

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : **Crim. No. 21-CR-0041-CJN-2**
 :
 MICHAEL THOMAS CURZIO, :
 Defendant. :

NOTICE OF FILING OF PRIOR HEARING TRANSCRIPTS

The United States of America, by and through the United States Attorney for the District of Columbia, respectfully files this notice of the filing of prior hearing transcripts, pursuant to the Court's order on February 19, 2021. The two prior hearing transcripts – from the initial appearance in this matter on January 14, 2021, and the detention hearing in this matter on January 19, 2021 – are attached to this notice.

Respectfully submitted,

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BY: /s/ Seth Adam Meinero
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 2021, I served a copy of this pleading on defendant's counsel through the Court's electronic filing system.

/s/ Seth Adam Meinero
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Assistant United States Attorney
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P R O C E E D I N G S

1
2 January 14, 2021

3:53 p.m.

3 - - -

4 THE COURT: All right. The next case on our calendar
5 this afternoon for our district is Case No. 5:21-mj-1009, the
6 United States versus Michael Thomas -- Curzio? Is that how you
7 pronounce your name?

8 THE DEFENDANT: Curzio, sir.

9 THE COURT: Curzio?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Hamilton represents the United
12 States. Ms. Bird is with the federal public defender, and
13 she's here to be appointed to represent you, at least in this
14 district (unintelligible) appointment of counsel.

15 Your charge, Mr. Curzio, is out of the District of
16 Columbia, and that is Case No. 1:21-mj-12. There's a criminal
17 complaint that was filed in the District of Columbia, against
18 you and several others for two federal law violations.

19 Do you have a copy of that complaint?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: Okay. Attached to the complaint, which
22 (unintelligible) the two charges, is an affidavit of probable
23 cause, which is a sworn statement signed (unintelligible) --
24 sorry -- a sworn statement signed to by a law enforcement
25 officer.

1 We have been conducting about 90 percent of our
2 proceedings by videoconference because of the coronavirus.
3 It's an efficient way to do it and a safe way to do it.

4 You do have a right to request an in-person hearing.
5 If you did that, we would have to reconvene in person, which we
6 could do. It would probably just be at a later day. You can
7 agree, of course, to the videoconference.

8 Ms. Bird, when you had a brief minute to chat with
9 Mr. Curzio, did you talk to him about that?

10 MS. BIRD: Your Honor, I'm sorry. I did not mention
11 that we were proceeding by videoconference. I covered
12 everything else. But I don't think he has any objection to it.

13 THE COURT: No objection, Mr. Curzio?

14 THE DEFENDANT: No, sir.

15 THE COURT: In this proceeding I'll talk to you about
16 the charges against you and the potential penalties and also
17 the rights that you have.

18 If there's anything I say that you don't understand
19 or you'd like to speak privately with Ms. Bird, just let me
20 know that.

21 THE DEFENDANT: (Unintelligible.)

22 THE COURT: You do have a right to remain silent.
23 That means you're not required to make any statements to the
24 Court or to law enforcement, and you should know that if you do
25 make a statement, it can be used against you.

1 Do you understand all that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The criminal complaint charges two
4 counts. The first count is under Title 18 of the United States
5 Code, Section 1752(a), and the charge is for knowingly entering
6 or remaining in any restricted building or grounds without
7 lawful authority or knowingly, with intent to impede government
8 business or official functions, engaging in disorderly conduct
9 on Capitol grounds.

10 The second charge is under Title 40 of the United
11 States Code, Section 5104(e)(2). It is for violent entry and
12 disorderly conduct on Capitol grounds.

13 It is alleged, then, in the affidavit of probable
14 cause that on January 6th, 2021, you and others engaged in the
15 conduct charged in the criminal complaint, that you unlawfully
16 entered the Capitol Building in Washington, D.C., during a
17 joint session of the United States Congress, and that you
18 remained there without lawful authority.

19 It's alleged in the affidavit that you and others
20 were seen engaged in disruptive and disorderly conduct while in
21 the Capitol Building. You were directed to leave and refused
22 and were ultimately arrested.

23 Mr. Hamilton -- well, I'm sorry.

24 Mr. Curzio, do you understand what the charges are
25 and what the allegations are?

1 THE DEFENDANT: Yes. I just don't understand what
2 the, like, max penalties, as you explained it -- I don't
3 understand any of that yet because it hasn't been explained to
4 me. But, yes, I understand.

5 THE COURT: Yes. That's what I was going to ask
6 Mr. Hamilton to tell you just now.

7 Mr. Hamilton, if you could advise him of what the
8 potential penalties are for each of those two charges.

9 MR. HAMILTON: Yes, sir.

10 So if he is convicted as charged in Count One of the
11 complaint -- that is a Class A misdemeanor -- he would be
12 subject to a maximum of one year of imprisonment, a term of
13 supervised release of up to one year, a fine of no more than
14 \$100,000, and there would also be a \$25 mandatory special
15 assessment.

16 As to Count Two -- that's a Class B misdemeanor --
17 the maximum penalty would be up to 180 days of imprisonment.
18 He would also be subject to a one-year term of supervised
19 release, a fine of no more than \$5,000, and a \$10 special
20 assessment.

21 THE DEFENDANT: Could I speak with Ms. Christina
22 Bird?

23 THE COURT: Okay.

24 THE DEFENDANT: Thank you.

25 MS. BIRD: Are you going to put us in a -- okay,

1 there you go -- breakout room?

2 (Pause in proceedings.)

3 COURTRROOM DEPUTY: All right, Chris. You all set?

4 MS. BIRD: All set.

5 THE COURT: Okay. So you heard the potential
6 penalties. The Class A misdemeanor, the potential one-year
7 maximum penalty, that relates to the offense under Title 18,
8 United States Code, Section 1752(a), the knowingly entering or
9 remaining in a restricted building or knowingly, with the
10 intent to impede government business, engaging in disorderly
11 conduct on Capitol grounds.

12 And then the other offense under Title 40 of the U.S.
13 Code, Section 5104, the violent entry and disorderly conduct,
14 is the one with the six-month maximum.

15 Both have a one-year period of supervised release.
16 That's a period where you're not in custody but you're
17 monitored by a probation officer.

18 The Class A misdemeanor has a maximum fine of
19 \$100,000. The Class B misdemeanor has a \$5,000 maximum fine.

20 The Class A has a \$25 special assessment that would
21 be due upon conviction, and the Class B has a \$10 special
22 assessment.

23 Do you understand those potential penalties?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You have a right to represent yourself in

1 these proceedings, but you also have a right to be represented
2 by an attorney.

3 If you can afford to hire an attorney, you're
4 certainly free to hire an attorney of your choice. If you
5 cannot afford to hire an attorney, I can appoint one to
6 represent you. Ms. Bird would then represent you here.

7 The case is pending in the District of Columbia, so
8 when you got there, for proceedings there, they would likely
9 then appoint someone else to represent you up there.

10 Would you like me to appoint an attorney to represent
11 you here?

12 THE DEFENDANT: Sir, if it's okay, I'd like to hold
13 off because I'm in the process of trying to get ahold of a
14 private paid attorney.

15 THE COURT: Well, it's fine, Mr. Curzio, but one
16 thing is I could, if you qualify, appoint Ms. Bird to represent
17 you, and then that wouldn't preclude you in any way from
18 hiring -- excuse me, from hiring an attorney.

19 So she could represent you for these proceedings, and
20 then if, in a few days, you hired your own attorney, that
21 attorney would then just take -- take her place and represent
22 you.

23 THE DEFENDANT: Actually, that's fine, sir. I would
24 go ahead and do that, then.

25 THE COURT: Okay. Do you have any significant source

1 of cash, income, or property?

2 THE DEFENDANT: No, sir. I do have a few people that
3 are willing to help me financially, though. But I -- it -- I
4 don't know how much, but I do have some people that are willing
5 to help me financially.

6 THE COURT: Okay. I'll find that you qualify for the
7 appointment of counsel, and I'll appoint Ms. Bird to represent
8 you.

9 And, now, if you can't or don't end up having the
10 money to hire someone else, then she'll remain your attorney
11 here, like I said, and someone else would represent you up in
12 the District of Columbia.

13 There's -- so there's a few rights you have. You are
14 charged by way of a complaint as opposed to an indictment,
15 which is returned by a grand jury.

16 You have a right to a preliminary hearing. That's a
17 hearing to determine whether there's probable cause to believe
18 you've committed one or more of the offenses that you're
19 charged with.

20 At a preliminary hearing, the government would call a
21 witness to testify about the facts of the investigation. Your
22 attorney could cross-examine the witness. You can also present
23 witnesses on your behalf.

24 Again, this isn't to determine guilt or innocence.
25 It's just to determine whether there's probable cause, enough

1 information to make a reasonable belief that you committed one
2 or more of those offenses.

3 If, before a preliminary hearing occurs, an
4 indictment is returned, then you would not have a preliminary
5 hearing.

6 Because you're in a different district right now and
7 the charges are in the District of Columbia, you could ask that
8 the hearing be held in the District of Columbia. You could
9 also ask that the hearing be held here. We can talk about that
10 in just a moment.

11 You have a right to an identity hearing and
12 production of the warrant, and an identity hearing is a hearing
13 to determine that you are the correct person named in the
14 criminal complaint that has been arrested.

15 The United States would have to show at such a
16 hearing, by sufficient evidence, that there's probable cause to
17 believe you are the correct person.

18 You can, of course, waive that identity hearing and
19 the production of the warrant. That hearing would be conducted
20 here.

21 Under Rule 20 of the Rules of Criminal Procedure, a
22 prosecution can be transferred from one district to another, so
23 it could be transferred from the District of Columbia to this
24 district, if you were agreeing to admit guilt and said so in
25 writing, waive your right to a trial, and also the United

1 States attorney for this district and the District of Columbia
2 agreed to have the case transferred here. And then you would
3 simply be sentenced here.

4 That's just a right you have. You don't have to make
5 any decisions about that.

6 Then you have a right to a detention hearing. That's
7 a hearing to determine whether you're eligible for a bond and,
8 if so, under what terms and conditions, or if you should remain
9 in custody because you are a risk of flight, or risk of
10 nonappearance, or danger to the community or both.

11 That hearing could be conducted here or in the
12 District of Columbia.

13 THE DEFENDANT: Can I ask you a question sir?

14 THE COURT: Yeah.

15 THE DEFENDANT: On what you just said about the
16 hearing, a bond or anything like that, I really have to wait on
17 that with my -- there's no way to do anything like that to see
18 if I can be released because, you know, I don't think that I'm
19 a flight risk or anything like that, and I can actually do
20 better to help myself in going through with the proceedings
21 that will take place.

22 But that's -- that's the only question I have on
23 that, sir.

24 THE COURT: Well, I'll let Ms. Bird, who represents
25 you now, and you decide where and when and if you should

1 request any of these hearings.

2 Let me start by asking the government what its
3 position is on the issue of a bond hearing, and then I'll come
4 back to Ms. Bird and ask her about all of the hearings I
5 mentioned to you.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Hamilton?

8 MR. HAMILTON: Your Honor, I -- I am going to move
9 for pretrial detention of Mr. Curzio.

10 I don't think I can make a substantial case that he's
11 a flight risk, but I believe there is clear and convincing
12 evidence that he is a risk of harm to the community. And on
13 that basis, specifically Title 18, U.S. Code, Section
14 3142(f)(2), I would move for his pretrial detention.

15 THE COURT: Do you plan to go forward with that? Are
16 you prepared to go forward today?

17 MR. HAMILTON: I'm prepared to go forward today, Your
18 Honor, or in the future, at the Court and defense's
19 availability.

20 THE COURT: Okay. Ms. Bird, so of the several
21 potential hearings, what do you say, preliminary hearing, the
22 identity and warrant production, and --

23 MS. BIRD: Your Honor, I spoke --

24 THE COURT: -- detention?

25 MS. BIRD: I'm so sorry.

1 I spoke with my client, and he's very interested in
2 having private counsel. So I advised him that really these are
3 the type of hearings that you get one shot at it. So if
4 there's a preliminary hearing or a bond hearing, he has the one
5 hearing and not another hearing.

6 So when we spoke, he was inclined to wait until that
7 attorney was able to represent him in the matter and defer on
8 the issues of waiving the hearings that he has a right to have.

9 THE COURT: Well, we could -- we could schedule to
10 reconvene on Tuesday, and that would give him a couple of days
11 to decide on counsel, consult counsel, and make a decision
12 about the hearings then.

13 And if he doesn't retain counsel, then you can meet
14 with him and advise the Court whether and how you'd like to
15 proceed.

16 MS. BIRD: That would be okay, Your Honor.

17 Let me see. What time on Tuesday? I'm just -- I
18 know I have an appointment.

19 THE COURT: We can -- well, let's see.

20 MS. BIRD: I know it's the Court's schedule, and I
21 don't -- but if it could be in the afternoon, that would be
22 more helpful.

23 THE COURT: Well, would you have time to do it after
24 the competency hearing we have scheduled?

25 MS. BIRD: Yes. That should be a really brief

1 hearing, so I should be able -- I should be able to do it then.

2 THE COURT: It's up to you. We could do it in the
3 afternoon also at 3:30, so either 9:30 or 3:30.

4 MS. BIRD: Well, in all honesty, 3:30 would probably
5 be best for me just because it will give me more time to
6 prepare, and I'm going to be out of town for a few days.

7 THE COURT: Okay. Does that sound reasonable,
8 Mr. Curzio? That would give you some time to hire an attorney,
9 if that's your plan. Otherwise, it will give you time to meet
10 and confer with Ms. Bird to go forward on what you'd like to go
11 forward on.

12 Do you need any time to talk with her now or --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You need to talk with her again before we
15 conclude for the day?

16 THE DEFENDANT: Yes, sir, if that would be okay.

17 (Pause in proceedings.)

18 THE COURT: Ms. Bird, what do you say?

19 MS. BIRD: So we're in the same posture, Your Honor.
20 We just want to wait until Tuesday. Either Mr. Curzio will
21 hire an attorney, or I will be back talking to him again before
22 the hearing, and we will go from there.

23 THE COURT: Okay. All right, Mr. Curzio. You'll
24 remain in custody until at least Tuesday when that next hearing
25 is conducted.

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CERTIFICATE OF OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT)
MIDDLE DISTRICT OF FLORIDA)

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

DATED this 25th day of February, 2021.

s/Shelli Kozachenko
Shelli Kozachenko, RPR, CRR, CRC
Official Court Reporter

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA, Ocala, Florida
 Plaintiff, Case No. 5:21-mj-1009-PRL
-vs- January 19, 2021
MICHAEL CURZIO, 4:38 p.m.
 Defendant. Courtroom 1A

**DIGITALLY RECORDED INITIAL APPEARANCE (RULE 5c) AND BOND
HEARING (VIA ZOOM)
BEFORE THE HONORABLE PHILIP R. LAMMENS
UNITED STATES MAGISTRATE JUDGE**

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(Proceedings recorded by electronic sound recording;
transcript produced by computer.)

P R O C E E D I N G S

1
2 January 19, 2021

4:38 p.m.

3 - - -

4 THE COURT: All right. Good afternoon.

5 This is Case No. 5:21-mj-1009, United States versus
6 Michael Curzio.

7 Mr. Hamilton represents the United States.

8 Mr. Curzio is represented by Ms. Bird, our assistant federal
9 public defender.

10 Since last week, Mr. Curzio, the District of Columbia
11 has filed a new charging document against you. It's called an
12 information. It now includes four distinct counts or four
13 distinct charges.

14 I'm going to ask the government to go over the
15 charges against you and the possible penalties for each of
16 them.

17 Mr. Hamilton, if you'll do that one at a time.

18 MR. HAMILTON: Yes, Your Honor.

19 So, Your Honor, the -- one moment. I'm sorry. I'm
20 experiencing some small technical difficulties.

21 So, Your Honor, the information charges Mr. Curzio
22 with four separate counts.

23 Count One charges that on or about January 6th of
24 this year, in the District of Columbia, he, together with five
25 others, knowingly entered and remained in the U.S. Capitol

1 without lawful authority to do so. This is in violation of
2 Title 18, U.S. Code, Section 1752(a)(1).

3 Count Two charges, on the same date and place, that
4 he knowingly, and with intent to impede and disrupt the orderly
5 conduct of government business, engaged in disorderly and
6 disruptive conduct and within such proximity to the Capitol so
7 that such conduct did, in fact, impede and disrupt the conduct
8 of government business. This is in violation of Title 18, U.S.
9 Code, Section 1752(a)(2). That's Count Two.

10 Count Three charges that on or about January 6th of
11 this year, in Washington, D.C., that he, together with five
12 others, willfully and knowingly engaged in disorderly and
13 disruptive conduct within any of the Capitol buildings with the
14 intent to impede, disrupt, or disturb the conduct of a session
15 of Congress or either house of Congress. This is in violation
16 of Title 40, U.S. Code, Section 5104(e)(2)(A).

17 Count Four charges again that on January 6th of this
18 year, in the District of Columbia, he, together with five
19 others, willfully and knowingly paraded, demonstrated, and
20 picketed within a Capitol Building. This is in violation of
21 Title 40, U.S. Code, 5104(e)(2)(G).

22 As to maximum penalties, Your Honor, Counts One and
23 Two have the same maximum penalties, and those penalties -- and
24 this is the penalty for both Count One and Count Two. It's up
25 to one year of incarceration per count, a fine of up to

1 \$100,000 per count, a term of supervised release of up to one
2 year, again, per count, and then a \$25 special assessment per
3 count.

4 Now, Counts Three and Four also have the same maximum
5 penalties. And those penalties are 180 days of incarceration
6 per count, a fine of no more than \$5,000 per count, a term of
7 supervised release of up to one year per count, and, again, a
8 \$10 mandatory special assessment per count.

9 THE COURT: Thank you, Mr. Hamilton.

10 MR. HAMILTON: Thank you, Your Honor.

11 THE COURT: Mr. Curzio, do you understand the charges
12 in each of the four counts?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And the potential penalties, the maximum
15 term of imprisonment of one year on Counts One and Two and six
16 months on Counts Three and Four, as well as the fines and
17 special assessments and supervision that the prosecutor
18 mentioned?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. The case was set for a bond
21 hearing. The case is pending in the District of Columbia, as
22 I've mentioned before. That case number is 21-mj-12.

23 You can request your bond hearing be conducted here
24 or in the District of Columbia. You should know that the
25 outcome of the hearing here could be overruled by the District

1 of Columbia, and if you got a bond hearing here, you couldn't
2 then ask for a separate one before a magistrate judge in the
3 District of Columbia. So in a sense you get one bite at the
4 apple.

5 Ms. Bird, are you prepared to go forward? I think
6 the government was seeking detention.

7 MS. BIRD: Yes, Your Honor.

8 THE COURT: Mr. Hamilton, do you want to proceed,
9 then?

10 MR. HAMILTON: I will. I need to share with the
11 Court a -- some updated information I received about the
12 standard for detention in this case.

13 As you know, it's not -- it's relatively uncommon for
14 us to have misdemeanor charges before the Court. I had
15 previously stated that we would be proceeding primarily based
16 on risk of harm to the community.

17 I have since learned that Mr. Curzio -- due to the
18 nature of the charges as misdemeanors that are not considered
19 crimes of violence under the categorical approach, he is
20 eligible for detention only upon a showing that he is a flight
21 risk.

22 So that would be -- so just to clarify that, with
23 leave of the Court, I would like to proceed by proffer at this
24 point.

25 Your Honor, I -- I'll start by going through the

1 statutory factors for detention. I'd like to start with the
2 nature and circumstances of the offense.

3 The defendant is currently charged with four
4 misdemeanor offenses with a maximum penalty of -- would be a
5 total of three-and-a-half years in prison, about four years of
6 supervised release.

7 But the circumstances of the offense are much broader
8 than the charges on the information indicate.

9 THE COURT: I mean --

10 MR. HAMILTON: Yes?

11 THE COURT: I don't mean to interrupt, but it would
12 be one year on Count One. The Court could then sentence him to
13 an additional year on Count Two.

14 MR. HAMILTON: Yes, sir.

15 THE COURT: And then six months on Count Three and
16 six months on Count Four?

17 MR. HAMILTON: Yes, Your Honor. That's correct. It
18 would be three years, not three-and-a-half. I misspoke. Thank
19 you, sir.

20 THE COURT: Yeah. But he could get up -- he could
21 get sentenced to three full years. I mean, it could end up
22 being three full years.

23 MR. HAMILTON: Yes. If the sentencing court decided
24 to impose all of the sentences consecutively, that would be the
25 maximum, yes, sir.

1 THE COURT: Okay.

2 MR. HAMILTON: As the Court and, I think, most
3 members of the American public are aware, on January 6th you
4 had a joint session of Congress presided over by the Vice
5 President of the United States. They had to be suspended, and
6 congressional chambers had to be evacuated hurriedly.

7 Based on publicly available information, no fewer
8 than five people lost their lives during the riot that
9 transpired immediately afterward, including a D.C. Capitol
10 Police officer who was apparently bludgeoned to death during
11 the disruption.

12 Congressional offices were broken into. Potentially
13 sensitive material and equipment was stolen.

14 Based on the significant loss of human life,
15 including the loss of life of a law enforcement officer trying
16 to restore order, severe disruption of critical functions of
17 the federal government at a critical time -- and I think we can
18 fairly say that the circumstances of this crime,
19 notwithstanding the specific charges against Mr. Curzio, are
20 among the most severe in recent U.S. history.

21 Mr. Curzio, as we know from the probable cause
22 affidavit, was part of one of the groups that was inside the
23 Capitol Building, a group that the police saw firsthand and was
24 throwing objects and spraying officers with unknown pollutants.
25 Based on this information, he was an active participant in

1 these events.

2 As to the second factor -- that's the weight of the
3 evidence against the person -- again, as detailed in the
4 probable cause affidavit, the officer directly witnessed Curzio
5 at the forefront of a group that was engaging in violent
6 destructive behavior, having broken into the U.S. Capitol, and
7 apparently battering law enforcement officers through thrown or
8 sprayed projectiles.

9 Law enforcement officers who witnessed the
10 defendant's crime firsthand ordered him to stop, and he then
11 refused.

12 There are dozens if not hundreds of civilian
13 eyewitnesses to this offense, but probably the strongest thing
14 in terms of the weight of the evidence against Mr. Curzio is
15 when he was arrested by the FBI late last week, while he was in
16 custody, he spontaneously stated to the FBI officer that he was
17 present at the D.C. riots, he was inside the Capitol Building,
18 that he knew he was not supposed to be there, and that the
19 police officer told him to leave, and he didn't.

20 Now, he was in custody at the time, but per the FBI
21 agent, these were spontaneous statements, not in response to
22 any questioning. I expect they'll be admitted in evidence if
23 Mr. Curzio elects to proceed to trial on these offenses, and I
24 expect, entirely just on that basis, he'll be convicted as
25 charged.

1 Notwithstanding firsthand law enforcement witness
2 testimony, I think the weight of the evidence against
3 Mr. Curzio is extremely strong.

4 Now, as for the history and characteristics of the
5 person, I think Mr. Curzio has demonstrated that he does not
6 have much respect for other people's persons or property or the
7 law. As the Court's aware from the pretrial services report,
8 he was convicted in 2012 or 2013 for attempted first-degree
9 murder with a firearm. He served an eight-year Florida prison
10 term for that offense.

11 The facts of that offense were that he shot the
12 victim in the chest, resulting in that victim's paralysis. He
13 did not have any term of supervision to follow. There wasn't
14 any probation following his release from prison.

15 But at the time of this offense, January 6th, he had
16 been out of prison for his attempted first-degree murder with a
17 firearm conviction for less than two years. He was released in
18 February of 2019 and was arrested for this January 6th of this
19 year.

20 Now, Mr. Curzio was not idle while he was in Florida
21 State Prison. As is detailed in the pretrial services report,
22 Mr. Curzio was interviewed September 18th, 2018, by Florida
23 Department of Corrections personnel. He admitted being a
24 member of a violent white supremacist gang called The
25 Unforgiven that operates in and outside of the prison system.

1 He said he had been a member since at least 2015 and that he
2 joined because he was, quote, like-minded.

3 He also had tattoos associated with that gang that
4 were documented and photographed by the Florida Department of
5 Corrections intelligence division. That includes swastikas
6 with the symbol of the Nazi Germany SS paramilitary force on
7 the backs of both of his arms.

8 When he was arrested by the FBI, he had a pendant
9 that was described to me as being sort of a Thor's hammer type
10 of pendant that's also associated with white power prison
11 gangs.

12 Per, of course, the updated presentence report
13 [verbatim] that was provided to the Court after the filing of
14 the information, Mr. Curzio is evidently a regular recreational
15 drug user, admitted to using marijuana continuously since -- I
16 believe he admitted to up to December of last year.

17 Most troublingly, though, is pretrial services,
18 despite having at this point five or six days to verify his
19 information, has not been able to make contact with anyone that
20 can verify where he would stay, any of the background
21 information, psychiatric history, or other information, or
22 anyone that could serve as a third-party custodian.

23 Despite repeated attempts to contact relatives,
24 friends, roommates, no one has returned, as I understand it,
25 any of the phone calls from pretrial services.

1 So what I would suggest we have here, Your Honor, is
2 despite these are misdemeanor charges, we have an individual
3 who was present and an active participant in a major, severe
4 crime in which multiple people died and functions of the
5 federal government were significantly impeded, for a time at
6 least.

7 And we have no way really to verify his living
8 situation, what individuals would be available to verify that
9 he's able to make appearances at his future court dates, either
10 here or in Washington, D.C., on these charges. He's admitted
11 to recreational drug use. He has a severe criminal history.

12 To me, what that suggests is that he is a significant
13 flight risk, not only because he's facing additional years in
14 prison but because he has a long history, I would argue, of
15 disregarding the law, and that would include the orders of
16 courts. And I don't think he's a good candidate for pretrial
17 release on that basis.

18 Now, in the alternative, if the Court feels that's an
19 insufficient basis to order Mr. Curzio's detention, I would
20 like to recommend an alternative set of release conditions.

21 And what I would recommend that the Court impose, if
22 you're not inclined to order detention, is I would ask for a
23 signature bond of no less than \$40,000, a prohibition from
24 owning any firearms or dangerous weapons -- he should already
25 be subject to these penalties as a convicted felon, but I don't

1 think it would hurt to add it as a condition.

2 I would ask that he be specifically ordered not to go
3 to Washington, D.C., unless he is given notice to go to an
4 in-person court hearing in Washington, D.C. I would also ask
5 that his travel be restricted, that he not be permitted to
6 travel outside the Middle District of Florida without the prior
7 approval of pretrial supervision.

8 Per pretrial's recommendation, I would ask that he be
9 subject to home detention, including GPS monitoring if the
10 Court feels that's appropriate. I echo their concerns on that
11 front, and I think that's a good recommendation. I would also
12 recommend that a curfew be imposed from 9:00 p.m. to 6:00 a.m.
13 as part of that home detention.

14 I would ask that all travel documents be surrendered.
15 It appears from the pretrial services report that he indicated
16 he has no passport. I would request that the Court order that
17 he surrender any passport he may have and be prohibited from
18 applying for any new travel documents or passports.

19 Your Honor, those would be the conditions I would
20 recommend in lieu of detention, if that's what the Court is
21 inclined to impose, but what I am asking for, on the basis of
22 flight risk, is that he be detained pending resolution of this
23 case.

24 THE COURT: Just give me one minute, okay, Ms. Bird?

25 MS. BIRD: Yes, sir.

1 THE COURT: What makes you think danger to the
2 community isn't a basis for detention, given the court's broad
3 application of the Bail Reform Act in *U.S. versus Megahed*?

4 THE DEFENDANT: Your Honor, can I have a minute with
5 Ms. Bird?

6 THE COURT: Sure.

7 THE DEFENDANT: Thank you.

8 COURTROOM DEPUTY: One moment.

9 (Pause in proceedings.)

10 THE DEFENDANT: I see the judge.

11 COURTROOM DEPUTY: You want to try it again?

12 THE DEFENDANT: Pardon?

13 COURTROOM DEPUTY: You left and then you came back.
14 Do you need me to resend it?

15 THE DEFENDANT: Yes, please.

16 COURTROOM DEPUTY: Chris is in there so I've got to
17 get her out.

18 THE DEFENDANT: Yes, ma'am.

19 Sorry, Chris. My bad.

20 MS. BIRD: Are we back?

21 THE DEFENDANT: No, ma'am. I --

22 COURTROOM DEPUTY: I had to redo it for the jail.
23 Can you try again, please.

24 (Pause in proceedings.)

25 COURTROOM DEPUTY: All right. Ms. Bird?

1 MS. BIRD: I'm back.

2 THE COURT: All right. You all set?

3 MS. BIRD: Yes.

4 COURTROOM DEPUTY: Okay. Just one moment.

5 (Pause in proceedings.)

6 THE COURT: I asked, Mr. Hamilton, because the Court
7 has held in *Megahed* that while the Bail Reform Act lists
8 certain offenses under which a court shall have a hearing, that
9 that doesn't preclude it from having a hearing in other types
10 of cases.

11 The court, in *Megahed*, said, for example, "The court
12 generally needs no authority or specific grant in order to hold
13 a hearing. No reason exists to believe that Congress conceived
14 the requirement of a hearing in one circumstance to
15 simultaneously and silently forbid a hearing in any other
16 circumstance."

17 The court held that it cannot concur in any
18 interpretation that says otherwise which would "torture words
19 forbidding release without a hearing in certain cases if the
20 government seeks a hearing into words that forbid detention in
21 any other case involving any other charge and every other
22 offender despite imminent danger to the public."

23 MR. HAMILTON: *Megahed* is an Eleventh Circuit
24 decision, correct, Your Honor?

25 THE COURT: No. It's a district court opinion from

1 2007.

2 MR. HAMILTON: Yes, sir.

3 THE COURT: And there's a -- albeit another district
4 court opinion written by a magistrate judge out of the Western
5 District of Virginia applying *Megahed* to Class B misdemeanors,
6 which two of these charges are, and saying, "While some
7 circuits disagree" -- not the Eleventh. I don't know if the
8 Eleventh speaks to it.

9 But, "While some circuits disagree, the Court takes
10 the broad reading of *Megahed* to mean that the Court can conduct
11 a bond hearing and consider both risk of flight and danger to
12 the community in a Class B misdemeanor." I would submit you
13 could do so then also in a Class A misdemeanor, which two of
14 these charges are.

15 And Title 18 of the United States Code, Section 3156,
16 which defines the terms in the Bail Reform Act, doesn't limit
17 the term "offense" to only felony offenses. The term "offense"
18 means any criminal offense, other than a court-martial or
19 military commission, which we're not dealing with, which is in
20 violation of an act of Congress and is triable in any court
21 established by act of Congress.

22 So there -- we're dealing with acts of Congress in a
23 court created by Congress.

24 In any event, I don't know that your argument would
25 differ, but I just mention that for Ms. Bird's benefit. I'm

1 not sure that danger to the community is not a factor the Court
2 would consider.

3 MR. HAMILTON: I understand.

4 My understanding, from the guidance I received, was
5 that it couldn't be the sole basis for the Court to order his
6 detention. I think there has to be at least a threshold --
7 threshold showing of a flight risk. But that was -- that was
8 my understanding.

9 In light of the *Megahed* decision and the Court's
10 explanation, I stand corrected.

11 THE COURT: Unless the circuit court says otherwise.
12 But, Ms. Bird?

13 MS. BIRD: Yes, Your Honor.

14 I think that on both prongs, the government has not
15 met its burden in this case. I can tell you, with regard to
16 the risk of flight, I think basically the government almost
17 conceded at the last hearing that it didn't think it would be
18 able to make that prong, although it did revise its opinion on
19 that today.

20 Clearly my client has significant ties to this area,
21 which is why we were requesting the detention hearing in this
22 area.

23 He's been in Summerfield, Florida, since 2008. He
24 works in that area. He has cousins, a roommate, family in the
25 Summerfield area. He lives on the property that is adjacent to

1 his father's. It's like the same property but a different home
2 where they live together, so he has significant family ties.
3 He has no contacts with any other -- you know, extensive
4 contacts with any other jurisdiction.

5 Although the government has indicated that pretrial
6 services has made repeated attempts to contact the father, I
7 can tell you that his family has been busy trying to assist him
8 in hiring an attorney and have met and sat down with an
9 attorney in the attorney's office. So they clearly are trying
10 to assist him in any manner that they can. He also has contact
11 with his sister on a regular basis.

12 He has a valid license that reflects the same
13 address, date of birth, Social Security number as reported to
14 pretrial services.

15 He's also employed. He works in the area. Actually
16 when he was picked up, he was driving from his job on Route 42
17 on his way back to his home.

18 And he's a handyman. He makes about \$1,700 a month.
19 He's able to take care of himself. He's also worked in
20 trucking as a truck driver and in construction and waste
21 management.

22 And, significantly, he has a license through the
23 Department of Transportation that requires a physical. It's a
24 Class B license, and he's scheduled to take that physical later
25 on this week, so he has goals that he needs to achieve if he is

1 released on pretrial release.

2 He has some assets, and significantly, I will -- I'll
3 tell the Court that there's really no evidence that he's not
4 going to appear in this case.

5 They gave him a notice to appear, actually, when he
6 was in the District of Columbia, to appear on a date in June of
7 2021 and then later on decided to do a more custodial arrest.

8 Nothing in his health or his substance abuse history
9 would suggest that he would fail to appear. He had, I think,
10 ADHD when he was a child. He has no history of any psychotic
11 behavior, no history of visual or auditory hallucinations.

12 He has one prior incident back in 2003 -- that is 17
13 years ago -- where he was released within 24 hours. And, of
14 course, the Court could address any concern on that matter
15 (unintelligible) with conditions.

16 Although he does admit that he consumes alcohol, he
17 consumes alcohol once -- once a week maybe in (unintelligible)
18 settings. And although he had smoked marijuana on a regular
19 basis, that is something that could be addressed because he's
20 willing to participate in substance abuse treatment if he was
21 released on bond.

22 There's really nothing that -- in your standard
23 reflection on this case -- these are misdemeanor offenses. The
24 maximum possible penalty that he receives would be three years,
25 followed by supervised release.

1 But, of course, now, he could receive much less of a
2 sentence. There would probably be some sort of negotiations
3 (unintelligible), and then the guidelines should give him some
4 relief from that maximum penalty.

5 With respect to his criminal history, the government
6 went on saying that he had a long criminal history. The truth
7 of the matter is he has a traffic citation from January 31st,
8 2005. He has another traffic citation from July 28th, 2006,
9 and then he has this arrest here.

10 He has one prior felony, an attempted first-degree
11 murder that happened in 2012, for which he did eight years in
12 prison and was released. And since his release, he's been
13 trying to get his life back together by working, keeping his
14 license, and doing all those other matters.

15 He does not have an extensive, lengthy history. He
16 has no history that the government could point to
17 (unintelligible) where he failed to appear for court or that he
18 violated any kind of probation.

19 It looks here, with these traffic (unintelligible)
20 that he had, that he was able to complete those conditions and
21 was able to do what he needed to do to get his license back.

22 The government also mentions -- although I -- and I
23 suppose, if we're talking about danger to the community, he has
24 connections with The Unforgiven and talked about his verifying
25 that he became part of The Unforgiven while he was in the

1 Bureau of Prisons [verbatim].

2 However, there's no real -- I mean, what you're not
3 hearing is that there's any disciplinary referral or any action
4 that he took for any violence or any failure to obey commands
5 while he was in prison. Simply the matter is that he's a
6 member of this gang, who many people would find offensive,
7 Unforgiven.

8 But there's nothing connected with that suggesting
9 that that -- that this incident's related to Unforgiven or
10 that -- that he took any action that was dangerous based on his
11 affiliation with this.

12 I'm not an expert on prisons and how things work in
13 prison, but I do know people get affiliated because there's
14 dangers in prison that they face, and sometimes that's the
15 reason that they're affiliated. And perhaps he was
16 like-minded, and while you might not like that, that's not a
17 reason to find that he's a danger.

18 Now, we haven't even heard that Unforgiven, the gang
19 itself, has created any (unintelligible), other than having
20 offensive attitudes to minorities and different -- people of
21 different backgrounds.

22 Although he does have that one offense, he does not
23 have an extensive history of criminal conduct. He has a family
24 that's supportive, trying to hire him an attorney.

25 He would dispute the facts, as set forth by the

1 government, that he took place in any -- took part in any
2 violent action while he was at the Capitol. I'm not sure where
3 the government got that evidence.

4 He indicated he was not violent, although he did
5 admit and apparently was cooperative with law enforcement when
6 they asked him -- or when he was arrested, I should say, near
7 his home on (unintelligible) for the warrant on the misdemeanor
8 offenses.

9 I don't think that my client would object to the
10 additional conditions that the government proposed if the
11 Court's inclined to release my client, but I don't see that the
12 government has shown that he's a risk of flight and also -- or
13 a danger to the community. And certainly here -- you know,
14 not locally.

15 The Court can restrict his travel if the Court's
16 worried about additional protests and additional rioting or
17 anything like that. You know, all those conditions would be
18 fine, but it doesn't seem to me that the government's met its
19 burden in this case.

20 THE COURT: Mr. Hamilton?

21 MR. HAMILTON: Just by way of rebuttal, Your Honor, I
22 would say I'm not really in a position to give a detailed
23 presentation on the scope of criminal activity of the
24 particular white supremacist gang in question.

25 But my understanding is they are significant in scope

1 and have been associated with a wide variety of criminal
2 activity, both violent and drug related, and are not simply a
3 club that expresses white supremacist opinions. They are a
4 fully fledged criminal gang in the Florida prison system and
5 outside of it.

6 So I -- I'm not in a position to make a detailed
7 presentation on their activities or anything like that today,
8 and I don't think that -- I don't think that's something that
9 would normally be seen at a detention hearing.

10 What I can tell you is they have a well-established
11 reputation for violence and illegal activity and that
12 Mr. Curzio, in September of 2018, freely admitted his
13 involvement with them and that he was of a like mind with them.

14 Otherwise, I'll stand on my prior arguments.

15 THE DEFENDANT: Can I speak with Ms. Bird again,
16 please, Your Honor?

17 THE COURT: You may.

18 THE DEFENDANT: Thank you.

19 (Pause in proceedings.)

20 COURTROOM DEPUTY: All right. Ms. Bird, you all set?

21 MS. BIRD: Yes.

22 COURTROOM DEPUTY: All right. Just one moment.

23 Mr. Hamilton?

24 Oh, you're muted.

25 MR. HAMILTON: I'm ready.

1 COURTROOM DEPUTY: Thank you.

2 THE COURT: Ms. Bird, anything further before I
3 proceed?

4 MS. BIRD: Yes, Your Honor.

5 My client just wanted to speak to the gang
6 affiliation. And what he did is he -- he reiterated to me
7 that -- that when he made those admissions regarding a gang
8 affiliation, he also told that officer that he was affiliated
9 because of the situation he found himself in. He was tired of
10 being beaten up and tired of being -- you know, having a hard
11 time being abused in prison.

12 And that what he -- you know, once he was released
13 from prison, he is not associated with the gang. He is not a
14 gang member. He says, in fact, it had really nothing to do
15 with being like-minded, that he actually has family members
16 that are interracial, you know, half black, that he loves and
17 cherishes his black friends. He said it was a situational
18 thing, and -- and he wanted the Court to be aware of that.

19 And I would just point out again that I don't know
20 anything about Unforgiven, but I would just say that there's
21 nothing on his record, no DRs, nothing to indicate that my
22 client acted in a violent manner as a result of his affiliation
23 (unintelligible) when he was in the (unintelligible).

24 THE COURT: All right. Thank you, Ms. Bird.

25 Just give me a minute or two, okay?

1 MS. BIRD: Okay.

2 (Pause in proceedings.)

3 THE COURT: In determining whether a bond would
4 issue, the Court starts with the standards.

5 The government, if it seeks your detention, as it
6 has, must show by a preponderance of the evidence -- that's not
7 an overwhelming amount of evidence -- that you are a risk of
8 flight or a danger of nonappearance at future proceedings, or
9 by clear and convincing evidence -- a higher standard than a
10 preponderance of the evidence but not as high as proof beyond a
11 reasonable doubt -- so by clear and convincing evidence that
12 you're a danger to the community.

13 In making that determination, the Court considers
14 various factors. The nature and circumstances of the offense
15 charged and the weight of the evidence are two of the most
16 important factors. Ties to the community and employment and
17 criminal history are other important factors.

18 The nature and circumstances of the offense charged
19 are significant. While Counts One and Two are Class A
20 misdemeanors and Counts Three and Four are Class B
21 misdemeanors, the charges don't exist in a vacuum.

22 This isn't a case charged where, for example, it's
23 alleged that an individual went into an empty government
24 building or explored a restricted area in a reckless way.

25 The conduct here has a setting. The setting, as the

1 government reminds us and as we all know, is that the Vice
2 President, meeting with the House of Representatives and the
3 United States Senate, were in session conducting the business
4 of the United States when individuals, including, as alleged in
5 the information, Mr. Curzio and others, entered the United
6 States Capitol; as charged, entered and remained in a
7 restricted area; and, as charged, did so while engaging in
8 disorderly and disruptive conduct and, according to the
9 affidavit, refused to leave when directed to.

10 He didn't just happen to be in the area or just
11 didn't happen to be in Washington, D.C. He had to travel from
12 Florida, and he had to travel over 800 miles to get to D.C. to
13 engage in the conduct that's alleged in the information.

14 Moreover, he had to do so after being released from
15 prison less than two years earlier on truly significant
16 charges.

17 The conduct alleged isn't just about breaking the
18 law. The conduct alleged has to do with challenging the very
19 existence and establishment of the law.

20 For whatever reason, pretrial services wasn't able to
21 corroborate the defendant's family ties, though the Court takes
22 those to be true, that he does have family here.

23 Counsel says he's been living in the area since 2008,
24 which may be right, but from 2012 until 2019 he was in custody.

25 In terms of danger, it's also noted that in addition

1 to that significant criminal history -- and not in terms of
2 numbers of convictions; I don't think that's what the
3 government meant, but in terms of the seriousness of the prior
4 conviction. I've seen many cases with multiple prior
5 convictions, but we all could acknowledge that we don't often
6 see prior convictions for attempted murder.

7 While in custody, it's undisputed that he became a
8 member of a gang that's referred to as a white supremacist
9 gang. That doesn't seem to be in dispute. Perhaps he's no
10 longer a member.

11 The weight of the evidence is also compelling. Not
12 only do you have the affidavit of the Capitol Police officer,
13 but you have the proffer that the defendant admitted to his
14 participation, his involvement, to knowingly being there,
15 entering the Capitol, and remaining despite being directed to
16 leave.

17 He does face three years in prison, not an
18 insignificant amount of time to spend in prison by any means.

19 For all of those reasons, I do find that the
20 government has met its burden to show that there is clear and
21 convincing evidence that the defendant poses a risk to the
22 safety of the community and that there is a preponderance of
23 the evidence that there is a serious risk of nonappearance.

24 The defendant will be remanded to the custody of the
25 marshals, transported to the District of Columbia, where the

1 charges are pending and where he'll have an opportunity to
2 proceed there.

3 Anything else for the defense?

4 MS. BIRD: No, Your Honor.

5 THE COURT: Mr. Hamilton, for the United States?

6 MR. HAMILTON: No, Your Honor, nothing further.

7 THE COURT: All right. We'll be in recess, then.

8 COURT SECURITY OFFICER: All rise.

9 (The proceedings were concluded at 4:46 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT)
MIDDLE DISTRICT OF FLORIDA)

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

DATED this 25th day of February, 2021.

s/Shelli Kozachenko
Shelli Kozachenko, RPR, CRR, CRC
Official Court Reporter