

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CRIM. NO. 21-00189 (CJN)

UNITED STATES OF AMERICA,
Plaintiff,

v.

RICHARD L. HARRIS,
Defendant.

DEFENDANT'S MOTION FOR BOND REVIEW

The Defendant, Richard Harris, though undersigned counsel, and pursuant to 18 U.S.C. §3145(b), moves this Court to review – and revoke – the order of a magistrate judge from the Southern District of Florida detaining him pending resolution of the charges here,¹ and states that:

The instant Indictment charges Mr. Harris with five offenses – two felonies² and three misdemeanors³ - related to his alleged involvement in the events at the United States Capitol on January 6th of this year. (DE 1). After conducting a hearing,⁴ a magistrate judge ordered that he be detained pending trial, finding that

¹ See Exhibit A.

² Assaulting, Resisting or Impeding Certain Officers in violation of 18 U.S.C. §111(a)(1) (Count One); and Obstruction of an Official Proceeding in violation of 18 U.S.C. §1512(a)(2) (Count Two).

³ Entering and Remaining in a Restricted Building or Grounds in violation of 18 U.S.C. §1752(a)(1) (Count Three); Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. §1752(a)(2) (Count Four); and Disorderly Conduct in a Capitol Building in violation of 40 U.S.C. §5104(e)(2)(D) (Count Five).

⁴ A transcript of that hearing is attached as Exhibit B.

he is both a danger to the community and a risk of flight. Exh. A. But the evidence elicited at that hearing reflects that he is neither. While Mr. Harris was concededly present at the Capitol on January 6th, his actions that day fail to establish that he “poses a concrete, prospective threat to public safety.” *United States v. Munchel*, 991 F.3d 1273, 1290 (D.C. Cir. 2021). Additionally, despite his seeming transience during the weeks following January 6th, he can now return to his father’s home in Happy Valley, Oregon until the completion of these proceedings. This Court can thus fashion conditions of release that can “reasonably assure”: 1) his appearance when required; and 2) “the safety of any other person and the community[.]” 18 U.S.C. § 3142(g).

Mr. Harris’s Actions on January 6th

At the hearing before the magistrate judge, the government relied primarily on three exhibits depicting Mr. Harris inside the Capitol on January 6th. The first was a still picture distilled from a short video-recording, which shows Mr. Harris addressing a law enforcement officer while other civilians stand nearby. The government proffered at the hearing that in the audio portion of the recording, Mr. Harris tells the officer that, “You’re outnumbered. There’s a F’ing million of us out there. We’re listening to Trump, your boss.” Exh. B at p. 6. The officer then steps back, allowing the civilians access to an interior stairway.

The second exhibit was similarly derived from a brief video-recording. In it, Mr. Harris is holding a telephone. The prosecutor proffered that the audio reflects Mr. Harris asking for Speaker Pelosi and then saying, “We’re coming for you, you [] bitch.” Exh. B at p. 6. He then directs a similar comment towards Vice President

Pence, calling him a “F’ing traitor.” *Id.* The FBI agent who testified at the hearing conceded that neither the Speaker nor the Vice President were on the line when those remarks were made. *Id.* at p. 14.

The third exhibit introduced at the hearing was a photograph of Mr. Harris with his arm draped around a statue of President Ford. A hat is on the statue’s head and a “Trump” banner is tucked under its arm.

The evidence presented at the hearing before the magistrate judge was perhaps more notable for what it lacked than for what it contained. Nowhere in its proffer or in the testimony of its agent did the government establish that Mr. Harris: 1) met beforehand with others to organize the protests; 2) helped storm the Capitol’s barricades; 3) had physical contact with – much less harm – another person, whether law enforcement or civilian; 4) vandalized property (except for his sophomoric attempt to adorn President Ford’s statue); 5) entered either Chamber of Congress; 6) possessed a weapon of any type; or 7) belonged to an organization advocating violence to reverse the results of the 2020 presidential election.

Investigation Resulting in Mr. Harris’s Arrest

After January 6th, the government disseminated “Be-On-The-Lookout” posters seeking information concerning Mr. Harris’s identity. Exh. B at p. 7. It was then able to trace his travels through eight states beginning on approximately February

21, 2021, and culminating with his arrest in Dania Beach, Florida on March 18, 2021.⁵ *Id.* at 8.

A warrant for Mr. Harris's arrest was issued by a magistrate judge in this District on March 5, 2021. Ten days later, an FBI agent called one of Mr. Harris's phones⁶ in an "attempt[] to get him to turn himself in." Exh. B at p. 8. Although not explicitly stated in the transcript of the detention hearing, the agent and Mr. Harris did not in fact speak. The government introduced no evidence that prior to the agent's call, Mr. Harris knew that he was a target of the government's investigation.⁷ Nor did it show that Mr. Harris actually listened to the agent's message. Whether he did or not, he was arrested without incident only three days after the call.

Danger to the Community

Before receiving the government's proffer at the detention hearing, the magistrate judge asked whether 18 U.S.C. § 111 (a)(1) – the offense charged in Count One here – is a "crime of violence" pursuant to 18 U.S.C. § 3142(f)(1)(A). Exh. B at p. 4. To his credit, the prosecutor responded that it is not as Mr. Harris had not possessed a weapon on January 6th. *Id.* at p. 5. The prosecutor then agreed with

⁵ Dania Beach is located on Florida's east coast between Fort Lauderdale and Miami.

⁶ He had three when arrested. Exh. B at p. 8.

⁷ The government may contend that Mr. Harris must have known of the extent of that investigation from the pervasive media coverage of January 6th. But, as the government will likely acknowledge, Mr. Harris was residing in his car for much of that period. He therefore may not have had access to that coverage.

the magistrate judge’s observation that the government was thus obligated to “convince” the court that Mr. Harris was either a “serious risk of flight” or a “serious risk” of obstructing justice or intimidating witnesses to warrant detention. *Id.* He then outlined why, in the government’s view, Mr. Harris is a flight risk. Despite the government’s concession, the magistrate judge ultimately found that the Defendant is a danger to the community. *Id.* at p. 26. That conclusion cannot be sustained.

Initially, this Court should consider what relevance, if any, Mr. Harris’s purported dangerousness has to the issue presently before it. Although not clear, it appears that the magistrate judge cited danger to the community as an independent basis justifying detention. But in *United States v. Ploof*, the First Circuit found that “where detention is based on dangerousness grounds, it can be ordered only in cases involving one of the circumstances set forth in [18 U.S.C.] §3142(f)(1).” 851 F.2d 7, 11 (1st Cir. 1988), *citing United States v. Himler*, 797 F.2d 156 (3d Cir. 1988).⁸ As the magistrate judge recognized – and the government confirmed – that detention here is being sought pursuant to only subsection (f)(2) of §3142, the magistrate judge’s reliance on dangerousness was arguably⁹ flawed.

⁸ See also *United States v. Giordana*, 378 F.Supp. 2d 1256 (S.D. Fla. 2005) (“Circuit Court opinions considering this issue under section 3142(f) have all ruled that the ‘dangerousness’ prong for pretrial detention under section 3142(e) *only* applies to cases that arise under section 3142(f)(1).” *Id.* at 1261 (emphasis in original)).

⁹ The Defendant recognizes that this Court rejected a similar argument in *United States v. Michael Thomas Curzio*, Crim. No. 21-041 (CJN). It is being raised here should the Court be inclined to revisit its earlier decision.

The legal argument addressed above is likely academic as, regardless of its outcome, the government has failed to establish factually that Mr. Harris “present[s] an identified and articulable threat to the community.” *Munchel*, *supra*, 991 F.3d at 1282. The analysis in *Munchel* compels that conclusion.

Munchel, like the instant case, stemmed from the “particular circumstances of January 6.” *Id.*, 991 F.3d at 1283. The defendants there were mother and son. Judge Katsas, in his opinion concurring in part and dissenting in part,¹⁰ summarized their conduct as follows:

[They] did not organize the election protest or the ensuing march to the Capitol, hatched no advance plan to enter the Capitol, and acted in concert with no other protestors. Nor did they assault any police officers or remove any barricades in order to breach Capitol security. They decided to enter the Capitol only after others had already done so forcibly. By the time they made their way to the building, police were making no attempt to stop or even discourage protestors from entering. To go inside, [they] walked through an open door. While there, they attempted neither violence nor vandalism. They searched for no Members of Congress, and they harassed no police officers. They found plastic handcuffs by chance, but never threatened to use them. [The son’s] threat to “break” anyone who vandalized the Capitol was intended to prevent destruction and was addressed to no one in particular. [] For ten to twelve minutes, [they] wandered the halls of the Capitol, with [the mother] leading the way and [her son] asking his mother what her plan was. At one point, they entered the Senate gallery. At another, as they entered what appears to be a hallway of offices, [the son] told his mother that “[w]e don’t want to get stuck in here, this is not a place for us,” which caused her to turn around. [] [They] voluntarily left the building – while many other

¹⁰ Rather than joining the majority’s decision to remand the detention orders to the district court for reconsideration, Judge Katsas would have “reverse[d] outright”. *Munchel*, 991 F.3d at 1285 (Katsas, J., concurring in part and dissenting in part).

protestors remained and before the police began to restore order. Their misconduct was serious, but it hardly threatened to topple the Republic. Nor, for that matter, did it reveal an unmitigable propensity for future violence. *Id.* at 1286-7.

Although maybe not identically situated to the defendants in *Munchel*, Mr. Harris is surely similarly situated to them. Like them, he had no role in planning the demonstrations on January 6th. Although Count One of the Indictment here alleges that he “forcibly assault[ed], resist[ed], oppose[d], impede[d], intimidate[d], and interfere[d] with” a law enforcement officer that day, his words were more akin to “rhetorical bravado”, *Munchel*, 991 F.3d at 1287 (Katsas, J., concurring in part and dissenting in part), than a realistic threat to cause bodily injury with an apparent and immediate ability to do so.¹¹ He entered the Capitol “only after others had done so forcibly.” *Id.* at p. 1286. While inside, he “attempted neither violence nor vandalism.” *Id.* Although he pretended to speak with Speaker Pelosi and Vice President Pence, he sought out neither. Despite the magistrate judge’s findings to the contrary, Exh. B at p. 24, he did not exhort others to engage in illicit activity.¹² Just as he entered the Capitol voluntarily, he left the same way. In fact, the sole

¹¹ See *United States v. Fallen*, 256 F.3d 1082 (11th Cir. 2001) (defining “forcible assault” as “a willful attempt or threat to inflict *serious* bodily injury, coupled with an apparent present ability, which causes the intended victim a reasonable apprehension of immediate *serious* bodily harm or death.” *Id.* at 1088 (emphasis in original)).

¹² Similarly, the magistrate judge’s suggestion that Mr. Harris “was at the head of an angry group of people going into the Capitol”, Exh. B at p. 25, has no support in the record.

meaningful factor distinguishing Mr. Harris from the defendants in *Munchel* is that Munchel (the son) possessed a Taser and zip ties inside the Capitol while Mr. Harris remained unarmed at all times.¹³ Munchel is therefore seemingly a greater risk of danger to the community than this Defendant.¹⁴

The magistrate judge remarked at the detention hearing that this is “not a normal case for detention because it’s not a crime of violence and there is no weapon involved.” Exh. B at p. 23. His decision to detain Mr. Harris was therefore apparently based on what he considered to be the Defendant’s “disregard for the institution of government and the rule of law, qualities that bear on both the seriousness of the offense conduct and the ultimate inquiry of whether [D]efendant will comply with conditions of release.” *Id.* at p. 25. But any perceived “threat must also be considered in context.” *Munchel*, 991 F.3d at 1283.

The Court in *Munchel* made two observations particularly apposite to Mr. Harris’s request for release. First, it noted that “those who actually assaulted police officers and broke through windows, doors and barricades, and those who aided, conspired with, planned, or coordinated such actions, are in a different category of

¹³ Pursuant to the execution of a search warrant at Munchel’s home, firearms and loaded magazines were seized. *Id.* at p. 1277. No weapons were recovered at Mr. Harris’s arrest.

¹⁴ At the detention hearing, reference was made to an incident in Oregon during which Mr. Harris allegedly “shov[ed] a photographer”. Exh. B at p. 15. The FBI agent who testified at the hearing admitted that he did not know whether Mr. Harris was acting in self-defense. *Id.* at p. 16. Because: 1) the record does not reveal the context in which the contact occurred; 2) the photographer apparently was not injured; and 3) the Defendant has not been charged there, that episode merits little, if any, weight in considering whether Mr. Harris is a danger.

dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way.” *Id.* at p. 1284. As addressed above, Mr. Harris surely falls within the latter category. The Court then recognized the “unique opportunity” presented by the “electoral college vote tally” occurring at the Capitol on January 6th:

Because [the defendants there] did not vandalize any property or commit violence, the presence of the group was critical to their ability to obstruct the vote and cause danger to the community. Without it, [the defendants] – two individuals who did not engage in any violence and who were not involved in planning or coordinating the activities – seemingly would have posed little threat. The District Court found that appellants were a danger to “act against Congress” in the future, but there was no explanation of how the appellants would be capable of doing so now that the specific circumstances of January 6 have passed. *Id.*¹⁵

Absent those “unique” circumstances, there is little or no reason to conclude that Mr. Harris, a forty year old gentleman who does not own a weapon and whose only prior conviction was ultimately set aside, poses the type of future threat that places him within the “subset of defendants charged with crimes that are ‘the most serious’ compared to other federal offenses.” *United States v. Singleton*, 182 F.3d 7, 13 (D.C. Cir. 1999), citing *United States v. Salerno*, 481 U.S. 739, 747 (1987). Detention based on dangerousness is thus unwarranted.

¹⁵ See also *Munchel*, 991 F.3d at 1285 (Katsas, J., concurring in part and dissenting in part) (“The answer to th[e] question [of detention] does not turn on any generalized, backward-looking assessment of the rioters or the riot, as the district court erroneously suggested. Instead, it turns on a specific forward-looking assessment of whether [the defendants] as individuals currently pose an unmitigable threat to public safety.”).

Risk of Flight

As Mr. Harris is not a danger to another person or to the community, to sustain the magistrate judge's detention order, this Court must find that he poses a "serious risk" that he *will* - not may - flee if released from custody. 18 U.S.C. § 3142(f)(2)(A). Despite his travels during the weeks preceding his arrest, he clearly does not.

Again, context here is important. Prior to March of 2020, Mr. Harris was residing with his father and working for Amazon. But when the pandemic struck, he left Amazon because he feared that he might become infected and in turn infect his father, who is over the age of 65 and significantly overweight. He then continued to stay with his father while obtaining sporadic employment where he would have limited access to the public.

Disheartened by the results of the election and the uprising at the Capitol, Mr. Harris decided to explore alternative locations for him to live with his girlfriend and their newborn twins.¹⁶ After visiting with them in California, he began traveling through the states referenced at the detention hearing, Exh. B at p. 8, until he reached his ultimate destination, Florida, where he stayed for approximately two weeks before he was arrested. But, as the magistrate judge noted, he could not truly be "characterize[d] [] as being on the run." *Id.* at p. 23. He did not use false identification to pay for food, gas or lodging (when he did not sleep in his car). The car that he was driving was

¹⁶ The children are now seven months old.

registered to him, as was the license plate. He was not concealing his movements as the FBI was able to track him. He did not avoid public areas for fear of detection. To the contrary, he was arrested after leaving a brewery with a friend in one of Florida's most populous areas. And when confronted by law enforcement, he did nothing to resist.

The magistrate judge found "evidence" that suggested that Mr. Harris "would have known that he was wanted for prosecution." Exh. B at p. 23. But, as discussed above, the record does not establish when – or even, if – he heard the voice message left by the FBI agent. If he did, the record certainly does not reflect that he took any evasive actions in the three days between the agent's message and his arrest.

Looking forward, Mr. Harris has depleted all of his savings and therefore lacks the financial resources to flee. But even if he had money, he has no place to go to. He has lived in the United States his entire life. Whatever family he has is here. If he flees, he would of course be unable to communicate with them, leaving him with no home, no family and no prospects. Flight is therefore not a viable option.

As proffered at the detention hearing, Mr. Harris's father, Frederick, has offered his home for his son to stay at pending resolution of the instant charges and as surety for his future appearance when required. The elder Mr. Harris is retired after being employed by Boeing for 38 years. He receives a pension and Social Security benefits. The equity in his house is apparently

\$300,000. Certainly, the Defendant will not jeopardize all that his father has earned over a lifetime by fleeing, especially as, by the government's estimate, his advisory guideline range would be 15 to 21 months imprisonment. Exh. B at p. 4.

Conclusion

As recognized in *Munchel*, courts “have a grave constitutional obligation to ensure that the facts and circumstances of each case warrant th[e] exceptional treatment” of detaining an accused without bond pending trial. *Munchel*, 991 F.3d at 1285. In the instant case, however, the “facts and circumstances” unique to Mr. Harris and his conduct on January 6th do not justify such “exceptional treatment”. Like the defendants in *Munchel*, Mr. Harris simply at most “chose to trespass – not to engage in violence, much less fight to the death.” *Id.* at 1288 (Katsas, J., concurring in part and dissenting in part). He is thus not a risk of danger. He can now return to his father's home subject to limitations such as a curfew and monitoring if the Court deems those appropriate. He is thus not a risk of flight. As no basis therefore exists to detain him pending the outcome of his case, he asks that the Court revoke the magistrate judge's detention order and order that he be released immediately to the his father's custody.

WHEREFORE, the Defendant requests that the Court approve his immediate release from custody with appropriate conditions.

Respectfully submitted,
MICHAEL CARUSO
Federal Public Defender

s/ Eric Cohen
Eric Cohen
Assistant Federal Public Defender
Attorney for Defendant
Florida Bar No. 328065
150 West Flagler Street
Suite 1700
Miami, Florida 33130-1566
Tel: 305-530-7000
Email: Eric.Cohen@fd.org

s/Kristy Militello
Kristy Militello
Assistant Federal Public Defender
Attorney for Defendant
Florida Bar No. 0056366
450 South Australian Avenue
Suite 500
West Palm Beach, Florida 33401
Tel: 561-833-6288
Email: Kristy.Militello@fd.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 7, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day of all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Eric M. Cohen
Eric Cohen

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 21-6163-HUNT

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD HARRIS,

Defendant.

DETENTION ORDER

Pursuant to 18 U.S.C. § 3142(f), on March 26, 2021, a hearing was held to determine whether the Defendant Richard Harris should be detained prior to trial. Having considered the factors enumerated in 18 U.S.C. § 3142(g), this Court finds that no condition or combination of conditions will reasonably assure the Defendant's appearance at trial or the safety of any other person and the community. Therefore, it is hereby ordered that the Defendant Richard Harris be detained prior to trial and until the conclusion thereof.

In accordance with the provisions of 18 U.S.C. § 3142(i), the Court hereby makes the following findings of fact and statement of reasons for the detention:

1. 18 U.S.C. § 3142(g)(1) -- Nature and Circumstances of the Offense.

The Defendant is charged by way of an indictment out of the District of Columbia with Assaulting, Resisting or Impeding an Officer; Obstructing an Official Proceeding; Entering and Remaining in a Restricted Building; and Disorderly Conduct in a Restricted Building/Capitol Building, in violation of 18 U.S.C. §§ 111(a)(1), 1512(c)(2), 1752(a)(1) and (2), and 40 U.S.C § 5104(e)(2)(D). The assault charge carries a maximum penalty

of eight years in prison. The obstruction charge carries a maximum of twenty years' imprisonment. These two counts are felonies; the other charges are misdemeanors. There is no presumption in this case, nor is it a case involving one of the listed offenses normally considered appropriate for a detention request. Rather, the Government seeks detention under 18 U.S.C. § 3142(f)(2)(A) and (B), arguing that Harris poses a serious risk of flight and a serious risk of obstruction or witness threats or intimidation. The Government estimates that Defendant's guideline imprisonment range would be 15-21 months after trial. 18 U.S.C. § 3142(e)(3)(D).

This prosecution arises out of the Capitol Riot on January 6, 2021, in Washington D.C. The background regarding this event is generally known. In a memorandum opinion entered on February 26, 2021, filed as an exhibit in this case (ECF No. 7), Chief Judge Howell of the District Columbia offered some guidance for judges considering release or detention in cases involving the events at the Capitol on January 6, 2021. With respect to consideration of the nature and circumstances of the offense, Chief Judge Howell suggested certain "guideposts," including: 1) whether the charged offenses are felonies or misdemeanors; 2) whether the defendant engaged in prior planning, for example, by bringing a dangerous weapon; 3) whether the defendant coordinated with others and acted deliberately in such a way as to amplify or assure the success of the breach of the Capitol; 4) whether the defendant assumed either a formal or de facto leadership role in the assault, for example, by urging rioters to advance or confronting law enforcement; 5) whether the defendant breached the interior of the Capitol building; 6) whether the defendant injured, attempted to injure or threatened to

injure others or damaged federal property; and 7) whether the defendant actively threatened or confronted federal officials or law enforcement or otherwise promoted efforts to disrupt the electoral vote certification, thereby encouraging others to engage in such conduct. *United States v. William Chrestman*, Case No. 21-mj-218 (ZMF), 2021 WL 765662 at *14-16 (D.D.C. February 26, 2021). These factors, according to Judge Howell, “measure the extent of a defendant’s disregard for the institutions of government and the rule of law, qualities that bear on both the seriousness of the offense conduct and the ultimate inquiry of whether a defendant will comply with conditions of release meant to ensure the safety of the community.” *Id.* at *16. The undersigned addresses some of these considerations below.

2. **18 U.S.C. § 3142(g)(2) -- Weight of the Evidence.** The weight of the evidence against this Defendant is strong. At the hearing, the Government proceeded by way of proffer, with FBI Special Agent Michael McGillicuddy then made available for cross-examination.

The evidence shows that Defendant was on the leading edge of a group that successfully breached a manned barrier inside the Capitol building on January 6, 2021. A still photograph (from a video) clearly shows Defendant, unmasked and with his arm upraised, addressing a masked, uniformed police officer. The Government proffered that Defendant told the officer that the police were outnumbered, that there are “a f***ing million of us out there,” and that they were “listening to Trump.” The Government proffered that the officer feared for his safety and stepped aside, allowing the mob to enter the interior. A second photograph showed Defendant holding a

telephone inside the Capitol. Aware that he was being filmed, Defendant then spoke into the phone, asking where Speaker of the House Nancy Pelosi was, adding, “We’re coming for you, you b***h!” He also asked where Vice President Mike Pence was, stating, “We’re coming for you too, you f***ing traitor!” A third photograph shows Defendant on a pedestal inside the Capitol, posing with his arm around a bronze statue of former President Gerald Ford. The statue is wearing a red MAGA hat and has a Trump flag tucked beneath its arm. In addition to the photographs filed as exhibits, Defendant appears in at least 19 videos or photographs taken by Capitol security cameras in and around the Capitol building during the Riot. Cell site data also places Defendant in the Capitol at the time of the Riots.

Law enforcement was able to identify Defendant shortly after the Riot, on January 7 or 8, 2021. Since that time, Defendant has traveled by car through eight different states, from Arizona to Florida. During this time, wanted posters and BOLOs were posted around the country and on the FBI website. Several people contacted the FBI and identified the man in the photographs as Defendant. An FBI agent called a cell number known to belong to Defendant and left a message advising him that he was wanted by the FBI and asking him to contact law enforcement. Defendant, who had this cell phone in his possession when arrested, did not contact the FBI. Defendant made no post-arrest statements. 18 U.S.C. § 3142(g)(2).

3. 18 U.S.C. § 3142(g)(3) -- History and Characteristics of the Defendant. Richard Harris was born in 1980 in Cherry Hill, New Jersey. For the last ten weeks he has been living out of his car. He has been in Florida for about two weeks.

Previously, he lived with his father in Happy Valley, Oregon, for about six months, living out of his car at first but later moving into the residence for about two months. Before that, Defendant states that he lived in California, but provided no additional information. Defendant's father lives in Oregon. He owns a home there and appeared at the hearing via Zoom, indicating his willingness to cosign a bond. Defendant's mother is deceased. Defendant has one sibling, but Defendant does not know where he lives. He reports previously being married for ten years and has six-month-old twins from another relationship. Defendant graduated high school in California. He has been unemployed since March 2020, previously working as a delivery driver for Whole Foods/Amazon. He has been living off savings and credit cards. He reports being in excellent physical health and has no history of mental health problems. He reports occasional CBD use and has no history of substance abuse treatment. He has a 2000 conviction for sale of marijuana, but the conviction was later set aside. 18 U.S.C. § 3142(g)(3)(A) and (B).

4. 18 U.S.C. § 3142(g)(4) -- Danger to any Person or the Community.

Based on Defendant's conduct on January 6, 2021, which included breaching the Capitol interior, confronting and ultimately convincing an officer to stand aside out of fear for his safety, and specifically threatening that the mob was "coming for" the Speaker of the House and the Vice President of the United States, the presiding officers of the disrupted proceedings, the undersigned finds that Defendant poses a danger to the community, and also a threat to obstruct justice and to threaten or intimidate prospective witnesses. Based on his lack of ties to this district or the receiving district, together with the fact that he has spent the last ten weeks living out of his car, traveling through eight different states

while apparently aware that he was wanted for these offenses, the undersigned finds that Defendant also presents a serious risk of flight. 18 U.S.C. § 3142(g)(4).

5. Based upon the above findings of fact, which were supported by the appropriate evidentiary standards (clear and convincing for danger to the community; preponderance for risk of flight), this Court specifically finds that there are no conditions or combination of conditions which reasonably will assure the Defendant's appearance as required or the safety of any other person and the community. 18 U.S.C. § 3142(e).

The Court hereby directs:

(a) That the Defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practical, from persons awaiting or serving sentences or being held in custody pending appeal;

(b) That the Defendant be afforded reasonable opportunity for private consultation with counsel; and

(c) That, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the Defendant is confined deliver the Defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

DONE AND ORDERED at Fort Lauderdale, Florida, this 30th day of March, 2021.



PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

Copies to: All counsel of record

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 21-mj-06163-PMH-1

United States of America,

Plaintiff,

vs.

Richard L. Harris,

Defendant.

March 26, 2021

Fort Lauderdale, Florida

Pages 1 through 33

TRANSCRIPT OF PRETRIAL DETENTION and REMOVAL HEARING
BEFORE THE HONORABLE PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

Appearance of Counsel (all by ZOOM)

For the Plaintiff: Joseph Cooley, Esq.
Nihar Mohanty, Esq.
United States Attorney's Office

For the Defendant: Daryl Elliott Wilcox, Esq.
Federal Public Defender's Office

Transcribed from Remote Video Teleconference Recording

1 (Court was called to order.)

2 COURTROOM DEPUTY: Your Honor, we're going to proceed
3 in the case of United States of America vs. Richard Harris.

4 Would counsel please announce their appearances for
5 the record, starting with the government.

6 MR. COOLEY: Good morning. Joseph Cooley, on behalf
7 of the United States. I also have AUSA Mohanty from the D.C.
8 circuit here as well.

9 THE COURT: Okay. Good morning.

10 MR. MOHANTY: Morning.

11 THE COURT: For the defense?

12 MR. WILCOX: Good morning, your Honor. Daryl Wilcox,
13 assistant federal public defender, on behalf of the defendant
14 in this case, Richard Harris. He is present on the Zoom
15 screen, in the Ft. Lauderdale marshal cellblock.

16 THE COURT: Thank you.

17 Good morning, Mr. Harris. Can you see me and hear me
18 okay?

19 MR. FRED HARRIS: Good morning.

20 THE DEFENDANT: I can, your Honor. Good morning.

21 THE COURT: Good morning. We are here today for a
22 detention hearing. Are we going forward?

23 MR. MOHANTY: Yes, your Honor.

24 MR. WILCOX: Yes, your Honor.

25 THE COURT: All right. Mr. Harris, as the other day,

1 we're doing this hearing by Zoom for everyone's safety because
2 of the pandemic.

3 Is it okay with you if we go forward with this
4 hearing by Zoom, instead of having you in open court?

5 MR. FRED HARRIS: Yes.

6 THE DEFENDANT: Yes. Yes, it is.

7 THE COURT: Okay. All right. Let's go.

8 Who is Mr. Harris?

9 MR. FRED HARRIS: I am Mr. Harris.

10 THE COURT: I know. But who are you?

11 MR. FRED HARRIS: I'm Richard's father.

12 THE COURT: Okay. Unless I specifically address you,
13 if I say "Mr. Harris," I'm talking to your son. Okay?

14 MR. FRED HARRIS: Oh. Okay. Sorry.

15 MR. WILCOX: And could you put your cell phone on
16 mute for the time being.

17 THE COURT: All right. We're here for a detention
18 hearing.

19 As you know, Mr. Cooley, if you wish, you may proceed
20 by proffer, as long as there is a knowledgeable agent
21 available for cross-examination.

22 If you do proceed by proffer, please let me know what
23 the basis for the request is, whether there is a presumption,
24 and also what kind of guidelines Mr. Harris will be looking at
25 if convicted of any or all of these charges. Okay?

1 MR. COOLEY: Yes, your Honor.

2 I do have AUSA Mohanty on Zoom. And it's actually
3 his case, your Honor, from D.C. Could he address the Court?

4 THE COURT: Everything that is said to Mr. Cooley, I
5 am now addressing to you, Mr. Mohanty. But, yes, I'll allow
6 you to proceed, if you wish.

7 But do you have an agent available for
8 cross-examination?

9 MR. MOHANTY: We do, your Honor. Agent Michael
10 McGillicuddy is available.

11 THE COURT: Okay.

12 MR. MOHANTY: And proceeding by proffer, your Honor,
13 we don't believe that any of the presumptions apply in this
14 case.

15 The defendant's statutory penalties that he's facing,
16 if convicted on all counts, are approximately 30 years.

17 Having said that, I believe the guideline
18 calculation, based on what I know of his criminal -- limited
19 knowledge of his criminal history, is approximately 15 to 21
20 months, your Honor.

21 Your Honor, we are asking that the defendant be held
22 in this case --

23 THE COURT: Before we go forward, though, I agree
24 with you that no presumption applies, but does violation of
25 Section 111(a)(1) constitute a crime of violence?

1 MR. MOHANTY: Your Honor, it is the government's
2 position it does not in this case because he did not have a
3 weapon. So the government, in other cases in our court
4 arising from this offense, we are taking the position that it
5 does not constitute a crime of violence.

6 THE COURT: All right. Then you are going to have to
7 convince me that he is a serious risk of flight or a serious
8 risk that he will obstruct or attempt to obstruct justice or
9 threaten or injure or intimidate, et cetera, a prospective
10 witness, correct, under subsection (e) (2) (b) -- or, rather,
11 (f) (2) (b)?

12 MR. MOHANTY: Right. I think that's certainly
13 correct, your Honor.

14 THE COURT: Okay.

15 MR. MOHANTY: We do think that he is a serious risk
16 of flight for several reasons, your Honor.

17 First, addressing the factors we need to address,
18 looking at the nature of the offense. It's a serious offense,
19 your Honor, the fact that he and others, on January 6,
20 obstructed or attempted to obstruct the certification of the
21 electoral college vote, which constitutes an official
22 proceeding.

23 The vice president, as I'm sure the Court knows, was
24 present in congress that day. No one was allowed in or out of
25 the Capitol Building, except for authorized personnel.

1 The defendant and others forced their way into the
2 building. The defendant made a number of statements, and I
3 believe the Court has a still photo, it's hard to show unless
4 you get video to the Court, but there is video that I've shown
5 to Mr. Wilcox, capturing still photo Exhibit No. 1, where the
6 defendant tells a police officer inside the Capitol, who is
7 trying to block them from going into certain areas, the
8 defendant says -- and I may not have the quote exactly, your
9 Honor -- but he says, You're outnumbered. There's a F'ing
10 million of us out here. We're listening to Trump, your boss.

11 That caused that police officer to be intimidated and
12 fear for his safety and he stepped back, allowing the
13 defendant and others to go up the stairs.

14 The defendant is also seen in Government's Exhibit 2.
15 The video from that still photograph shows him picking up a
16 telephone inside the Capitol and saying, again, Can I speak to
17 Pelosi? We are coming for you, you -- the Court will forgive
18 my words, but it's his words -- you bitch. Oh, Mike Pence,
19 we're coming for you, too, you F'ing traitor.

20 And then, Government Exhibit 3 shows --

21 THE COURT: Can I assume that when you say "F'ing,"
22 that Mr. Harris didn't say "F'ing"?

23 MR. MOHANTY: That's correct, your Honor.

24 THE COURT: You can feel free to use whatever
25 language you need to use.

1 MR. MOHANTY: I appreciate that, your Honor. I'm
2 sure the Court knew what I was getting at.

3 THE COURT: Well, I knew what you were getting at,
4 but I would prefer direct quotes if you're wanting me to rely
5 on what was said.

6 So regarding Pelosi, he picked up the phone. What
7 phone was this? I saw that picture. Is that a phone in the
8 Speaker's office? Is that a phone in the chambers? Where is
9 that phone?

10 MR. MOHANTY: That's a phone in the Capitol Building
11 itself, your Honor. That is actually, as I understand, there
12 is a landline used by the Capitol Police office. And he says
13 "We're coming for you, you bitch," regarding Ms. Pelosi.

14 Regarding Vice President Pence, he said, We're coming
15 for you, too, you F -- you fucking traitor.

16 And in regard to his statement to the police officer
17 earlier, he said, "There's a fucking million of us out here."

18 The defendant -- as the Court probably knows, the
19 government has been trying, since January 6, to identify the
20 people, as best it could, that breached the Capitol that day.

21 The defendant was identified through a
22 Be-On-The-Lookout poster, calling for information linked to
23 his identity by somebody that knows him well.

24 As the government attempted to locate him, the
25 defendant traveled through eight different states, beginning

1 on or about February 21st, until his arrest in Florida
2 recently, your Honor.

3 He went through Arizona, New Mexico, Texas, Oklahoma,
4 Arkansas, Tennessee, Alabama, Georgia, and then wound up in
5 Florida.

6 He didn't stay in any of those states for any length
7 of time. It wasn't like he was looking for a job. It wasn't
8 like he was site seeing.

9 On March 15, an agent called Mr. Harris in an attempt
10 to -- and advised that she was an FBI agent and that he should
11 call her back, attempting to get him to turn himself in. He
12 did not return that phone call.

13 The defendant also --

14 THE COURT: Was that on a cell phone -- I'm sorry.
15 Did he call his home, in Oregon, or did he call his cell
16 phone? Did he actually call a cell phone that was known to
17 belong to this defendant?

18 MR. MOHANTY: She called a cell phone that was known
19 to belong to this defendant and that was actually recovered
20 from the defendant at his arrest.

21 THE COURT: Okay.

22 MR. MOHANTY: When the defendant was arrested in
23 Florida, he had three cell phones in total. He admitted to
24 the Pretrial Services officer that he was living out of his
25 car. He has no income. No real property. No ties to

1 virtually any community, your Honor, except for with respect
2 to his father.

3 The defendant was also present at a protest in
4 Portland, Oregon, at the Capitol there, on or about December
5 20 of 2020, where he shoved a journalist who was taking photos
6 of the event.

7 I understand that his father, Mr. Harris, is offering
8 to post money bond for him, your Honor. As much as I
9 appreciate Mr. Harris looking out for his 40-year-old son, we
10 simply don't think that that is sufficient in this case.

11 I would refer the Court to two cases from the Second
12 Circuit, United States vs. Mercedes, 254 F.3d 433, at page
13 437, a case from 2001, in which the Second Circuit essentially
14 held that when someone is a substantial risk of flight, the
15 fact that a relative is offering to post a money bond is not
16 enough to overcome that risk of flight.

17 So for those reasons, your Honor, we ask that you
18 hold the defendant.

19 THE COURT: Let me ask you a couple of questions
20 before I turn it over to Mr. Wilcox. Well, let me ask you one
21 question and then I'll let Mr. Wilcox go.

22 The phone call from the FBI agent to the defendant's
23 cell phone, when was that?

24 MR. MOHANTY: That was on March 15, your Honor.

25 THE COURT: And you said that BOLOs went out from

1 Washington. When did those go out?

2 MR. MOHANTY: They went out on or about January 7th,
3 or 8th, your Honor. And this was on January 6th.

4 THE COURT: And those were BOLOs to police or were
5 any BOLOs issued to the general public? Was this person's
6 image or identity broadcast publicly or was this just to law
7 enforcement?

8 MR. MOHANTY: It was broadcast publically, your Honor
9 and on the FBI's website and through posters around the
10 country.

11 In fact, several sort of laypersons, for lack of a
12 better word, your Honor, were able to connect him, although
13 they didn't know his name, were able to point out through
14 Twitter that he was the same person who had been present at
15 the Oregon incident based on his clothing, his appearance and
16 the distinctive tattoo on his right arm.

17 THE COURT: All right. Thank you.

18 MR. MOHANTY: Thank you, your Honor.

19 THE COURT: Mr. Wilcox, did you want to
20 cross-examine?

21 MR. WILCOX: Yes, your Honor. But I'm going to
22 object to the Court considering the Oregon incident. He is
23 not charged with that. It's hearsay. There is really no
24 probable cause for this Court to believe that that act of
25 crime actually occurred.

1 THE COURT: I'll let you inquire into it, and then
2 I'll reserve ruling on your objection and let you know whether
3 I'm going to consider it and, if so, to what degree.

4 So did you want to cross the agent?

5 MR. WILCOX: Yes, your Honor. I will, just briefly.

6 THE COURT: All right. Who is the agent? I don't
7 see a name.

8 Agent McGillicuddy -- there he is. Right in the
9 middle. You are hiding right in plain site.

10 All right. Do you want to swear him in, please?

11 COURTROOM DEPUTY: Yes, sir.

12 MICHAEL J. MCGILLICUDDY,
13 having been first duly sworn, testified as follows:

14 COURTROOM DEPUTY: State your name, sir, and let us
15 know what agency you work for.

16 THE WITNESS: My name is Michael J. McGillicuddy. I
17 work for the FBI's Washington field office.

18 THE COURT: All right, Agent. Did you hear the
19 proffer?

20 THE WITNESS: I did, yes.

21 THE COURT: Was it accurate?

22 THE WITNESS: Yes.

23 THE COURT: Is there anything you would like to
24 change, correct or add?

25 THE WITNESS: Nope.

1 THE COURT: Are you prepared to adopt that as your
2 direct testimony?

3 THE WITNESS: Yes, I am.

4 THE COURT: All right. Mr. Wilcox, you may inquire.

5 CROSS-EXAMINATION

6 BY MR. WILCOX:

7 Q. Good morning, Agent McGillicuddy.

8 A. Good morning.

9 Q. Have you seen the video and photographs that were
10 referenced by --

11 THE COURT: Sounds like there is a toddler in the
12 background. Would somebody -- I assume that's not the
13 cellblock -- somebody have a kid in the background?

14 UNIDENTIFIED MAN: I do, your Honor. I'm going to
15 put me on mute, unless I'm answering a question.

16 THE COURT: Okay. Is it necessary to have the kid in
17 the office with you, or wherever you are?

18 UNIDENTIFIED MAN: I'm at home this morning, your
19 Honor. My kids are on online school.

20 THE COURT: All right.

21 Mr. Wilcox, go ahead.

22 BY MR. WILCOX:

23 Q. Agent McGillicuddy, have you seen a photograph and video
24 referenced by assistant United States attorney Mohanty?

25 A. I have, yes.

1 Q. Besides those videos and photographs, is there any other
2 evidence showing Mr. Harris inside the Capitol?

3 A. Yes, there are -- yes, there is.

4 Q. What other evidence?

5 A. The United States Capitol Police provided approximately 19
6 security camera videos of Mr. Harris's movements throughout
7 the Capitol.

8 Q. Okay. So there are either 19 still shots or 19 video
9 clips of Mr. Harris moving through the Capitol, is that what
10 you're saying? Is that fair?

11 A. Yes. That's fair.

12 Q. Okay. In any of those video or still shots, Mr. Harris
13 was not carrying a weapon such as an axe handle or anything
14 like that. Is that fair?

15 A. That's fair. Yes.

16 Q. Okay.

17 Mr. Harris in the cellblock, could you mute yourself,
18 please?

19 THE COURT: I don't think he can, but I will.

20 Mr. Harris, I'm going to mute you. I will unmute you
21 later on if there is anything you want to say.

22 We're trying to get rid of the background noise.

23 BY MR. WILCOX:

24 Q. Is there any evidence that Mr. Harris attacked any officer
25 physically?

1 A. No.

2 Q. Now the phone that he was speaking on, that phone wasn't
3 actually connected to Nancy Pelosi's office, was it?

4 A. It was not. No.

5 Q. Okay. Would it be fair to say that he was just making a
6 show for the cameras? Is that a possible explanation for his
7 actions?

8 A. It's possible. I don't know what he was attempting to do
9 with those statements.

10 Q. Well, he wasn't talking to Nancy Pelosi and he wasn't
11 talking to Mike Pence. You know that, right?

12 A. That's correct. Yes.

13 Q. Have you spoke to the agent that arrested Mr. Harris?

14 A. Yes.

15 Q. Did he make any statement?

16 A. Not my knowledge.

17 MR. WILCOX: Your Honor, I don't have anything else.
18 Let me speak with me client briefly, but I don't think I have
19 anything else for the agent.

20 THE COURT: Do you want to talk to him in a room or
21 by phone or publicly?

22 MR. WILCOX: I'm going to just call the room. He's
23 on mute. I'll put myself on mute, if that's okay with the
24 Court.

25 THE COURT: All right. Go ahead.

1 I just muted you, Mr. Wilcox.

2 (Pause.)

3 MR. WILCOX: Your Honor, I don't have any further
4 questions for Agent McGillicuddy. Thank you.

5 THE COURT: All right. Any redirect?

6 MR. MOHANTY: No, your Honor.

7 THE COURT: Let me just ask the agent, since it's
8 been raised, what do you know about any involvement Mr. Harris
9 had in any incident in Oregon, and how do you know it?

10 THE WITNESS: Yeah. We received some social media
11 information of photographs of Mr. Harris at the Oregon State
12 Capitol. So my knowledge is limited to still photographs of
13 that scene of him, outside at the Capitol and one still
14 photograph of him shoving a photographer.

15 THE COURT: You personally reviewed a still
16 photograph and you can identify this defendant?

17 THE WITNESS: Yes.

18 THE COURT: And he's shoving a photographer?

19 THE WITNESS: Correct.

20 THE COURT: All right. Mr. Wilcox, did you want to
21 follow up on that?

22 BY MR. WILCOX:

23 Q. Was he charged in Oregon with any crime related to the
24 shoving of the photographer?

25 A. He was not. No.

1 Q. Okay. And does the video show the incident in its
2 entirety? Does the video show what the photographer was doing
3 prior to my client shoving him?

4 A. No. I have reviewed no video. I have reviewed only still
5 shots.

6 Q. It was a still shot. So you can't say whether or not my
7 client was acting in self-defense, or not?

8 A. I can't say.

9 MR. WILCOX: Okay. Thank you.

10 THE COURT: All right. Thank you.

11 Any other evidence, testimony or proffer, from the
12 government?

13 Thank you, agent. You may stand down.

14 Mr. Mohanty?

15 MR. MOHANTY: Your Honor, the only other thing that I
16 think I should ask of the Court is that the defendant's cell
17 sites, the cell phone evidence puts him in the Capitol or near
18 the Capitol during the relevant time.

19 I apologize, your Honor. I should have said that in
20 my initial proffer, but I did mention that to Mr. Wilcox, off
21 the record, earlier.

22 THE COURT: Are you talking about the U.S. Capitol or
23 the Portland Capitol, or both?

24 MR. MOHANTY: The U.S. Capitol, your Honor. We do
25 not have cell sites, as far as I know, for the time period of

1 December.

2 THE COURT: Okay. I'll give you an opportunity to
3 argue in a minute, but do you have any other evidence,
4 testimony or proffer?

5 MR. MOHANTY: No, your Honor.

6 THE COURT: All right. Mr. Wilcox, do you have any
7 evidence, testimony or proffer, including letting me know
8 whether the Pretrial Services report is accurate?

9 MR. WILCOX: Your Honor, I have reviewed the Pretrial
10 Services report. There are a couple of questions I would like
11 to -- I would like Mr. Fred Harris to answer. I would like to
12 take the testimony from Fred Harris, Mr. Richard Harris's
13 father.

14 THE COURT: All right. I prefer a proffer, but if
15 you want to do testimony, you may do so.

16 MR. WILCOX: Okay. No, your Honor, I can do it by
17 proffer. He's here.

18 Well, he proffered that prior to -- that prior to
19 Mr. Harris going to D.C., that he was -- he had relocated to
20 Oregon. He had been in Oregon for a while before he took the
21 trip to Washington, D.C.

22 THE COURT: Before you go further, let me make sure
23 that all the lawyers have read, there is an updated Pretrial
24 Services report sent to me this morning that I have read, I'm
25 not sure you guys have.

1 But it's got a whole paragraph indicating what Fred
2 Harris said to Pretrial. Do you guys have that?

3 MR. MOHANTY: I do, your Honor. I received it from
4 Mr. Cooley. Thank you.

5 THE COURT: All right. Mr. Wilcox, have you reviewed
6 that?

7 MR. WILCOX: Yes, I have, your Honor. I reviewed it
8 with Mr. Harris this morning.

9 THE COURT: Okay. Go ahead.

10 MR. WILCOX: So he had been living in Oregon, for a
11 while before he decided to go to Washington, D.C., your Honor.

12 And he can go back there. I mean, there is room for
13 him to live there and he can live there during the pendency of
14 the case.

15 So that's all I wanted to elicit from Mr. Harris,
16 your Honor, Mr. Fred Harris, the father.

17 THE COURT: All right. Mr. Fred Harris, is that
18 accurate? You would be willing to put up your house and have
19 your son come live with you?

20 THE DEFENDANT: Is that on me now?

21 THE COURT: He's muted, but he's indicating yes.

22 It takes a matter of 60 seconds' delay to unmute him.

23 You should be there now, Mr. Harris.

24 MR. FRED HARRIS: Yes, I am. I am willing to have
25 him stay with me.

1 THE COURT: Okay. Thank you.

2 Any other evidence, testimony or proffer, Mr. Wilcox?

3 You're on mute.

4 MR. WILCOX: No, your Honor.

5 THE COURT: All right. Argument from the government.

6 MR. MOHANTY: Your Honor, as I indicated earlier, we
7 believe that the defendant remains a substantial flight risk,
8 despite his father's generous offer.

9 And the Court can tell, he traveled, he chose to
10 travel across country to participate in the attack on the
11 Capitol on January 6.

12 Our evidence is strong of his violating the relevant
13 statutes here, including 1815 -- excuse me, 18 U.S.C. 1512(c),
14 which has a penalty of 20 years, and 18 U.S.C. 111(a)(1),
15 which has a penalty of up to 8 years.

16 The defendant has essentially been, in the
17 government's view, your Honor, on the run since that time. He
18 has been living out of his car. He has not sought employment.
19 He has not attempted to set community ties virtually anywhere.

20 And I would certainly concede, your Honor, this is
21 not necessarily the type of dangerous cases that perhaps your
22 Honor and I am more aware of, you know, gang violence or drug
23 cases, your Honor.

24 But the defendant has shown, in our view, a real
25 disregard for the law and sort of -- it does not appear that

1 he will -- we're not satisfied that he would appear for
2 further court hearings, your Honor, or that the government
3 could find him for further court hearings.

4 So for those reasons, your Honor, we ask that the
5 Court hold him.

6 THE COURT: All right. Mr. Wilcox?

7 MR. WILCOX: Your Honor, I would proffer that most of
8 the people that have been charged with similar offenses have
9 been released on bond.

10 You can inquire of Mr. Mohanty. It's my
11 understanding that the only people that haven't been released
12 on bond are people that are possessing weapons and people that
13 are part of the conspiracy, people that are part of Proud Boys
14 or some of these other groups.

15 People that are similarly situated to Mr. Harris have
16 been receiving bond.

17 Mr. Mohanty is free to rebut that, but I believe that
18 that is accurate, based on my review of internet sites and my
19 review of -- and my speaking with the federal public defenders
20 in the District of Columbia, your Honor.

21 He has one prior, your Honor, and that's a
22 20-year-old prior for marijuana, a marijuana sale. He would
23 indicate that -- he would proffer that that was a situation
24 with him being in the wrong place at the wrong time. Other
25 than that, he has no priors.

1 He has ties to the United States. He is a citizen.
2 He has twins that are six months old.

3 His father has substantial equity in his home. I
4 would submit that he would not want to risk his father's home
5 by fleeing in this case.

6 He is only facing a guideline sentence of 15 to 21
7 months, as conceded by the government. To suggest that he
8 would put his father's home and/or money at risk just so he
9 could avoid serving a 15 to 21 month sentence, I don't think
10 is reasonable, your Honor. I don't think that's a reasonable
11 argument.

12 Again, your Honor, I think there have been about 300
13 arrests, and the vast majority of these people have been
14 released. And, your Honor, from what I gather, the people
15 that have been released, when they are -- they are from all
16 over the country.

17 And they are having these hearings via Zoom. I mean,
18 the defendant is allowed to appear at these hearings via Zoom.
19 And Mr. Mohanty can correct me if I'm wrong about that.

20 So I think this is a case where the Court can set
21 maybe a \$150,000 personal surety bond, to be cosigned by Fred
22 Harris, collateralized by his home, and a 10 percent bond that
23 the Court thinks is reasonable.

24 THE COURT: All right. Thank you, to both sides, for
25 your presentation.

1 To begin with, as we discussed at the outside, this
2 is not a presumption case and it's not even a case that
3 normally would be appropriate for pretrial detention. So I
4 believe we are operating under subsection (f)(2), which
5 requires a finding of the serious risk of flight or serious
6 risk that the person would obstruct or attempt to obstruct
7 justice, et cetera.

8 Mr. Wilcox, you filed, this morning, a memorandum
9 opinion from D.C., which I was able to read before court. And
10 I think it's instructive so I'm going to somewhat follow the
11 guidelines there.

12 I don't know whether it's true or not that people
13 have been released all over the country. I just know what I
14 see in the papers, and I'm not going to rely on that. But I
15 am going to look at this opinion from Chief Judge Howell,
16 where someone was released in Kansas City by a magistrate
17 judge, and that was overturned and the defendant was put into
18 custody.

19 And there is a decent framework here from the chief
20 judge of Washington, D.C., about what we should consider, and
21 I'm going to follow that.

22 For starters, on risk of flight, I do appreciate
23 Mr. Harris here, but I'm going to find that he is a serious
24 risk of flight.

25 Prior to this incident, he was itinerant. Even when

1 he was living in Oregon, according to the Pretrial Services
2 report, he still lived in his car for about four months before
3 he moved into his house. And then he left the house and was
4 traveling around for 11 weeks.

5 He was involved, there is certainly enough evidence
6 to believe that he was involved in the incident at the
7 Capitol. There is also evidence that he would have known that
8 he was wanted for prosecution.

9 During that time, the government has proffered that
10 he traveled through, was it eight different states, setting
11 down no ties anywhere. And when he was arrested here in
12 Florida, where he has no ties, he was living out of his car.

13 So he has no ties here. He has no ties to
14 Washington, D.C. And even the ties that he does have in
15 Oregon, he left that place and didn't go back to it.

16 I don't know if it's fair to characterize him as
17 being on the run, but he certainly was a rolling stone, with
18 no ties kept down anywhere when he had every reason to know,
19 including a phone call from the FBI, that he was wanted for a
20 crime. So I find that he is a risk of flight.

21 With respect to danger to the community, it's not a
22 normal case for detention because it's not a crime of violence
23 and there is no weapon involved.

24 However, just quickly going through the factors that
25 Judge Howell suggested looking at, differentiating between a

1 felony and a misdemeanor, looks like two felonies and three
2 misdemeanors, so certainly there are serious charges here.

3 I don't really see any evidence of prior planning. I
4 guess the fact that he was in Oregon, and then he was in
5 Washington, suggests a pattern, but I don't know if it
6 suggests any real planning.

7 And what Judge Howell concentrated on was coming to
8 Washington, with tactical gear, weapons, et cetera. I don't
9 see any evidence of that on behalf of Mr. Harris. And I
10 haven't heard any allegation that he's a member of the Proud
11 Boys or any other group that was involved in organizing.

12 And use or carrying of a dangerous weapon, I don't
13 see that here either. So that weighs in the defendant's
14 favor.

15 However, the next two factors include coordination
16 with other participants before, during or after the riot, and
17 a defendant who assumed either a formal or de facto leadership
18 role in the assault by encouraging other rioters' misconduct,
19 for example, by urging rioters to advance on the Capitol or to
20 confront law enforcement may have inspired further criminal
21 conduct on the part of others.

22 He certainly knew that he was in front of cameras.
23 Even if he clearly knew that he wasn't talking to Speaker
24 Pelosi or Vice President Pence, if he was in front of cameras,
25 giving what are pretty direct threats to the Speaker of the

1 House and the vice president of the United States, I think
2 that constitutes both provoking the mob and also assuming sort
3 of a de facto leadership role.

4 And likewise, with what he did, seeing the picture of
5 him at the head of the crowd, threatening the police officer,
6 Judge Howell differentiates between somebody who just remained
7 on the grounds and milled about, et cetera, as opposed to
8 someone who injured, attempted to injure or threatened to
9 injure others or who damaged or attempted to damage property.

10 And then, grave concerns are implicated if the
11 defendant actively threatened or confronted federal officials
12 and law enforcement or otherwise promoted or celebrated
13 efforts to disrupt the certification of the electoral vote
14 count during the riot by encouraging others to engage in such
15 conduct.

16 These factors measure the extent of a defendant's
17 disregard for the institution of government and the rule of
18 law, qualities that bear on both the seriousness of the
19 offense conduct and the ultimate inquiry of whether defendant
20 will comply with conditions of release.

21 I have evidence before me that he was at the head of
22 an angry group of people going into the Capitol. They are
23 being restrained by a police officer, and he told them you're
24 outnumbered, there is a fucking million of us out here and
25 we're listening to Trump.

1 And at that point the officer, the proffer was that
2 the officer was in fear for his safety, stood aside, and let
3 the mob proceed.

4 And then we have additional photographs of Mr. Harris
5 with his arm around a statue of Gerald Ford and on the phone,
6 pretending to talk to Pelosi and Pence, saying We're coming
7 for you.

8 I can't release someone under those circumstances.
9 I'm going to find that he is a risk of flight and a danger to
10 the community.

11 I'll follow up with a written order and that will be
12 out shortly.

13 MR. COOLEY: Your Honor, the other day we discussed
14 removal. And I don't think --

15 MR. WILCOX: Your Honor, may I be heard, briefly?

16 I would just point out that the government wasn't
17 proceeding on danger. And that on page 13 of this order, the
18 judge -- the reason I sent it to you is because I wanted you
19 to be aware that not all the rioters charged with offenses
20 were being held, and that the court has not been uniformly
21 granting the government pretrial detention.

22 And I understand the Court went through those
23 factors, but it seems to me that the father's house would
24 allay any fears that he would not show up for court.

25 Thank you, your Honor.

1 THE COURT: Well, I disagree. And you also proffered
2 that he has got, what did you say, two six-month-old twins at
3 home and living out of his car in eight different states for
4 the last three months. So I'm not satisfied about ties.

5 So you haven't really -- and I disagree with you, but
6 I'll let Mr. Mohanty speak for himself. At the outset, I
7 asked if they were proceeding on those two prongs and I
8 thought he said yes.

9 Mr. Mohanty, were you requesting under only risk of
10 flight? Or danger to the community as well?

11 MR. MOHANTY: Your Honor, danger to the community as
12 well. I think what I said is there was a presumption of
13 dangerousness under the statute.

14 THE COURT: Right. And that's what I thought. And
15 I'm proceeding under heightened standard, finding under that
16 heightened standard that he qualifies for danger to the
17 community.

18 And, Mr. Wilcox, I'm not really paying much attention
19 to what other judges elsewhere have done, but I will say this
20 is not my first Capitol rioter case, but it is the first
21 detention case.

22 So I have released people; I'm not releasing this
23 one.

24 We talked about removal the other day, but I don't
25 think we got as far as actually a waiver.

1 Mr. Wilcox, does your client want to waive removal?
2 Or, if not, are there any additional questions you would like
3 to ask, and we'll treat this as a removal hearing?

4 MR. WILCOX: May I just have a moment to speak with
5 him, your Honor?

6 THE COURT: Yes. I'm going to mute you.

7 I think you just muted yourself. Okay.

8 (Pause.)

9 MR. WILCOX: Your Honor, we're going to waive
10 removal. But Mr. Harris would proffer that the reason he was
11 traveling all over the country is because he was seeking to
12 relocate and he was just checking out different states for
13 possible relocation for his girlfriend and the two
14 six-year-old twins.

15 THE COURT: All right. Thank you. My ruling stands.

16 All right. Mr. Harris, Mr. Wilcox is indicating you
17 want to waive removal, which means you want to agree to go
18 back, voluntarily, to Washington, D.C.

19 I have here a written waiver of removal that you
20 haven't signed, but let me read it to you.

21 It would say I, Richard Harris, charged in a
22 proceeding -- I'm going to unmute you now so that the
23 60-second lag time starts.

24 All right.

25 I, Richard Harris, charged in a proceeding pending in

1 the District of Columbia with assaulting, resisting or
2 impeding certain officers, and having been arrested in the
3 Southern District of Florida and taken before Judge Hunt, who
4 informed me of the charge and of my right to retain counsel
5 and request the assignment of counsel if I am unable to retain
6 counsel, and to have a hearing or execute a waiver thereof, do
7 hereby waive a hearing before the aforementioned magistrate
8 judge, and consent to the issuance of a warrant for my removal
9 to the District of Columbia, where the aforesaid charge is
10 pending against me.

11 Is that what you want to do? Give up your right to a
12 removal hearing here, and go back voluntarily?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Wilcox, is it okay with you if I have
15 Troy give him this written waiver and have him sign it?

16 MR. WILCOX: Yes, your Honor.

17 THE COURT: All right. The record will show that I
18 have taken an oral waiver, and I find that Mr. Harris
19 knowingly, voluntarily and intelligently has waived his right
20 to a removal hearing.

21 Again, Mr. Harris, you're not admitting you did
22 anything wrong. You are just admitting that there is probable
23 cause and that they have got the guy they're looking for, both
24 of which I would make a finding about based on the hearing we
25 just had, anyway, but by waiving, it makes it more clear.

1 So again, you're not admitting you did anything
2 wrong. You're just agreeing to go back to face the charges in
3 Washington.

4 I'll sign the commitment today, but Troy will bring
5 up this waiver to you later and your lawyers are advising you
6 need to sign it. I hope you'll do that as well.

7 So I'll sign the --

8 MR. WILCOX: Your Honor, may I?

9 THE COURT: Yes.

10 MR. WILCOX: Your Honor, may I just say one more
11 thing to him?

12 THE COURT: Let me put you back on mute.

13 (Pause.)

14 MR. WILCOX: Thank you, your Honor.

15 THE COURT: All right. Is that everything for today,
16 then, Mr. Cooley?

17 MR. COOLEY: Yes, your Honor.

18 THE COURT: Mr. Mohanty?

19 MR. MOHANTY: Yes, your Honor. Thank you.

20 THE COURT: Mr. Wilcox?

21 MR. WILCOX: Yes, your Honor.

22 THE COURT: Mr. Harris, did you understand everything
23 we did here today?

24 I'm going to ask you to nod or shake your head,
25 because you're on mute.

1 Did you understand everything we did here today?

2 All right. This is --

3 MR. FRED HARRIS: I was wondering if I could say
4 something, your Honor?

5 THE COURT: You're not going to change my mind, but
6 you're free to say what you would like.

7 MR. FRED HARRIS: I would just like to say probably
8 12 years ago, Richard borrowed \$20,000 from me for an
9 investment on repairing a home that he was working on, and I
10 did get paid back.

11 He is pretty reliable and I don't think he would flee
12 on the bail that I am signing.

13 THE COURT: All right. Mr. Harris, I do appreciate
14 you being here today, I appreciate the offer you made for your
15 son.

16 Just I'm going to have to detain him. He will be
17 held in custody until the resolution of this case.

18 Thank you.

19 We will be in recess on this case and I'll sign the
20 -- unless there is a reason for me not to sign the order, I'll
21 sign the order of removal as soon as I get the detention order
22 done.

23 All right.

24 Good luck to you, Mr. Harris.

25 THE DEFENDANT: Thank you, sir.

1 THE COURT: You will have to stand up and let the
2 marshal know we're ready for the next case.

3
4 (Proceedings were adjourned.)

5
6 * * *

TRANSCRIBER'S CERTIFICATION

I, Judith M. Wolff, a Certified Realtime Reporter, do hereby certify:

That I transcribed the proceedings digitally-recorded on March 26, 2021, in the matter of USA vs. Richard L. Harris, Case No. 21-mj-06163-PMH-1;

That said audio recording of the proceedings were reduced to typewritten form by me; and that the foregoing transcript is a true and accurate record of the proceedings to the best of my skill and ability.

Date: April 16, 2021

s/ JUDITH M. WOLFF, CERTIFIED REALTIME REPORTER
Signature of Transcriber

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CRIM. NO. 21-00189 (CJN)

UNITED STATES OF AMERICA,
Plaintiff,

v.

RICHARD L. HARRIS,
Defendant.

_____ /

PROPOSED ORDER ON DEFENDANT'S MOTION FOR BOND REVIEW

This matter has come before the Court on the Defendant, Richard L. Harris's Motion for Bond Review. The Court being fully advised in the premises, the Defendant's motion is hereby _____. The Defendant shall be released from custody with pretrial conditions and reside with his father in Happy Valley, Oregon, until the completion of these proceedings.

DONE and ORDERED in Chambers at Washington, D.C., this _____ day of May, 2021.

CARL J. NICHOLS
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record