

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	: Criminal No. 21-cr-40 (TNM)
	: :
v.	: :
	: :
PATRICK MCCAUGHEY III,	: :
	: :
Defendant.	: March 31, 2021
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**MOTION TO REOPEN DETENTION HEARING  
AND FOR RELEASE ON CONDITIONS**

The Defendant Patrick McCaughey III respectfully moves that the February 12, 2021 Detention / Bail hearing be reopened and that he be released on the conditions proposed in a new, even more substantial bail package. In support of this motion, the defendant submits the following:

***I. There Is New Information Not Known To The Defendant As Of 2/12/21 That Has Material Bearing On The Issues At Hand.***

“The (detention) hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(f). There are several important pieces of information that are new to the defendant, not least of which is an interview with alleged victim Daniel Hodges, wherein he provides, *inter alia*, an explanation for his audible screams – a description that materially changes the perception of the weight of the evidence against the defendant as well as the nature and circumstances of the most serious

charge in the Superseding Indictment.

**A. Alleged victim Daniel Hodges made statements to local CBS affiliate WUSA9 contradicting the most serious crime in the Superseding Indictment.**

***1. Officer Hodges was not, in fact, screaming out in pain from an assault by the defendant.***

In connection with the February 12, 2021 hearing, the government cited and presented evidence by way of a YouTube link of a video that revealed, to the casual observer, that Officer Hodges was screaming out in apparent agony. <https://www.youtube.com/watch?v=qc0U755-uiM>; (Govt's Opposition Brief, Footnote 1, ECF #11). The government forcefully asserted that Hodges was screaming out in pain as a result of an assault, by Mr. McCaughey, with a plastic defensive police shield. "While being assaulted by McCaughey, the video shows *Officer Hodges crying out in pain* as McCaughey pins the officer's body between the stolen riot shield and the lower west terrace door...*Hodges continues screaming in pain* as he cannot move and is helpless to defend himself, as captured in the still shot below." *Id.* at pp.6-7. This video, being the primary evidence presented by the government in connection with the February 12, 2021 hearing, is presumably what the Court relied upon in determining (a) the "nature" of the charges, (b) the "circumstances" of the charges, as well as (c) the "weight of the evidence." 18 U.S.C. 3142(g).

As set forth extensively at the March 12, 2021 status conference, the defendant has essentially received no Rule 16 Discovery to date. Having no such discovery material to examine, counsel for the defendant has been compelled to search the vast expanse of the internet to try to find anything relevant to the defense. In so doing, last week undersigned counsel came across a lengthy interview that alleged victim Daniel Hodges

conducted with WUSA9 CBS network on or about January 14, 2021, regarding his involvement in the events at the Capitol on January 6, 2021. The interview can be found at: <https://www.youtube.com/watch?v=FmAxt2zF0g>. In the video, Officer Hodges had an entirely different explanation for his audible screams than that which has been portrayed by the government.

Beginning at around 4:45, Hodges stated the following:

I guess I got pinned through the small back and forth we had fighting for, ya know, every inch. And um I had my arm was pinned at that point, I was unable to defend myself. The uh, yeah I think you see someone in the video who um rips my mask off, my gas mask; he's also able to rip away my baton, uh, beat me with it, and um, at that point I was also, ya know, sucking in the OC and CS gas, so uh I was pretty disabled at that point... There's nothing I can do to defend myself at this point so I just started screaming at the top of my lungs for them to give me a way out, get me a line of retreat; thankfully someone was able to do that and I was able to extricate myself.

Officer Hodges' statements reveal that he was not, as the government alleged, "screaming out in pain" from an assault by Mr. McCaughey. The last portion above demonstrates very plainly that Officer Hodges was screaming out not in pain but, rather, he was yelling in order to alert those around him that his arm was trapped, he was defenseless and needed a way out. This revelation undermines the key cog in the government's detention arguments and puts the entire allegation against Mr. McCaughey – that he forcibly assaulted Hodges – in a different and highly questionable light.

Importantly, this Court expressly relied upon the mistaken impression that Officer Hodges was in pain in making its detention decision on February 12. "I believe, *based on the evidence that is currently before me*, he did use the police shield as a weapon against them. Specifically, it appears to me that he pinned Officer Hodges in a doorway,

*causing serious pain to him...*” *Transcript*, p. 25 (emphasis added). This newly discovered evidence indicating that Hodges was not, in fact, screaming in pain, therefore provides a material change in circumstances warranting reconsideration of the Court’s detention order.

Hodges’ newly discovered statements also provide support for the defense’s claim that, not only did Mr. McCaughey not forcibly assault the officer, but he actually came to Hodges’ aid.

***2. Officer Hodges seemingly also confirmed that it was Mr. McCaughey who answered his calls for help when he implored the crowd to back up to give Hodges room.***

Notably, Hodges also revealed to WUSA9, in referencing that he was “thankful” that “someone was able to get him” a “line of retreat,” that Mr. McCaughey’s imploration of the crowd behind him, who were chanting as they pressed in unison toward the Capitol doorway, to move back so as to give Hodges room to remove himself from the doorway – which efforts are captured by both video and audio from the government’s above-referenced YouTube link – are very likely what allowed him to “extricate himself.” In this new context provided by Officer Hodges’ interview, it is difficult to conclude otherwise.

And it bears repeating that the said video proffered by the government clearly shows that, immediately after McCaughey appeared to get the crowd to ease up enough to allow Officer Hodges a way out, (a) Hodges was able to simply back up of his own volition to free his other arm, and (b) Mr. McCaughey then came to Hodges’ aid, first by lowering for him his protective face shield, and thereafter by calling out frantically to

Officer Hodges' cohorts to alert them that he was in need of assistance.<sup>1</sup> The defense assertion, that these were not the actions of someone intent on forcibly assaulting Officer Hodges, is significantly reinforced by the new information from Hodge's WUSA9 interview.

Moreover, Officer Hodges statement that he "started screaming at the top of my lungs for them to give me a way out, get me a line of retreat; thankfully someone was able to do that and I was able to extricate myself," is utterly inconsistent with the government's claim, made repeatedly in connection with the February 12 hearing, that it was Mr. McCaughey who was jamming Officer Hodges into the doorway. Surely if that was the case, Officer Hodges would have directed his screams at Mr. McCaughey *directly* and implored *him* to stop single-handedly pressing him against the door jamb. Instead, as aforesaid, he told WUSA9 that he was screaming to alert "them" to give him a way out. This newly discovered interview with Officer Hodges not only significantly undermines the government's most serious claims against the defendant, but it really provides common-sense context and harmony to facts available to the Court today, that were not apparent on February 12, 2021.

For instance, knowing that Officer Hodges was not screaming out in pain makes sense, now, given the unlikelihood that Mr. McCaughey had the strength necessary to cause screech-inducing pain by merely pressing the flat face of a plastic defensive shield against the well armored officer.

And the fact that Hodges wasn't screaming in pain from an assault by Mr.

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<sup>1</sup> In fact, Mr. McCaughey did not stop trying to signal Hodges' fellow officers of his need for assistance until finally another officer acknowledged him by nodding his head.

McCaughey is consistent with what appeared previously to be the incongruous actions of McCaughey in (a) imploring the crowd to relieve the pressure so that Hodges could free himself, (b) lowering for Hodges his own protective face shield, and (c) exhorting Hodges' colleagues to attend to him and render any necessary aid or comfort.

In view of these newly discovered revelations from the proverbial horse's mouth, the nature and circumstances of the alleged crime and the weight of the evidence in support of the government's claim that Mr. McCaughey was intentionally and forcibly assaulting Officer Hodges with a dangerous or deadly weapon, are significantly less in favor of detention than appeared to the Court on February 12, 2021.

**B. The Government Has Added A Similarly Situated Codefendant To The Defendant's Indictment And He Has Been Release Without Any Security.**

Another piece of information not known to the defendant or the Court on February 12 is that, shortly thereafter, the government obtained a superseding indictment that now included a co-defendant, Tristan Stevens, who is charged with the same crimes as Mr. McCaughey, including the most serious offense of Assaulting an Officer with a Dangerous or Deadly Weapon. In fact, Stevens is charged with *more crimes* (13) than Mr. McCaughey (11). And like Mr. McCaughey, co-defendant Stevens has no prior criminal record, is an out of district resident – he lives in Florida – and, on information and belief, he likewise has no ties to the District of Columbia other than his decision to travel here on January 6, 2021 for the Capitol protest. Nonetheless, the Court not only did not order Mr. Stevens detained, *but it released him merely on his own recognizance.*<sup>2</sup>

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<sup>2</sup> The defendant takes no issue with the decision to release Mr. Stevens on his own recognizance, as it is wholly consistent with the purposes of the Bail Reform Act. "Our system of criminal justice embraces a strong presumption against detention." U.S. v.

At least one district court has acknowledged the fundamental unfairness of detaining a codefendant when a similarly situated codefendant in the same indictment has been released. “[C]ognizant of the pretrial release of all other defendants indicted by the same Grand Jury for similar offenses, this Court’s abhorrence of disparity of treatment within a judicial district led it to examine closely the justification for pretrial detention of defendant Cox.” U.S. v. Cox, 635 F.Supp.3d 1047, 1049 (D. Kansas 1986).

In fact, this Court expressly considered and compared, during the February 12, 2021 hearing, the defendant’s situation with other defendants in this investigation –*who are not even in this indictment* – in determining that he should be detained. “There’s a number of defendants who are charged in this court, including some in front of me. He’s the only one that I’m aware of charged in front of me who apparently acted in a violent manner and has been charged with acts of violence.” *Transcript*, p. 27.

In light of this new information, such inequity and unequal treatment ought not stand and Mr. McCaughey should be released pending trial. *Id.*; see also, U.S. v. Boustani, 932 F.3d 79, 82 (2d Circuit 2019) (wherein the Court discussed the “fundamental principal of fairness” that similarly charged defendants ought to be treated similarly under the Bail Reform Act).<sup>3</sup>

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Hassanshahi, 989 F.Supp.2d 110, 113 (Dist. D.C. 2013) (*citing*, U.S. v. Hanson, 613 F.Supp.2d 85, 87 (D.D.C.2009)). The problem here is that Mr. McCaughey, who is similarly situated – except for the actual and substantial bail package he has proposed and that his codefendant did not – should also be released pending trial.

<sup>3</sup> This Court ought to also consider, in terms of fundamental fairness, the fact that the government is now seeking to deem this indictment “complex” for purposes of the Speedy Trial Act, and has already begun to seek to delay the defendant’s trial by filing a Motion to Continue (ECF #22). However, as set forth orally during the March 12, 2021 status conference and in his written Opposition papers (ECF #25), this presumed innocent defendant ought not be made to wait for his trial – in prison - because the government

**C. The Defendant's Mother And Grandmother Are Now Willing To Offer Their Respective Houses In CT To The Proposed Bail Package.**

The defendant is also presenting new information in connection with his proposed bail package; to wit, that: (1) his mother, Ulrike Fein-McCaughey, has now agreed that the government can lien her longtime home in Ridgefield, Connecticut, in which she has approximately \$140,000 in equity, and (2) his grandmother, Margaret Jay, is now willing to allow the government to lien her property in New Canaan, CT, which she owns free and clear of any encumbrances and which is worth at least a \$725,000.<sup>4</sup>

The defendant previously presented an already unusually substantial bail package that included a government lien on his father's home in South Salem, NY with equity of an estimated \$450,000. On top of that, the defendant's father had agreed to pledge a small property in Maine worth \$150,000 and, if necessary, to post an additional \$150,000 in cash, while his mother agreed to sign as an unsecured surety in the amount of \$250,000. Should the Court now include a lien on the defendant's mother's newly available home and his grandmother's newly available property as a part of a package of condition of his release, Mr. McCaughey would have a significantly higher incentive to appear and court and to not commit any crime while awaiting trial, lest his three closest family members – *both* of his parents *and* his grandmother – lose their houses.

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*chose* to hastily arrest him, rather than waiting to complete its investigation.

<sup>4</sup> Ms. Fein-McCaughey had heretofore only been willing to act as an unsecured surety, while Ms. Jay was not willing to contribute at all to the defendant's proposed bail package.

**D. This Court Mistakenly Applied The Rebuttable Presumption Standard.**

Still another changed circumstance is that, upon review of the recently received transcript of the February 12 hearing, defense counsel discovered that the Court mistakenly applied a rebuttable presumption standard that doesn't apply in this case.

In its detention order of February 12, this Court stated: "I find that there is a rebuttable presumption that arises under 18 U.S.C. 3142(e)(2) for detention and because the Defendant is charged with a crime of violence under 18 U.S.C. 3142(f)(1)." *Transcript*, p. 24. However, an alleged crime of violence does not trigger such a presumption under 18 U.S.C. §3142(e)(2), which only applies to defendants with certain prior criminal convictions, or § 3142(e)(3), which applies to certain categories of crimes, none of which are alleged against this defendant.

"The default position of the law ...is that a defendant should be released pending trial." *U.S. v. Taylor*, 289 F.Supp.3d 55, 62 (D.C. District 2018) (citing, *U.S. v. Stone*, 608 F.3d 939, 945 (6<sup>th</sup> Cir. 2010) "That default is modified, however, for certain particularly dangerous defendants." *Id.* In particular, the Bail Reform Act creates a rebuttable presumption "that no condition or combination of conditions will reasonably assure ... the safety of the community if ... there is probable cause to believe that the person committed" one of an enumerated list of crimes, including a crime carrying a maximum term of imprisonment of ten years or more under the Controlled Substances Act, 21 U.S.C. § 801 et seq., or a violation of 18 U.S.C. 924(c)." *Id.*

Without a presumption in this case, the government cannot meet the applicable burdens of proof to warrant continued detention of Mr. McCaughey.

***II. The New Bail Package, In Light Of The Other Newly Discovered Information, Is More Than Enough To Secure The Safety Of The Community And Mr. McCaughey's Appearance In Court.***

**A. The Government Hasn't Provided Even A Plausible Hypothetical Scenario Whereby Mr. McCaughey Would Be A Danger To The Community, Let Alone Provide Clear And Convincing Evidence Thereof.**

As set forth in the defendant's original Motion for Bond, there is every indication that, whatever the defendant may or may not have done on January 6, 2021, this is a one-time event. No evidence has been presented to show that Mr. McCaughey conspired with anyone, nor that he planned to get so close to, and involved with, the protest that he is now accused of various federal crimes.

Furthermore, the government has yet to even proffer, let alone prove by clear and convincing evidence, that there is some plausible future scenario where Mr. McCaughey will be a danger to the community at all. He has no criminal record, has led an exemplary life up until the events that led to this indictment, and there is virtually no chance that there will be any other upcoming 2020 election-related protests or rallies such as the once-in-a-generation event that occurred on January 6, 2021, which provided a unique confluence of circumstances that were indispensable in bringing Mr. McCaughey to his current lot.

The Court even recognized in its February 12 ruling that, but for the massive protest that day, Mr. McCaughey would not have engaged in the alleged illegal activity. "You probably would not have done any of this alone, but the Defendant willingly joined a mob that injured dozens of officers and permanently scared our country." (*Transcript*, p. 26).<sup>5</sup>

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<sup>5</sup> The Court likewise noted that the history and character of the defendant militate against detention. "I disagree with the government about the Defendant's history and

Thus, the government cannot sustain its burden of proving, by clear and convincing evidence, that Mr. McCaughey will be a danger to the community should he be released on the stringent proposed conditions.

**B. The Government Likewise Can't Meet Its Burden To Show That It Is More Likely Than Not That Mr. McCaughey Is A Flight Risk.**

The defendant is a lifelong resident of the United States with substantial ties to the State of Connecticut. The fact that he has little ties to the District of Columbia should be of little moment, as none of the hundreds of "Capitol defendants" have significant ties to the District of Columbia yet, on information and belief, the majority of them are currently *not detained*, including the co-defendant who resides all the way down in Pensacola, Florida.

In addition, and despite the Court's statements to the contrary on February 12, the defendant *is* employed – he works for his father's construction business. (See, defendant's *Motion for Bond, Exhibit B*, ECF #9).

Moreover, the defendant's two passports are in the possession of undersigned counsel and will be handed over to the government or the court upon request. "[W]here the defendant is a dual citizen and dual passport-holder, the D.C. Circuit has considered it relevant that his passports have been confiscated." U.S. v. Hassanshahi, 989 F.Supp.2d 110, 116 (2013) (citing, U.S. v. Nworko, 651 F.3d 108, 110, n. 2).

Notably, in Hassanshahi, the defendant was a born and bred Iranian national with extensive ties to Iran. Here, the defendant's dual citizenship with Germany is only by virtue of his being born in the United States to a German National mother, he has never

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characteristics. I think that factor would favor release here. The Defendant has no criminal history. He has a good reputation in the community." Id.

lived in Germany – or anywhere else outside of the United States – and there is no evidence he has any family in Germany. Mr. McCaughey is a born and bred American young man who happens, by operation of law, to have dual citizenship.<sup>6</sup>

In short, the exuberant and naïve Mr. McCaughey certainly made a terrible decision in getting that close to the action that day but, especially in light of the new information presented herein, the government cannot meet its burdens of proof because he is neither a danger to the community going forward, nor is he in any way a flight risk.<sup>7</sup>

### ***III. Supplemented Proposed Conditions of Release***

The defendant submits the following supplemented proposed conditions of his release:

1. Ms. Ulrike Fein-McCaughey, the defendant's mother and the person with whom the defendant was residing at the time of his arrest, is prepared to act as Mr. McCaughey's 3<sup>rd</sup> Party Custodian and pledge as security her real property set forth below, which has equity of approximately \$140,000.

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<sup>6</sup> To alleviate any possible lingering concern that the defendant would try to flee to Germany despite the fact that his passports are confiscated and all of his ties are to this country, the defendant is prepared to "sign a waiver of any rights not to be extradited to the United States..." U.S. v. Karni, 129, 133 (D.C. District 2004) (ordering release of defendant with "no ties to the United States"). Further, the US and Germany have an extradition treaty dating back to 1978 and which specifically enumerates, as extraditable crimes, felony charges involving "civil disorder" and "unlawful obstruction of ... government proceedings..." with which the defendant is so charged herein. (See, Treaty Appendix. [Germany International Extradition Treaty with the United States.pdf \(mcnabbassociates.com\)](http://mcnabbassociates.com))

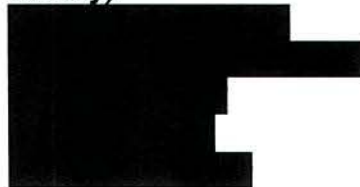
<sup>7</sup> Mr. McCaughey believes he has been grossly overcharged by the government and is very much looking forward to his "day in court."

**Ulrike Fein-McCaughey (Mother) (Third Party Custodian & Real Property lienee / Surety)**



2. Mr. Patrick McCaughey, III, father of the Defendant, will pledge as security, at minimum, his real property known as 10 Hoyt Street, South Salem, NY, in which he has confirmed equity of approximately \$450,000.00. If necessary, he is also prepared to post up to \$150,000.00 in cash for bond, as well as accept a lien for his full equity stake, in favor of the government, on a property he owns free and clear, in Maine, worth approximately \$150,000.00.

**Patrick Edward McCaughey III<sup>8</sup> (Father) (Real Estate lienee / Surety)**



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<sup>8</sup> Due to an error when the defendant's mother registered the defendant with state authorities at birth, the defendant was given the same identical name as his father, instead of being properly named Patrick Edward McCaughey the IV.

3. Ms. Margaret Jay, the defendant's grandmother, will pledge as security her real property known as 52/54 Hillside Avenue, New Canaan, CT 06840, which she owns free of any mortgages or liens and which has an estimated value of \$725,000.


***Margaret Coppinger Jay (Grandmother) (Real Estate lienee / Surety)***

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

4. The defendant will wear an electronic monitoring / gps device and be subject to curfew and/or home confinement if deemed necessary by the Court.
5. The defendant shall be required to maintain employment with his father's construction business.
6. The defendant's travels are to be limited to the District of Connecticut, the Southern District of New York, and to and from the within District for physical court appearances herein.
7. The defendant shall surrender – either to his attorney or the Clerk of Court – any passports in his name and possession.
8. The defendant agrees to such other terms and conditions as the Court deems appropriate for his release.


Dated: Stamford, CT  
March 31, 2021

Respectfully Submitted,

By:   
\_\_\_\_\_  
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CERTIFICATION OF SERVICE

This certifies that a copy of the foregoing Motion was filed via ECF on this 31<sup>st</sup>  
day of March in the year of our Lord 2021.

  
\_\_\_\_\_  
Lindy R. Urso

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :  
 :  
 : Docket No. CR 21-40  
 :  
 vs. : Washington, D.C.  
 : Friday, February 12, 2021  
 PATRICK EDWARD MCCAUGHEY, III : 3:00 p.m.  
 :  
 Defendant. :  
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TRANSCRIPT OF ARRAIGNMENT/BOND REVIEW  
VIDEO CONFERENCE  
BEFORE THE HONORABLE TREVOR N. MCFADDEN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: JOCELYN P. BOND, Esquire  
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Court Reporter: CRYSTAL M. PILGRIM, RPR, FCRR, RMR  
Official Court Reporter  
United States District Court  
District of Columbia  
333 Constitution Avenue, NW  
Washington, DC 20001

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

2 THE COURT: Is that Mr. Seeger there?

3 MR. URSO: No, Your Honor, it's Urso, Lindy Urso.

4 THE COURT: Have you talked with him about proceeding  
5 by video for this hearing?

6 MR. URSO: Yes, Your Honor, he's prepared to consent,  
7 thank you.

8 THE COURT: Okay, thank you.

9 THE OFFICER: He's present, Your Honor.

10 THE COURT: Good afternoon, sir.

11 THE DEFENDANT: Good afternoon, Your Honor.

12 THE DEPUTY CLERK: Your Honor, this is criminal case  
13 21-40, United States of America versus Patrick Edward  
14 McCaughey. From Pretrial we have Christine Schuck. Counsel  
15 please introduce yourselves for the record, starting with the  
16 government.

17 MS. BOND: Good afternoon, Your Honor, Jocelyn Bond  
18 on behalf of the United States.

19 THE COURT: Good afternoon Ms. Bond.

20 MR. URSO: Good afternoon, Your Honor, Lindy Urso on  
21 behalf of Mr. McCaughey.

22 THE COURT: Good afternoon Mr. Urso and good  
23 afternoon Mr. McCaughey. We're here on an arraignment and a  
24 bond hearing. Ms. Chaclan, can we proceed with the  
25 arraignment?

1 THE DEPUTY CLERK: Yes, Your Honor.

2 May the record reflect that the Defendant through counsel  
3 has received a copy of the indictment. Patrick Edward  
4 McCaughey, III in criminal case 21-40 in which you are charged  
5 by an indictment on Count One, assaulting, resisting or  
6 impeding certain officers using a dangerous weapon.

7 Count Two, civil Disorder.

8 Count Three, assaulting, resisting, or impeding certain  
9 officers using a dangerous weapon.

10 Count Four, Civil Disorder.

11 Count Five, obstruction of an official proceeding and  
12 aiding and abetting.

13 Count Six, disorderly and disruptive conduct in a  
14 restricted building or grounds with a deadly or dangerous  
15 weapon.

16 Count Seven, engaging in physical violence in a restricted  
17 building or grounds with a deadly or dangerous weapon.

18 Count Eight, disorderly conduct in a Capitol building.

19 Count Nine, act of physical violence on in Capitol grounds  
20 or building.

21 Do you waive the formal reading of the indictment and how  
22 do you wish to plead?

23 THE DEFENDANT: I would like to waive the formal  
24 reading and I would like to plead not guilty.

25 THE COURT: Okay, thank you Mr. McCaughey.

1           We have a bond motion, but a couple of things before we  
2 get to that first.

3           First, I realize I probably should have put on the record  
4 beforehand. Mr. Urso, have you had an opportunity to talk with  
5 your client about proceeding virtually rather than in-person?

6           MR. URSO: I have, Your Honor.

7           THE COURT: And is he prepared to proceed virtually  
8 for today's hearing?

9           MR. URSO: He is, Your Honor.

10          THE COURT: Okay, I think in light of the coronavirus  
11 and the danger to Mr. McCaughey and others meeting in-person  
12 and in light of the provisions under the CARES Act, it is  
13 appropriate for us to proceed virtually.

14          Ms. Bond, where do things stand now with the government  
15 on this case?

16          MS. BOND: I'm sorry, Your Honor. Would you say that  
17 one more time?

18          THE COURT: Yes, where do matters stand in terms of  
19 discovery and what are you seeking in terms of next steps here?

20          MS. BOND: So, Your Honor, we have not yet provided  
21 discovery. We do intend to provide informal discovery in the  
22 very near future. We have spoken to Mr. Urso about that.

23          As far as next step, we would like to address the  
24 detention issue. Of course we oppose his bond review motion  
25 and then ideally set a status hearing out about a month from

1 now to assess where we are in the case.

2 THE COURT: Okay, Mr. Urso.

3 MR. URSO: That sounds right, Your Honor. I guess  
4 the scheduling aspect depends on what happens with the bail  
5 decision.

6 THE COURT: Okay, so we can come back to that in a  
7 moment.

8 I will direct the government in light of the Due Process  
9 Protections Act to review their disclosure obligations under  
10 Brady v. Maryland and it's progeny as set forth in Local  
11 Criminal Rule 5.1 to comply with those provisions. The failure  
12 to comply can result in dismissal of the indictment or  
13 information, dismissal of individual charges, exclusion of  
14 government evidence or witnesses, continuances or discipline or  
15 any other remedy that is just under the circumstance. I'll  
16 also be issuing a written order to that effect.

17 Ms. Bond, I'll hear you on bond.

18 MS. BOND: Thank you, Your Honor.

19 The government does oppose the bond review motion and  
20 we're asking for continued detention. Our position remains  
21 that the factors under 3142(g) still weigh heavily in favor of  
22 detaining him because he is both a danger and a potential risk  
23 of flight.

24 Going through each of those four factors, with respect to  
25 the nature and circumstances of the crime, the Defendant was a

1 willing and enthusiastic participant in the mob violence and he  
2 assaulted specific officers on January 6th. Since his  
3 participation in that mob that was violent and dangerous at  
4 both the both the macro and the micro level.

5 Of course I imagine Your Honor has heard a lot in recent  
6 weeks about the mob on the Capitol, so I won't spend much time  
7 on that. There was a lot of violence and a lot of  
8 destructiveness as those legislators were forced to pause that  
9 electoral college vote count.

10 But the evidence the government has with respect to  
11 Mr. McCaughey puts him specifically on the lower West Terrace  
12 of the Capitol Building between the times of about 2:40 and  
13 3:15 p.m. Now the lower west terrace is a very visible and  
14 familiar part of the Capitol building that many Americans have  
15 seen if not in person, they've certainly seen it in movies or  
16 on TV. It is right in the front and center of the building.  
17 As a very symbolic place where the inauguration which happened  
18 a few weeks ago. On the lower west terrace there's an archway  
19 with a short tunnel that leads directly to a door into the  
20 Capitol. And that archway was the scene of a lot of violence  
21 that day particularly against police officers.

22 Because pretty quickly after the mob broke onto the  
23 grounds and blasted officers both MPD, Metropolitan Police  
24 Department, and the Capitol Police formed a line inside that  
25 archway to protect the front door of the Capitol.

1 Over the course of the afternoon, that mob spent about two  
2 and a half hours from about 2:45, 3:15 battling with officers.  
3 They would come in waves and try to force themselves through  
4 the line. Sometimes the officers would be able to push them  
5 back and out of that tunnel, but they would be coming hour  
6 after hour.

7 That is where Mr. McCaughey joined into. That's where he  
8 pushed himself that day, right front and center in the most  
9 violent crashes with the police. His conduct was dangerous and  
10 violent toward the specific officers, but it also contributed  
11 to the, contributed to the overall violence of that mob.

12 Our evidence puts him on the lower west terrace between  
13 about 2:40 and 3:15 in the early waves of the rioters trying to  
14 breach the center door. He is now charged in a nine count  
15 indictment with most of those charging felonies and two of them  
16 being crimes of violence. And those are the two assaults on  
17 Officers Daniel Hodges and Henry Foulds with a dangerous  
18 weapon.

19 These assaults were captured on video which we referenced  
20 in our pleading Exhibit 1. The government reference a longer  
21 video, but we directed Your Honor's attention to minutes 19  
22 through about 23 and those minutes really capture Mr. McCaughey  
23 and his conduct as part of the mob that afternoon.

24 I'm sure that Your Honor saw how he was using one of the  
25 stolen police riot shields to crush Officer Hodges against that

1 door frame, while Officer Hodges is screaming out with pain he  
2 is stuck there, unable to move. And Mr. McCaughey keeps going  
3 after he finishes with Officer Hodges. You see him in that  
4 video engaging with and striking Officer Foulds. Officer  
5 Foulds is the individual, the officer in the green mask who's  
6 trying to protect the entry way.

7 We do want to share with Your Honor three additional short  
8 clips this afternoon that I think address some of defense  
9 counsel's points in his reply about how, his suggestion that  
10 maybe Mr. McCaughey was acting because he was pushed by the mob  
11 to do so or he really had no choice.

12 We want to show you Exhibit No. 2 and my colleague Melissa  
13 Jackson has provided a makeshift way for us to play this  
14 through the Jabber platform. I'm hoping that Your Honor can  
15 see at this point. This Exhibit 2 is a second video from a  
16 different angle that shows --

17 MR. URSO: Judge, can I just interrupt for a moment?  
18 I can't see Ms. Bond or whatever Ms. Bond is going to present.  
19 I haven't seen it yet.

20 THE COURT: Yes. So it should be showing up on the  
21 screen this picture. If you hit, I think is it 8 on the key  
22 pad; is that correct Michelle, you should see it?

23 MR. URSO: I got it.

24 MS. BOND: Your Honor, we did email it to defense  
25 counsel shortly before the hearing started.

1 MR. URSO: I've got it now, Judge, thank you.

2 THE COURT: We all see it now. You may proceed  
3 Ms. Bond.

4 MS. BOND: Thank you.

5 What I want to draw your attention to in this clip is that  
6 as you see Mr. McCaughey battling with Officer Foulds, there's  
7 a good deal of space between him and the rioter between him. I  
8 want Your Honor to see how there's no one pushing him there.  
9 There's no one compelling him to be engaging in this behavior.  
10 Please go ahead and play it.

11 (Video played.)

12 MS. BOND: Is the Court and Mr. Urso able to see  
13 that?

14 MR. URSO: Yes.

15 THE COURT: Was that a subset of the prior video that  
16 I watched that is referenced in your motion, Ms. Bond, or is  
17 that from a different angle?

18 MS. BOND: It's not the same video that was Exhibit  
19 1. It's a different angle, but I do believe that I referenced  
20 that there were other videos out there.

21 THE COURT: Okay.

22 MS. BOND: But I did want you to see specifically  
23 that angle of it.

24 THE COURT: Okay.

25 MS. BOND: And to respond to the suggestion that

1 somehow the Defendant was an unwilling participant or even some  
2 sort of victim here. I want to emphasize that the government's  
3 evidence clearly shows that he was both willing and  
4 enthusiastic in the mob violence and in his assault on the  
5 officers.

6 One of the things that I neglected to mention is all of  
7 the chances Mr. McCaughey had to walk away during that  
8 afternoon, but he didn't. One of the items that we described  
9 in our pleading was the Capitol surveillance footage. And that  
10 footage shows the Defendant first coming to the mouth of that  
11 entrance around 2:50 p.m. and he lingered there for a few  
12 minutes. He didn't leave.

13 The officer pushed out, he pushed out with a group. He  
14 walks away, he's off camera. We don't know where he goes. He  
15 didn't have to come back at that point. He was gone, he was  
16 off camera. There was no evidence of what he was doing, but he  
17 did. He was gone for about fifteen minutes. (Audio  
18 interference.)

19 MS. BOND: Can I continue at this point?

20 THE COURT: Yes, please Ms. Bond.

21 MS. BOND: Thank you.

22 So he comes back around 3:05. He's seen again on that  
23 surveillance video in the archway. He's moving of his own  
24 volition, moving back into the fray and in that video he's seen  
25 grabbing the stolen riot shields from these officers. He's

1 helping to pass them back to people behind him. Eventually he  
2 grabs onto one and holds on to it. That is what we describe in  
3 the Capitol surveillance footage.

4 On top of that, which we'll show you right now,  
5 Ms. Jackson will show you Exhibit 3. It's another open source  
6 video that captures the Defendant in the archway. Based on our  
7 timelines in comparison with other individuals who were there  
8 that day, we believe that this clip was filmed shortly before  
9 the assault on Officers Hodges and Foulds. And it shows that  
10 the Defendant was there of his own free will. He's not being  
11 pushed by the mob. No one is forcing him to that spot. As you  
12 can hear, I'm sure it's difficult to hear in this particular  
13 format that we're on the phone, but when talking to the person  
14 holding the camera, the Defendant actually breaks into a smile  
15 when he tells that person this is our building.

16 (Video played.)

17 (Video cut off.)

18 MS. BOND: What I wanted Your Honor to see -- sorry  
19 about that.

20 What I wanted Your Honor to see from that is that he was a  
21 willing participant. He was glad to be there. He was not  
22 forced into that position. Of course he makes his way to the  
23 front of the line at that point. And Your Honor has seen the  
24 assault against Officer Hodges and Foulds. In Defendant's  
25 motion, he suggests that Defendant is only crushing Hodges

1 because of the weight of the crowd behind him, but that is to  
2 ignore a couple of things.

3 First, it ignored that even though there was a crowd  
4 around, the Defendant was using his own weight and he was  
5 really leaning into Officer Hodges. If Your Honor has seen  
6 Exhibit No. 1, right around 30 seconds into the video, you can  
7 see where there's a gap between Mr. McCaughey and a person  
8 behind him. That person has his hand on Mr. McCaughey's  
9 shoulder, but there's no weight, there's no pushing.  
10 Mr. McCaughey is using his own body weight there.

11 The second thing about the suggestion is it ignored the  
12 words that the Defendant was saying when he committed these  
13 assaults. Your Honor you have heard as he was crushing Hodges  
14 under and against that door frame Mr. McCaughey is saying go  
15 home. He said it multiple times. Go home. Do the right  
16 thing. You're going to get squished, go home. Of course just  
17 a few moments after in the earlier video saying this is our  
18 building.

19 What the government believes that Mr. McCaughey was saying  
20 to that officer is you have a choice; either get out of the way  
21 of the mob, let us get into this building or you are going to  
22 get squished because that is what he was doing with his  
23 actions.

24 The third thing that defense counsel ignores is the  
25 Defendant continues to assault Hodges, even as he is seeing

1 other rioters assault the same officer. He sees another rioter  
2 pull off Hodges' gas mask. He sees another rioter sprays their  
3 spray on the officer. He continues. He doesn't back away.

4 Of course there's that moment where the Defendant really  
5 does show a moment of humanity or regret. We don't know what  
6 it was there. But he does seem to try to get Hodges some help.  
7 He puts Hodges mask down and signals to another officer nearby  
8 that this guy needs some help. That is to the defendant's  
9 credit, but it also makes his next step even more baffling  
10 because that was a moment where in all honesty, he did a  
11 credible thing in that moment, but he could have walked away  
12 there. He could have stopped. He could have laid down his  
13 arms. He could have gotten out of that tunnel, but he didn't.  
14 Instead he keeps fighting.

15 He then goes after Officer Foulds, moved to the front of  
16 that police line. That view that we showed you in Exhibit 2  
17 sort of really reaffirms that he is there of his own volition.  
18 The crowd is not pushing against him. He's there because he  
19 wants to be.

20 That touches on defense counsel's suggestion that the  
21 Defendant was using the riot shield defensively. We want to be  
22 very clear, there is no self-defense claim here. Mr. McCaughey  
23 and the other members of that mob were the aggressors and had  
24 no right to be on the Capitol grounds. They were attacking  
25 uniform officers who were lawfully defending the Capitol. He

1 wasn't using that stolen shield defensively. He was using to  
2 attack officers so that he could get into the building. His  
3 building.

4       Eventually of course he does leave the tunnel. But it  
5 isn't because he decided to do the right thing and to put down  
6 his weapon. He doesn't stop fighting officers until he's  
7 actually physically unable to do so. After that hand to hand  
8 between him and Officer Foulds that we see in Exhibit 1 and 2,  
9 the officers are then able to disperse that particular group  
10 and force them out of the tunnel at least monetarily. And  
11 that's where we want to show you Exhibit 4 which shows the  
12 Defendant exiting the tunnel. He's squinting, it looks like  
13 he's struggling to see. He didn't leave that tunnel because it  
14 was the right thing to do. He left because he couldn't fight  
15 anymore.

16       (Video played.)

17       MS. BOND: Your Honor, this is another place where  
18 the Defendant had the opportunity to walk away, but that's not  
19 what it was. He was forced out. He physically couldn't fight  
20 anymore and so then he left the tunnel and the government has  
21 no additional evidence at this point about what he did after  
22 that time.

23       So with respect to the nature and circumstances of the  
24 crime, his conduct was dangerous and violent just standing  
25 alone. It contributed to the overall danger and violence that

1 day. He was a willing and enthusiastic participant throughout  
2 the assault, and he kept going. He didn't stop until he had  
3 been physically neutralized and this weighs heavily in favor of  
4 his continued detention.

5 The weight of the evidence is similarly weighed in favor  
6 of continued detention. As Your Honor has seen much of his  
7 conduct is captured on video. We have multiple videos not only  
8 the ones Your Honor has seen, but the Capitol surveillance  
9 videos. I believe there are a few other source videos out  
10 there that we haven't referenced at this point.

11 Another piece of evidence the government has is that brown  
12 jacket that Your Honor can see in the video that Mr. McCaughey  
13 is wearing. When he was arrested, law enforcement officers  
14 recovered a brown jacket that looks very similar and the  
15 government certainly contends it is the same brown jacket.

16 We have also seized his cell phone and that cell phone has  
17 provided evidence of his participation and his presence in  
18 Washington D.C. on January 6th.

19 First, inside of his phone there is an Apple map search  
20 where he is searching for Freedom Plaza in Washington D.C.  
21 There are multiple selfies that appear to be taken on his phone  
22 that captures his face showing scenes from downtown Washington,  
23 D.C. including the Capitol Building as well as the Washington  
24 Monument. There are selfies where you can see portions of the  
25 mob up against the Capitol Building.

1        Finally, we have chats that were recovered from his phone,  
2 from a flat phone signal in which he discusses scenes in  
3 Washington, D.C., sent video links to his friends, that seem to  
4 acknowledge not only that he was in Washington, D.C., but at  
5 one point in the chat he almost acknowledges that the person in  
6 the video was him and the leader in the chat suggesting that it  
7 was not him.

8        So we have all of that evidence. The video evidence. The  
9 coat he is wearing. The contents of his cell phone. And the  
10 government views this as a very, very, strong case.

11        I just want to touch on his history and characteristics.  
12 We do understand that he doesn't have a criminal history, but  
13 this is a very significant and violent crime that he has  
14 engaged in. We also have significant concerns about how well  
15 they work, his parents putting up the bond here.

16        One of the concerns we have is that the evidence we have  
17 shows that Mr. McCaughey went to D.C. with his father, which on  
18 its face is innocuous. Many people came and did not commit any  
19 unlawful activities. But the concern here is that  
20 Mr. McCaughey's father has offered to put up property in his  
21 name. And because Mr. McCaughey, the Defendant, committed  
22 these crimes, even though he was in the city on a trip with his  
23 own father, how much parental pressure is his father really  
24 going to be able to exert to keep him in line if he is  
25 released.

1           We also have -- we understand that his mother has also  
2 offered to put up a substantial bond and we have similar  
3 concerns there. Part of that is that any financial loss here  
4 would be to his parents and not directly to him.

5           Finally, one of our concerns is that Mr. McCaughey is a  
6 citizen of Germany which I say again is completely innocuous.  
7 We do have concerns that that gives him an easier opportunity  
8 than most to flee the country to avoid answering for what he  
9 has done here.

10           So for all of those reasons, Your Honor, we ask that he  
11 remain detained because each of these factors weighs in favor  
12 of detention.

13           THE COURT: Thank you, Ms. Bond. Mr. Urso, I'll hear  
14 from you.

15           MR. URSO: Thank you, Your Honor.

16           Your Honor, so upon being retained and reviewing what  
17 was out there in the public, as Ms. Bond indicated, I haven't  
18 gotten before that YouTube link in their opposition papers. I  
19 hadn't gotten anything they were relying on.

20           After reading those documents I expected there would be  
21 video out there of Mr. McCaughey wheedling this shield like a  
22 baseball bat or like a sword and I was concerned. And I saw  
23 the opposition brief.

24           Judge I want to -- I saw the YouTube video, but I want to  
25 focus on those two crimes. The alleged crimes of violence

1 because I think that's what the government is relying on most  
2 for the detention. The alleged assault on Officers Hodges and  
3 Foulds.

4 I watched the YouTube videos and I want to break them  
5 down. Well, I want to break them down each separately. The  
6 alleged assault on Officer Hodges it seems to me in talking  
7 about the weight of the evidence. It seems very clear to me  
8 that there was no assaultive intent. I understand the  
9 government's position is that Mr. McCaughey was pushing  
10 himself, just himself pushing Officer Hodges in that doorjamb,  
11 causing him to be injured which really makes no sense when  
12 watching the video in its entirety.

13 As soon as he heard Officer Hodges yelling in pain, he  
14 turned back to the crowd. I noticed again watching it last  
15 night, imploring the crowd behind him to back off, to release  
16 some of the pressure. Then afterwards he spent many, many  
17 seconds urging the fellow officers. He kept urging fellow  
18 officers, hey, this guy is in trouble. And he didn't stop  
19 until he got a nod from one of the officers saying yes, okay,  
20 we understand.

21 The video pans back and does show -- it's not the  
22 defense's suggestion that he was there because he was carried  
23 forward like a mob pit. He obviously got into this protest,  
24 got too close and this is the result. But I'm talking about  
25 the crowd pushed him with respect to the one assault

1 allegation. He just happened to be at the front of the pack  
2 and you can hear the crowd pushing forward seconds before the  
3 officer was hurt.

4 And his conduct, again right after realizing and in aiding  
5 the officer when another third party took off his gas mask,  
6 took off Officer Hodges gas mask. He aided, he bent over and  
7 helped the officer. I don't believe the weight of the evidence  
8 is nearly as strong as the government contends as to that.

9 Then Officer Foulds' assault. From what I can gather and  
10 I can see again, I think Your Honor touched on it. I think it's  
11 a video of the same incident, just a different angle. It looks  
12 like he may have advanced forward at one point with the shield,  
13 but not using it as a weapon necessarily. I don't think that  
14 shield could have hurt anybody stepping forward with the shield  
15 in that position. So I think it's very questionable whether  
16 that charge, whether they're going to prove that charge by  
17 reasonable doubt.

18 But I think most importantly, Your Honor, even if these  
19 charges stick, I mean he's convicted of these charges. Looking  
20 at them and looking at their nature and looking at his history,  
21 I think the issue is whether he's a danger going forward.

22 This January 6th, 2021 incident was a once in a generation  
23 event. It was a protest. He obviously got too close and got  
24 involved, but everything about this young man's history, even  
25 some of what he did on tape in trying to render aid to the

1 officer and did aid indicates that this is a one off event  
2 regardless.

3       There's no reason for the Court to be concerned that he's  
4 going to somehow get involved in some other violent protest  
5 should the Court release him on this significant bail package,  
6 so even assuming all of that. But I think, I really believe  
7 that this is a defensible case in terms of those two assault  
8 charges. There's obviously some other charges to deal with,  
9 but the two crimes of violence I think are very defensible.

10       So in terms of weight of evidence, I don't think that  
11 should carry the day, Your Honor. There's no mandatory minimum  
12 jail sentences here.

13       I have touched on Mr. McCaughey's history that the letters  
14 paint. Various different people really paint a uniform picture  
15 of Mr. McCaughey as a kind, intelligent, considerate,  
16 compassionate young man who goes out of his way to help lend a  
17 hand when needed.

18       A couple of things I didn't put in the submissions, Your  
19 Honor, which I got from his family. In high school he played  
20 junior varsity football and a year of varsity football. He's  
21 got three different language awards, two for German one for  
22 Latin. One of those awards led to one of two trips overseas.  
23 His mother is a native from Germany. By the way, he's born and  
24 raised in the United States, Your Honor.

25       He has dual citizenship by operation of German law because

1 his mom is a German National. He's taken two trips to Germany.  
2 I have both passports, Your Honor, in my possession. The U.S.  
3 passport shows that he has taken two trips to Germany, one in  
4 2014, one in 2016. One of those was paid for as a result of  
5 that award. He thereafter got this EU German passport which  
6 has no markings. So he hasn't used that yet.

7 Your Honor, he was born in California. I believe at the  
8 age of five or six, the parents had to split before he was even  
9 born. So he was raised with split parents. They moved to  
10 Connecticut around the time of age four, five, five or six.  
11 And he's lived in Richville, Connecticut since. He's got very  
12 strong ties to the community.

13 He has worked. He had worked out of high school. He  
14 began working with his father who has a construction company.  
15 And obviously business dried up with the COVID, so there was  
16 really nothing happening in 2020. But as I indicated, I think  
17 in Exhibit B to my original motion, there is one rather sizable  
18 job that Dad has already lined up. And he's indicated there  
19 are several more that he thinks will keep them busy into the  
20 spring and summer. If the Defendant were released, he'd be  
21 working with his dad side by side on these jobs.

22 Your Honor, with respect to risk of flight. Again, he's  
23 taken two trips out of the country. But these crimes do not  
24 carry the mandatory minimums, these allegations. He's born and  
25 raised in the United States. He's not going anywhere. If the

1 Court really felt concerned that he was a flight risk, the  
2 Court could certainly order home confinement with electronic  
3 monitoring.

4 I don't know if the Court had a chance to review the SDNY  
5 police report. It was much more narrow than what D.C. has been  
6 able to do in a short time, with what D.C. has been inundated  
7 with.

8 THE COURT: I did.

9 MR. URSO: Thank you, Your Honor.

10 I don't think he's a flight risk. I really honestly  
11 believe that an unsecured bond would be sufficient, but I think  
12 putting up all that equity in the father's house and his house  
13 sales for almost half a million dollars. The mother is willing  
14 to put up another quarter million dollars unsecured which is a  
15 really significant passage, Your Honor. This young man, he's  
16 not going to put his parents in a financial risk in that way.  
17 There's nothing in his history to suggest that he would ever  
18 flee.

19 So Your Honor, I think, under all of these circumstances,  
20 particularly his history and again the weight of the evidence  
21 of the crime, the two crimes of violence alleged, I think  
22 release on this significant bail package; I don't think the  
23 government has met by clear and convincing evidence that he is  
24 so dangerous that the Court can't release him on sufficient  
25 conditions.

1 I think we proposed -- again, I think we even proposed  
2 backup conditions along with the father will wipe out his  
3 retirement account and post extra cash if the Court deemed it  
4 necessary to secure his appearance. But I just don't see under  
5 these unique facts and circumstance that he is such a danger to  
6 the community going forward after living such a stellar life of  
7 23 years. I think the Court can feel comfortable releasing him  
8 on sufficient conditions and I ask the Court to do that.

9 THE COURT: Thank you, Mr. Urso.

10 Ms. Bond, I'll give you the last word.

11 MS. BOND: Thank you, Your Honor. No additional  
12 argument. I just want to mention about what defense counsel  
13 said that his client had no assaultive intent inside that  
14 tunnel. But we intend the normal consequences of our actions.  
15 He knew what he was doing when he walked into that archway,  
16 when he grabbed those riot shields, when he walked to the front  
17 of the line and he participated in assaulting those officers.  
18 That's pretty clear assaultive intent right there. I have  
19 nothing further, Your Honor.

20 THE COURT: Thank you, Ms. Bond.

21 I've reviewed the parties submissions including the  
22 video and I've considered the thoughtful arguments of both  
23 attorneys here. The government has made a motion pursuant to  
24 18 U.S.C. 3142(f)(1) for detention pending trial. A magistrate  
25 judge found that the government had carried its burden for

1 detention and defense has now appealed to me. I reviewed this  
2 matter de novo.

3 I find that there is a rebuttable presumption that  
4 arises under 18 U.S.C. 3142(e)(2) for detention and because the  
5 Defendant is charged with a crime of violence under 18 U.S.C.  
6 3142(f)(1).

7 I find that the Defendant has presented evidence  
8 sufficient to rebut the presumption. But after considering the  
9 presumption and the other factors discussed that I'll discuss  
10 in a moment, I do believe detention is warranted for the  
11 following reasons: I find that by clear and convincing  
12 evidence that no condition or combination of conditions of  
13 release will reasonably assure the safety of any other person  
14 in the community. I also find by a preponderance of the  
15 evidence that no condition or combination of conditions will  
16 reasonably assure the Defendant's appearance as required.

17 I make the following findings of fact and conclusions of  
18 law as to the nature and circumstances of the offense and the  
19 other factors that must be considered under the Bail Reform  
20 Act.

21 First, as to the nature and circumstances of the offense,  
22 the Defendant was part of a large violent mob that sought to  
23 force its way into the U.S. Capitol to disrupt certification of  
24 the Presidential election. In this melee, one officer was  
25 killed, approximately 100 were injured. There were serious

1 property damage and incalculable damage to our body politic.

2       The Defendant entered the west front tunnel entrance. He  
3 saw what was happening. And then, according to the video I've  
4 seen, he returned grabbing a stolen police shield and moving to  
5 the front to directly engage with the officers. There he  
6 battled two officers in particular.

7       I believe, based on the evidence that is currently before  
8 me, he did use the police shield as a weapon against them.  
9 Specifically, it appears to me that he pinned Officer Hodges in  
10 a doorway, causing serious pain to him and allowing another  
11 rioter to further assault the officer.

12       Based on the evidence before me, and on the requisite  
13 standard, I don't think it's correct the Defendant was just  
14 using the shield defensively. And while I don't believe or  
15 don't have any reason to believe the Defendant went there  
16 intending to assault anyone. I think when he got to the front  
17 of the line and found that there were officers standing between  
18 him and his object, he was willing to assault them in order to  
19 try to force his way into the Capitol building.

20       I thought it was just audacious for him to tell the  
21 officers to get out of his house and to go home.  
22 Mr. McCaughey, I don't know, you were certainly close enough to  
23 observe the officers' patches and badges. On an MPD shield  
24 they have a picture of the Capitol on the patch. They have a  
25 picture of the Capitol Building that they were protecting the

1 Nation's home. And you were breaking into it as if you were a  
2 thief or a robber.

3 To your credit, you did assist Officer Hodges and helped  
4 him out of harms way when he was injured in part because of  
5 your actions. I think that speaks well of you. And there may  
6 well be a point down the road where that would be relevant, but  
7 right now I don't think that erases what you did to injure him  
8 in the first place or what you went on to do when you battled  
9 another officer immediately after that.

10 You probably would not have done any of this alone, but  
11 the Defendant willingly joined a mob that injured dozen of  
12 officers and permanently scared our country. That is part of  
13 the danger of joining a mob or a riot and the Defendant  
14 willingly engaged in that very dangerous behavior.

15 Looking at the strength of the evidence, I agree with the  
16 government that the strength of the evidence is strong here.  
17 I've seen this video footage. There is body worn camera  
18 footage. There is cell phone evidence and other evidence that  
19 ties the Defendant to the crimes charged.

20 I disagree with the government about the Defendant's  
21 history and characteristics. I think that factor would favor  
22 release here. The Defendant has no criminal history. He has a  
23 good reputation in the community. I've read the numerous  
24 letters submitted on his behalf. I've also considered the  
25 Defendant's willingness to a number of substantial assets as a

1 surety; nonetheless, in balancing that factor against the other  
2 factors here, I'm considering his dangerousness and the risk of  
3 flight. I don't find that outweighs these other factors.

4 I do think, for the reasons I previously stated, the  
5 Defendant poses a danger to the community. He was willing to  
6 participate in such a violent, in fact, deadly riot raises  
7 grave questions about the danger he poses to others. And I  
8 should say specifically, the willingness to engage in violence  
9 there.

10 There's a number of defendants who are charged in this  
11 court, including some in front of me. He's the only one that  
12 I'm aware of charged in front of me who apparently acted in a  
13 violent manner and has been charged with acts of violence.

14 I also think there's evidence of the Defendant being a  
15 flight risk. The Court typically considers whether someone is  
16 employed. He is not. He has no ties to this District. Of  
17 course he has substantial ties elsewhere, but none here. He  
18 also has significant and unusual ties outside of the United  
19 States.

20 Although none of those things are inherently wrong of  
21 course, I think I must consider the length of time the  
22 Defendant is facing, the length of, potential lengthy  
23 imprisonment and the Defendant's lack of connections here, I  
24 think there is a concern about the Defendant's flight risk.

25 So for all of these reasons, I'm denying the defense

1 motion for release.

2 All right, in light of that the government, as I said, has  
3 asked for another status conference in one month.

4 Mr. Urso, what's your position on that?

5 MR. URSO: I guess one month would be sufficient,  
6 Your Honor, because I do have to get discovery and review it,  
7 so that seems logical.

8 THE COURT: Okay, so how about -- well actually  
9 Ms. Chaclan, I need to ask you what would appear to work for  
10 the Northern Neck Jail?

11 THE DEPUTY CLERK: Your Honor, was that in one month?

12 THE COURT: Yes, ma'am.

13 THE DEPUTY CLERK: Friday, March 12th at 2 p.m. is  
14 available.

15 THE COURT: All right, Ms. Bond does that work for  
16 the government?

17 MS. BOND: That is fine for me. Just one moment,  
18 yes, it's fine for the government.

19 THE COURT: Okay and Mr. Urso?

20 MR. URSO: That's fine, Your Honor, thank you.

21 THE COURT: Okay, we'll set a video status conference  
22 for 2 p.m. on Friday March 12th.

23 Ms. Bond, do you have a motion?

24 MS. BOND: Yes, Your Honor. Under the Speedy Trial  
25 Act, we're asking that the time be excluded between today's

1 date and the next day in the interest of justice. As Your  
2 Honor well knows, the Chief Judge's order is in effect until  
3 March 13th and beyond that the government has noted there's  
4 going to be voluminous discovery in these cases because it was  
5 such a big and broad situation. And there's going to be  
6 extensive preparation required and so we're asking for the  
7 exclusion of time to allow the parties to discuss these issues.

8 THE COURT: Mr. Urso?

9 MR. URSO: Your Honor, I'm just hesitant in light of  
10 his incarceration to agree to any kind of speedy trial waiver.

11 THE COURT: Okay, nonetheless I find that tolling is  
12 appropriate here. I think that the Chief Judge's standing  
13 order would cover all or most of this time. And regardless, I  
14 do imagine there's significant discovery here. As I say, I'm  
15 hoping we're going to be able to get back and start doing  
16 trials sooner rather than later and I expect the government to  
17 move expeditiously, so that we could be in a position to have a  
18 trial and discuss trial dates if that is Mr. McCaughey's wish  
19 to proceed to trial.

20 Ms. Bond, anything further?

21 MS. BOND: Nothing further from the government, Your  
22 Honor.

23 THE COURT: And Mr. Urso?

24 MR. URSO: No, Your Honor, thank you.

25 THE COURT: Thanks folks.

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(Video conference adjourned at 3:45 p.m.)

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## 1 CERTIFICATE

2 I, Crystal M. Pilgrim, Official Court Reporter, certify  
3 that the foregoing is a true and accurate transcript, to the  
4 best of my ability, of the proceedings remotely reported in the  
5 above-entitled matter.

6 **Please Note:** This hearing occurred during the COVID-19  
7 pandemic and is, therefore, subject to the technological  
8 limitations of court reporting remotely.

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11 Crystal M. Pilgrim, RPR, FCRR, RMR

\_\_\_\_\_ Date: March 25, 2021  
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