

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

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 21cr0006 (TJK)**
 :
 DOUGLAS AUSTIN JENSEN, :
 Defendant. :

REPLY TO GOVERNMENT RESPONSE (Dkt. 24)

Douglas Jensen, by and through his attorney, Christopher M. Davis, respectfully submits that on January 6, 2021, he did not physically assault anyone, nor did he destroy any property at the Capitol. Mr. Jensen did not plan in advance to go to the Capitol nor did he coordinate with anyone else. Mr. Jensen submits that he neither led any group activity nor did he “use” a dangerous weapon or plan in advance to bring one to the Capitol that day. And the video and photographic evidence, along with the FBI’s investigative interviews proves this. He requests that he be released pending trial, as required by 18 U.S.C. § 3142, on the conditions of release that were imposed shortly after the detention hearing held in the Northern District of Iowa (NDIA).

1. In the first instance, many of the allegations in the government’s response, some of which contain veiled threats of other criminal activity and yet additional charges, the defense is hearing about for the first time. Almost six months have passed since Jensen’s arrest, he has been indicted three times, and now the government alleges it may indict him with new charges based on new evidence it

recently discovered in sifting through his cell phone – apparently last week. Evidence of which Jensen learned about in its response to his motion for release. The defense sent a 1 TB storage device to the government over a month ago. The government ran into technical difficulties which prevented them from loading the contents of Jensen’s cell phone onto the storage device. They tried three times to no avail. Then the government attorney withdrew and another one was substituted. At that time, the defense requested that it at least needed the videos and pictures from the Capitol incident that were on the phone. Recently, a second attempt to provide the contents of the cell phone failed, as a consequence of the medium that was provided to counsel.¹ To date the defense does not have the text messages from Mr. Jensen’s cell phone, many of which he is learning about for the first time when the government filed its response to Mr. Jensen’s request to have the bond hearing he reserved his right to request at the initial presentment. The defense had no idea new allegations were forthcoming and did not receive the photos and the videos from his cell phone until late last week.²

2. In the same pleading, the government complains that Mr. Jensen should not get his day in court for his initial bond hearing, despite the fact much of what it is alleging is new and some of which still has not been provided to the defense. The government completely sidesteps the fact that at the initial appearance, Mr.

¹ On June 10, 2021, a disk was provided by the FBI field office to the defense. The contents of the cell phone had been loaded onto a “blue ray” disk, an outdated medium from 2008 that requires a special player. Needless to say, attempts to open this failed

² As discussed below, the photos and videos do not capture any acts of violence, much less support any of the new allegations of additional wrongdoing by Mr. Jensen.

Jensen agreed to detention, *specifically reserving the right to come back before the Court once discovery was provided and he had some familiarity with the case.*³

Noteworthy is the fact the Court accepted counsel's representations at that initial appearance on February 23, 2021, and at that time, the government raised no objection.

3. Mr. Jensen agrees that many of the acts of January 6, 2021 were chaotic and disturbing. There is no denying that there are many people in this country who feel alienated, outdated, and powerless as we all march forward in the 21st Century. Jobs have become obsolete, society as they knew it is changing. Despite the disturbing behavior observed that day, Mr. Jensen is entitled to fair process. He is entitled to be advised of the evidence in advance, not to be repeatedly indicted, and not to be sandbagged as he goes through the system. At the February 23, 2021 arrangement, Mr. Jensen agreed to detention "specifically reserving his right to request a hearing once discovery was provided and he became familiar with the evidence" that the United States had against him. Mr. Jensen submits that his request for a hearing now is not a reopening of the hearing, but his initial request for a hearing. Jensen is not rearguing facts from the original hearing nor is he advancing theories already considered and rejected. He is simply doing as this Court authorized him to do, contesting detention now that he has had an opportunity to familiarize himself with the facts of the case. And at that, he is being

³ On one hand, it is understandable that the United States misunderstood what occurred at that hearing. The current counsel for the United States was not its counsel of record on February 23, 2021. However, government attorneys are fungible, it is the nature of the organization, which has vast resources at its disposal.

confronted with new and unproven allegations.

4. The Court is specifically authorized to continue a detention hearing for “good cause.” 18 U.S.C § 3142 (f)(2). Though not directly on point, it would be fundamentally unfair to accept Mr. Jensen’s representations on the 23rd and then deprive him of the right to request a detention hearing now. He is now prepared to argue what he now knows about the case. Not to overlook the fact that the *Munchel* decision was returned by the Circuit after February 23, 2021.⁴ The Circuit’s decision in *Munchel* outlines the fact-based analysis to be utilized in reviewing bond for the many January 6 Capitol rioter cases.

5. In the final analysis, this Court has the power to and should hear Mr. Jensen’s opposition to his continued detention without bond. And the cases cited by the government in its response do not undercut his right to now have his hearing. Mr. Jensen, in turn, replies to the government’s response to his motion to reinstate the NDIA Magistrate Judge’s decision to release him to home detention with conditions.⁵

THERE IS NO VIOLENT LIFE-THREATENING CONDUCT

6. Violence is defined as “Behavior involving physical force intended to hurt, damage, or kill someone or something.” See the Oxford English Language Dictionary referenced <https://www.lexico.com/definition/Violence>. The Supreme Court in *Johnson v. United States* defined “physical force” as “force capable of

⁴ *United States v. Munchel*, 991 F.3d 1273 (D.C. Cir. 2021).

⁵ A transcript of the preventive detention hearing held in the NDIA is attached as Ex. 1.

causing physical pain or injury to another person.” 559 U.S. 133, 140 (2010). The government’s response repeatedly refers to Mr. Jensen’s violent behavior. Yet there is nothing even remotely resembling a violent act on his part on January 6, 2021. He literally did not lay a finger on any individual, law enforcement or otherwise. He personally did not damage any property, and not once does he address the crowd trailing behind him in the Capitol that day. Not once does he ever acknowledge that he is aware anyone is even behind him.⁶ And perhaps most importantly, the whole incident inside the Capitol is *captured on video* (with audio) and supports Mr. Jensen’s recounting of what occurred there on January 6, 2021. *See*, Ex. 2. The video was presumably made by a reporter and is one minute and 30 seconds long, essentially the duration of Mr. Jensen’s relevant acts that day in the Capitol.⁷ There is not one second in that video, nor any other video or photograph, that the defense is aware of, that captures Mr. Jensen raising a hand or engaging in physical contact with anyone. And aside from the reporters and numerous others inside the Capitol videoing and photographing what was going on, there is the whole Capitol surveillance camera network, none of which has been proffered as supporting the government’s groundless allegations of “violence” by Mr. Jensen. The inside of the Capitol that day was a chaotic scene. Reporters all running around filming and

⁶ This fact is supported by the government’s own words when it states that Jensen is basically single focused and unaware of what others are doing around him, “he appeared unfazed by the loud explosion of a fire extinguisher behind him.” Dkt. 24 at 13.

⁷ The defendant’s best friend was interviewed (recorded) by the FBI. In addition to what the government cites in Dkt. 24 at 7, the friend goes on to state how Jensen’s behavior is totally at odds with the person he has known for over 20 years. He told the FBI that “this is not him” and that you cannot define a man for 24 hours of his life. Here, a matter of minutes is at issue. This man travelled to DC with Jensen and, as Jensen told the FBI, he had no intention of doing anything other than go to the Trump rally, he was not part of any group or acting in concert with anyone. On impulse, Jensen went to the Capitol to witness the “storm” and that is what everyone of his text messages corroborate. He neither intended nor engaged in any violent acts. He was an observer.

photographing, some politicians and some law enforcement giving the rioters fist bumps and high fives, and most importantly, it was all televised, almost immediately. Contrary to what Gil Scott Heron predicted concerning civil discontent, this incident was televised. See, Gil Scott Heron, *The Revolution Will Not Be Televised*. <https://www.youtube.com/watch?v=QnJFhuOWgXg> And the photographs and videos demonstrate that the government's allegations of violent behavior by Jensen are unfounded.

7. The government's memo states that "he was willing to engage in violent, harassing, and life-threatening conduct in order to promote his beliefs..." See, Dkt. 24 at 6. Powerful words, but unsupported by evidence. Peaceful disobedience yes, but Mr. Jensen committed no violent acts and to characterize his running up the steps of the Capitol as "life threatening" is without support.⁸ This incident "was televised." See, Ex. 2. Mr. Jensen is neither charged with a crime of violence nor is he subject to a presumption of detention. The government's memo is sprinkled with innuendos and unproven facts and, in the end, is more of a tribute to its attorneys' creative writing skills than a recounting of what exists as evidence. Both the video (Ex. 2 - which has an audio track) and the two-hour interview of the defendant clearly establish that the defendant simply believed he was there to

⁸ This characterization of "life threatening" – threatening to cause physical injury - results in a 8 point enhancement in Jensen's guideline range (41-51 months). Acceptance of a plea offer required a written admission that he threatened physical injury to Officer Goodman. The video does not support characterizing this conduct as "life threatening." The government's theory is when Jensen said "I will take it" that this was life threatening. In the first instance, there is a factual dispute about what was said, and even the government concedes that whatever was said may not have been an intended threat. Dkt. 24 at 13. And how can Jensen be held accountable for the actions of others unless he is acting in concert with them. Yet another fact in dispute and unsupported by the video.

witness “the storm” that day.⁹ He expected to witness politicians being arrested. His two-hour voluntary interview with the FBI corroborates this. He literally asked the FBI agents during his interview whether the arrests had taken place yet. The video of the voluntary interview also corroborates his lack of planning or acting in concert with anyone.¹⁰ His comments to law enforcement in the Capitol were literally limited to asking them why they were not arresting the corrupt politicians.

8. Repeatedly, the government references Jensen’s “willingness to hurt law enforcement” (Dkt. 24 at 6), “clashing with police” (Dkt. 24 at 16)¹¹, and “violent assault” (Dkt. 24 at 16). All of these allegations are unsupported by the video footage either in or out of the Capitol. The fact that Jensen picked up a hat off of the floor, took a selfie, and then when told to put it down, did so, does not imply he assaulted anyone. Had he physically removed that hat from one the officers, we would have heard of this and seen it long before today. He engaged in no acts of violence.¹²

9. Jensen acted on his own. Telling is the audio to the video when others are yelling in the background, Jensen just stands there. Ex. 2. Jensen never looks behind, never acknowledges the crowd nor does he address anyone. The whole scene was chaotic. Reporters were everywhere snapping photos and one of them

⁹ Counsel can make Mr. Jensen’s two-hour voluntary interview with the FBI available to the Court if requested.

¹⁰ His best friend, who went to the Trump rally, but not the Capitol, with him corroborates this in his tape-recorded interview with the FBI.

¹¹ Everyone that was in the Capitol made their way past security outside. There is absolutely no evidence whatsoever that Jensen “clashed with police officers” outside the Capitol. He did not even go up the steps, he climbed the wall.

¹² He is guilty of behaving foolishly. Scaling the wall of the Capitol, as did many others, and doing his Rocky pose. However, even if it is him yelling “Storm the White House, that’s what we do,” he is not directing the crowd, he is simply memorializing the event. And the Capitol was in no uncertain terms “stormed” by hundreds of people.

must have made the video (Ex. 2) that captured the whole Officer Goodman ordeal.

10. The most compelling evidence of what occurred is captured on video, coupled with audio. Jensen, when threatened with the baton Officer Goodman had stated “I will take it for my country.” You hear I will take it, but what immediately follows is muddled, but something follows. Ex. 2 at 35 to 38 seconds. Jensen never puts a hand on Officer Goodman, and in fact, he never raises a hand to Officer Goodman when the baton hovers above his head. See, Ex. 2 at 31 seconds and the included still shot.



Nor does Jensen raise a hand when shoved back with such force that his large frame falls back against the wall. He just stands there. See, Ex 1 at 51 seconds and the following still shots from that video.



11. There is no video or photographs of Jensen raising a hand at any time. Nor has any internal Capitol surveillance video been disclosed that captures any violent act on Jensen's behalf. Jensen, as silly as it sounds, was there to observe. And when he spoke, he simply questioned why the police were not arresting the politicians.

12. Mr. Jensen has felony charges, however there are disputed issues of fact on what he was actually doing on January 6, 2021. The government believes he was actively trying to block the electoral count. Jensen states he was there to witness the storm.¹³ He expected the vote to be blocked, but not by him. He wanted to see it happen. At this stage of the case, he is cloaked with the presumption of innocence and since he not charged with a violent offense, he should be afforded release with conditions.

13. There are degrees of dangerousness and Mr. Jensen's possession of his work pocketknife, which remained in his pocket the whole time he was in the

¹³ The FBI agent called at the preventive detention hearing in the SDIA provided sworn testimony on this point. See, Ex. 1.

Capitol, indisputably falls at the lower end of the dangerousness spectrum.¹⁴ The reckless suggestion that Mr. Jensen was patting his pocketknife (Dkt. 24 at 16) is absolutely unsupported. Again, this incident was “televised”, and the best evidence is the video itself. The authorities were not even aware that Jensen had this pocketknife until he voluntarily went to the FBI field office in Des Moines and spoke at length about his activities on January 6, 2021. It was during this lengthy interview that Jensen told the FBI he had his work pocketknife on him, but notably, he does not say where he had it on his person. He had his work knife on him in the event he was attacked at the Trump Rally, the only event for which he came to Washington that day. He had several videos on his cell phone, which he voluntarily allowed the FBI to download, that included videos of Trump supporters being attacked on the streets in DC during earlier Trump related events. This pocketknife, though in his possession at the time he entered the Capitol, played no part in his conduct while he was in the Capitol.

14. Everyone who was unauthorized to be in the Capitol that day had to pass what was at one point a line of law enforcement. Again, there is no evidence that Jensen clashed with anyone outside the Capitol. His phone had two pictures of a small piece of metal fencing that was tipped over – nothing indicates he took any part in knocking it over. He went with the crowd that was advancing towards the Capitol, as did hundreds of others. Everyone walked by the fallen fencing,

¹⁴ The government argues that Jensen committed an “aggravated felony” that day. This is an enormous play on words. One, it presumes an “assault” and two, the status becomes aggravated because he was committing a felony – being in the Capitol to interfere with the electoral count. Not engaging in violent life-threatening conduct.

otherwise they would not have reached the Capitol. No body cam, cell phone, or surveillance video provides evidence that Jensen engaged in any type of violent or destructive behavior. This incident was “televised” as we all know from viewing the countless news videos and images of men beating police officers, breaking out windows, tearing down fencing, and basically violently engaging law enforcement. But none exists of Jensen doing any of this. The worst characterization is that he jumped the line to advertise his silly shirt and ran up the steps of the Capitol (at times at Officer Goodman’s suggestion – Dkt. 5 at 11) to observe the “storm.” The video makes clear that Jensen’s objective was simply to advance up the steps, not to inflict injury.

RELEASE IS WARRANTED

15. The vast majority of charged Capitol riot men have been released. A sampling of some detained include: *United States v. McCaughey, III*, 21-CR-040-1, at 11 (D.D.C. Apr. 7, 2021) (government emphasizing defendant’s “intent to injure” an officer who he had pinned against a door using a stolen riot shield as grounds for pretrial detention); *United States v. Pezzola*, 2021 WL 1026125, at *9 (Kelly, J.) (ordering pretrial detention for defendant “engaged in planning and coordination with other Proud Boys, including by arranging concealed means of communicating by radio during the riot”); *United States v. Chrestman*, 2021 WL 765662, at *2–3 (ordering pretrial detention for defendant who marched with the Proud Boys to the Capitol, urged the crowd to “take” the Capitol, and then “led his [four] co-conspirators in deliberate efforts to prevent Capitol Police from closing

the barriers”). Other detained defendants clearly sought to incapacitate and injure members of law enforcement by striking them with fists, batons, baseball bats, poles, or other dangerous weapons: *United States v. Webster*, 21-CR-208 (D.D.C.) (defendant struck officer with flagpole multiple times, tackled officer, and pinned officer to ground while trying to remove officer’s shield and gas mask); Statement of Facts, ECF No. 1-1 & Min. Entry (Apr. 8, 2021), *United States v. Sabol*, 21-CR-35-1 (D.D.C.) (defendant took officer’s baton and dragged officer down steps); Statement of Facts, ECF No. 1-1 & Min. Entry (Apr. 5, 2021), *United States v. McKellop*, 21-CR-268 (D.D.C.) (defendant pushed officers back with his hands, threw a bottle at another officer, and shoved flagpole into officer’s face); Statement of Facts, ECF No. 1-1 & Min. Entry (Mar. 10, 2021), *United States v. Stager*, 21-CR-35-2 (D.D.C.) (defendant struck officer on the ground with flagpole); Statement of Facts, ECF No. 1-1 & Min. Entry (Mar. 15, 2021), *United States v. Foy*, 21-CR-108-1 (D.D.C.) (defendant lifted hockey stick above his head and struck an officer lying on the ground multiple times); Statement of Facts, ECF No. 1-1 & Rule 5(c)(3) Docs., ECF No. 6, *United States v. Jenkins*, 21-CR-245 (D.D.C.) (defendant threw nine items at officers, including three stick-like objects, a wooden dresser drawer, and a flagpole); Aff. in Supp. of Crim. Compl. & Arrest Warrant, ECF No. 1-1 & Min. Entry (Feb. 9, 2021), *United States v. Lang*, 21-CR-53 (D.D.C.) (defendant swung bat at officers’ shields); Statement of Facts, ECF No. 1-1 & Min. Entry (Mar. 9, 2021), *United States v. Mellis*, 21-CR-206 (D.D.C.) (defendant repeatedly struck or attempted to strike officers’ necks between their

helmets and body armor). Jensen's actions are distinguishable from all of these cases, yet he remains behind bars with them – albeit – to protect the public safety.

16. On the other hand, many defendants with charges that actually allege violence have been released: See Statement of Facts (Jan. 7, 2021), ECF No. 1-1 & Min. Entry (Jan. 8, 2021), *United States v. Leffingwell*, 21-CR-5 (D.D.C.) (defendant repeatedly punched officer with closed fist in attempt to push past wall of officers); Statement of Facts (Jan. 18, 2021), ECF No. 1-1 & Min. Entry (Jan. 19, 2021), *United States v. Gossjankowski*, 21-CR-123 (D.D.C.) (defendant activated taser within tunnel multiple times as he pushed towards the police line); Statement of Facts (Feb. 9, 2021), ECF No. 1-1 & Min. Entry (Feb. 17, 2021), *United States v. Blair*, No. 21-CR-186 (D.D.C.) (defendant struck an officer in the chest with a lacrosse stick); Statement of Facts (Jan. 13, 2021), ECF No. 1-1 & Min. Entry (Mar. 2, 2021), *United States v. Sanford*, 21-CR-86 (D.D.C.) (defendant hurled a fire extinguisher that struck one officer and ricocheted off two other officers' helmets); Statement of Facts (Feb. 16, 2021), ECF No. 1-1 & Min. Entry (Apr. 9, 2021), *United States v. Coffee*, 21-MJ-236 (D.D.C.) (defendant pushed a crutch into an officer's body at the archway to the tunnel and then charged at several officers in the tunnel with the crutch).

17. Some defendants have been given favorable consideration by expressing remorse: See, e.g., *United States v. Cua*, 2021 WL 918255, at *7–8 (D.D.C. Mar. 10, 2021) (Moss, J.) (weighing defendant's deep remorse and regret in favor of pretrial release). Cua climbed the scaffolding affixed to the observation

deck that had been constructed for President Biden's forthcoming inauguration and then headed toward the Capitol building. Cua breached the Capitol building. Upon entering the building, he marched through it carrying and twirling a black baton. Cua eventually made his way to the foyer of Senate Chamber. There, he and a group of others shoved aside an officer guarding the entrance, and then entered the Senate Chamber. Aside from his use of physical force and violence to gain entry to the Senate Chamber, he made a number of public posts which were very graphic. His public Parler posts included the following:

December 19, 2021

On JAN 6th congress will open their blinds and see MILLIONS OF ANGRY #PATRIOTS. OPEN CARRY MISSION. If they vote for sleepy joe and commie KAMALA, we BREAK DOWN THEIR DOORS AND TAKE OUR COUNTRY BACK BY FORCE

January 1, 2021

I hear chatter of DC having "firearm checkpoints", where they will stop you, search your car (without a warrant) and arrest you for having a gun. Which is an unconstitutional felony in DC. Bring other weapons if you prefer, like pepper spray, tasers, baseball bats, whatever you want. Although may I remind you that that is EXACTLY what they want from us, to lay down our weapons and be sheep! They know they cannot control us if we are armed and dangerous! I don't know who needs to hear this, but they can't arrest all of us. Do not back down and do not be discouraged. Show up and be ready to fight. This really is out #1776. Please

echo to spread awareness.

January 7, 2021

The tree of liberty often has to be watered from the blood of tyrants. And the tree is thirsty.

Violent protests against the capital (NOT SMALL BUSINESS'S) are well within our constitutional rights

Dear Swamp Rats, The events at the capital were a reminder that WE THE PEOPLE are in charge of this country and that you work for us. There will be no 'warning shot' next time.

Everyone who works in congress is a traitor to the people and deserves a public execution.

Id. at 1–3. Although less public, his Instagram direct messages express similar, violent sentiments:

November 9, 2020

I'm trying to find an AR to buy under the table. Know anybody?

December 14, 2020

I don't want to sit here in GA and watch I want to fight

December 22, 2020

[T]his [January 6, 2021] could possibly be one of the most important days in

American history ... because we can storm the freaking senate/house ... That's why I keep saying to bring guns ... Holding signs is useless ... We have to forcefully take our freedom back on Jan. 6

January 7, 2021

In response to a message stating “You know if trump really doesn't get in because of the traitors all I can say is he exposed the swamp,” Cua writes “If Trump doesn't get Im we will be back in DC for a blood bath”

January 8, 2021

Trump or not, our fight against the government is far from over ... I would lay down my life for him but I'm gonna keep fighting

January 9, 2021

I want a bloody war I'm ready to start shooting and I'm ready to die before I watch America crash and burn ... I'll be on the front lines ... I want to lock the swamp rat tyrants in the capital and burn the place to the ground

Dkt. 23-1 at 5, 6, 9, 12 (Ex. 1).

Cua's actions and posts are truly violent in nature. However, his remorse was similar to Jensen's for having gone down the rabbit hole of conspiracy theories on the internet. Judge Moss released him on conditions.

THE LEGAL FRAMEWORK

18. In *Munchel*, the D.C. Circuit remarked 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 dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way.” *Munchel*, 2021 WL 1149196, at *8. Jensen engaged in none of these activities, and if Officer Goodman felt threatened as Jensen pushed ahead, this threat would fall at the very low end of the spectrum.¹⁵

19. A finding of dangerousness must be predicated on a concrete determination that the defendant poses a continued, “identified and articulable threat to the community...” *Munchel*, 2021 WL 1149196, at *4. *Munchel* advises that the district court consider “the specific circumstances that made it possible, on January 6, for [the defendant] to threaten the peaceful transfer of power.” *Id.* at *8. In Jensen’s circumstances, “the presence of the group,” knowingly or unknowingly, impacted his “ability to obstruct and to cause danger to the community.” *Id.* But in the end, his most forceful conduct was directed at advancing up the steps to observe what he believed was going to be the “storm,” not toward inflicting injury.

20. As outlined in his initial pleading, Jensen’s trip out of the “rabbit hole” is complete. Despite having managed to become the “Where’s Waldo” of the Capitol riots, he remains memorialized as a silly passive observer. By law, he is presumed innocent and under the Bail Reform Act presumed to be released on

¹⁵ It would be improper to take into consideration other people’s behavior during this incident, unless Jensen was aware of what they were doing and a part of a coordinated effort. Again, Jensen was there on his own, with his silly “Q” shirt.

conditions. In *Munchel*, the majority emphasized that the threat to public safety must be continuing and prospective. *Id.* at *4. The election is over, the leaders of the charge on the Capitol are on the fringe-edge of the political spectrum, and “Q” is missing in action (game over).

CONCLUSION

The strongest emotion that is left in Jensen is the love for his family. He has voluntarily sought mental health treatment in the past and while incarcerated, and he will do so if directed by Pre-Trial Services. He has maintained a stable relationship with his wife of over 20 years and been steadily employed throughout that time period. He is non-violent man who now recognizes what happened to him. Perhaps a little late, but better late than never. He asks that this Honorable Court release him pending trial or disposition, both of which apparently are going to take much longer than the routine criminal cases that pass through the U.S. District Court.

WHEREFORE, Mr. Jensen moves this Honorable Court to give him a chance and release him on conditions pending resolution of his case.

Respectfully submitted,

/s/
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 4:21-mj-11
	:	
DOUGLAS AUSTIN JENSEN,	:	<u>DETENTION HEARING TRANSCRIPT</u>
	:	
Defendant.	:	
- - - - -	X	

Courtroom, Fourth Floor
U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa
Tuesday, January 19, 2021
3:36 p.m.

BEFORE: THE HONORABLE CELESTE F. BREMER, Magistrate Judge.

APPEARANCES:

For the Plaintiff:	VIRGINIA M. BRUNER, ESQ. Assistant U.S. Attorney U.S. Courthouse Annex 110 East Court Avenue, Room 286 Des Moines, Iowa 50309-2053
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For the Defendant:	MACKENZI JO NASH, ESQ. JOSEPH HERROLD, ESQ. Assistant Federal Public Defenders Capital Square, Suite 340 400 Locust Street Des Moines, Iowa 50309
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THERESA KENKEL - CERTIFIED SHORTHAND REPORTER

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
<u>For the Plaintiff</u>				
Tyler Johnson	7	26		

E X H I B I T S

<u>GOVERNMENT EXHIBITS</u>	<u>OFFERED</u>	<u>RECEIVED</u>
1 - Affidavit	4	4
2 through 16 - Photographs	4	4

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P R O C E E D I N G S

(In open court.)

THE COURT: This is Southern District of Iowa No. 4-21-mj-11. It's District of Columbia No. 1:21-06. This is the time that was set for the identity hearing and detention hearing in United States versus Douglas Jensen.

Mr. Jensen, I know you had an initial appearance last week. You're appearing by video conference today because of COVID quarantine requirements at the Polk County Jail. Your attorneys are here as is the prosecutor and any witnesses. I'm Judge Bremer. So can you hear and see me okay?

DEFENDANT JENSEN: Yes, Your Honor.

THE COURT: All right. And I've just been having this coughing spell, so if I can't--if I'm not talking loud enough, let us know and we can adjust the volume, okay?

So you received a copy of the charges which would be the indictment that was filed last week in the District of Columbia; right? You got a copy of that last week; correct?

DEFENDANT JENSEN: I received it about an hour ago.

THE COURT: All right. And you're charged with six charges, each a separate count in the indictment. You're the only person in this indictment and it all is about events that arose January 6, 2021, in the District of Columbia.

When this was on a complaint, which was the version of the charge before the indictment, there was an attachment which

1 was an affidavit from the FBI agent and the Government has
2 marked that as Exhibit 1.

3 Is that correct?

4 MS. BRUNER: Yes, Your Honor.

5 THE COURT: Is there any objection to Exhibit 1 for
6 the purposes of this hearing?

7 MS. NASH: No, Your Honor.

8 THE COURT: And does Defendant have a copy of that?

9 DEFENDANT JENSEN: Yes, Your Honor.

10 THE COURT: Okay. So you have Exhibit 1. And
11 Exhibits 2 through 16 are some photographs.

12 Is the Government offering all of those?

13 MS. BRUNER: Yes, Your Honor.

14 THE COURT: Again, any objection to those for the
15 purposes of this hearing?

16 MS. NASH: No, Your Honor.

17 THE COURT: So we'll go ahead and admit 1 through 16.
18 (Government Exhibits 1 through 16 were
19 offered and received in evidence.)

20 THE COURT: Does Defendant have a copy of the photos?

21 DEFENDANT JENSEN: Yes, Your Honor.

22 THE COURT: You do? Okay. Thank you.

23 Ms. Nash, you filed a waiver today but I'm not sure if
24 it's really a waiver and order or just an acknowledgment. So
25 what is that?

1 MS. NASH: Yes, Your Honor. That was just an
2 acknowledgment of his rights. Although, in the meantime we've
3 had an opportunity to discuss the identity and detention
4 hearings with Mr. Jensen and he has decided to waive his
5 identity hearing for purposes of today.

6 THE COURT: All right. So, again, I know that the
7 Judge told you last week you have a right to have an identity
8 hearing, which would mean that the Government would have to
9 prove that you're the person who's charged in this indictment
10 from the other district, and you would be entitled to see an
11 original copy of the warrant, although these days everything's
12 electronic, but you could have that.

13 So you're waiving or giving up your right to the
14 identity hearing and production of the warrant; is that correct?

15 DEFENDANT JENSEN: Yes, Your Honor.

16 THE COURT: So you're admitting that you're the
17 Douglas Jensen who's charged in this indictment; correct?

18 DEFENDANT JENSEN: Yes, Your Honor.

19 THE COURT: Okay. So we'll go ahead. That waiver has
20 been filed.

21 The Government has moved that you be detained or held
22 without any conditions of release being set. I've gotten a
23 report from Pretrial Services.

24 Is it still the Government's motion that he be
25 detained?

1 MS. BRUNER: Yes, Your Honor.

2 THE COURT: I assume, Ms. Nash, you've gotten a copy
3 of the Pretrial Services Report?

4 MS. NASH: We have, Your Honor.

5 THE COURT: All right. And you are not entitled to
6 what's called a preliminary hearing or probable cause hearing.
7 That's because the Grand Jury returned the indictment so they
8 made the probable cause hearing for the charges that were filed
9 here.

10 So what we're talking about today is whether there are
11 any conditions of release that reasonably assure your appearance
12 and the safety of the community. And, again, the only other
13 thing, we've got to have a financial affidavit signed; is that
14 correct? I have a blank one. Is there a signed one?

15 MS. NASH: Your Honor, I believe we filed the signed
16 financial affidavit this morning.

17 THE COURT: You did. Okay. There it is, No. 13.
18 We're still proceeding with the Public Defender's
19 Office to represent you; correct?

20 DEFENDANT JENSEN: Yes, Your Honor.

21 THE COURT: And, again, do you agree or consent to
22 have this hearing by video conference today?

23 DEFENDANT JENSEN: Yes, Your Honor.

24 THE COURT: And, again, if at some time you can't hear
25 or if you need to see anybody, we'll flip the camera so you can

1 see it, but if you have any concerns, just yell, say stop, and
2 we'll make sure that the transmission is clear and you can hear
3 and see everything. All right?

4 DEFENDANT JENSEN: Thank you, Your Honor.

5 THE COURT: All right. So what does the Government
6 have in addition to the Pretrial Service Report and its
7 affidavit?

8 MS. BRUNER: Your Honor, the Government calls Special
9 Agent Tyler Johnson.

10 THE COURT: What's going to be the easiest place for
11 him?

12 THE CLERK: Either way, Your Honor.

13 THE COURT: We can go ahead and use the witness stand.
14 Step forward and be sworn, please.

15 THE CLERK: Please raise your right hand.

16 TYLER JOHNSON, GOVERNMENT'S WITNESS, SWORN

17 THE CLERK: Thank you. You can be seated.

18 THE COURT: Just give us a second so we can change the
19 camera.

20 All right. Go ahead.

21 DIRECT EXAMINATION

22 BY MS. BRUNER:

23 Q. Agent Johnson, can you state and spell your name for the
24 court reporter, please.

25 A. Tyler Johnson; T-y-l-e-r, Johnson J-o-h-n-s-o-n.

1 Q. How are you employed?

2 A. I am employed as a special agent with the Federal Bureau of
3 Investigation.

4 Q. And how long have you been employed by the FBI?

5 A. October of 2019.

6 Q. Okay. What cases--what kinds of cases, generally, do you
7 work?

8 A. I am primarily assigned to investigate domestic terrorism
9 and international terrorism.

10 Q. Are you familiar with the Defendant, Douglas Jensen?

11 A. I am.

12 Q. How is it that you're familiar with him?

13 A. I am one of the investigators assigned to his case.

14 Q. And you're a Des Moines agent; is that right?

15 A. That's correct.

16 Q. Is there an agent in D.C. that's also assigned to this case?

17 A. Yes, there is.

18 Q. Did you participate in an interview and arrest of
19 Mr. Jensen?

20 A. I did.

21 Q. I want to ask a little bit about the interview first. Where
22 did that interview take place?

23 A. It took place at the Des Moines Police Department in
24 Des Moines, Iowa.

25 Q. When did that take place?

1 A. January 8th of 2021.

2 Q. What time of day was that?

3 A. It was approximately 9 a.m.

4 Q. How did that interview come about?

5 A. Douglas Jensen arrived to the Des Moines Police Department.

6 Q. Who was present for the interview?

7 A. Myself and Special Agent Scott James, FBI.

8 Q. Was that interview recorded?

9 A. It was recorded.

10 Q. Did you tell the Defendant that it was going to be recorded?

11 A. He was advised it was a recorded interview, yes.

12 Q. Did you also tell him whether or not the interview was
13 voluntary?

14 A. Yes, he was told it was a voluntary interview.

15 Q. And at the end of the interview, was the Defendant allowed
16 to leave?

17 A. He was allowed to leave, yes.

18 Q. In fact, how did he get home that day?

19 A. We drove him home.

20 Q. Did--I want to ask--well, we'll get back to the interview.

21 I want to talk a little bit about January 6, 2021.

22 Did the Defendant have authority to be in the Capitol
23 Building in Washington, D.C., on January 6, 2021?

24 A. No, he did not.

25 Q. During the interview did he state whether or not he was in

1 the Capitol Building on January 6, 2021?

2 A. He did state being in the Capitol Building on January 6,
3 2021.

4 Q. Did he say how he got into the Capitol Building?

5 A. He did. He explained during the interview that he climbed
6 up a wall and then proceeded to an exterior door and window with
7 another group of rioters. A rioter broke that window out and
8 Mr. Jensen explained how he climbed through the window into the
9 U.S. Capitol.

10 Q. Did he say how the window had gotten broken?

11 A. He did. During the interview he explained that another
12 rioter who was also outside the building opened up a bag with
13 what was described as weapons. And that individual broke the
14 window with one of those objects and Mr. Jensen climbed through
15 the window.

16 Q. Did the Defendant say whether or not he had a weapon on him
17 when he was in the Capitol Building?

18 A. He did. He told us that he had a pocketknife.

19 Q. Have you seen that knife?

20 A. I have.

21 Q. How is it that you saw the knife?

22 A. He had that pocketknife with him when he came to the
23 Des Moines Police Department.

24 Q. During the course of law enforcement's investigation of the
25 events at the Capitol Building, has the FBI investigated an

1 incident involving a mob chasing a United States Capitol police
2 officer inside the Capitol Building?

3 A. Yes.

4 Q. Is there video of that incident?

5 A. There is.

6 Q. Has that video actually been circulating in the media?

7 A. It has.

8 Q. And have you reviewed that video prior to your testimony
9 today?

10 A. I have.

11 Q. Due to technology issues with in-custody defendants, we're
12 not going to offer the video today. But if you look at
13 Government's Exhibits 2 through 13 that is now--that have been
14 admitted, are these screenshots of that video?

15 A. Yes, they are.

16 Q. How did the video begin?

17 A. The video begins with who's been identified as Officer
18 Eugene Goodman standing in a doorway inside the U.S. Capitol.
19 When the video starts, there is a large group of rioters just on
20 the other side of that doorway.

21 Q. And looking at Government Exhibit 2, what do we--is this
22 from early on in the video?

23 A. It is, yes.

24 Q. And what are we seeing here in Government Exhibit 2?

25 A. In Government Exhibit 2 you see Douglas Jensen make his way

1 to the front of that group of rioters and start engaging with
2 Officer Goodman.

3 Q. When you say "Douglas Jensen," is the person in that shirt
4 in the front facing the officer, do you recognize that as
5 Douglas Jensen?

6 A. I do.

7 Q. And is that from having spent hours with him?

8 A. That is correct.

9 Q. Looking at Government Exhibit 3, can you tell us what
10 transpires between 2 and then what we're looking at in 3?

11 A. Between Exhibit 2 and Exhibit 3, Douglas Jensen begins
12 exchanging words with Officer Goodman and pointing at him.

13 Q. And looking at Officer Goodman between 2 and 3, does Officer
14 Goodman actually back up?

15 A. He does. That's correct.

16 Q. Looking at Government Exhibit 4, what's happened now between
17 3 and 4?

18 A. Douglas Jensen has advanced through the doorway towards
19 Officer Goodman and Officer Goodman has began stepping back
20 away.

21 Q. And I should say, so how long is this whole video?

22 A. The video is approximately one minute.

23 Q. So when we're looking at these different exhibits, about how
24 much time has transpired between each picture?

25 A. A matter of seconds.

1 Q. Looking at Government Exhibit 5, what's happened here?

2 A. In Government Exhibit 5, Officer Goodman pushes out to push
3 Doug Jensen back away and during the video he's telling him to
4 get back.

5 Q. Does the Defendant get back?

6 A. He does not.

7 Q. Looking at Government Exhibit 6, what has happened between 5
8 and 6 here?

9 A. Between 5 and 6, Officer Goodman has retreated further into
10 the hallway as Douglas Jensen proceeds to advance towards him.
11 Officer Goodman in this image right here has actually picked up
12 a baton that was on the floor of the Capitol and at this point
13 Officer Goodman again directs Mr. Jensen to get back, which he
14 does not.

15 Q. In his interview, did the Defendant talk about this moment
16 where the officer has the baton in his hand?

17 A. He did.

18 Q. And what did he say about that?

19 A. During this encounter, Mr. Jensen told us that he tells
20 Officer Goodman, "Hit me. I'll take it."

21 Q. As in directing the officer to hit him?

22 A. Correct.

23 Q. You can look at Government Exhibit 7. Can you tell us
24 what's transpired now between 6 and 7?

25 A. Between 6 and 7, Officer Goodman has continued to retreat.

1 He's now retreating up a flight of stairs and Douglas Jensen is
2 running behind him chasing him.

3 Q. And in the video, especially in between these portions, can
4 you see people behind Mr. Jensen?

5 A. You can, yes.

6 Q. Do you have any idea how many people were behind the
7 Defendant?

8 A. I don't.

9 Q. If we look now at Government Exhibit 8, what are we looking
10 at here?

11 A. Officer Goodman again stops at the top of that flight of
12 stairs and turns around and begins to give Douglas Jensen
13 additional commands to back up, which Douglas Jensen does not
14 abide by.

15 Q. So then if we go to Government Exhibit 9, what is happening
16 next here in the video?

17 A. Officer Goodman continues to retreat from that top flight of
18 stairs up another section of stairs and Douglas Jensen continues
19 to chase after him.

20 Q. So the other individual on the left in Government Exhibit 9,
21 do you recognize that as the Defendant?

22 A. I do.

23 Q. Looking at Government Exhibit 10, what's gone on between 9
24 and 10?

25 A. Between 9 and 10 Officer Goodman has reached the top of the

1 last steps and he is now turned around and is engaging with
2 Douglas Jensen again continuing to tell him to get back.

3 Q. And, again, were those people--were there more people behind
4 the Defendant?

5 A. There were.

6 Q. Looking--so is this the second floor landing, as far as you
7 know, in the Capitol Building?

8 A. As far as I know, yes.

9 Q. Looking at Government Exhibit 11, what happens in the video
10 at this point?

11 A. At this point Officer Goodman kind of pushes on Douglas
12 Jensen's shoulder and he ends up continuing to back away from
13 Douglas Jensen and commanding him to leave.

14 Q. If you look beyond Officer Goodman, sort of in the top left
15 there, what's in the--what's that in the distance?

16 A. It's a corridor leading to the Senate floor.

17 Q. At the time that this was taken, had all of the senators
18 been evacuated from the Senate floor?

19 A. I do not believe so.

20 Q. And were there armed law enforcement officers still on the
21 Senate floor?

22 A. I believe there were.

23 Q. So Government Exhibit 12, in which direction is Officer
24 Goodman going here?

25 A. He's going away from the corridor that leads to the Senate.

1 Q. And what is Mr. Jensen doing here?

2 A. He's looking down the corridor that leads to the Senate.

3 Q. What impact, if any, did Officer Goodman have in touching
4 the Defendant and then moving away from the Senate floor?

5 A. He lured Mr. Jensen away from the Senate floor.

6 Q. During the interview did the Defendant make any statements
7 to you about whether he knew where he was going in the Capitol
8 Building?

9 A. He did make statements. Those statements indicated to us
10 that he didn't know where he was in the building or where he was
11 going.

12 Q. So looking at Government Exhibit 13, what happens next in
13 the video?

14 A. Officer Goodman continues to retreat into the room here in
15 Exhibit 13 and Mr. Jensen continues to follow him.

16 Q. During the interview did the Defendant state whether he had
17 confronted a black officer?

18 A. He did.

19 Q. Had the Defendant indicated whether or not he'd actually
20 seen this video?

21 A. He did indicate he saw it.

22 Q. And did he indicate whether or not he was the person in that
23 video?

24 A. He indicated that he was the person in this video.

25 Q. Now, throughout the video, is the Defendant seen yelling at

1 Officer Goodman and others?

2 A. Yes.

3 Q. Did you ask the Defendant about--did you or the other agent
4 ask the Defendant about what he was saying during this
5 encounter?

6 A. We did.

7 Q. And what did he say he was saying?

8 A. He indicated that he was telling Officer Goodman, along with
9 other officers, to do their job and alluding to make arrests.

10 Q. And who did he say the Capitol police officers were supposed
11 to arrest?

12 A. Congress members and Vice President Mike Pence.

13 Q. So during when all this was going on, he was trying to tell
14 the officers to go arrest congressmen and congresswomen and Mike
15 Pence?

16 A. Correct.

17 Q. Now looking at Government Exhibit 14, is this another
18 photograph--well, what are we looking at in Government Exhibit
19 14?

20 A. We're looking at another photograph of Doug Jensen in an
21 encounter with Capitol Police.

22 Q. Did the Defendant explain anything about--or the
23 significance of a shirt that he was wearing that day?

24 A. He did.

25 Q. What did he say about that?

1 A. Mr. Jensen indicated to us that he wore that shirt which
2 references QAnon, he wore that shirt specifically so that QAnon,
3 or who he refers to as Q, could get the credit for the events
4 that occurred that day.

5 Q. Have Capitol police officers described the Defendant's
6 demeanor that day?

7 A. They have.

8 Q. And how did they describe his demeanor?

9 A. Loud and abusive.

10 Q. Looking at Government's Exhibit 15, what are we looking at
11 here?

12 A. We're looking at another photograph of Doug Jensen engaging
13 with Capitol police officers.

14 Q. And Government Exhibit 16, can you tell us what this is a
15 photograph of?

16 A. It's a photograph that was taken inside the U.S. Capitol in
17 which there seems to be a lot of smoke in the background and
18 Doug Jensen progressing and continuing towards Capitol police
19 officers.

20 Q. Have you spoken with law enforcement about what that smoke
21 was?

22 A. I have.

23 Q. And what did they say the smoke was?

24 A. At the time they did not know what it was, but they've come
25 to find out that it was a fire extinguisher that was smashed on

1 the ground, broke, and emitting what was contained inside of it.

2 Q. Did they describe how it sounded when the fire extinguisher

3 was slammed on the ground?

4 A. Yeah. They described it as a loud bang.

5 Q. And did they describe how the Defendant reacted to that loud

6 bang and smoke?

7 A. They did.

8 Q. And how did he react?

9 A. He continued to progress through it.

10 Q. Did they indicate whether he was upset by it or agitated?

11 A. No, I don't know.

12 Q. During your interview of the Defendant, did he state whether

13 or not he took an officer's hat?

14 A. He did.

15 Q. What did he say about that?

16 A. He said that he took an officer's hat, put the hat on, and

17 then he tried to take a selfie with his mobile device. At the

18 time he tried to take that picture, he said his phone powered

19 off and he couldn't get the picture.

20 Q. Did he say why he thought his phone powered off?

21 A. He indicated they turned it off.

22 Q. Who did you take "they" to mean?

23 A. I took "they" to be the U.S. Government.

24 Q. I want to ask you now a few questions about the Defendant's

25 beliefs that he shared with you during the interview.

1 Did the Defendant say why he went to D.C. on January
2 6?

3 A. He did.

4 Q. Why did he go to D.C., in his words?

5 A. He indicated that he went to D.C. to receive big news from
6 President Donald Trump.

7 Q. And did he say what the big news was or what he thought it
8 would be?

9 A. Yup. He specifically--he referenced the storm and he
10 believed that there were going to be arrests made.

11 Q. Do you know what "the storm" was in reference to?

12 A. I don't.

13 Q. Okay. And arrest of who?

14 A. Arrests of members of Congress and Vice-President Mike
15 Pence.

16 Q. We talked a little bit about the QAnon shirt he was wearing.
17 Did the Defendant tell you he wanted to be the poster boy?

18 A. He did.

19 Q. And did he use those words, "poster boy"?

20 A. He did.

21 Q. Did he also tell you "I was trying to fire up this nation"?

22 A. He did.

23 Q. And did he also tell you "I'm all about a revolution"?

24 A. He did.

25 Q. Did he tell you whether he actually believed in Q and QAnon?

1 A. He did.

2 Q. What did he tell you about that?

3 A. He's a true believer, 100 percent believes in it.

4 Q. Even after the events of January 6th, did he say whether
5 that changed his mind at all?

6 A. He still believes it.

7 Q. It's hard to summarize but generally speaking, what is your
8 understanding of what QAnon is, particularly in regard to what
9 the Defendant said about QAnon?

10 A. What Mr. Jensen told us about QAnon is an online conspiracy
11 forum in which an individual who goes by the name of QAnon, also
12 known as Q, disseminates information relating to Government
13 conspiracies, which include things such as Pizzagate, JFK, Jr.--

14 THE COURT: Hold on a second, please.

15 Okay. Thank you.

16 A. --JFK, Jr., still being alive, John McCain being executed
17 and being involved with ISIS.

18 BY MS. BRUNER:

19 Q. Are those examples you gave, are those all specific examples
20 that Mr. Jensen gave you?

21 A. Yes.

22 Q. And are those things he said he either believed was true or
23 might be true?

24 A. Yes.

25 Q. Did he--and are you aware that QAnon also has conspiracy

1 theories about human trafficking, and that's one that Pizzagate
2 refers to?

3 A. Yes.

4 Q. Did he say how much time he spends researching or reading
5 about QAnon?

6 A. He did.

7 Q. What did he say about that?

8 A. He said in a typical day, he works an eight-hour day. When
9 he gets home, he consumes basically exclusively a lot of this
10 information from QAnon.

11 Q. Did he say how long he's been following these conspiracy
12 theories?

13 A. He did.

14 Q. About how long?

15 A. Approximately four years.

16 Q. During the Defendant's interview, did he say anything about
17 the so-called Insurrection Act?

18 A. He did.

19 Q. What's your understanding of what that refers to?

20 A. My understanding of the Insurrection Act is an act that the
21 President of the United States can enact which would allow him
22 to establish a militia to stop an insurrection.

23 Q. Did the Defendant say who he thought would be arrested first
24 based on the Insurrection Act?

25 A. He did.

1 Q. And who would that be?

2 A. Mike Pence.

3 Q. We talked about what--why the Defendant said he went to D.C.
4 that day. Did he say why he marched on the Capitol?

5 A. During the course of the interview, he indicated to us that
6 after the rally had ended, a number of the group started
7 marching towards the Capitol. The conversation and general
8 consensus of the marchers going to the Capitol was that they
9 were going to break in.

10 Q. Did he say what he thought they were doing when they were
11 breaking into the Capitol or what he thought would happen?

12 A. He thought that the arrests were going to start.

13 Q. During the course of the interview, did the Defendant
14 express any regret for the actions he took?

15 A. The regret that he expressed was for the backlash that it
16 had on his family. But overall, I do not believe that he
17 expressed regret for his actions that day.

18 Q. Did he ever say "I should never have gone into the Capitol
19 Building"?

20 A. Not that I recall.

21 Q. Or "I should never have chased that officer in the
22 building"?

23 A. Not that I recall.

24 Q. Did he refer to himself as a patriot?

25 A. He did.

1 Q. Did the Defendant discuss whether or not he was aggressive
2 or violent?

3 A. He did discuss that. He indicated to us that he did not
4 believe he was aggressive or violent while he was inside the
5 U.S. Capitol.

6 Q. Was Defendant asked what he thought will happen at the
7 Inauguration?

8 A. He was asked that and he indicated that he believed the
9 arrests would happen.

10 Q. The arrests of congressmen and women and Vice President Mike
11 Pence?

12 A. Correct.

13 Q. Was the Defendant asked if he had been evaluated for mental
14 health issues?

15 A. He was.

16 Q. What did he say?

17 A. He said, "No, not really."

18 Q. Was he then told by FBI agents that it was important that he
19 be honest with the FBI?

20 A. He was.

21 Q. Did he change his answer?

22 A. He did not.

23 Q. Did the Defendant state what his view of federal law
24 enforcement agencies is?

25 A. He did.

1 Q. What did he say?

2 A. He described the FBI and the CIA as corrupt.

3 Q. Are you aware whether or not there were any casualties or
4 injuries as a result of the riot at the Capitol?

5 A. I am aware that there were.

6 Q. What are you aware of?

7 A. I'm aware there was a female who lost her life inside the
8 U.S. Capitol on January 6th and then another officer, a D.C.
9 police officer, lost his life due to injuries sustained during
10 the January 6th riot.

11 Q. Are you aware that there were many other injuries as a
12 result of the riot?

13 A. Correct. Yes.

14 Q. And has the FBI made any public statements as to whether
15 there's any current threat to any state capitals or the national
16 capital between now and tomorrow, the inauguration?

17 A. Yes.

18 Q. What's the general nature of that public information?

19 A. That there is information that they are aware of on
20 additional planned protests and rallies in both D.C. and
21 capitals across the United States.

22 MS. BRUNER: Those are all my questions.

23 THE COURT: All right. Do you have any questions?

24 MS. NASH: Yes, Your Honor. Thank you.

25 THE COURT: All right.

1 CROSS-EXAMINATION

2 BY MS. NASH:

3 Q. You testified that Mr. Jensen voluntarily came to the
4 Des Moines Police Department; is that right?

5 A. That's right.

6 Q. And did he tell you that he walked to the Des Moines Police
7 Department?

8 A. He did.

9 Q. Do you recall how far?

10 A. I recall approximately six miles.

11 Q. And did he tell you why he came to the police department?

12 A. He wanted to talk to somebody in law enforcement.

13 Q. And why was that?

14 A. I do not recall.

15 Q. Did he see himself on the news?

16 A. He did.

17 Q. And he was prominently featured in the news; is that right?

18 A. That's correct.

19 Q. And he was identified almost immediately?

20 A. The exact timeline of--between January 6th and when he was
21 identified, I don't know the exact timeline.

22 Q. Was it within a matter of days?

23 A. Yes.

24 Q. And he took no measures to conceal his face or identity at
25 the Capitol; is that right?

1 A. Not that I know of.

2 Q. Did he tell you that his wife was unhappy with him when he
3 came back?

4 A. He did.

5 Q. And she suggested that he turn himself in?

6 A. I was not aware of that.

7 Q. Mr. Jensen told you that he went to Washington, D.C., to
8 attend a rally put on by Donald Trump; is that right?

9 A. That's correct.

10 Q. And that he had no prior plans to go to the United States
11 Capitol?

12 A. That's correct.

13 Q. And did he tell you that he only decided to March to the
14 Capitol at the conclusion of the rally because Donald Trump said
15 to go to the Capitol?

16 A. That's what he told us, yes.

17 Q. And when he got to the Capitol, he told you that he felt
18 like he was being led in by law enforcement officers?

19 A. That's what he stated.

20 Q. And he felt like Officer Goodman was waving him along as he
21 went up the stairs?

22 A. That's what he stated.

23 Q. And, in fact, Officer Goodman was trying to lead him up the
24 stairs; is that right?

25 A. I don't know Officer Goodman's exact intentions but my

1 understanding was yes, he was leading him away.

2 Q. And Mr. Jensen, you testified, had no idea where he was
3 going?

4 A. That's correct. That's what he told us.

5 Q. And Mr. Jensen told you that law enforcement officers were
6 being cordial with him?

7 A. He did state that to us, yes.

8 Q. And that they walked him out of the Capitol?

9 A. He did state that, yes.

10 Q. Law enforcement officers at the Capitol didn't arrest
11 Mr. Jensen while he was there; right?

12 A. That's what Mr. Jensen stated, yes.

13 Q. Are you aware of any arrests made of Mr. Jensen at the
14 Capitol?

15 A. I am not.

16 Q. Or any attempt at arrest?

17 A. I am not.

18 Q. And Mr. Jensen you testified had a pocketknife?

19 A. Yes.

20 Q. And he told you that he took that to the Capitol?

21 A. He did.

22 Q. There's no indication that Mr. Jensen took the knife out of
23 his pocket at all while he was at the Capitol?

24 A. Not that I'm aware of.

25 Q. And Mr. Jensen didn't have any other weapons that you're

1 aware of; is that right?

2 A. Not that I'm aware of.

3 Q. Mr. Jensen also told you that he didn't have knowledge of
4 anyone else's possession of weapons at the Capitol; is that
5 right?

6 A. That's correct.

7 Q. Until the point in time when he said that he saw someone
8 pull a weapon out of a backpack?

9 A. That's correct.

10 Q. Did he tell you what that weapon was?

11 A. He initially described it as a weapon and then proceeded to
12 describe it as a club of some sort.

13 Q. And Mr. Jensen didn't bring any zip ties with him?

14 A. Not that I'm aware of.

15 Q. Or any other tactical equipment?

16 A. Not that I'm aware of.

17 Q. Mr. Jensen didn't damage any property?

18 A. Not that I'm aware of.

19 Q. And he didn't steal any property?

20 A. Not that I'm aware of, no.

21 Q. And he didn't strike anyone?

22 A. Not that I'm aware of, no.

23 Q. And he testified about a fire extinguisher being thrown on
24 the floor where Government 16, the picture, was taken?

25 A. Yup.

1 Q. Mr. Jensen didn't throw that fire extinguisher on the floor
2 and cause it to explode, did he?

3 A. Not that I'm aware of.

4 Q. You also testified about casualties and injuries sustained
5 by individuals present at the Capitol. Mr. Jensen didn't cause
6 those casualties or injuries; is that correct?

7 A. Not that I'm aware of.

8 Q. And this is a very well-documented incident; is that right?

9 A. Yes.

10 Q. Did Mr. Jensen tell you where he was getting information
11 regarding what he thought was going to take place at the
12 Capitol?

13 A. He did.

14 Q. And where did he say he heard that?

15 A. Predominately social media.

16 Q. From Rudy Giuliani--

17 A. I recall--

18 Q. --and Lin Wood?

19 A. I recall him stating Lin Wood.

20 Q. And Donald Trump?

21 A. I do recall that, yes.

22 Q. And you also testified that Mr. Jensen said he was a true
23 believer of QAnon and that he still believes, in your opinion;
24 is that right?

25 A. That's correct.

1 Q. Several times throughout the course of your interview with
2 Mr. Jensen did he ask you questions to the effect of, "Am I
3 being duped?"

4 A. He did.

5 Q. And explicitly at the end of the interview he asked you "Can
6 you guys let me in on that, if you know if these arrests are
7 real?"

8 A. He did ask that.

9 Q. And what was your response?

10 A. My response was that "I don't know."

11 Q. And Mr. Jensen indicated to you that he wasn't aware of any
12 future events planned; is that right?

13 A. As I recall, yes.

14 Q. Or that he had any intent to take part in any possible
15 future events?

16 A. As I recall, yes.

17 Q. And you testified a little bit about the FBI's information
18 about events planned during the inauguration. Mr. Jensen didn't
19 indicate to you that he had any intention of going anywhere for
20 the inauguration; is that right?

21 A. That's correct.

22 Q. And Mr. Jensen was fairly forthcoming with you regarding his
23 beliefs and what he expected to happen that day; is that right?

24 A. He was.

25 Q. Regarding the arrests that Mr. Jensen believed were to take

1 place, did he give you any indication that he intended to
2 participate in effectuating those arrests?

3 A. He did not.

4 Q. And at the conclusion of the interview you testified that
5 you drove Mr. Jensen home?

6 A. That's correct.

7 Q. And you told him not to go anywhere; is that right?

8 A. I do not recall telling Mr. Jensen not to go anywhere.

9 Q. Maybe not to leave the state?

10 A. It was advised--he asked if he should leave or if he should
11 not leave. We advised him that he should probably stay.

12 Q. And he did stay; is that right?

13 A. He did, yes.

14 MS. NASH: I have nothing further. Thank you.

15 MS. BRUNER: No redirect, Your Honor.

16 THE COURT: All right. Thank you. We'll go ahead and
17 excuse the witness.

18 (Witness excused.)

19 MS. BRUNER: And there's no further evidence, Your
20 Honor, just argument.

21 THE COURT: All right, thanks. And I don't know if I
22 said Exhibits 1 through 15 or 1 through 16, but it's 1 through
23 16, and that's what will be admitted for the purposes of this
24 hearing.

25 For Defendant, any proffer or testimony?

1 MS. NASH: Yes, Your Honor, just proffer.

2 THE COURT: Okay.

3 MS. NASH: By way of proffer, if released Mr. Jensen
4 would return to his residence with his wife, April Jensen. She
5 is his wife of almost 20 years. Together they have three
6 children.

7 Mrs. Jensen confirms that Mr. Jensen can return home.
8 Mrs. Jensen, as noted in the bond report, has stable employment.

9 By way of proffer, Mrs. Jensen indicated that while
10 she was aware that Mr. Jensen was going to Washington, D.C., for
11 a rally, she was not aware that it would evolve into anything
12 more than a political rally.

13 Upon Mr. Jensen's return, Mrs. Jensen, having seen
14 the news, told Mr. Jensen to go talk to law enforcement.
15 Mrs. Jensen also confirmed that she's willing to serve as
16 Mr. Jensen's third-party custodian if Mr. Jensen is released
17 pending trial.

18 Also, as noted in the bond report, Mr. Jensen has
19 employment waiting for him if released. I confirmed with
20 Mr. Jensen's prospective employer that he would hire Mr. Jensen
21 if Mr. Jensen is released. Mr. Jensen has worked for him in the
22 past and he has known Mr. Jensen for 15 years.

23 The prospective employer indicated that Mr. Jensen
24 would work 20 to 40 hours per week until March, at which point
25 their busy season begins and Mr. Jensen would be working 40 or

1 more hours per week.

2 Also by way of proffer, Mr. Jensen was born in
3 Des Moines, has lived here for the vast majority of his life.
4 He has no ties outside of the United States. Mr. Jensen has a
5 passport. The last time he traveled out of the United States
6 was in 2005 for a family vacation to Mexico. He's willing to
7 surrender his passport.

8 With regard to the 2015 domestic incident that's noted
9 in the bond report, Mr. Jensen would proffer that the victim of
10 that incident was not his wife.

11 Mr. Jensen has been on supervision in the past and had
12 no violations. He did not miss any court dates. Mr. Jensen
13 indicated he's willing to submit to any conditions of release
14 deemed appropriate by the Court, including, but not limited to,
15 ankle monitoring, home detention, internet monitoring and
16 limitations, substance abuse evaluation, and any recommended
17 treatment.

18 Thank you.

19 THE COURT: And so, again, just from the Pretrial
20 Services Report, he was discharged from probation in 2016 from
21 the Minnesota convictions; is that right?

22 MR. HERROLD: Correct, Your Honor.

23 THE COURT: So he has not been on any supervision
24 between then and now; correct?

25 MR. HERROLD: Correct.

1 THE COURT: Okay. Thank you.

2 Argument from the Government?

3 MS. BRUNER: Thank you, Your Honor.

4 Your Honor, in this case the factors weigh toward
5 detention both due to the risk of nonappearance and due to the
6 safety of the community.

7 When we look at the weight of the evidence, the weight
8 is extremely strong in this case. He admitted to his conduct at
9 length in an interview, there is a video of it, of a portion of
10 his conduct, I should say, and he is clearly displayed because,
11 as he said, he wanted to be the poster boy for this, he wanted
12 to get the attention for it.

13 The Grand Jury has found probable cause for six
14 offenses and so the evidence here is strong. When we look at
15 the nature and circumstance of the offenses that are charged, I
16 don't really know the right word for it. "Serious" is not quite
17 the right word, certainly serious. He's at the front lines of a
18 massive riot on the nation's Capitol. He was not escorted into
19 the building. He, in his own words, say that he went in through
20 a window when someone else used what he described as weapons to
21 break into that window, and he went in with a knife on his
22 person.

23 He led a mob of individuals against a lone police
24 officer who was trying to protect the Capitol and congressmen
25 and women who were there trying to do their job that they were

1 democratically elected to do. He knew at that point, when he's
2 chasing the officer, he knew that this was violent, he knew he
3 was being aggressive, he knew he was being violent because he
4 told the officer to "hit me." He tried to get the officer to
5 hit him. I don't want to really think about what would have
6 happened if the officer had done that and taken the bait.

7 When we talk about Officer Goodman leading him away,
8 he led him away from the Senate floor on the second floor, which
9 I think undoubtedly saved lives that day. He wasn't leading him
10 up the stairs. He repeatedly told him to stop, go away, and the
11 Defendant keeps going at him, keeps coming at him, coming at
12 him, coming at him, and Officer Goodman keeps having to back up.
13 Then he tried to make the best decision he could and send him in
14 the other direction.

15 There were multiple deaths that day, many injuries
16 that day, and the Defendant himself said he wanted a revolution.
17 He was there for a revolution and he was there for the arrest of
18 the Vice President and the members of Congress. So I don't know
19 what that means for them to be arrested, but it certainly wasn't
20 going to be peaceful like the arrest of the Defendant was.

21 When we look at his physical and mental condition,
22 there's a--I'll just refer to the mental health history and the
23 current treatment that's referenced in the Pretrial Services
24 Report on page 3. He lied about this in his interview. He
25 denied any mental health evaluation or diagnosis when he was

1 interviewed by the FBI. When he was told "It's important you're
2 truthful with us," he doesn't correct himself.

3 The conspiracy theories that he believes, that he
4 still truly, 100 percent by his own words, believes are absurd,
5 they are outlandish, and they led to this riot on the Capitol.

6 The key tenet is the election is fraudulent and he
7 still thinks tomorrow that there are going to be arrests,
8 arrest of the Vice President, arrests of members of Congress,
9 and there are real threats out there in D.C. and against state
10 capitals because of people like the Defendant and this belief
11 system.

12 Someone who has the beliefs that the Defendant has is
13 not someone who can be trusted to abide by the rules of this
14 Court, by the orders of this Court, to appear when he's supposed
15 to appear, because his whole belief system is that our
16 democratically-elected government is illegitimate and that he
17 wants a revolution. So that's not someone who can be trusted
18 upon to come to court when he's supposed to be here.

19 He does have a wife. I'd say it's really
20 inappropriate for somebody of the Defendant's age to have a
21 third-party custodian, and she did know he was going to D.C.,
22 she knows about his belief system.

23 He has little to no contact with his sisters,
24 according to the bond report; he has minor daughters in his
25 home, which is a concern, Your Honor.

1 He does have--in the Pretrial Services Report and
2 Defendant's proffer he does have another job he can take, but he
3 was fired by his employer.

4 He has assets that are detailed in the report, so he
5 does have resources should he decide to leave the state where
6 everyone seems to know his photograph and his name.

7 When you look at the factors in terms of his history
8 of drug or alcohol abuse, he reports daily marijuana use, he
9 reports drinking six alcoholic beverages at a time until
10 intoxication at least monthly. That's also detailed on page 3
11 of the Pretrial Services Report.

12 When we look at his criminal history it is concerning
13 in 2015 he pled guilty to a domestic assault, intentionally to
14 inflict bodily harm, and then the disorderly conduct that's
15 listed there. I don't think it's--it doesn't do him any favors
16 that it wasn't his wife. I'm not really sure how that's
17 relevant.

18 When we look at the factors and consider the
19 seriousness of the danger to any person or the community that
20 would be posed by his release, I think he is a danger both
21 locally and on a national level. There are continued threats
22 against State and Federal Government and we all know that the
23 need to disrupt and dismantle those threats has led to a
24 wide-scale effort by law enforcement.

25 He rejects the--he rejects law enforcement, the FBI is

1 corrupt, the CIA is corrupt, members of government are human
2 traffickers. He believes that tomorrow there's going to be
3 arrests--

4 THE COURT: All right. Let's just get it condensed
5 here to factors relating to release. I heard you the first time
6 on that, okay?

7 MS. BRUNER: Well, Your Honor, my last point would
8 just be that there is every reason to think that he would
9 continue to rejoin these efforts.

10 And then, finally, we note that the Probation Office
11 does recommend detention in this case, that the Probation Office
12 has made a finding that they cannot adequately supervise the
13 Defendant.

14 And, finally, if the Court would release the
15 Defendant, we ask that that release order be stayed as the
16 District of Columbia has indicated that they would appeal the
17 release of the Defendant.

18 THE COURT: Okay. Thank you.

19 So argument for the Defendant?

20 MR. HERROLD: Your Honor, I guess first off, I'm not
21 sure what prong of the statute the Government is asking for
22 detention under here. If they're asking under (f)(1)(A), I
23 don't see a crime of violence that's been alleged in the
24 indictment from D.C., not in the categorical sense, which is
25 what the statute requires here.

1 You've got civil disorder, which is a Class D felony,
2 kind of a lead count here. The elements of that offense, it
3 reads "Whoever commits any act to obstruct, impede, or interfere
4 with an officer in the performance of their duties incident to
5 civil disorder which does in fact obstruct, delay, or adversely
6 affect conduct or performance of a federally-protected
7 function," with civil disorder--

8 THE COURT: Okay. Wait. Just take a breath. Thank
9 you.

10 MR. HERROLD: --with civil disorder being then defined
11 in the Code as any public disturbance involving acts of violence
12 by three or more persons that causes an immediate danger or
13 results in damage or injury to the property or person of any
14 other individual.

15 It's not a requirement that he commits the act of
16 violence, it's just being part of what the Government is
17 characterizing as a riot or a mob in their argument and
18 testimony, but civil disorder is defined in the statute there.

19 And the only case--there's not a lot that I could find
20 related to that--where this has been actually levied against
21 people involved evidence that the Defendant charged with it
22 actually did an act of violence or something along those lines,
23 not just being there. Obviously the merits of all this are for
24 D.C. on another day, but that's not categorically a crime of
25 violence under the elements of that offense.

1 Then the rest of these are misdemeanors. The next
2 closest thing you have is this resisting and impeding officers
3 under 18 US Code Section 111(a)(1). Elements of that offense
4 are forcibly assaults, resists, opposes, impedes, intimidates or
5 interferes with any person while engaged in their official
6 duties. That's a Class A misdemeanor as charged by D.C. in this
7 indictment. If they want it to be more than that in D.C., they
8 haven't pled it right.

9 And the Supreme Court in Jones versus the United
10 States made that clear, that there's multiple crimes that have
11 to be pled in the indictment to reach those higher levels. And
12 while assault is an element of that type offense, at the basic
13 level it's simple misdemeanor assault as defined in the Code
14 here, which does not meet the physical force requirement to be a
15 crime of violence under the Bail Reform Act statutes here, as
16 interpreted after the Supreme Court in Johnson 1, where they
17 said physical force means violent force, force capable of
18 causing physical pain or injury to another person. A violent
19 active crime is what they're looking for here. It's a
20 categorical analysis there. Beyond that, the rest of these,
21 again, more misdemeanors that basically involve forms of
22 trespass on the Capitol grounds here.

23 So I think the Government is left to try to argue, if
24 they even request detention under a theory of the (f)(2) prong
25 here, a serious risk that he will flee or a serious risk that

1 he'll somehow obstruct or attempt to obstruct justice; threaten,
2 injure, or intimidate, or attempt to threaten, injure, or
3 intimidate a prospective witness or juror here.

4 I mean, there's no doubt that the events in Washington
5 on January 6th were chaotic. The ramifications of all that are
6 still being investigated across the country. All the charges
7 against the people so far, that we've seen in the media and
8 heard about in the system here, involves this kind of question
9 of civil disorder versus civil disobedience. The charges
10 against Mr. Jensen fall under that same kind of question, where
11 the line is for him.

12 At the end of this thing in D.C. it will come down to
13 where he falls in that line based on his individual actions,
14 civil disorder versus civil disobedience. That, again, all goes
15 to the merits of the case that has to be resolved in D.C.
16 We're not here today to figure that part of this out.

17 Today is just whether there is a serious risk of
18 flight from prosecution here, or a serious risk if he would
19 somehow obstruct justice, and that the risks are so serious that
20 there is no condition, none, available in release that would
21 reasonably assure the safety of the community or his future
22 appearance for court proceedings.

23 The Government can't show a serious risk of flight
24 here. Mr. Jensen has no history of failing to appear for court
25 proceedings.

1 He went to Washington for an event organized by the
2 President and President supporters. His actions here were being
3 recorded on video, he knew they were being recorded, it's
4 obvious. He pushed to the front of the group, made himself
5 prominent throughout the whole thing, in a way kind of mugging
6 for the cameras.

7 And then after the events that day he came home. He
8 sees the news and he walks to the police station and voluntarily
9 consents to a four-hour interview with law enforcement. They
10 didn't arrest him at that point. In fact, gave him a ride home,
11 told him not to go anywhere, or suggested that he not go
12 anywhere, and he didn't. So when they come back to arrest him,
13 there he was.

14 And that's all because he does take this seriously and
15 because his home is here. He's a nearly life-long Iowa
16 resident. He went to school here. His wife of nearly 20 years
17 lives here. His children are here. He gets his medical care
18 here. He owns his residence. His wife works in the suburbs in
19 the Des Moines area and Mr. Jensen has worked here for the past
20 15 years and has even lined up new work here, if the Court
21 releases him, in the Central Iowa area.

22 His whole life is here. His ties to the community are
23 deep and they're substantial and there's no reason to believe
24 he's going to run away from all of that in order to run from the
25 charges against him in this case.

1 Nor can the Government here show a serious risk that
2 he's going to engage in some sort of obstruction of justice or
3 obstructive behavior in regards to the case in the future. And
4 while the charges against him all involve allegations that are
5 arguably some form or derivation of obstructive behavior, it
6 again all comes back to where he is going to fall in that line
7 between violent civil disorder allegations or civil disobedience
8 when this case plays out in the grand scheme of things in D.C.

9 But there's not indication here of any serious risk of
10 future obstruction of justice in this case that's been levied
11 against him. He voluntarily approached law enforcement after he
12 returned home to Iowa, and that's likely been to the overall
13 detriment of his case in D.C. because of his statement.

14 During his past problems with the law, which I think
15 are fairly limited, as referenced in the bond report, he
16 completed his probationary term successfully and without any
17 incident. So any argument that he might somehow engage in
18 obstruction of justice going forward is just purely speculative
19 and the release statute I think requires more than speculation
20 to keep someone detained prior to an adjudication in their case.

21 Again, there's no crime here that's categorically a
22 crime of violence. The only felony alleged is the civil
23 disorder offense which did not contain an element of the use, or
24 threatened use, of physical force.

25 The impeding an officer allegation is charged as a

1 misdemeanor, and simple assault, again, does not require that
2 degree of physical force that the Supreme Court has held is
3 required to meet that federal definition of crime of violence.

4 And even the specific facts alleged against Mr. Jensen
5 in that misdemeanor charge don't show violent force here capable
6 of causing physical pain or injury sufficient to meet that
7 threshold to qualify as a crime of violence under the Code.

8 He's not a particular danger to the community. His
9 criminal history is pretty limited. It mostly occurred in his
10 mid-20s. He's 41 now. He's completed those probationary terms
11 in the past and will likely have one criminal history point, by
12 my estimate, under the Federal Sentencing Guidelines when they
13 delve further into his case. Those guidelines, as we all know,
14 are not known for being particularly merciful in how they score
15 people.

16 Even if you think that the Government has reached its
17 threshold here to even request detention, there's ample
18 conditions available to reasonably assure the safety of the
19 community and his future appearance as required.

20 He already is receiving mental health care in the
21 community. The Court can order further evaluation and treatment
22 if necessary. He is receptive to substance abuse evaluation and
23 treatment to alleviate any concerns about his drug use or
24 history of drug use.

25 If the concern is that he has been or will somehow be

1 further radicalized by the internet use, that use can be
2 monitored or even prohibited completely while he's on pretrial
3 release.

4 He's got a good work history, a new job lined up with
5 an employer who's aware of the obviously high-profile nature of
6 this situation and yet is still willing to employ him.

7 Mr. Jensen's a long-time union member. He also has
8 those resources available to him if his work dries up while this
9 case is going forward in D.C.

10 He has a home, no firearms in that. He can surrender
11 his passport. His wife is not an adherent or follower of QAnon.
12 She wants him back in the home. She understands what's involved
13 with being a third-party custodian. She's willing to assist
14 Pretrial Services in supervising Mr. Jensen.

15 And if all that is still not enough, the Court has
16 options like putting him on electronic monitoring and watching
17 his every step and move. They can put him on home detention and
18 just keep him locked down while the whole case goes forward, not
19 leaving for anything he's not allowed to leave for. Or if
20 there's a halfway house bed, they can place him there.

21 The Court can even require, it's not usually something
22 we do in this district, but post a bond if you feel like he
23 needs to have a monetary stake in his release from custody.

24 So in this case against Mr. Jensen, it all stems from
25 this chaotic series of events in Washington leading up to and on

1 January 6th, but there's nothing about him individually that's
2 so chaotic such that he just simply cannot be released from
3 custody and placed on pretrial supervision while his case goes
4 forward. His crimes are not crimes of violence, he does not
5 pose a serious risk of flight or a serious risk of obstructing
6 administration of justice in his case as it goes forward.

7 He's only accused of the felony and these misdemeanors
8 at this point. The Bail Reform Act favors pretrial release over
9 pretrial detention. And to the extent that there are any
10 concerns that the Court has about him, all of them can be
11 addressed through the conditions of supervision that are
12 available to the Court to impose on Mr. Jensen.

13 Under all these circumstances the Court should order
14 Mr. Jensen released to the supervision of the Pretrial Services
15 Office and have him report to D.C. for his next court date as
16 directed.

17 Thank you, Judge.

18 THE COURT: All right. Thank you. Anything else,
19 briefly, from the Government? And, again, just--I would like
20 some clarification. Are you under 18 USC 3142(f)(1), (f)(2), or
21 any other basis?

22 MS. BRUNER: We're under (f)(1)(A), crime of violence,
23 and we would point to Counts 1 and 2 of the indictment, civil
24 disorder and assaulting a police officer. And also we're
25 proceeding under (f)(2)(A) and (B), Your Honor.

1 THE COURT: All right. Anything else in response?

2 MR. HERROLD: I think I already laid it out, my
3 position. I don't think it qualifies.

4 THE COURT: No, I'm sorry. I didn't know if the
5 Government was finished.

6 MR. HERROLD: Oh, I'm sorry.

7 THE COURT: Was that your whole thought on that?

8 MS. BRUNER: Yes, Your Honor, unless you would like
9 further clarification, yes.

10 THE COURT: No.

11 MS. BRUNER: That's our position, Your Honor.

12 THE COURT: All right. Thank you.

13 I'm going to take this under advisement and get you a
14 written order tomorrow. If I order the Defendant detained,
15 well--well, whatever I order, either party has 14 days to
16 appeal.

17 On the Government's request for a stay, I'll take that
18 under advisement, too. Typically if I do an order of release,
19 we do give people time--the Government time to get a stay if it
20 seems to be appropriate in the circumstances; and if so, have
21 that as one of the issues.

22 But I will get you an order as promptly as I can so
23 you know what is going on here. We do have instructions from
24 the District of Columbia, as to if Defendant's released, they're
25 doing their Zoom hearings and the time and the day of the week

1 that they do those, so we found that information so if I need
2 that, it will be included.

3 Again, I'll take this under advisement under the
4 conditions of the Bail Reform Act, okay?

5 All right. Thank you.

6 Thank you, Mr. Jensen. Your attorneys will talk to
7 you later.

8 (Proceedings concluded at 4:36 p.m.)

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C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the hearing in the above-entitled matter at the time and place indicated;

That I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to typewriting under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.

Dated at Des Moines, Iowa, this 9th day of February, 2021.


CERTIFIED SHORTHAND REPORTER

Ex. 2

(Provided to Chambers separately due to the size limitations of ECF)