha. Ha.

7 Are you aware he has a sister that lives in  
8 Shreveport?

9 A. I am aware he has a sister. I'm not sure where she  
10 lives.

11 Q. If the bond report reflects that, you don't have any  
12 reason to dispute that?

13 A. No, not as I sit here, no, sir.

14 Q. All right. And, likewise, finally, the text message,  
15 this family support text message -- and it says family  
16 support, violent conduct. I learned today that would be  
17 Mr. Nichols' dad; is that right?

18 A. Yes, sir.

19 Q. That text message, there is no evidence in this document  
20 that Mr. Harkrider responded to that?

21 A. Correct, in this document, that is correct.

22 Q. Getting back to the tomahawk and I said, before he  
23 advised you it was a tomahawk, you guys did not know it, that  
24 it was a tomahawk?

25 A. That's correct.

1 Q. And the reason you didn't know it is he never pulled  
2 that tomahawk out of his jacket the entire time that you see  
3 him on video, did he?

4 A. Not that I have seen, no, sir.

5 Q. There was no evidence that you have seen up to this  
6 point two weeks into this investigation that would indicate  
7 he ever brandished that weapon?

8 A. I have no evidence of that. And, in fact, I believe he  
9 told the investigators during his custodial interview that he  
10 did not -- never took it out of his sheath.

11 Q. Okay. So it was in the sheath actually in his jacket?

12 A. I don't know -- but I believe the sheath was how he  
13 affixed it to either his jacket or his vest, yes, sir.

14 Q. Okay. Do you know if any were met with resistance by  
15 any outside groups, whether it is Black Lives Matter or  
16 Antifa or whoever had opposition to them; are you aware of  
17 any of that?

18 A. As to Mr. Nichols and Mr. --

19 Q. Any of this protest? Was any of that a part of this  
20 protest?

21 A. Other than hearing rumors, nothing that I can certainly  
22 say concrete or there is -- I can refer to this defendant  
23 somewhere. I would imagine that happened, but I have nothing  
24 specific about it. I'm sorry.

25 Q. The reason I ask that question, he advised you that that

1 was his concern that that would be the clash -- or he advised  
2 the investigators of that?

3 A. Right.

4 Q. He didn't take it to break into the Capitol; he took it  
5 in case he was assaulted to defend himself. Right?

6 A. That is the information that I believe he gave to  
7 investigators.

8 Q. And that would go hand in hand with him telling, I never  
9 brandished this; I never pulled it out?

10 A. With respect to the tomahawk, sure, I agree.

11 Q. Besides about five years of living in Judson, Texas,  
12 after military, are you aware that he is a life-long resident  
13 of Carthage, Texas?

14 A. I was not -- I am not aware of that.

15 Q. Okay. Are you aware that his mother, who is sitting  
16 right here, Donna Cox, is also a long-time resident of  
17 Carthage, Texas?

18 A. I was not aware of that.

19 Q. Are you aware she lives a half of a mile from his  
20 house?

21 A. I am not.

22 Q. Okay. You are aware now that he is 100 percent  
23 disabled, and he totally survives on his disability check  
24 through the military?

25 A. That's my understanding, yes, sir.

1 Q. You are aware that obviously with disability comes  
2 constant contact with the VA to reassess and reevaluate any  
3 disabilities through the military?

4 A. I would imagine that it is, but I am not familiar with  
5 VA's practices.

6 Q. Okay. The cases that are involved here, one is a 0 to  
7 10 year case and the other is a misdemeanor; you are aware of  
8 that, right?

9 A. Yes, sir.

10 Q. Okay. Have you even looked at the Sentencing Guidelines  
11 to see where they fall for this offense?

12 A. I sure haven't.

13 Q. Okay. So you are not aware that they would potentially  
14 be 0 to 6 months in this case?

15 A. I am not aware of that.

16 Q. Other than Washington, the interaction with law  
17 enforcement prior to that, are you aware it is only DWI  
18 related?

19 A. I want to say -- I know about the DWIs. I want to say  
20 there was maybe a criminal mischief sometime in his past, as  
21 well. But certainly nothing more significant than those that  
22 I am aware of.

23 Q. Misdemeanor?

24 A. Yes.

25 Q. And his only DWI conviction would have been 2010 or '11;

1 is that right?

2 A. If you say -- I have -- I am not -- I am sorry. I am  
3 not intimately familiar with his criminal history at this  
4 moment, as I sit here.

5 Q. Okay. I am looking at the affidavit for arrest warrant,  
6 and I realize that there is a lot going on with this. Okay?  
7 I'm not trying to put you in the box here. But you learned  
8 of Mr. Harkrider and Mr. Nichols on January 7th, is that  
9 correct, FBI did?

10 A. So I do believe that was the first reporting of that by  
11 the witness Aryeh Ohayon. I am messing his name up. I'm  
12 sorry. Ohayon. As far as -- and that was made to the FBI on  
13 January 7th. As far as when that tip trickled down to us  
14 took some time. And I want to say the first time I really  
15 dug into them was that Monday, that following Monday,  
16 whatever day that is. I'm sorry.

17 Q. Okay. I don't have my calendar in front of me. But he  
18 is arrested on the 18th, so I think it would be the 11th?

19 A. That sounds right. It was roughly a week from when I  
20 first was familiar with -- or looked into either of them,  
21 yes.

22 Q. Okay. First tip, January 7th, from witness number one.  
23 Second tip, January the 9th, witness number two?

24 A. Uh-huh.

25 Q. Both identifying Harkrider and Nichols, and that is

1 Paragraphs 13 and 15 of the affidavit.

2 A. That sounds right, yes, sir.

3 Q. This affidavit for arrest warrant, it is signed by an  
4 agent I guess out of D.C.; is that right?

5 A. That's correct, the Washington Field Office.

6 Q. Okay. So you didn't prepare this?

7 A. No, sir. Other than that we discussed with Mr. Files,  
8 obviously this is built in large part off the search warrants  
9 for the Defendants' residences. Obviously, it has been  
10 reworded and rephrased and things like that --

11 Q. Okay.

12 A. -- by the attorneys, of course, and that agent as  
13 well.

14 Q. All right. So when you get the case on the 11th, what  
15 do you immediately start doing?

16 A. Well, we wanted to take sure -- this is going to sound  
17 bad. My first goal is to make sure that these guys are  
18 actually in my territory. If I can kick the work off to  
19 somebody else, because we have got a whole bunch of these,  
20 I'm going to do that. So that was our first step was to --  
21 you know, we got this tip about these two guys, are they in  
22 our territory? Yes, they were. We were able to verify that.

23 Then we started to take steps to see -- I think I  
24 described this earlier, because the tips called us to their  
25 Facebook pages, that was the first place we went. And I

1 think, as I discussed earlier, the pages had been kind of  
2 sanitized though.

3 I think with respect to your client, there really  
4 was not much of an allegation that his Facebook page was  
5 littered with videos or pictures anyway. A lot of the images  
6 that we have now -- I am sorry. I am rambling here -- are  
7 Mr. Nichols' images, which depict Mr. Harkrider, but he is  
8 tagged. Yeah. Ryan Nichols is angry with Alex Harkrider,  
9 and his Facebook page is tagged.

10 Q. Okay.

11 A. I'm sorry, I kept going there.

12 Q. I get it. But that is Ryan Nichols posting; that is not  
13 Alex Harkrider?

14 A. That's correct.

15 Q. Just tagging Mr. Harkrider?

16 A. Correct.

17 Q. Okay. To get back to -- this is an important part, too,  
18 as far as cooperation. I know you guys made a big deal about  
19 how Mr. Nichols sanitizes his Facebook. He gets rid of his  
20 clothes. His AR is nowhere to be found. He wasn't  
21 completely truthful about a lot of stuff. Okay? He didn't  
22 sit down and give you an hour-long interview, or whatever it  
23 was, like Mr. Harkrider did?

24 A. That's correct.

25 Q. Mr. Harkrider tells you where everything is, tells you

1 exactly what happened, tells you what he has, still had the  
2 text messages, which are the basis for these text messages  
3 that we have. Right?

4 A. I think that is fair. The only thing I would add to  
5 that is that the investigators, when they initially asked him  
6 about his conduct, he initially denied all of those things.  
7 And it was kind of one of those things, okay, you weren't in  
8 the Capitol? Okay. Well, what about this picture? Okay.  
9 You got me. That kind of thing.

10 Now, he does end up admitting the conduct that we  
11 allege. The pictures that we showed him, he does acknowledge  
12 his involvement, but --

13 Q. Okay.

14 A. -- I want to make that notation there.

15 Q. And it is a comparative basis, obviously?

16 A. Totally fair, yes.

17 Q. You know, you have got one guy that is not cooperative;  
18 you have one guy that is very cooperative -- or cooperative.  
19 He gives you that (indicating), that tomahawk that is sitting  
20 right there on the desk?

21 A. Well, he confesses to that. We had that anyway. We  
22 certainly would have had it with the search warrant.

23 Q. He didn't dispose of it?

24 A. No, no, that is totally fair, you're right.

25 Q. Still in his house?

1 A. Yes. As well as his clothing that he wore, and he  
2 didn't delete messages in his phone.

3 Q. Yeah. So we have two different pictures of cooperation  
4 here, correct? One a total lack of and one cooperation. And  
5 one that didn't try to destroy evidence.

6 A. As far as I know. I think that is fair.

7 Q. Okay. So getting back to the timeline. You started  
8 work on the 11th. He is not arrested until the 18th.

9 A. Yes, sir.

10 Q. Okay. When was it during that time frame that you  
11 believe that Mr. Harkrider now is a complete danger to the  
12 community, himself, and others; and he needs to be taken off  
13 the streets?

14 A. I don't know that there was any one moment. Just kind  
15 of something that you kind of come up with as you learn all  
16 things throughout it.

17 Q. By the 12th did you have that opinion?

18 A. I can't answer that. I don't remember specifically  
19 having those thoughts. My focus at the time and fixation was  
20 on developing evidence, if there was any, preparing the  
21 complaints and search warrants in coordination with the case.  
22 My mind was not on detention. It was not on -- I know what  
23 you are asking, but that is not where my head was.

24 Q. Well, and I guess what I am asking is this: There have  
25 been many people identified in this riot that committed acts

1 of violence?

2 A. Yes, sir.

3 Q. Whether it is clubbing an officer with a stick?

4 A. Sure, uh-huh.

5 Q. Whether it is throwing a fire extinguisher at an officer  
6 and hitting an officer -- one I think even passed away; is  
7 that correct?

8 A. Yes, sir.

9 Q. They have been identified; is that right?

10 A. A lot of them have, yes, sir.

11 Q. Okay. And those people, without hesitation, once it was  
12 identified and learned that they committed those acts of  
13 violence, they were taken off the streets immediately, were  
14 they not?

15 A. As soon as the appropriate complaint could be worked up,  
16 search warrants, yes. I mean, all of that is taken into  
17 consideration with what are we going to get -- how do we need  
18 to proceed?

19 And as you know and you have seen the complaint,  
20 this was filed in District of Columbia. There was -- they  
21 were not quite as expeditious in their preparing of the -- or  
22 getting the complaint signed as I think we would be here in  
23 the Eastern District. They are a little bit overwhelmed  
24 right now.

25 Q. That's fair enough.

1 A. To be fair.

2 Q. That's fair enough.

3 A. We could not proceed -- if your question is, would I  
4 have liked to have arrested Mr. Harkrider on the 12th, the  
5 answer is yes. We did not have a complaint in hand at that  
6 time.

7 Q. Okay.

8 A. And the guidance we got was that the complaint needed to  
9 be signed in the District of Columbia.

10 Q. Okay. But you had provided your information by then?

11 A. My search warrant wasn't done until pretty much Friday  
12 morning, whatever that -- maybe the 15th or 16th -- whatever  
13 day we got the search warrant signed. I'm sorry. I am a  
14 little tired.

15 Q. So between the 6th and 18th when he is arrested, are you  
16 aware of any acts of violence that Mr. Harkrider committed?

17 A. No, sir, not as I sit here.

18 Q. Between the 6th and the 18th, are you aware, from going  
19 through his phone, of any plans of Mr. Harkrider to flee?

20 A. I am not aware of any of that. However, again, for the  
21 purposes of -- I want to be transparent with the Court -- we  
22 have not totally gone through anybody's phones, obviously.  
23 The Snapchats that we have are very finite. We were looking  
24 for the -- pretty much the time frame to, again, build  
25 evidence for the purposes of detention and for probable

1 cause, quite frankly, to make sure we were right on the  
2 money, which I think we are.

3 Q. Okay. He is arrested at home?

4 A. Uh-huh.

5 Q. Carthage, Texas, where he has been living for the last  
6 eight to 10 years, I believe?

7 A. Yes, sir. I think he bought that home in June is my  
8 recollection.

9 Q. Well, Carthage is longer --

10 A. Carthage is his hometown, sure.

11 Q. Obviously, you know the issues before the Court; flight  
12 risk, danger, there are a lot of factors that go into that,  
13 nature of the offense being one of them?

14 A. Sure.

15 Q. So in that assessment, that is the reason why -- and I  
16 guess the question becomes -- or is your opinion that he is  
17 both a flight risk and a danger; is that what your testimony  
18 is?

19 A. I have some concerns that he has no ties to D.C. I am  
20 concerned that the reference, in whatever context it may be  
21 that he was, quote, unquote, hiding out, and my -- most  
22 probably my paramount concern is his danger to himself, the  
23 reference that he wished he had been killed or shot by  
24 police.

25 Whether it is during when he was arrested or at the

1 Capitol, either way, that is very concerning. And if he is  
2 driving his car and, you know, he gets pulled over for a  
3 speeding ticket, he might not know that that is all it is.

4 You know, hopefully, he reacts -- you know,  
5 responds to that in kind. But that is a pretty bold  
6 statement to make, that I wish they would have killed me.

7 Q. Distraught over being arrested for a federal offense?

8 A. I'm sorry?

9 Q. Distraught over being arrested for a federal offense?

10 A. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. Distraught over being arrested for being involved in  
14 something at the behest of the President of the United  
15 States?

16 A. I don't know if that is why he is distraught. I do know  
17 that one of the information that was related to me that he  
18 specifically asked if, as a result of what we are doing here,  
19 if he would lose his disability payments and stuff, which if  
20 that is his sole income, I can see how that would be  
21 distressing as well.

22 Q. Yeah.

23 A. Got to be able to put food on the table.

24 Q. Yeah.

25 A. And I believe he has a child. I could be wrong about

1 that.

2 Q. You are correct. I believe he has got a 15-year-old;  
3 15, 16-year-old daughter.

4 A. Somebody that he, I mean, probably needs to provide for,  
5 as well as himself.

6 Q. There has been something made about this heave-ho deal  
7 where we can spot different people in the crowd, including  
8 Mr. Harkrider?

9 A. Uh-huh.

10 Q. Do you recall watching that video?

11 A. Yes, sir.

12 Q. Do you recall Mr. Harkrider in the crowd?

13 A. Yes, sir.

14 Q. There is obviously some steps up to where those officers  
15 are, by the appearance of the angle people's heads are; would  
16 that be safe to say?

17 A. Yes, sir. There is definitely an elevation of some  
18 kind.

19 Q. And he is definitely not up at the front fighting with  
20 the officers?

21 A. No, sir.

22 Q. He is in the crowd?

23 A. Correct.

24 Q. At one point you can actually see him with his head down  
25 and his arm stuck up in the air like this (indicating)?

1 A. Uh-huh.

2 Q. Is that fair to say?

3 A. Yes, sir, I know exactly what you are talking about.

4 Q. He is not pushing the crowd one way or another; that  
5 crowd is moving him at that stage. Would you agree with  
6 me?

7 A. I don't know that I am comfortable saying that. I  
8 certainly think it is fair to say he couldn't get his arms  
9 down. He is obviously significantly taller than the rest of  
10 that crowd, unfortunate to him in this instance because it  
11 made him stick out very easily to us.

12 Q. And we have got no evidence of him saying heave-ho, do  
13 we?

14 A. No, not as I sit here today.

15 Q. Not everyone in that crowd participated in the heave-ho,  
16 did they?

17 A. Certainly not everybody who was present in that frame of  
18 footage, no. I would agree with that.

19 Q. That mash of bodies, not everyone participated in it;  
20 you would agree with that?

21 A. I'm sorry, I don't.

22 Q. So you think everyone in that body, that mass, even the  
23 ones that later get out of that mass, they were participating  
24 in it?

25 A. I think Mr. Harkrider and Mr. Nichols participated in

1 that swaying motion, and I think they knew what they were a  
2 part of.

3 Q. And you base that on their other conduct or what you  
4 view in that video?

5 A. All of it. I mean, what is in that video and the  
6 totality of their conduct and what I know.

7 Q. I believe in that same frame about the time we are  
8 talking about, you see an individual specifically in a brown  
9 cowboy hat and camouflage. You remember seeing that? And  
10 the guy saying: Stop and pray, stop and pray?

11 A. Yes. That is later than when they are rocking, but,  
12 yes, sir.

13 Q. Yes. Shortly thereafter?

14 A. Uh-huh.

15 Q. Okay. And he was in that crowd, right?

16 A. In the swaying crowd, I'm not sure, as I sit here. If  
17 you say it. I haven't been fixated on him.

18 Q. Just to clarify, the bullhorn comments were all made by  
19 Mr. Nichols?

20 A. That's correct.

21 Q. Not a single time do you have Mr. Harkrider holding a  
22 bullhorn?

23 A. I have no evidence that Mr. Harkrider held a bullhorn or  
24 made a statement through the bullhorn.

25 Q. And, likewise, there is a video that was introduced in

1 Mr. Nichols' hearing of him spraying OC spray. No evidence  
2 of us ever spraying any OC spray? Nor were we charged with  
3 that, were we?

4 A. The Defendant was not charged with that, and I don't  
5 have any evidence of him spraying the OC spray, that's  
6 correct.

7 Q. Okay. Just to be clear, too, you have no evidence that  
8 my client has any knowledge of Mr. Nichols shooting at an  
9 airplane flying over his head -- over his house, do you?

10 A. I don't have any evidence of that right now, but I would  
11 love to talk to him about it.

12 Q. Didn't find an AR or any 10-round magazines in my  
13 client's house either, did you?

14 A. Not that I am aware of, no, sir.

15 Q. We talked about that piece of furniture that was found.  
16 Have you seen it?

17 A. I haven't.

18 Q. Can you describe it, how big, how small?

19 A. My understanding is that it is pretty little, and they  
20 believe it is a leg. What I kind of envisioned, how it was  
21 described to me was from a very low -- like a low chair.  
22 Well, kind of sort of like just an old antique chair leg, in  
23 my mind is what I am picturing, but I haven't seen it. I'm  
24 sorry.

25 Q. Okay.

1 A. But there probably is a picture of it, though, in the  
2 search photos from his residence. I haven't looked at those  
3 either, but I would imagine there was one in there since we  
4 took it.

5 MR. WALDRON: Judge, I will pass the witness.

6 THE COURT: All right. Redirect?

7 MR. LOCKER: Yes, Your Honor, and I will keep it  
8 brief.

9 REDIRECT EXAMINATION

10 BY MR. LOCKER:

11 Q. Regarding the heave-ho discussion --

12 A. Yes, sir.

13 Q. -- in your viewing of the video, does it appear that  
14 Mr. Harkrider throws his weight into that crowd as they are  
15 heaving and hoeing?

16 A. That is what it appears to me, yes.

17 Q. Wherever his hand is, it appears he is leaning his  
18 shoulder into it and participating with the sway?

19 A. Yes.

20 Q. Regarding Mr. Harkrider's PTSD, are you aware that he  
21 has been prescribed medication for that?

22 A. That is the information that I have, yes.

23 Q. And you also have information that he is non-compliant  
24 with taking of that medication?

25 A. My understanding is that is the statement that he made

1 to investigators was that he was not complying with his  
2 medication, that is correct.

3 MR. LOCKER: Your Honor, I would like to offer for  
4 admission Government's Exhibit 12 or 13 at this point.

5 THE CLERK: It's 13.

6 THE COURT: 13.

7 MR. LOCKER: 13. And it is an image that shows  
8 Mr. Nichols and Mr. Harkrider outside the window, and then  
9 attached to it is a second image that shows them inside the  
10 same room which they appeared outside of at first.

11 Mr. Waldron, I have it up on my screen if you would  
12 like to see it.

13 MR. WALDRON: I have seen those pictures. I have  
14 no objection for the purposes of this hearing.

15 THE COURT: All right. It will be admitted.

16 BY MR. LOCKER:

17 Q. So, Detective Harry, this shows that we have Mr. Nichols  
18 in the foreground and Mr. Harkrider in the background. I'm  
19 going to zoom in somewhat.

20 And, although you can tell from this image that  
21 Mr. Nichols -- you can't tell if Mr. Nichols or Mr. Harkrider  
22 are in some other room besides the arched-window room that  
23 they entered within, it is clear from this image that they  
24 didn't merely remain in the two- or three-foot proximity of  
25 the window; they are fully in that room. Is that fair?

1 A. Correct, yes.

2 MR. LOCKER: I will pass the witness.

3 THE COURT: Any recross?

4 RE-CROSS-EXAMINATION

5 BY MR. WALDRON:

6 Q. Agent, do you believe that is the window they entered  
7 right there?

8 A. I do.

9 Q. Okay. So, obviously, we are talking a still photo.  
10 Depth-perception-wise, it's really hard to say exactly how  
11 far that window is away, isn't it?

12 A. Yes.

13 Q. We don't know if it is eight feet, 10 feet, five feet;  
14 we don't know how far away it is?

15 A. I don't know a distance, but I can certainly -- you can  
16 look at points of reference in the image. The can lights on  
17 the ceiling is a pretty good indicator to me of kind of how  
18 far they are.

19 I certainly think they are at least four lights  
20 back. I mean, we can only see three. But they look further  
21 back than that to me. But just even if you look at the can  
22 lights right above the Judge's Chambers, I mean, those are  
23 probably at least four feet apart.

24 Q. Sure. So it looks my guy is further down the table,  
25 Mr. Harkrider is further down the table under that second

1 light.

2 What does it look like he is doing there?

3 A. My assumption is that he is actually playing on his  
4 phone. He is texting or taking a picture or doing something.

5 Q. He is not tearing anything up, is he?

6 A. Not in that image.

7 Q. Not yielding a weapon of any type?

8 A. No, sir.

9 Q. Do we know if this is a police officer standing beside  
10 him with his patch on his arm?

11 A. The gentleman to the right?

12 Q. Yeah.

13 A. I have no idea.

14 Q. That could be a Capitol Police Officer. We don't even  
15 know, do we?

16 A. Could be another Marine.

17 Q. Could be.

18 MR. WALDRON: I will pass the witness.

19 THE COURT: Anything further?

20 MR. LOCKER: Nothing further, Your Honor -- no,  
21 Your Honor.

22 THE COURT: All right. You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 MR. LOCKER: The Government rests.

25 THE COURT: Okay. Mr. Waldron, who will be your

1 first witness?

2 MR. WALDRON: Judge, I just have a proffer.

3 THE COURT: Proceed.

4 MR. WALDRON: That would be it.

5 THE COURT: All right.

6 MR. WALDRON: Judge, I have family members here

7 present. I have got Mr. Harkrider's mother, Donna Cox.

8 Would you stand up, Ms. Cox?

9 And then I have got his aunt and uncle here.

10 And, I'm sorry, you wrote your names down, and I  
11 can't remember.

12 But his aunt and uncle are here also from Carthage.

13 Judge, the proffer would be, this family lives in  
14 close proximity, less than a mile from Mr. Harkrider. His  
15 mother is here today to offer to be third-party custodian.  
16 And if she was called to testify, she would say exactly that.

17 Her house, and I have looked it up, is .7 miles  
18 from Mr. Harkrider's house in downtown Carthage.

19 If she was called to testify, she would say that  
20 her son, who she helps out a lot anyway with various errands,  
21 she would allow him to live with her, if this Court would  
22 allow that.

23 She has a job with CIGNA; that she works in the  
24 area; she would be home in the evenings; and would be able to  
25 take care of him; take care of his needs; make sure he gets

1 to his VA appointments; make sure he gets all of his grocery  
2 shopping; and his bills paid; and whatever it may be.

3 She is not opposed, obviously, to the electronic  
4 monitor being in the house. In fact, she welcomes that.  
5 That would be fine with her.

6 She -- you know, if called to testify, she would  
7 talk about right now what he does for his PTSD is he raises  
8 peppers. He gardens, and he is trying to do it with the  
9 non-medication way in addressing his PTSD.

10 She would testify she does not believe he is  
11 suicidal. He is distraught over being arrested.

12 But she would abide by the restrictions of this  
13 Court. She would, obviously, call his Probation Officer if  
14 he did, in fact, violate any condition of his -- of his bond  
15 requirements.

16 So I am offering her as a third-party custodian,  
17 someone that is very close to him, someone that sees him on a  
18 regular basis.

19 As Mr. Files previously said, obviously a mother  
20 loves her child. It doesn't mean she agrees with everything  
21 that her child does. At the same time recognizing he has to  
22 be in D.C. at some point to answer to this potentially, she  
23 is willing to make sure he makes all those court appearances.

24 She is able. She is capable. She is in good  
25 health. She can take care of this. So I would offer her as

1 third-party custodian.

2           The other thing is I wanted to talk a little bit  
3 about the electronic monitoring because I know it is  
4 recommended. And we are not opposed to that. That is fine.  
5 He is 100 percent disabled. He stays at home. He doesn't go  
6 and do. He did not drive to D.C. He rode with Mr. Nichols  
7 to D.C. I think that is borne out by the messages.

8           I talked to Mr. Manley beforehand, and he said  
9 right now currently that electronic monitoring doesn't have  
10 the GPS technology, but they have ways of closely monitoring,  
11 and they can make it where he is restricted to his residence  
12 24/7 with the exceptions of doctors' appointments and certain  
13 essential needs.

14           Well, with his mother here, she has already said, I  
15 can take care of the essential needs. The only thing we  
16 would need to go to is court and VA appointments. Outside of  
17 that, he could be restricted to his home pending the outcome  
18 of this case.

19           So, Judge, I would -- that is my proffer is that  
20 she would be third-party custodian.

21           THE COURT: Thank you, Mr. Waldron. With that, do  
22 you rest?

23           MR. WALDRON: I do, Your Honor.

24           MR. LOCKER: Government closes.

25           THE COURT: All right. And the Defendant will

1 close.

2 So, Mr. Locker, I will let you argue the motion at  
3 this time.

4 MR. LOCKER: Thank you, Your Honor. May it please  
5 the Court.

6 We are in. Two people killed already. We need all  
7 of the patriots in this country to rally the F up and fight  
8 for our freedom before it's gone forever. Give us liberty or  
9 give us death. We won't stand for it.

10 The Defendant's own words. We believe that that is  
11 a reasonable inference that those were his words.

12 Who is y'all's favorite domestic terrorists?

13 Made in jest or otherwise, it is still his words.

14 He makes a throat-slashing gesture to the crowd.

15 There is no other way to interpret this besides a call to  
16 violent action.

17 Regarding weapons. He took a tomahawk into the  
18 United States Capitol, and he can be seen holding an OC spray  
19 canister over his head same, the same kind that Mr. Nichols  
20 used to assault law enforcement officers.

21 His mental health raises legitimate questions about  
22 his stability, and his suicidal comments indicate he is a  
23 danger to himself, very sadly.

24 And while he may have been following his friend,  
25 Mr. Nichols, his conduct was just as serious and his

1 intention as equally warranted and necessary to protect the  
2 public and deter his and other's desire to continue their  
3 attack on the rule of law.

4 Plenty of people, leaders and followers of all  
5 walks of life and background, were in the crowd that day.  
6 Yet, as you can see from the video, only a tiny fraction  
7 committed the kinds of offenses that he and Mr. Nichols  
8 committed.

9 I ask the Court to detain him.

10 THE COURT: Your response?

11 MR. WALDRON: Thank you, Your Honor.

12 Your Honor, I would note that there is no  
13 presumption in this case based on 3142(f), and we are asking  
14 the Court to take note of that.

15 And we are also asking the Court to take judicial  
16 notice of the Pretrial Services Report where it documents  
17 Mr. Harkrider's history, including both mental health  
18 history, his medical history, his criminal history. It is  
19 all documented in here; and it is confirmed by his mother,  
20 who is present today. I had her review this prior to the  
21 hearing. She said this is all accurate. I think some of the  
22 information she, in fact, provided.

23 Judge, it gets back to those factors and what we  
24 need to do here. It is not about sending a message, because  
25 of the nature of this offense, to everybody that is involved.

1 Each individual is entitled to an assessment based on the  
2 factors.

3 I get that there are crimes that were committed  
4 that day. I get that people are outrageously upset about  
5 what happened that day. But when it boils down to it, we  
6 shouldn't be judged by the actions of the Ryan Nichols or any  
7 other individual. Judge us on our actions. Judge us on  
8 where we are in life and our past conduct.

9 We haven't shot at airplanes or been accused of  
10 that. We have not assaulted construction workers. We live  
11 at home. We fought for the country. We served two tours  
12 where we were shot at and had to return fire and, as a  
13 result, had PTSD.

14 This agent testified his biggest concern is the  
15 suicidal thoughts that my client has had. I have a mother  
16 right here that says she does not believe her son is  
17 suicidal. Anybody is going to be distraught about being  
18 arrested and drug into federal court on a felony charge when  
19 you have never committed a felony in your life and the worst  
20 thing you have done is driven intoxicated. That has been his  
21 life for 33 years.

22 He has a daughter that he pays child support to  
23 that he sees on a regular basis. He has a mother and aunts  
24 and uncles that live in close proximity that he sees on a  
25 regular basis.

1 His sister leaves in Shreveport. There was no  
2 hiding out in Shreveport. There was a laugh face at the end  
3 of that. He didn't try to conceal anything that he had done.

4 He didn't delete text messages, as he was  
5 instructed to by Mr. Nichols. He didn't hide that tomahawk.  
6 He could have gotten away, and they never knew he had a  
7 tomahawk hidden in his jacket because it was never revealed.  
8 The believed it was a baton.

9 He cooperated. Sure you can search my phone.  
10 Sure. Even though they might have a warrant, he didn't  
11 object to anything from the standpoint of the search of his  
12 house and gave them all of his weapons.

13 I think that goes to the difference in nature that  
14 you have seen this afternoon of two different, separate  
15 Defendants, not basing it just on this charged conduct.

16 And even looking at the charged conduct, we have  
17 got Mr. Nichols spraying pepper spray at whoever he was  
18 spraying at. We didn't do that. We touch an OC can, and all  
19 of a sudden we are on the same level as Nichols. That was  
20 handed to us. It is clear on the video. And he gets rid of  
21 it as clear as he can. He didn't participate in that.

22 That picture at the end was the best evidence of  
23 what was going on in that room that we can't see. He is  
24 standing there on his phone, probably taking the picture that  
25 we saw.

1           The writing on there, they can't even say that what  
2 was written was attributed to him. It is a screenshot.  
3 Anybody could have typed that in. They have no evidence of  
4 that. They got his phone. We haven't seen that phone yet.  
5 But they got his phone.

6           I don't know how -- I know Snapchat has some  
7 features where pictures and images and all is wiped clean  
8 after a period of time. So I don't know if that even exists  
9 on that phone anymore.

10           Judge, I have looked at this, studied it, spent a  
11 lot of time with Mr. Harkrider and his mother. I have looked  
12 at the factors set forth in (G), and it talks about the  
13 nature and circumstances of the offense charged being one  
14 factor. But it also talks about the history and  
15 characteristics of the person, the person's character, talks  
16 about his physical and mental condition. And there is some  
17 concern about suicidal. He does have PTSD. But he has lived  
18 with that now for a number of years, and he is on 100 percent  
19 disability.

20           It talks about financial resources. He doesn't  
21 have hardly anything in the bank. He represented that to  
22 you.

23           Length of residence. In the community most of his  
24 life. Community ties. Past conduct. History related to  
25 drug or alcohol abuse. We know we have a DWI. But we don't

1 have anything else outside of that.

2 Criminal history. Record concerning appearance in  
3 court proceedings. We have none of that.

4 And he was not on probation or parole at the time  
5 that this offense was committed.

6 So, Judge, when you take into consideration these  
7 factors that Congress has given us as guidelines in  
8 determining, they weigh heavily in favor of releasing  
9 Mr. Harkrider.

10 We have the Pretrial Services Report that makes a  
11 recommendation to this Court. Release Mr. Harkrider. We  
12 think he will abide by your conditions. Put him on that  
13 electronic monitor and monitor him 24/7. Let his mom run his  
14 errands for him. Let him be home pending the outcome of this  
15 case.

16 And, Judge, one of the strongest arguments, I have  
17 looked at the Guidelines, how they applied in this case. We  
18 have had these conversations quite often. And, obviously,  
19 there is wiggle room for somebody to make a motion for an  
20 upward departure based on the nature and circumstance and  
21 being involved. But the Guidelines in this case are 0 to 6  
22 months. If he is detained, he could serve more time than he  
23 would actually get under a Guideline sentence. I think that  
24 is my biggest concern.

25 This is a probation-eligible case. Whether it ends

1 that way, I don't know. But right now his Guidelines are 0  
2 to 6 months, and I think he ought to be given a chance to  
3 prove himself.

4 Thank you.

5 THE COURT: Any final word?

6 MR. LOCKER: No, Your Honor.

7 THE COURT: All right.

8 Thank you all. In light of the testimony and  
9 evidence, I do find that probable cause exists to believe  
10 that an offense has been committed by Mr. Harkrider.

11 In addition, based on what I have heard here today,  
12 even just specific to Mr. Harkrider, concerning the nature of  
13 the charged offense and the additional evidence I have heard,  
14 I do not believe that there are conditions that would  
15 reasonably assure the safety of the community or  
16 Mr. Harkrider's appearance.

17 Specifically, as to this Defendant, there are text  
18 communications discussing bringing firearms to the Capitol.  
19 Mr. Harkrider did, in fact, bring a weapon into the Capitol,  
20 although not a firearm. There is video evidence showing him  
21 trying to and successfully getting into the Capitol.

22 In addition to the instant offense, I am concerned  
23 about his mental health history and his past issues with  
24 alcohol consumption.

25 So I appreciate the attorneys' argument. I do.

1 But for all of these reasons, Mr. Harkrider is going to be  
2 detained pending trial. I will enter an order detaining him.

3 Is there anything further from the Government?

4 MR. LOCKER: No, Your Honor.

5 THE COURT: Anything further from the Defendant?

6 MR. WALDRON: Judge, I know my appointment may be  
7 limited, obviously, to this district in this case, but I  
8 would ask -- and I know Mr. Locker will continue to provide  
9 discovery, if there is something new learned from that, I  
10 will let the Court know --

11 THE COURT: Yes, and you have absolutely retained  
12 your right to revisit this issue upon receipt of new  
13 evidence. Okay?

14 MR. WALDRON: Thank you, Judge.

15 THE COURT: All right.

16 All right. Mr. Harkrider, you are remanded to the  
17 custody of the United States Marshals.

18 And we are adjourned.

19 COURT SECURITY OFFICER: All rise.

20 (Hearing adjourned.)

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CERTIFICATION

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I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ Shea Sloan  
SHEA SLOAN, CSR, RPR  
Federal Official Court Reporter

February 5, 2021

# EXHIBIT 3



knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in, and, with the same intent, did engage in, disorderly or disruptive conduct while, during and in relation to these offenses, NICHOLS did use or carry a deadly or dangerous weapon, to wit a canister of OC/pepper spray and a crowbar, as described below, and HARKRIDER did use or carry a deadly or dangerous weapon, to wit, a baton, as described below, in violation of 18 U.S.C. §§ 1752(a) and (b)(1)(A) (conspiracy against both defendants, two substantive counts against NICHOLS, and one substantive count against HARKRIDER); that NICHOLS and HARKRIDER (2) did willfully and knowingly utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the U.S. Capitol Grounds or in any of the U.S. Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress, or parade, demonstrate, or picket in any of the Capitol Buildings, in violation of 40 U.S.C. §§ 5104(e)(2), 5104(e)(2)(D), 5104(e)(2)(G); that NICHOLS (3) did willfully commit or attempt to commit an act to obstruct, impede, or interfere with a law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which obstructed, delayed or adversely affected the conduct or performance of a federally protected function; and corruptly did obstruct, influence, or impede any proceeding before the Congress, in violation of 18 U.S.C. § 231(a)(3); that NICHOLS (4) did forcibly assault, resist, oppose, impede, intimidate, or interfere with an officer or employee of the United States or of any agency in any branch of the United States Government while engaged in or on account of the performance of official duties, and, in the commission of such offense, used a deadly or dangerous weapon, to wit a canister of OC/pepper spray, or inflicted bodily injury, in violation of 18 U.S.C. §

111(a) and (b); and that NICHOLS and HARKRIDER did (5) aid and abet the commission of these offenses against the United States, in violation of 18 U.S.C. § 2(a).

### **BACKGROUND OF AFFIANT**

3. I am a Special Agent of the Federal Bureau of Investigation, Washington Field Office. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws.

4. Unless otherwise stated, the information in this Affidavit is either personally known to me, has been provided to me by other individuals, or is based on a review of various documents, records, and reports. Because this Affidavit is submitted for the limited purpose of establishing probable cause to support an application for an arrest warrant, it does not contain every fact known by me or the United States. The dates listed in this Affidavit should be read as “on or about” dates.

### **STATEMENT OF FACTS SUPPORTING PROBABLE CAUSE**

#### *Assault on the U.S. Capitol on January 6, 2021*

5. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol.

6. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

7. On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States

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

8. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

9. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

10. At such time, the certification proceedings still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

11. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 pm after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

12. During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

*Witness Reports to FBI and Identification of Suspects*

13. On January 7, 2021, a witness (“W-1”) contacted the FBI’s National Threat Operations Center (“NTOC”) to report RYAN NICHOLS of Longview, Texas, and ALEX HARKRIDER of Converse, Texas, as identified by W-1 on Facebook, as two persons who broke into the U.S. Capitol in Washington, D.C. on January 6, 2021. W-1 identified a Facebook account with a profile name “theyannichols” as associated with NICHOLS and a Facebook account with a profile name “alex.harkrider” as associated with HARKRIDER.

14. W-1 informed the FBI that W-1 had observed digital media posted on NICHOLS' Facebook account depicting both NICHOLS and HARKRIDER present at the U.S. Capitol during the assault on January 6, 2021, and HARKRIDER's Facebook account is tagged in NICHOLS' posts. W-1 stated that NICHOLS and HARKRIDER identified themselves in these videos. W-1 reported that W-1 does not know either NICHOLS or HARKRIDER personally but identified both as friends of someone known to W-1. W-1 provided several images that W-1 captured from NICHOLS' Facebook account that are consistent with other media recovered by the FBI depicting both men at the U.S. Capitol on January 6, 2021.

15. On January 9, 2021, a second witness ("W-2") contacted the FBI NTOC to report two men who "were present and participate[d] in the insurrection [at] the Capitol building." W-2 continued, "Tuan Nichols [sic] lives in Longview, TX and Alex Harkerider [sic] lives in Carthage, Tx. I have photo screen shots from their social media pages showing they were there and showing Alex stated they were planning a civil war."

*Identification of Suspects and Evidence of Offenses*

16. Based on the information provided by W-1 and W-2, information obtained through subsequent investigation described below, and information obtained from government databases, law enforcement has identified NICHOLS, a 30-year-old white male and resident of Longview, Texas, and HARKRIDER, a 32-year-old white male and resident of Carthage, Texas, as the individuals identified by W-1 and W-2 and as the individuals appearing in the photographs and videos described below that establish their unlawful conduct on January 6, 2021, at the U.S. Capitol. Driver's license photographs of NICHOLS and HARKRIDER obtained by law enforcement appear in Figures 1 and 2 below.



Figure 1 (NICHOLS)



Figure 2 (HARKRIDER)

17. During its investigation, the FBI conducted open source Internet searches of social media, news, and other media for information pertaining to NICHOLS and HARKRIDER. Investigators located photographs, including screenshots of NICHOLS' Facebook page, and video posted on the Internet depicting both men present and engaged in criminal activity during the assault on the U.S. Capitol on January 6, 2021. For example, Figure 3 below appears to be a screenshot of NICHOLS' Facebook account and depicts NICHOLS and HARKRIDER in two photographs at the U.S. Capitol on January 6, 2021, as evidenced by the U.S. Capitol building and the crowd visible in the photographs, which is captioned, "We're in." In the photos, NICHOLS appears with a beard and wearing a Marine Corps camouflage hat, American flag face cover around his neck, and a blue jacket, and HARKRIDER appears with a beard and wearing a blue and gray baseball hat with a Star on it and a tan jacket.



Figure 3

18. Additional photos and screenshots of NICHOLS' Facebook account appear below in Figures 4 and 5, which show NICHOLS' Facebook profile including a photo of himself and HARKRIDER at the U.S. Capitol. In the photo, NICHOLS is shown holding a red bullhorn and HARKRIDER is wearing a tactical vest under his tan jacket.



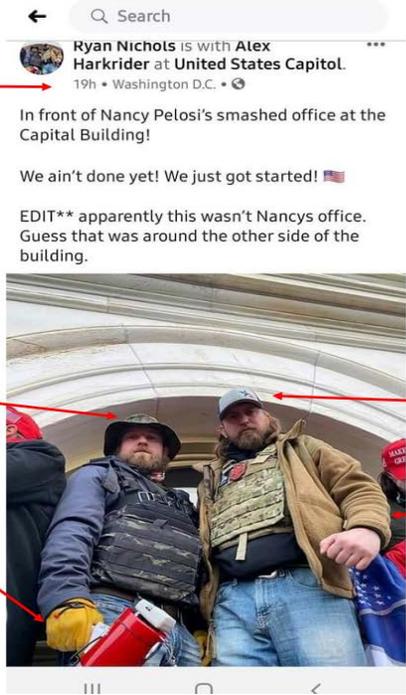
Figure 4



Figure 5

19. A screenshot of a Facebook post by NICHOLS, shown below in Figure 6, contains the same photograph appearing in Figures 5 and 6. However, HARKRIDER is tagged in the post, which also indicates that both men are in Washington, D.C. The caption first states that the men were standing in front of a smashed window into Speaker of the House Nancy Pelosi’s Office but then states that Speaker Pelosi’s office was “around the other side of the building.” Also included is the statement “We ain’t done yet! We just got started!” As indicated in Figure 6, the photograph shows NICHOLS and HARKRIDER wearing distinct clothing that is visible in other photos and video of the two men at the U.S. Capitol.

Facebook post showing Ryan Nichols and Alex Harkrider in Washington DC



**Ryan Nichols**  
 Marine Corp Camo Hat  
 Yellow Gloves

**Alex Harkrider**  
 Blue/White Texas Hat  
 Tan jacket

Figure 6

20. Additional photographs and video obtained during the investigation show NICHOLS and HARKRIDER standing on the ledge of a U.S. Capitol window that is broken, with NICHOLS holding a bullhorn and a crowbar. In a video obtained online, NICHOLS can be identified in the crowd at the U.S. Capitol based on his appearance and distinct clothing, and he can be seen and heard yelling into the bullhorn in the direction of the large crowd, “If you have a weapon, you need to get your weapon!” As shown in another video, NICHOLS can be seen and heard yelling, “This is the second revolution right here folks! [...] This is not a peaceful protest.” Additional video shows that, close in time to these events, at least dozens of individuals were actively forcing their way inside the U.S. Capitol building through an entrance in the immediate vicinity of NICHOLS and HARKRIDER. Figure 7 below shows NICHOLS and HARKRIDER on the window ledge and depicts their clothing, as well as the bullhorn and crowbar held by NICHOLS.

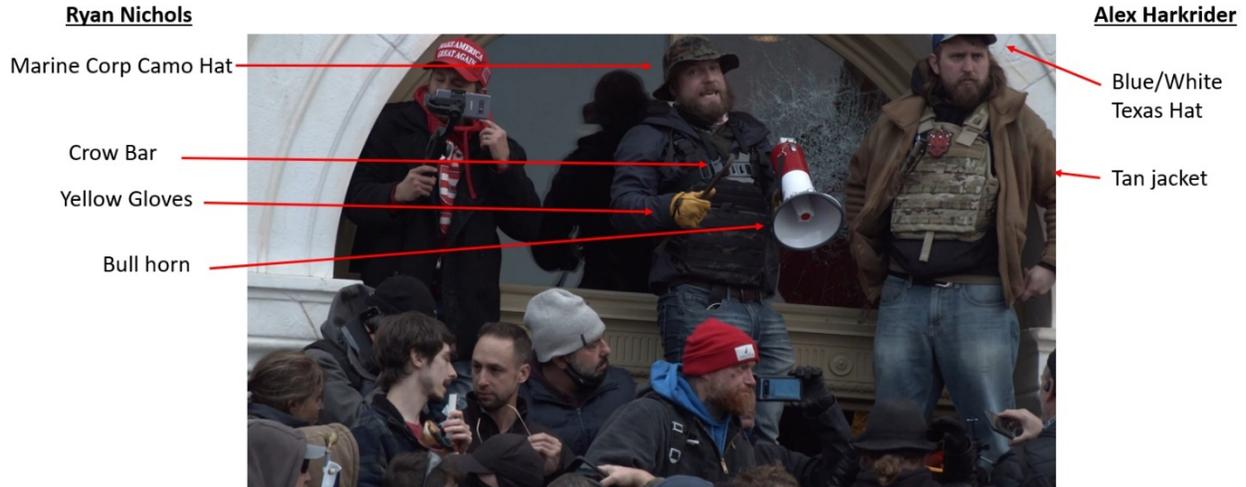


Figure 7

21. Additional video evidence shows NICHOLS near an entrance to the U.S. Capitol building in a large crowd actively forcing entry into the building, which was guarded by U.S. Capitol Police. During the video, a screenshot of which is shown below, NICHOLS can be seen taking a large, red aerosol canister from another person in the crowd and spraying an unknown agent, believed based on its appearance to be OC/pepper spray, in the direction of the entrance into the U.S. Capitol building, where federal law enforcement officers were engaged in the performance of official duties, that is, seeking to restrain the mob of individuals who were forcing entry. Figures 8 and 9 below are still shots from the OC/pepper spray video, with arrows indicating NICHOLS' clothing and the suspected OC/pepper canister.



Figure 8

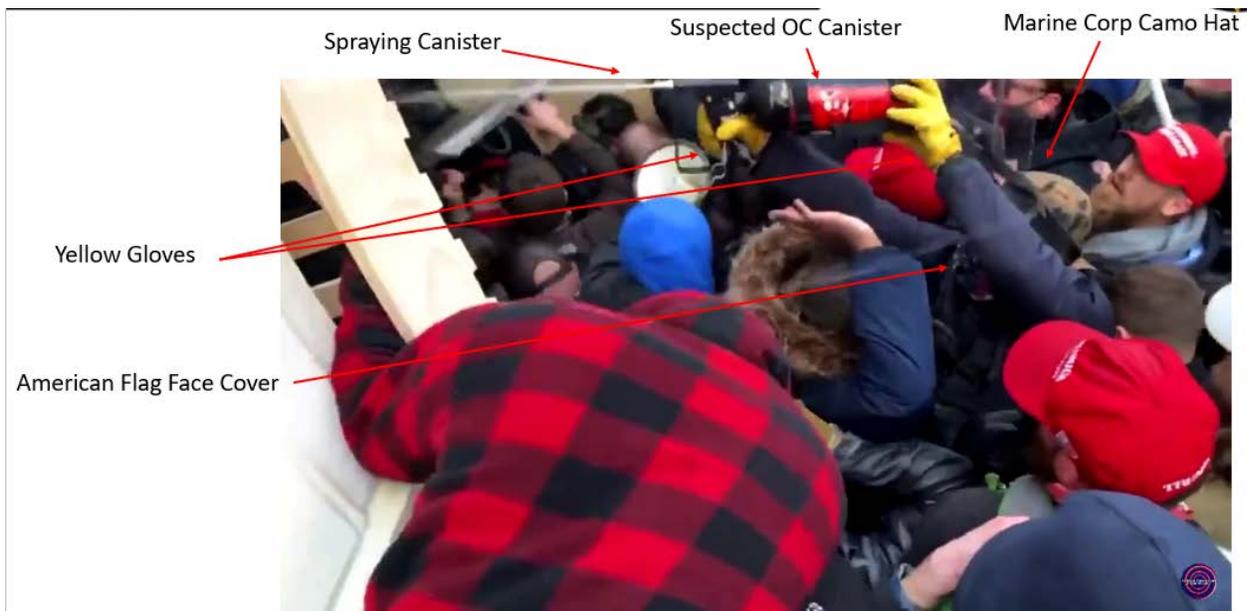


Figure 9

22. Additional video, a still shot of which is shown in Figure 10 below, also depicts NICHOLS and HARKRIDER pushing with the large crowd against the same entrance to the U.S. Capitol that was guarded by U.S. Capitol Police. In the video, the crowd appears to be chanting “Heave! Ho!” as it rocks back and forth in the direction of the entrance.

**Alex Harkrider**

Blue/White  
Texas Hat

Tan jacket



**Ryan Nichols**

Marine Corp Camo Hat

Yellow Gloves

Figure 10

23. Additional video, a still shot of which is shown in Figure 11 below, depicts HARKRIDER leaning out from within the U.S. Capitol through a broken window, which is the same window where NICHOLS and HARKRIDER were standing while NICHOLS was yelling into the bullhorn, as noted above. In the video, HARKRIDER is seen retreating back from the window and inside the U.S. Capitol building.

**Alex Harkrider**

Blue/White  
Texas Hat

Tan jacket

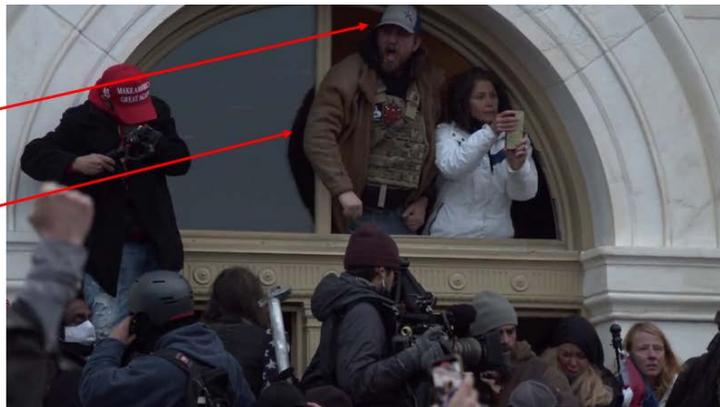


Figure 11

24. Additional images, shown in Figure 12 below, depict NICHOLS and HARKRIDER outside the U.S. Capitol building and apparently inside the building, based on the identifiable arched Capitol window and other contents of the photo.

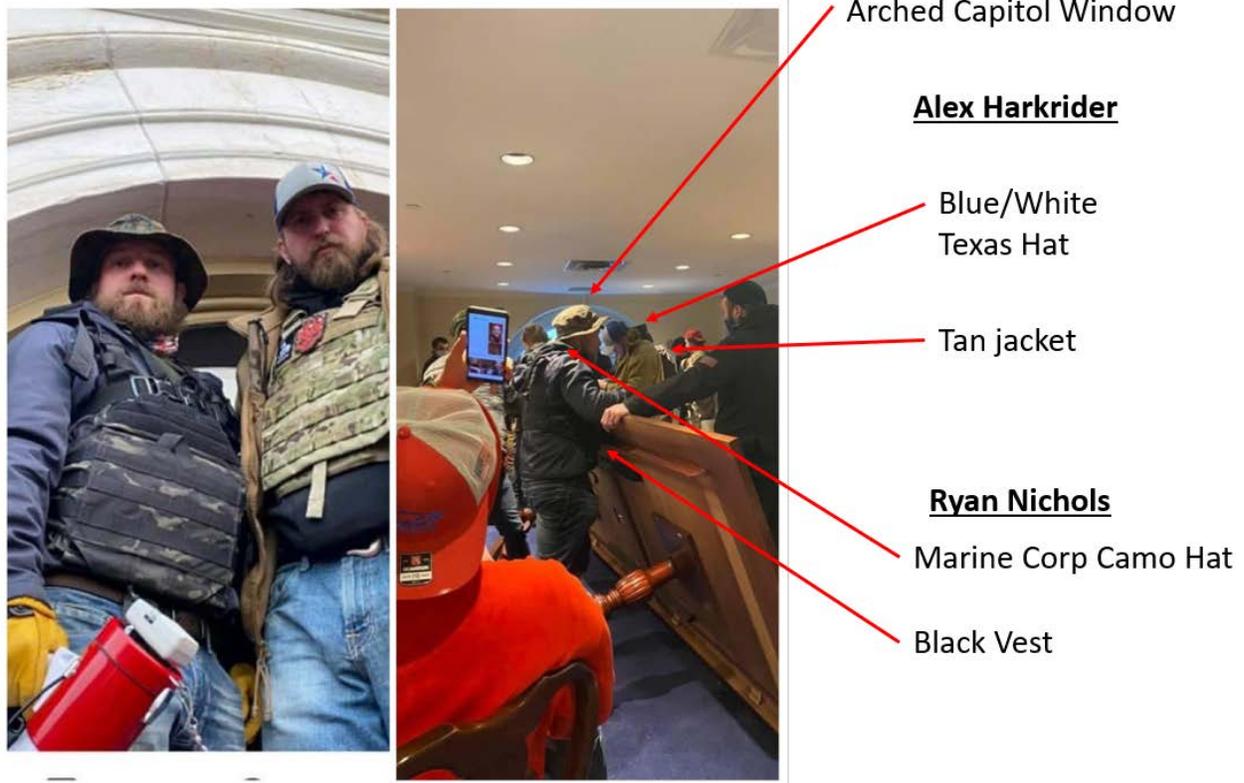


Figure 12

25. Figure 13, shown below, is a screenshot from a photograph apparently shared by HARKRIDER on Snapchat and obtained by investigators online. Snapchat is a messaging application which enables users to share photographs and videos with captions. The photograph depicts HARKRIDER inside a building identifiable as the U.S. Capitol on January 6, 2021, based the contents of the image, including HARKRIDER's clothing and the crowd of persons in the background. The caption to the photograph reads, "We're in. 2 people killed already. We need all the patriots of this country to rally the fuck up and fight for our freedom or it's gone forever. Give us liberty, or give us death. We won't stand for it." The photograph also appears to show a baton inside HARKRIDER's jacket or vest and labeled "Weapon."

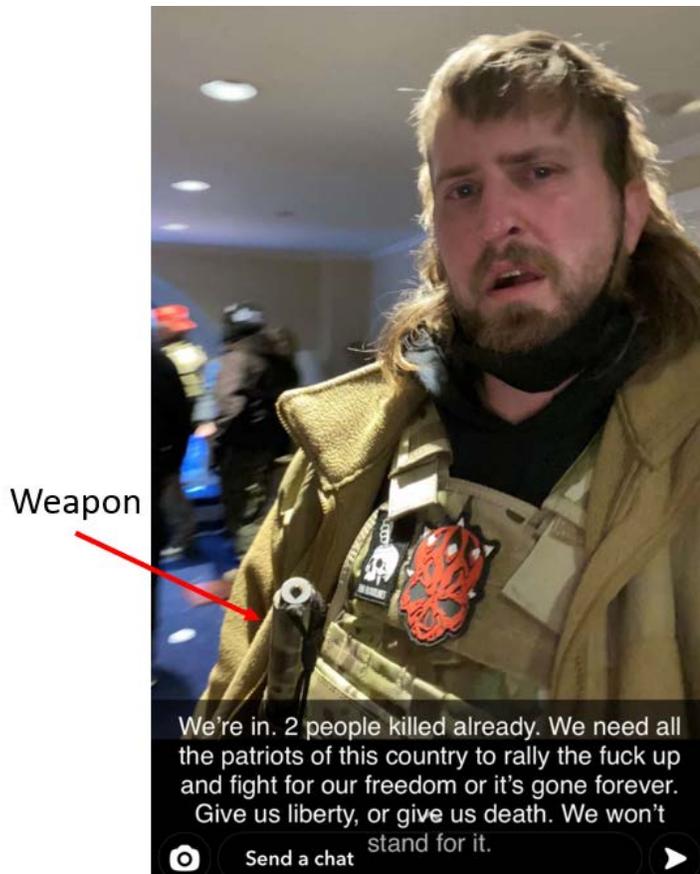


Figure 13

26. Shown below in Figure 14 is a still shot from video of NICHOLS emerging from a lower portion of the broken U.S. Capitol window. Figure 15 is a still shot showing HARKRIDER emerging from the same window.



Figure 14



Figure 15

27. In another screenshot of NICHOLS' Facebook page obtained by investigators, shown in Figure 16 below, NICHOLS and HARKRIDER appear in front of the large crowd at the U.S. Capitol. The title of the Facebook post is, "Ryan Nichols is . . . feeling pissed off with Alex Harkrider at United States Capitol." The text of the post states: "Patriots stood their ground today!"

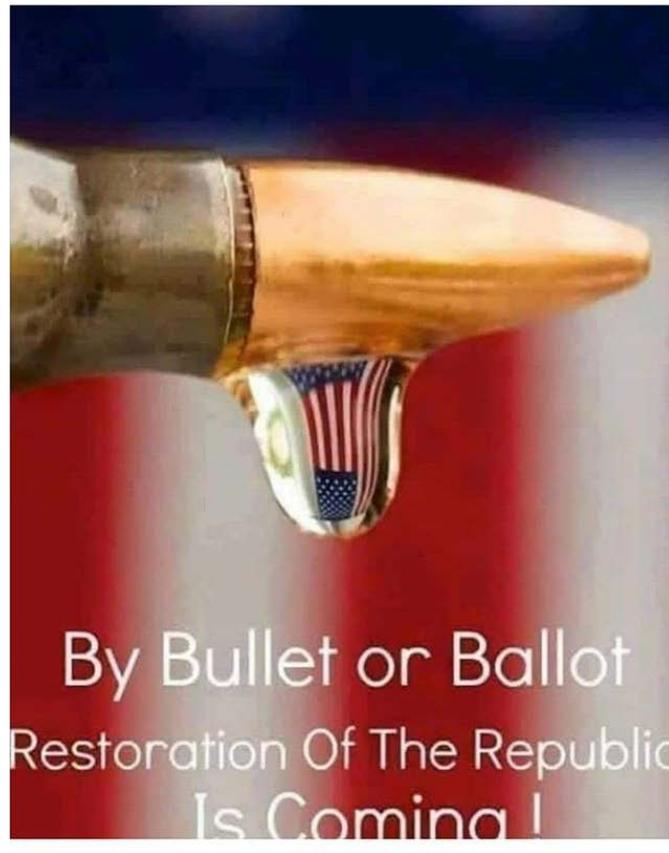
We aren't done yet, either! You want to steal our election, and not hear us in court? Good! Now you'll hear our civil unrest!"



Figure 16

28. A second Facebook profile was identified by law enforcement as belonging to NICHOLS (facebook.com/dontlistentoryan). The profile photograph of this Facebook Account

shows a picture of NICHOLS and the account contains a Facebook live video of NICHOLS and HARKRIDER as well as other photographs of NICHOLS and HARKRIDER. Throughout December 2020, NICHOLS made several posts to this Facebook account about coming to Washington, D.C. on January 6, 2021. On December 24, 2020, NICHOLS posted the image in Figure 17 below, which shows a bullet and states, “By Bullet or Ballot, Restoration of the Republic is Coming.”



**Don't Listen To Ryan.** December 24, 2020 at 11:31 AM · 🌐  
We're either going to do it the EASY way or the HARD way..  
It'll get done either way though!  
Don't Listen To Ryan.. Listen to the American people! 🇺🇸👊

Figure 17

On December 28, 2020, NICHOLS posted on the same Facebook page that “Pence better do the right thing, or we’re going to MAKE you do the right thing.”

29. On January 7, 2021, NICHOLS posted a Facebook message, shown below in Figure 18 that reads in part: “Listen up: I hear so many reports of ‘Antifa’ was storming the capital [sic] building. Know that every single person who believes that narrative have been DUPED AGAIN! Sure, there may have been some ‘Antifa’ in DC, but there wasn’t enough to ‘Storm the Capital’ [sic] themselves.” In response to this post, another Facebook commented on this post with NICHOLS’ residential address.



Figure 18

### **CONCLUSIONS OF AFFIANT**

30. Based on the foregoing, your Affiant submits that there is probable cause to believe that NICHOLS violated 18 U.S.C. §§ 1752(a) and (b)(1)(A) (conspiracy and two substantive counts); 40 U.S.C. §§ 5104(e)(2), 5104(e)(2)(D) and (G); 18 U.S.C. § 231(a)(3); 18 U.S.C. § 111(a) and (b); and 18 U.S.C. § 2(a), as identified and described above. Further, your Affiant submits that there is probable cause to believe that HARKRIDER violated 18 U.S.C. §§ 1752(a) and (b)(1)(A) (conspiracy and one substantive count); 40 U.S.C. §§ 5104(e)(2), 5104(e)(2)(D) and (G); and 18

U.S.C. § 2(a), as identified and described above

31. As such, I respectfully request that the court issue an arrest warrant for NICHOLS and an arrest warrant for HARKRIDER. The statements above are true and accurate to the best of my knowledge and belief.

*Michael D Brown*  
\_\_\_\_\_  
SPECIAL AGENT MICHAEL D. BROWN  
FEDERAL BUREAU OF INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 17th day of January, 2021.



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\_\_\_\_\_  
U.S. MAGISTRATE JUDGE

# EXHIBIT 4

# EXHIBIT 5

Jorge A Olalde  
XXXXXXXXXX

To whom it may concern,

I had the privilege of knowing Alex Harkrider from July 2010 through October 2011. Specifically, I was Mr. Harkrider direct enlisted supervisor. I was fortunate to served alongside Alex during peacetime and in combat while serving in the United States Marine Corps. Mr. Harkrider played a pivotal role as an Infantrymen during our companies' deployment to Afghanistan. Alex made extensive sacrifices by leaving his family and deploying to a horrible war under harsh and undesirable conditions. His willingness to put himself in harm's way for his fellow Marines displayed many attributes which included teamwork, camaraderie, and self-sacrifice. I am also aware of the situation Mr. Harkrider is currently facing and I can only say that Mr. Harkrider's actions are not a reflection of the man I served with. Maybe, he may have lost his way along the navigation of coming back home much like the rest of us whom struggle with the ugliness of "WAR". Whatever his reasons may have been I am pleading with you, Honorable Ketanji Brown Jackson to look past his obvious mistakes and rather look at the fact that he is a father who just wants to comfort his child before he is either sentenced or taken away. I plead with you to allow for these veterans of consecutive deployments to have the opportunity of a bail to await trail.

Sincerely,

Jorge A Olalde

To whom it may concern:

I'm Alex's sister. We are seven years apart and have experienced much together in our lives. Much joy. Much heart break. Much overcoming. Physical distance. Reunion. But through it all he's always been someone to push through whatever has been presented to him. We used to argue over what restaurants we wanted to eat at as kids. We would fight over what to watch on TV. We'd get on each other's nerves when I was 18 & he was 11. But when I learned Alex had joined the marines I was so proud. What he achieved as a Marine & what he witnessed and had to deal with, it's overwhelming. It clearly had an effect in him. Even still he was a great father to my nephew AJ. They are so funny together & it's great to see him happy with his son in a way we never experienced from our absent father. I've watched Alex grow as an incredible cook. His adventurous skill and desire to create better has been so exciting to see develop. As a pretty good cook myself I've secretly harbored a bit of jealousy at his skill. But I think where I really watched in awe is when I saw a broken Marine start to find his purpose after serving multiple terms. I was so proud to see my brother co-found the 'Rescue the Universe' group. He was using his skill to go into intense storms & flood zones to literally rescue people. Hearing his stories of people, hopeless & abandoned, suddenly seeing him there and realizing someone cared and was there to help, it's overwhelming. He rescued a woman in a Lake Charles nursing home after a major hurricane. The nursing home staff abandoned the helpless residents who had no way to get out. Alex physically carried one woman out and I still get emotional thinking of how that was helping both the elderly frail woman & Alex.

Alex is truly loves his country. He loves people. He loves his family. And he loves his dog. Even his dog, Opie, is obviously missing Alex, just like we are. He's my little brother and he loves this country. I love him and I know he's going to do continue to do great things because that's just who is.

From his sister,  
Andrea Remedies

TO WHOM IT MAY CONCERN:

My name is Darlene Humphries and I am Alex Harkrider's aunt. I've known Alex since his birth. He's always been loving, funny and sweet!!

In spite of not having the opportunity to be raised by a loving Dad or any other Father figure it's amazing how wonderful he's grown up to be!!

He has a huge loving heart for family, friends, those in need and animals. I truly believe he doesn't discriminate and finds the best in everyone he knows or meets.

I was extremely impressed with Alex at Thanksgiving this past year, he cooked a huge Thanksgiving meal for his family and some of his friends. I'm so thankful to have been a part of it.

My son is 19 years old and Alex was his hero in elementary school. The school proudly displayed Alex's picture for serving our country. My son still loves to hear about his tours and all it entailed. He has also influenced my son to be a rescuer too!

Alex loves his country too and that's why he enlisted in the Marines for 4 years. He served in Afghanistan and Iraq. I know it was extremely hard for him and he has had to cope with PTSD.

But his heart led him to join Rescue the Universe where he has cared for many people after disasters. He has helped with high water issues, cleaned debris, passed out water and helped with repair damage. He has even helped with the elderly in Louisiana.

His compassion is amazing! I'm extremely proud of him and love him dearly.

3/22/21

To whom it may concern.

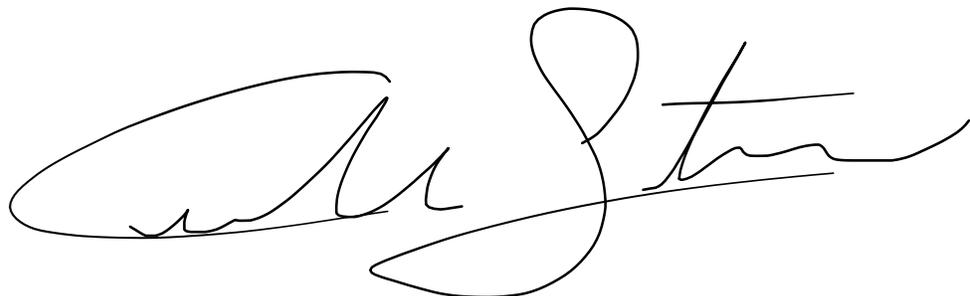
My name is Cullen Stone, I am a devoted father to a little boy named Jaxon, I just recently started my own business in the Oil & Gas industry, and I am writing this character witness statement for my brother and my close friend Alex Harkrider. I am fully aware of his current situation and the charges that are pending against him.

Alex and I have known each other since may 2020. We hit it off immediately, the loyalty/friendship he had to offer matched my own and I knew it was genuine just from his military background. I have multiple friends with military backgrounds which have all given me a place to sleep and a meal to eat if I was ever in need of either. Alex has a love for many things such as: helping/rescuing civilians during natural disasters, cooking meals for those he's helped rescued, taking his dog Opie on nature hikes or just to the lake so she can stretch her legs, spending time with his son outdoors teaching him proper work ethic and discipline, growing and raising exotic pepper plants, making others laugh and smile effortlessly, spending time with his mother and son watching shows like the mandalorian. Alex was Co-founder and devoted volunteer to a non profit organization known as "rescue the Universe". He was also a War Hero that received a key to the city when he returned home permanently from his line of duty. Alex took me in during a time where I had nowhere to go. I lived with my mother and step-father at the time and had a lot of personal/family issues taking place at home. He didn't ask for details or for rent, he just said "stay here as long as you need to man, I'll help you any way I can". Believe it or not Alex rarely ever left the house unless it was family related, for his dog, or for his organization. I wholeheartedly believe with every fiber in my body that Alex is not the man that he has been portrayed to be, and is not the man he has mistakenly portrayed himself. He is the most loyal and committed friend I have ever had, you will never stand alone or lack loyalty in your life as long as Alex is in it. Alex was exposed to the idea of going to Washington to protest by a fellow Marine veteran/friend. This so called friend has taken advantage of Alex's loyalty on multiple occasions. but Alex is blinded by his need to find purpose, he wants to fill the void that's been left from leaving the military. I think he feels this feat can be accomplished with or through his fellow marine that he accompanied to Washington. I'm not saying he is innocent or trying to convince you that he wasn't capable of the charge related incidents. But I am saying that his loyalty was taken advantage of.

I believe the incarceration of Alex Harkrider would devastate his family/friends as well as destroy him emotionally/mentally. I think Alex has much more to offer as a free man, I have full intentions of offering him a full time job when/if he gets out. My line of work is strenuous, difficult, and nothing short of hard labor. I live with Alex, I've up-kept his home while he's been away cleaning and remodeling the things he's always wanted done since I met him. I do these things in hope for a fresh start when he returns, a new chapter with a chance of redemption. He is a blessing to all who know him personally. I vow to hold him to a higher standard as I always have. Even when he's got nothing to give, he offers everything he has. I want to thank you for your time and consideration regarding my statement. If there is anything at all I can help with or clarify you may contact me on my personal cell (903)-754-3929 or my work cell (903)-263-1775.

Yours sincerely,

R. Cullen Stone

A handwritten signature in black ink, appearing to read "R. Cullen Stone". The signature is fluid and cursive, with a large, prominent loop at the end of the last name.



I have known Alex Harkrider for over 10 years and during that time I've gotten to know him very well, he is my best friend. I served, fought, and bled alongside Alex and our fellow brothers in the Marine Corps both during OIF and OEF. Alex served honorably during his time, risking his life time and time again to make sure the brother next to him had the support he needed. I've always known him to put others before himself in and outside of the Corps. He is a kind man who always looks to brighten someone else's day, sometimes at the expense of his own comfort. Which is why I was not surprised to hear that he volunteered many times to help families that fell victim to natural disasters in the non-profit Rescue the Universe. I know deep in my heart that Alex Harkrider only wants to help people, which is why he talked me into helping to start his own non-profit to help at risk veterans called Curb 22. I pray for those that read this understand what kind of man he really is. He is a helper, a friend, and my brother whom I love.

Thank you and God Bless,

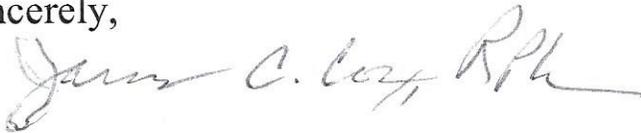
Jesus O. Hernandez

I am writing this letter about the character for former United States Marine Lance Corporal Alex Kirk Harkrider. To establish my credibility please allow me to tell you a little about myself. My name is James Cox, and I was born and raised in Carthage, Texas. I have lived in Carthage all my life and am a second-generation pharmacist and I am the pharmacy manager at our local Walmart. I have a doctorate degree in clinical pharmacy. My mom and dad owned our local jewelry store and were good friends with Alex's grandparents who owned a cleaning business for many years. So, with all this said let me speak to character of Lance Corporal Harkrider. But before I do, allow me to say that my Dad was a WWII veteran and participated in the Normandy landings on Omaha beach June 6, 1944. Our family is very patriotic and believe in the constitution of these United States. He knew Alex as a small child and if he were here today, he would testify the remarkable child that Alex was and would have been enormously proud of Alex's service to our country during his tours of duty in Iraq and Afghanistan. As for myself, I have the privilege of being Alex's stepfather. Although his mother and I divorced several years ago, Alex and I developed a bond over his service to our country and his child A.J (Alex Kirk Harkrider, Jr). I will not sugar coat this letter as I feel that would do more harm than good. Alex was not a perfect child as he had his share of difficulties as we all do. But that is not to say that as a 17-year-old, he decided that college was not for him and enlisted in the U.S.M.C. Now being the son of a D-Day veteran, I can truthfully say that my Dad would have been enormously proud of the young man that came out of

boot camp when he graduated. He was more confident and self-assured. I also feel the same pride in my heart as I watched him come home from his first tour in Iraq as he waved to the crowd in his dress blues during the parade the town threw for Alex for serving his country. In addition to the proud tradition of serving in the U.S.M.C., after Alex mustered out of the marine corps, he and some of his marine buddies starting using their military skills to help people during hurricanes and tornadoes. All this surely tells of a heart for God and country and service to his fellow man. Pertaining to the events of January 6, 2021 at the capitol building in Washington, D.C., Alex got caught up in the moment of being a patriot. Although this idea may have been ill conceived, I honestly believe that the news media and all the hype that was thrown at this country stirred the pot not only for Alex but for others that attended the capital meeting that day. As for his punishment, how can any of us sit in judgment of what this young man's mind was thinking. He was taught by the Marines to act and not react. Alex was following his oath that he took when he became a Marine to defend the constitution of these United States against enemies both foreign and domestic. Although we cannot blame President Trump for instigating the events, I do believe he could have done something to stop the events that played out that day. Am I ashamed of what Alex did that day? Absolutely not. although his judgment may be in question, his patriotism, honor, and heart cannot be questioned. It is my sincere hope that whoever judges his case will take into consideration his service to our country and the things that he saw while in combat on foreign soil

trying to make our country a safer place to live and hopefully his son would not see the horrors on our home soil that he has seen abroad. I love this young man for who he was and who he became. He has overcome a lot of obstacles to get to where he is today. Please do not turn the light out on a soul as bright as Alex Kirk Harkrider. He has so much to offer and so much to give and I believe with all my heart he has learned his lesson. Spare him please and let him live a life that is still full of service for this young man. One act of a lack in judgment should not be condemned but used as a tool to make Alex an even stronger American. God bless this young man in all he endeavors, and God bless our United States of America.

Sincerely,

A handwritten signature in cursive script that reads "James C. Cox, Rph". The signature is written in black ink and is positioned below the word "Sincerely,".

James C. Cox, Rph. PharmD.

March 20, 2021

TO WHOM IT MAY CONCERN:

RE: Alex Harkrider

My name is Pat Wilson and I live in Carthage, Texas.  
I have managed a local travel agency for 35 years.

I first met Alex when he was between 7 - 8 years old. He and his Mom started attending Central Baptist Church in Carthage. I was a Sunday School teacher for this age group and he was in my class. He was a blond headed little boy and he caught my attention on that first Sunday. He was a well adjusted child! As we in the South say, "All Boy!!" He was a smart child and was never disrespectful to me even when I corrected him. Needless to say, I fell in love with him from the start. He was in my room for approximately two years before promoting to the next grade level. I saw him often after he left my class and I always received a hug each time I saw him.

During the time Alex was in Jr. High and High School, I did not see him very often, but kept up with him through his Mom. I would see Alex from time to time and even though he was older, I still would get that "big old bear hug." One day I ran into his Mom in a local shop here in town and she told me that Alex had enlisted in the marines and was leaving soon. That made my heart happy that he wanted to serve our country. I thought this would be good for Alex and that Alex would be a good marine. During his time in the service, I did not see his Mom very often.

One Sunday morning, when I entered the sanctuary, I saw this tall, handsome young man dressed in his Dress Marine uniform in the front of the church. I thought it was Alex, but not quite sure. During the announcement time, he was announced and welcomed home from serving our country. After service I went down to the front and waited my turn to welcome him home. The minute he saw him I got that big old Alex grin and my bear hug. Again, my heart was happy and proud. My now, his Mom and I were friends on social media and I would see Alex post on her page. He called her MOTHER GOOSE and I loved this. A year or so later, he teamed up with a friend and they formed a rescue team that would respond to hurricanes, tornadoes or any other natural disaster that occurred. Again, I was happy and proud that they were helping people in need that they did not even know.

Upon hearing of his arrest, I immediately called Mother Goose because I knew she was heart broken. I immediately began praying for Alex and his Mom. I will now add you to this prayer list as you work to defend Alex. May God richly bless you.

Alex's friend,  
Pat Wilson

P.S. I love Alex Harkrider

RE: Alex Harkrider

March 28, 2021

To the Honorable Ketanji Brown Jackson:

I am writing this letter to speak on the character of Alex Harkrider. I was shocked when I learned of the allegations against him. They are incongruent with the man I know. I've known Alex for 11 years. In that time, I've known him to be a good friend and a great father. He is the type of person to go out of his way to help others. He is a man of character and conviction who always stands up for what he believes in. Alex and I served together in the Marine Corps, including a tour of duty in Afghanistan. He has always been a walking example of *integrity and discipline*, even in the face of adversity. There are endless examples of the depth of his friendship and loyalty. One prime example is the unwavering support and encouragement he gave me as I was adjusting to life after deployment. He is incredibly supportive of those he cares about and often puts the needs of others before his own. I have zero concerns about his ability to be safe in the community. I have complete faith in Mr. Harkrider's ability to move forward with his life as a positive and productive member of society.

Randy Langdon

A handwritten signature in cursive script that reads "Randy Langdon".