

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

UNITED STATES OF AMERICA

v.

CHRISTOPHER WORRELL,

Defendant.

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Case No: 21-MJ-292 RCL

**OPPOSITION TO
DEFENDANT’S SECOND EMERGENCY MOTION FOR RECONSIDERATION**

The government respectfully opposes defendant Christopher Worrell’s second emergency motion for reconsideration of Chief Judge Howell’s March 19, 2021 order detaining Worrell prior to trial.

Worrell raises three arguments: that he is being denied prescription medication aimed at treating his non-Hodgkin’s lymphoma; that he is not being permitted to see an outside oncologist; and that he is vulnerable to a second COVID-19 infection. The first and third arguments closely mirror those raised by Worrell in his first motion for reconsideration, which he filed on March 26, 2021. Chief Judge Howell denied that motion after an April 6, 2021 hearing. For the reasons described below, Mr. Worrell’s allegations do not merit reconsideration of Chief Judge Howell’s March 19 detention order any more than they did in late March when he raised similar arguments. The second argument, meanwhile, is factually incorrect.

FACTUAL AND PROCEDURAL BACKGROUND

I. Dangerousness.

The facts establishing Mr. Worrell’s dangerousness, and hence the appropriateness of his detention generally, are spelled out in detail in the government’s prior detention-related filings: its initial memorandum in support of detention (Dkt. 9); its memorandum in opposition to

Worrell's first motion for reconsideration (Dkt. 19); and the government's subsequent response to Chief Judge Howell's minute order regarding the D.C. Circuit's *Munchel* opinion (Dkt. 24). *See United States v. Munchel*, 2021 WL 1149196 (D.C. Cir. Mar. 26, 2021). The government incorporates those factual proffers by reference, but does not repeat them here. The most salient facts found by Chief Judge Howell in her March 19 detention order are as follows:

- Worrell's "participation in the mob was planned, calculated and intentional." Dkt. 13 at 5.
- Worrell, a self-avowed Proud Boy, traveled to the U.S. Capitol on January 6, 2021 with other members of the Proud Boys and armed with a tactical vest, pepper spray, and radio communications device. *Id.*
- Worrell then "discharged pepper spray gel directed at a thin police line keeping the rioters from entering the Capitol via the West Plaza." *Id.*
- Worrell's criminal history includes a 2009 arrest for impersonating a law enforcement officer, which involved "intimidating conduct towards a total stranger in service of taking the law into his own hands" and was "a significant backdrop" in evaluating Worrell's dangerousness. *Id.* at 7. In that incident, Worrell "displayed a gold colored badge" to a young female driver, then "tailed" the driver "as if attempting to pull her over"; she escaped by entering a local business's parking lot. *Id.* at 6. Worrell was arrested and found with a badge, firearms, pepper spray, knives, and handcuffs in his vehicle. *Id.* at 7.
- On the day of his arrest in this case, Worrell "refused to turn himself in, as directed by the FBI, to the nearest FBI office when he was three hours away from his home heading to a Proud Boys camping trip." *Id.* at 7.

- When Worrell was arrested, he “commented to the FBI agents that he knew the name of the tipster and stated a name, as if seeking confirmation, and further, stated that if he were to find out the name of the Twitter user who exposed his identity online, the FBI ‘would be coming for [him] again,’” comments that Chief Judge Howell believed “raise serious and troubling signals about defendant’s willingness to comply with release conditions to not intimidate or threaten any prospective witness.” *Id.*

II. Worrell’s Medical History

When he was arrested, Worrell reported to the pretrial services office in the Middle District of Florida that he had been diagnosed with non-Hodgkin’s lymphoma in 2007. Worrell also reported that he at one time received chemotherapy and radiation treatment for that cancer. The government is currently not aware of Worrell receiving either form of treatment recently. Worrell did not mention his underlying condition at the initial detention hearing. *See* Ex. 1 (Tr. of Apr. 6, 2021 Hr’g) at 17.

On March 26, 2021, in a filing that closely mirrors his most recent motion for reconsideration, Worrell filed what he styled an emergency motion for reconsideration of Chief Judge Howell’s March 19 detention order. *See* Dkt. 16. Worrell argued that (1) his requests for two of his required medications had been denied by the Charlotte County Jail, where he was detained pending transit to D.C.; and (2) his non-Hodgkin’s lymphoma made him highly vulnerable should he contract COVID-19. Dkt. 16-1. Worrell attached to that motion the same March 24, 2021 affidavit from Dr. Rucker that he has attached here. *See* Dkt. 16-4; Dkt. 47-4. Worrell sought a specially formulated prescription cream and a low-dose prescription for naltrexone.

The government then sought information from the Charlotte County Jail, which informed the government that the jail's medical staff had attempted to reach Dr. Rucker for more than two weeks by calling four different numbers. Dkt. 19-1 at 3. Dr. Rucker had not returned their calls. Upon learning that Dr. Rucker had not yet responded to the jail, the government immediately informed both defense counsel (via email) and the Court (in its opposition) that the Charlotte County Jail was waiting to hear back from Dr. Rucker regarding the prescriptions. Dkt. 19 at 2-3, 4-5. Dr. Rucker then communicated with the jail's medical staff.

At the April 6, 2021 hearing on Worrell's motion, the government proffered the following further facts:

- Worrell's compounded cream prescription had expired on March 5, 2021, one week before he was arrested on March 12, 2021. *Id.* at 11.
- Worrell had stated that he had a partial bottle of that cream at his residence. Worrell was informed by Charlotte County Jail staff that he could have his girlfriend bring that leftover cream for the jail's pharmacy to approve. He declined to do so. *Id.* at 14.
- Dr. Rucker informed the Charlotte County Jail that he "was unable to provide either the dosage level for the cream or instructions for the pharmacy on how to compound the cream," because he "no longer has the instructions for compounding that." *Id.* at 13.
- With respect to Worrell's second requested prescription, for naltrexone, medical staff informed Dr. Rucker that the ordinary medical use for that is to treat opiate withdrawal or exposure to high opioid levels. *Id.* at 15. Jail medical staff were

unaware of a valid use of that drug to treat non-Hodgkin's lymphoma. *Id.* Dr. Rucker declined to provide justification for using naltrexone to treat lymphoma beyond stating that he was prescribing it for that "off-label" purpose. *Id.* at 16.

- Dr. Rucker informed jail staff that he had no medical staff, did not keep medical records, and that he provided a "concierge" holistic or nontraditional medical service. *Id.* at 13-14.

Defense counsel did not dispute the foregoing proffered facts during the hearing. Chief Judge Howell stated:

[T]o say the least, Dr. Rucker's assistance in this matter hasn't been as fulsome as one would hope whether Mr. Worrell was incarcerated or not. And this medication presumably was not so significant that he kept his prescription up to date.

Id. at 17. Later, Chief Judge Howell stated:

[T]he government's opposition and detailed proffer today . . . is very illuminating, in terms of this doctor not being able to provide records, . . . admitting he was using an . . . off-label usage of one of the medications; didn't seem to particularly cooperative with the medical facility where the defendant was held . . . that he doesn't have the records and he can't provide the compound, and it was just—appears to have been really a lack of cooperation. In addition, the defendant could have had his girlfriend or partner bring the medication but he didn't want to bother her with that.

Id. at 39-40. Chief Judge Howell denied Worrell's motion. *Id.* at 39.

Worrell was diagnosed with COVID-19 upon arrival at the D.C. Jail following a positive COVID-19 test on April 13, 2021. He is no longer exhibiting symptoms, according to the latest medical records in the government's possession. He filed the instant motion on May 11, 2021.

In response to Worrell's latest motion for reconsideration, the government obtained the following information from Unity Healthcare, the healthcare provider that the D.C. Jail contracts with to provide healthcare to inmates.

Unity staff report, with respect to Worrell's allegation that his condition is "rapidly deteriorating" and that he has developed "lymphomas on the skin of his face, neck, back, arms,

and legs,” Dkt. 47-1 at 5, that they have not seen a significant change in Mr. Worrell’s exam since his arrival. However, staff did note that, at baseline, he has significant post-radiation skin changes and abnormalities and skin findings consistent with his diagnosis of cutaneous lymphoma.

With respect to Dr. Rucker, Unity staff noted that, based on the Florida Department of Health’s licensing website, he appears to be a urologist, not an oncologist. Although Dr. Rucker was now able to offer the formula for his prescribed compounded cream, Unity staff declined to authorize that prescription. According to Unity, based on their review of medical records from the oncologists Worrell had seen before Dr. Rucker, the two prescriptions were not the treatment recommended by his prior oncologists. Moreover, Unity staff could not find recommendations or guidelines for the compound cream (a topical Rapamycin cream) or for the naltrexone for the treatment of cutaneous lymphoma in the literature. The D.C. Jail’s infirmary called an oncologist at Howard University to confirm there were no recommended or standard off-label uses for these two medications to treat cutaneous lymphoma. The oncologist at Howard University Hospital was not aware of any recommended treatments using those two prescriptions.

Worrell is scheduled to see an outside oncologist on May 19, 2021.

ARGUMENT

I. Standard of Review.

Worrell styles his motion a “motion for reconsideration.” Dkt. 47-1 at 9. In general, a court will grant a motion for reconsideration of an interlocutory order like a detention order only when the movant demonstrates: “(1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error in the first order.” *Zeigler v. Potter*, 555

F. Supp. 2d 126, 129 (D.D.C. 2008)); *United States v. Gamble*, No. CR 19-348 (CKK), 2020 WL 588323, at *3 (D.D.C. Feb. 6, 2020) (applying this standard to detention reconsideration motion), *vacated and remanded on other grounds*, 810 F. App'x 7 (D.C. Cir. 2020); *see also* Dkt. 47-1 at 9 (agreeing with this standard of review).

The corollary of that narrow standard of review is that motions for reconsideration “cannot be used as ‘an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier.’” *Estate of Gaither ex rel. Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 10 (D.D.C. 2011) (quoting *SEC v. Bilzerian*, 729 F. Supp. 2d 9, 14 (D.D.C. 2010)); *United States v. Hong Vo*, 978 F. Supp. 2d 41, 48 (D.D.C. 2013) (applying similar standard in detention context).

II. Worrell’s alleged new facts do not merit reconsideration.

Worrell rests his motion on three purported new facts.

First, Worrell contends that the D.C. Jail has failed to authorize prescriptions he has requested. Dkt. 47-1 at 5-6. Worrell is presumably referring to the same two prescriptions that were denied him in the Charlotte County Jail, each originally prescribed by Dr. Rucker: a specially compounded topical Rapamycin cream and naltrexone. The D.C. Jail has not authorized the two prescription medications that Mr. Worrell has requested for reasons similar to those given by the Charlotte County Jail. According to the D.C. Jail’s staff, Dr. Rucker, who holds himself out as an oncologist, is listed as having a specialty in urology, not oncology, on the Florida Department of Health licensing website.¹ He has previously stated that he provides a “concierge” and holistic medical approach, in which he apparently does not have medical staff and does not

¹ See <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders/Details?LicInd=79441&ProCde=1501>. At least one article in which presumably the same Dr. Rucker was interviewed also characterizes him as a former urologist. See <http://health.heraldtribune.com/2016/03/23/bradenton-clinic-is-part-of-an-industry-luring-women-and-athletes/>.

keep medical records—a fact defense counsel confirmed at the April 6, 2021 hearing. *See* Ex. 1 at 13-14; *id.* at 44 (defense counsel stating “Dr. Rucker doesn’t have any medical records”). With respect to the naltrexone, Dr. Rucker informed the Charlotte County Jail that he was using that drug—ordinarily, the government understands, employed to treat opioid-related issues—for the “off-label” use of treating lymphoma. *Id.* at 15-16. But when asked for support for that off-label use, Dr. Rucker declined to provide any to the Charlotte County Jail. *Id.* Unity Healthcare, meanwhile, has researched whether either the Rapamycin cream or naltrexone are recommended treatments for cutaneous lymphoma in the literature, and have consulted with an outside oncologist on that question. They have been unable to find support for the use of either medication to treat Worrell’s lymphomas. Finally, Worrell’s prior treating oncologists had not recommended those medications, according to the records Unity reviewed. Unity has therefore concluded that the two prescriptions are inappropriate to treat Worrell’s cutaneous lymphoma, and scheduled him to visit with an outside oncologist instead. Thus, two different jails’ contracted healthcare providers have determined that those prescriptions either could not be provided or were medically inappropriate.

Despite the passage of nearly two months, Worrell has provided no new facts in his motion regarding either prescription—no justification for naltrexone’s off-label use, no new affidavit from Dr. Rucker, no supporting affidavit from any other medical professional. He provides only the same affidavit from Dr. Rucker that he submitted in March. Indeed, Worrell has recycled the same argument (and many of the same paragraphs) he included in his initial motion for reconsideration six weeks ago. Ex. 1 at 7. Chief Judge Howell denied that motion based on, among other things, the absence of medical justification provided by Worrell or his doctor for the two medications. Thus, Worrell’s first fact—to the extent it can be considered new

at all—does not merit reconsideration.

Second, Worrell contends that he “will not be able to see an oncologist soon, perhaps not even for a month.” Dkt. 47-1 at 8. That is inaccurate. Worrell is scheduled to see an outside oncologist on May 19, 2021. Worrell was in isolation at the D.C. Jail for several weeks after his arrival on April 13, 2021, due to his COVID-19 diagnosis. Thus, he is scheduled to see an outside specialist within a few weeks of him being eligible to do so.

Finally, third, Worrell contends that the risk he faces from COVID-19 is somehow greater now that he has contracted and seemingly overcome the disease. But in his first motion for reconsideration, Worrell already argued that the risk of him contracting COVID-19 was a reason for him to be released, due to the health risks it posed. Dkt. 16-1 at 7-10. Chief Judge Howell denied that motion on April 6, 2021. Now that Worrell has contracted and seems to be recovering from COVID-19, the risk of reinfection is dramatically lower, as government health authorities have made clear for many months. According to the Centers for Disease Control and Prevention, “[c]ases of reinfection with COVID-19 have been reported, but remain rare,”² and a recent study found the rate of reinfection even for often-exposed healthcare workers was roughly eight times lower than the rate of primary infection among those without a prior infection, with a median interval between a first infection and reinfection of more than 200 days.³ Moreover, Worrell can receive a vaccine shot while in custody when it is medically appropriate for him to do so. With increasing vaccination rates at the D.C. Jail and low COVID-19 infection rates there, Worrell’s risk of COVID-19 reinfection is low, and certainly lower than his risk of primary infection when his first motion for reconsideration was denied by Chief Judge Howell.

² See Centers for Disease Control and Prevention, Reinfection with COVID-19 (Updated Oct. 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>.

³ See Centers for Disease Control and Prevention, COVID-19 Science Update (Apr. 23, 2021), https://www.cdc.gov/library/covid19/04232021_covidupdate.html#anchor_Reinfection.

Worrell's motion does not raise any new facts that merit reconsideration.

CONCLUSION

The Court should deny Worrell's second motion for reconsideration.

Respectfully submitted,

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Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,) Criminal Action
) Case No. 21-MJ-296
vs.)
)
CHRISTOPHER JOHN WORRELL,) April 6, 2021
) 2:55 p.m.
Defendant.) Washington, D.C.
* * * * *

**TRANSCRIPT OF MOTION FOR RECONSIDERATION
BEFORE THE HONORABLE BERYL A. HOWELL,
UNITED STATES DISTRICT COURT CHIEF JUDGE**

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ALSO PRESENT: THOMAS FISHER, Pierce Bainbridge
CHRISTINE SCHUCK, Pretrial Services

Court Reporter: Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter

***This hearing was held via videoconference and telephonically
in compliance with the COVID-19 pandemic
stay-safer-at-home recommendations and is therefore subject to
the limitations associated with the use of technology.***

Proceedings reported by machine shorthand, transcript
produced by computer-aided transcription.

P R O C E E D I N G S

THE COURTROOM DEPUTY: Matter before the Court,
Magistrate Case No. 21-296, United States of America versus
Christopher John Worrell.

Your Honor, for the record, pretrial agent
Christine Schuck is joining us today.

Counsel, please state your names for the record,
starting with the government.

MR. DREHER: Good afternoon, Your Honor.

William Dreher for the government.

THE COURT: Yes. Good afternoon, Mr. Dreher.

MR. KELLY: Good morning. This is James Kelly for
the defendant, Christopher Worrell.

THE COURT: James Kelly, okay.

MR. JENKINS: Good afternoon, Your Honor. This is
Robert Jenkins; I am local counsel for Mr. Kelly.

THE COURT: Okay. And who is Thomas Fisher?

MR. FISHER: Hello, Your Honor. I am a law clerk
with Pierce Bainbridge for the defendant.

THE COURT: All right. Well you can take your
video off, I don't think you're going to be speaking; it's
just a distraction. If you don't mind, please.

All right. And where is Mr. Pierce, is he here?

MR. KELLY: No. Mr. Pierce is not attending. I
am appearing as counsel of record for today's hearing.

1 Thank you, Your Honor.

2 THE COURT: Okay. All right. And Mr. Worrell.

3 Mr. Worrell, do you agree, after consultation with
4 counsel, to participate in this hearing today for your
5 motion --

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: -- via videoconference rather than
8 being present physically in the courtroom?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. So pending before the Court is
11 the defendant's emergency motion for reconsideration of the
12 Court's detention order that was entered on March 19th,
13 2021.

14 In connection with this hearing, I have reviewed
15 all of the submissions that have been made, the defendant's
16 motion, the exhibits attached to that motion including the
17 DVD which was marked as Exhibit D; it arrived in the
18 courthouse yesterday so I was able to watch it yesterday.

19 I have also reviewed the government's opposition
20 memos, both docketed at ECF 19, as well as ECF 24 which was
21 in response to the court order that the government address
22 the *Munchel* factors, which is the most recent D.C. Circuit
23 case on detention for defense conduct arising out of the
24 January 6th events.

25 I have also reviewed the defendant's response to

1 the Court's minute order that -- which is docketed at ECF 23
2 which -- and that was an order -- that was entered on
3 April 1 that directed defense counsel to advise the Court
4 about all of the steps that had been taken by defense
5 counsel in coordination with the defendant's doctor,
6 Dr. Bino Rucker, to ensure that the Charlotte County Jail
7 was authorized to give the defendant all of the medications
8 that he says he requires and -- particularly in light of the
9 defense -- of the government's response saying that that
10 jail has tried multiple times to reach Dr. Rucker without
11 success. And I have to say the response I got back from
12 Mr. Pierce to that minute order at ECF 23 did not address
13 any of the questions that I posed in my minute order since I
14 am trying to make this hearing as efficient and constructive
15 as possible with all of the information in front of me. And
16 I think that that's important, and so that's the first thing
17 that I am going to turn to Mr. Kelly or Mr. Jenkins to
18 address because the motion for reconsideration of the
19 Court's order, which was just recently entered, was
20 predicated largely on what is called the discovery of
21 evidence not previously available; and it's based on the
22 claim that the defendant had been denied medication for his
23 medical condition.

24 So, Mr. Kelly, are you prepared to address what I
25 hoped to have already at hand, the questions in my April 1

1 minute order? And if you want me to review those questions
2 I will be happy to do that for you.

3 MR. KELLY: No, Your Honor.

4 I think I am equipped. I have a pretty --
5 substantial previous experience with oncology in other types
6 of litigation, although I am not a medical doctor; that's
7 why we resorted to having Dr. Rucker address all of our
8 concerns in the form of an affidavit not once but twice
9 regarding Mr. Worrell's condition.

10 These were -- symptoms began developing since his
11 incarceration. He had met with a nurse and a physician who
12 was available on a Monday to explain to her what his
13 conditions were, what his symptoms were. We had consulted
14 previously with --

15 THE COURT: I am sorry, I am going to interrupt
16 you. When I ask a question, if you don't mind, I'd really
17 like an answer to my question.

18 MR. KELLY: Yes.

19 THE COURT: So the defense motion says he has been
20 denied this medication that he requires. The Charlotte
21 County Jail says that that medication -- he has been given
22 all of the medications for which he had good prescriptions;
23 and that for this cream -- the medication that he says he
24 didn't get -- it required further authorization from
25 Dr. Rucker; and they tried multiple times to reach

1 Dr. Rucker without success.

2 So what did you-all do as defense counsel to make
3 sure that Dr. Rucker had responded to the jail's phone calls
4 to tell them whether he was authorized or not authorized to
5 get the cream?

6 MR. KELLY: Indeed, Dr. Rucker was -- there were
7 several attempts by the jail to contact him. They didn't
8 leave a call back number, only a general number which he did
9 return that call and did direct medical or the pharmacy; he
10 was more than prepared to authorize any prescription which
11 has been done in the meantime, in the interim period, and
12 many of that communication has taken place. And since then
13 the compound is being developed at the Florida location for
14 administration to Dr. Rucker -- rather to Mr. Worrell from
15 Dr. Rucker; so that is in the process of being furnished to
16 him. That was before his transfer just yesterday to jail
17 in -- Brady jail in Oklahoma, so that has further slowed
18 down the process.

19 We have taken all steps necessary and due
20 diligence to have Dr. Rucker make direct contact with the
21 jail's pharmacy which he was able to get through to them;
22 that information -- that contact information had not
23 previously been made available by the jail.

24 THE COURT: I'm sorry. You know what, rather than
25 spending time in making a motion, you know, asking for

1 reconsideration of something this Court just considered,
2 don't you think it might have made more good use of your
3 time to get in touch with that jail and arrange for a
4 connection between Dr. Rucker and the jail or to fax the
5 jail a prescription with Dr. Rucker's signature?

6 I mean, it just seems like this is a comedy of
7 errors that wasn't cured very promptly by defense counsel.

8 I mean, we have -- I mean, medical issues come up
9 all the time; defense counsel simply -- you know, they talk
10 to the jail, they arrange for doctor communication.

11 Okay. So what else do you have to say about this
12 medical condition that is now going to be treated?

13 MR. KELLY: It cannot only be treated by
14 medication which has been denied him because of the
15 transfer; that will be the furthest line down the process.
16 If he were still in Florida, he may have those medications
17 in hand by now to at least deal with the symptoms.

18 They will only deal with the symptoms of an
19 underlying disease which is cancer, non-Hodgkin's lymphoma,
20 which is potentially fatal. And in connection with the
21 COVID environment currently in carceral facilities, we think
22 that the government would have to stipulate that it is an
23 unsafe environment with respect to these current conditions.
24 And, again, these medications are only --

25 THE COURT: Well, you know, I read the pretrial

1 services report before. The pretrial services report said
2 that he had this non-Hodgkin's lymphoma; he's had it for 14
3 years, he had been subject to treatment before, it raised no
4 issue about that it wasn't controlled.

5 There was zero -- zero reference to this at the
6 hearing, zero.

7 MR. KELLY: Okay.

8 THE COURT: So you can imagine busy judges'
9 reactions when something that is now an emergency wasn't
10 even mentioned -- wasn't even mentioned at the hearing in
11 front of me before.

12 MR. KELLY: Because the symptoms of the disease
13 have become aggravated during the interim period, which
14 lesions and rashes are readily apparent through a standard
15 medical evaluation. Those were not present before but now
16 they are. These are not self-inflicted wounds. These are
17 rather, simply, symptoms aggravated. It's the ongoing
18 incarceration, the lack of medications, and the lack of
19 outside oncology examination and treatment for this disease.

20 THE COURT: Well, have you -- what efforts have
21 you made to communicate to the marshal service about the
22 fact that he needs medication he developed I guess -- or
23 compounded for him and to get it to the D.C. jail upon his
24 arrival here?

25 MR. KELLY: Yes, agreed, Your Honor. And with due

1 diligence we immediately contacted the marshal when it
2 became apparent that he had been transferred. But the
3 marshal's policy is not to comment on any aspect of the
4 transfer, so it was a moot question as far as medications.

5 So the fact that we're discussing this right now
6 and he is in jail in Brady is only going to be resulting in
7 further delay in him receiving those medications; and,
8 again, those are only for the symptoms, not for the
9 underlying disease.

10 MR. DREHER: Your Honor, if I may.

11 THE COURT: Yes, Mr. Dreher.

12 MR. DREHER: I think I may have some information
13 that may be helpful.

14 One thing is -- I just wanted to flag that I
15 believe -- although obviously Mr. Kelly can correct me if
16 this is not correct. I believe that defense counsel may
17 have included some portion of their narrative description of
18 what defense counsel and Dr. Rucker did in response to -- in
19 attempting to contact the jail at docket 22 which was also
20 the reply to the government's opposition. So that document
21 has a couple of pages of narrative facts about the attempts
22 to call the jail and provide some background for the Court.

23 With respect to --

24 THE COURT: Well, you are right, I didn't see
25 that. That's why I usually start with talking about what I

1 have looked at to make sure I haven't missed anything.

2 MR. DREHER: With respect to the medications, the
3 government did reach out to the marshal service yesterday
4 when it learned that Mr. Worrell was being transported to
5 Washington, D.C., which is something that the government
6 actually -- the Department of Justice had requested given
7 the COVID -- frankly given the COVID numbers and the fact
8 that Mr. Worrell is, we would say, someone who is vulnerable
9 to COVID-19, we requested his earlier transport to
10 Washington, D.C., given their superior vaccination numbers
11 and efforts. I think there is only one COVID case out of
12 over a thousand inmates there.

13 THE COURT: I mean, the D.C. Department of
14 Corrections has done an excellent job. And I actually did
15 get a report, Mr. Dreher, just yesterday that there are
16 three positive cases of COVID at the D.C. jail but they are
17 all intakes. So they have none within -- they have none
18 among the residents at D.C. jail; these are all new intakes
19 who were caught as part of their protocol on intake and
20 quarantined and treated before they're put in the general
21 population.

22 MR. DREHER: So with respect to the medications,
23 my understanding is that -- what the marshals informed me is
24 that Mr. Worrell has two medications that he was able to
25 travel with and neither of the medications that were noted

1 by Dr. Rucker in his affidavit were among those two
2 medications, so I do not believe he currently has the
3 medications that Dr. Rucker requested from the Charlotte
4 County Jail as early as last week. I have some information
5 from the Charlotte County Jail as to why that is, which I am
6 happy to provide to the Court.

7 THE COURT: Yes, because that was not my
8 understanding from reading the affidavit from the Charlotte
9 County Jail health person who said that the names of these
10 prescriptions -- they were giving him two which they
11 referred -- they are not allowed to give him because they
12 needed further doctor authorizations which their effort to
13 obtain was to no avail.

14 MR. DREHER: Exactly. And so I think that is all
15 accurate. I think that was the status as of Tuesday when
16 that was filed.

17 So since that time -- so he does have -- again, he
18 does have two prescriptions; he has received those. I think
19 those were the ones that were prescribed shortly after he
20 arrived on March 12th.

21 The third prescription that was suggested was a
22 cream that has to be specially formulated, a compound; that
23 is the one that had expired. Based on my conversations with
24 the jail staff this morning, that prescription actually
25 expired on March 5th, which was one week prior to

1 Mr. Worrell being arrested; and there was a no refill -- and
2 it had expired.

3 Now, Mr. Worrell did have that cream -- my
4 understanding is that they were informed that he had a
5 bottle of some leftover cream at his residence. But
6 typically jail policy is they don't allow inmates to bring
7 their own medication in with them if they haven't presented
8 a valid prescription because obviously they don't know what
9 those substances are.

10 They did obviously -- as noted in the affidavit,
11 they attempted to reach Dr. Rucker. I reached out to
12 defense counsel on Tuesday, March 30th to say it looks like
13 there is an issue about -- once I learned -- essentially
14 within an hour of learning that there was an issue with this
15 connection -- we needed to get Dr. Rucker in connection with
16 the jail.

17 On Thursday I followed up and said if you need a
18 direct line -- I have spoken with the medical staff; if you
19 need a direct line, let me know. I think on that day they
20 were able to get a direct line with the medical staff.

21 Dr. Rucker did talk to the advanced registered
22 nurse practitioner who works in the Charlotte County Jail on
23 April 1st. And so here is what that individual then relayed
24 to me; so there are two prescriptions that Dr. Rucker had
25 recommended for Mr. Worrell, they are -- one of them is

1 something called a sirolimus cream; and that is a compounded
2 cream.

3 Mr. Worrell had indicated to medical staff that it
4 usually takes one to two weeks after the pharmacy receives
5 the prescription for that cream for them to actually
6 compound it and make it available to him. That is done
7 outside of the jail setting. There is some delay even after
8 the prescription has been entered and they receive that
9 cream.

10 Unfortunately Dr. Rucker, according to the jail
11 staff, was unable to provide either the dosage level for the
12 cream or instructions for the pharmacy on how to compound
13 the cream which, again, is not, sort of, an off-the-shelf
14 prescription. He informed the staff that he had provided
15 those instructions to Mr. Worrell's other pharmacy and that
16 he no longer has the instructions for compounding that. So
17 he was not able to provide those instructions directly to
18 the medical staff -- so this was on Thursday.

19 Belatedly, the nurse practitioner asked for a
20 phone number to contact Dr. Rucker for medical records that
21 they could use to support the request for the prescription.
22 Dr. Rucker informed the jail -- and, again, this is the
23 government's proffer as to what it was told by Charlotte
24 County Jail staff.

25 Dr. Rucker informed the nurse practitioner that he

1 did not -- he could not provide a phone number for medical
2 staff to directly contact with him, and that he did not have
3 the ability to provide medical records because he provided
4 what he termed a "concierge" medical service where he does
5 not have staff who can field calls or provide medical
6 records. So they requested medical records with respect to
7 these prescription and a direct phone number for follow-up
8 questions for Dr. Rucker. While they attempted to offer
9 these prescriptions, Dr. Rucker declined to provide either
10 of those.

11 The only two other things that I will quickly
12 note, the same nurse practitioner had seen Mr. Worrell on
13 Tuesday, March 30th; that was the conversation where
14 Mr. Worrell indicated how long apparently it takes for this
15 cream sometimes to have this prescription filled.

16 The registered nurse practitioner actually
17 informed Mr. Worrell in that conversation that his
18 girlfriend could bring the cream that he had at home to the
19 jail and that then the pharmacy -- the prescription that he
20 had brought and they could either -- they could make a
21 decision about dispensing that cream to Mr. Worrell. And
22 Mr. Worrell told medical staff that it was about an hour
23 drive from his home to the jail and that he was not going to
24 ask his girlfriend to make that drive to bring his cream.
25 That's what they relayed.

1 Another thing -- again, I think this is the last
2 point on this, and I appreciate Your Honor's patience.

3 The second prescription was for naltrexone
4 hydrochloride. The medical staff indicated that the
5 ordinary indicated medical use for that is when it is in
6 conjunction with opiates or opioid use, and they were not
7 aware of a -- Dr. Rucker indicated that he had prescribed it
8 for off-label use for Mr. Worrell's cancer. The medical
9 staff asked whether he had reports for the use of -- the
10 daily use of that drug typically used, again, with respect
11 to opiates to --

12 THE COURT: And when you say -- I'm sorry to
13 interrupt you, Mr. Dreher. But when you say it is used for
14 opioids, is it used for opioid addiction; is that what you
15 mean?

16 MR. DREHER: That is -- yes, that is the
17 government's understanding. It's essentially for people who
18 either -- it's not necessarily to treat anyone who had been
19 on high doses of opioids or who had high levels of
20 opiates -- taken a high level of opiates. It's a
21 prescription that is used to basically prevent them from
22 returning to the use of opiates, so in the addiction
23 setting; but I think also there are other -- there may be
24 some other settings in which it's prescribed for that
25 purpose.

1 Again, Dr. Rucker stated, you know, I am
2 prescribing it for this off-label use to treat his cancer.
3 But, I guess, the best I can say is that medical staff
4 requests for further information, further specification, and
5 further medical records with respect to that prescription
6 were -- they were unable to get any further information; so
7 that was the purpose he was using it for.

8 At this point, what the government has done,
9 we have -- the Department of Justice -- I have actually
10 already forwarded the information from Mr. Worrell's
11 affidavit that he filed, the reply, the doctor's affidavit,
12 to both the marshal service and to the D.C. jail to make
13 sure that they are aware of Mr. Worrell's condition. The
14 D.C. jail responded and said not necessarily yet -- at this
15 point, they obviously can't make a medical diagnosis because
16 Mr. Worrell is not here. But, yes, they do treat
17 individuals with -- and for someone with cancer who may see
18 oncologists --

19 THE COURT: Mr. Dreher, you are fading a little
20 bit. Can you just repeat what you said about your
21 communications with the D.C. jail medical staff?

22 MR. DREHER: Absolutely.

23 When I forwarded those records, they said that
24 while they can't necessarily make a medical diagnosis
25 obviously of an inmate that they have not seen, but they do

1 regularly treat or have treated individuals with cancer, and
2 that those individuals would be sent to an outside
3 oncologist in the Washington, D.C., community to see an
4 oncologist to treat for that. They have done that in the
5 past, and it would be perfectly comfortable with doing that.

6 THE COURT: All right. Thank you.

7 Mr. Kelly or Mr. Jenkins.

8 MR. KELLY: Yes. Hi.

9 THE COURT: You know, this is -- it doesn't -- it
10 doesn't put a judge in a good humor when an issue is raised
11 that could have been raised at the original hearing when
12 it's done on an emergency basis. It's also not particularly
13 fruitful or helpful to, you know, try and get
14 reconsideration of a motion based on a medical circumstance
15 where not every single effort possible with the cooperation
16 of the treating physician, you know, has been at its
17 fullest. That's -- to say the least, Dr. Rucker's
18 assistance in this matter hasn't been as fulsome as one
19 would hope whether Mr. Worrell was incarcerated or not. And
20 this medication presumably was not so significant that he
21 kept his prescription up to date. You know, at the time of
22 his initial detention he -- his prescription was already
23 outdated by five days.

24 So, you know, what -- is there anything else you
25 want to add to this? It sounds like the sooner he gets to

1 D.C. the better.

2 MR. KELLY: I would say I respectfully disagree.
3 He has cancer, Your Honor.

4 He has been living with this for some time. And,
5 again, the naltrexone is treatment for pain management, also
6 for autoimmune disorders. It is another -- it's another
7 treatment for opioids, but that's not the case here.

8 The bail report never made any reference
9 whatsoever that there was any opioid-type of addiction or
10 opioid abuse; this was strictly to deal with his cancer
11 management and his autoimmune. The cream certainly helps a
12 great deal with the rashes, the boils, and the lesions that
13 he experiences, which are clearly visible upon a medical --
14 a proper medical examination.

15 This is an ongoing -- ongoing matter. This
16 disease of cancer exposes him because of the autoimmune
17 disorder to a heightened risk of developing COVID. We are
18 told here, as represented, that D.C. seems to be COVID-free
19 when, in fact, the ACLU has filed a major class-action
20 lawsuit against the D.C. jail and carceral systems for
21 numerous defects involving the COVID risk; that's ongoing
22 litigation. There are some injunctive -- injunctions in
23 place but I --

24 THE COURT: I am very familiar with that
25 litigation, and it was started at the outset of the

1 pandemic. And most of the issues that were identified in
2 the course of that litigation have been addressed.

3 MR. KELLY: And if I could be --

4 THE COURT: And I get, on a daily basis, reports
5 from the Department of Corrections about the status of the
6 community transmission of the virus and the number of people
7 within -- residents of D.C. jail with COVID and what their
8 status is.

9 MR. KELLY: Well, again, this all came up because
10 of the aggravating symptoms developing since the last
11 hearing. Mr. Pierce apparently believed that he didn't have
12 an opportunity to really bring up the issues.

13 But all of that aside, he has cancer; he needs to
14 see an oncologist. And he thinks that it would be the
15 safest route to have him on home detention along the usual
16 lines, as previously ordered, with the ankle bracelet and
17 supervision. And he intends to fully and strictly comply
18 with all of the requirements of this Honorable Court if he
19 is allowed to be released on house arrest. There is no
20 question that he needs to get an examination with his
21 oncologist.

22 THE COURT: And when he gets to the D.C. jail that
23 will occur promptly.

24 Is there anything further that you want to add to
25 your argument?

1 MR. KELLY: The fact that he is living with
2 cancer, I can't imagine that it would be really feasible,
3 given the continuing substandard standard of care within
4 carceral facilities, that he is necessarily going to be
5 assured a visit with an oncologist about his ongoing cancer
6 and the appropriate treatment.

7 Again, I think that there are serious doubts as to
8 whether or not he would have the appropriate treatment
9 despite all of the assurances from the government that, in
10 fact, he will; that seems to be rather incredible and in
11 doubt.

12 And that's -- like I said, given the ongoing
13 litigation nationwide involving the COVID risk to inmates,
14 it hasn't necessarily gotten much better. But, again, you'd
15 have to see the data of D.C. in order to further consider
16 that issue involving the conditions of his confinement. The
17 man is currently suffering.

18 We are only respectfully and with some compassion
19 requesting that he be allowed on house arrest as he does not
20 present any risk whatsoever to the community or a flight
21 risk. And we would hope that this Honorable Court would
22 consider his conditional release on that basis of his cancer
23 and the potential, seemingly however remote, with an
24 autoimmune condition he is at serious risk, Your Honor,
25 of -- if not COVID, further aggravation of his cancer --

1 which I believe that the jail and prison system are just ill
2 equipped to be able to meet any necessary standard of care
3 for a cancer victim.

4 THE COURT: All right. Mr. Dreher.

5 MR. DREHER: Your Honor, I think aside from the
6 information that the government has made, and the
7 information about the specifics regarding COVID with respect
8 to individuals and the numbers at the D.C. jail, the
9 government --

10 THE COURT: Okay. Mr. Dreher, I have my -- I see
11 my court reporter. You are fading, so we can't really hear
12 you.

13 I would like everybody who is not muted to please
14 mute their phones. I see a number of people who are not
15 muted and they should be so that we can make sure that the
16 person speaking can be heard.

17 That didn't help that much, Mr. Dreher.

18 So you have nothing to add?

19 MR. DREHER: That's essentially right. As to the
20 COVID numbers, Your Honor is currently aware of --

21 THE COURT: Well, you know, the *Munchel* -- the
22 Circuit's decision in *Munchel* which involves a defendant who
23 was wearing a taser inside the Capitol, carrying around zip
24 ties looking for -- based on what they were saying, looking
25 for members of Congress or staff to tie up -- in the

1 Circuit's view, the Munchels were not -- were not dangerous.

2 You know, why -- why should this defendant who
3 never even entered the Capitol be considered dangerous?

4 I know he sprayed bear spray in the direction of a
5 police officer based on -- including based on the new
6 photographs that the government has put in today. But, I
7 mean, the Circuit's decision in *Munchel* was quite remarkable
8 in finding that the context of -- even if the person was
9 dangerous that day because they were, sort of, part of this
10 mob doesn't mean they're going to be dangerous afterwards.

11 You know, the Circuit was -- you know, they
12 required the district court judge there -- even conceding
13 that these appellants were a danger to act against Congress
14 at the time, on January 6th, there is no explanation of how
15 the appellants are capable of doing so now that the specific
16 circumstances of January 6th have past; and that's a factor
17 the district court should consider. Well, January 6th has
18 past. I mean, based on this line in the D.C. Circuit's
19 decision in *Munchel* -- since January 6th has past, you know,
20 it seems like it's going to be a little hard to detain,
21 pretrial, anybody arrested in connection with the
22 January 6th events, doesn't it?

23 MR. DREHER: Well, Your Honor, I think --

24 THE COURT: Given the Circuit's view, it's like
25 January 6th is over. So where is -- how is the district

1 court or the government going to show that the defendants
2 who were involved in that offense conduct on that day will
3 be capable of doing so again in the future when there is not
4 a mob that helps facilitate their actions?

5 You know, it's a pretty high standard that the
6 Circuit laid out in *Munchel*, isn't it? -- which is why I
7 asked you to address it.

8 MR. DREHER: Thank you, Your Honor. Yes.

9 THE COURT: They threw out some other factors --
10 they threw out some other factors, but -- you know, wow.
11 How am I here, Mr. Dreher?

12 MR. DREHER: So I think that --

13 THE COURT: Are you going to be able to say that I
14 have met the Circuit's mandate which, by the way, the
15 government did not appeal, did not even seek rehearing
16 en banc.

17 The Circuit reads as follows: Because *Munchel* and
18 *Eisenhart* did not vandalize any property or commit violence,
19 the presence of the group was critical to their ability to
20 obstruct the vote and to cause danger to the community. And
21 without it, these two individuals seemingly would have posed
22 little threat.

23 Would this defendant, Mr. Worrell, absent a crowd
24 of Proud Boys and absent a mob, would he have posed a threat
25 in the future? I mean -- because that's what they go on to

1 say, that -- you know, there was no explanation of how the
2 defendants in that case, *Munchel*, would be capable of doing
3 so now that the specific circumstances of January 6th have
4 past. This, too, is a factor that the district court has to
5 consider on remand.

6 MR. DREHER: Right.

7 THE COURT: So if I put Mr. Worrell under house
8 arrest -- I mean, is that sort of -- you know, with location
9 monitoring, how is that -- and the January 6th events have
10 past according to the D.C. Circuit -- how is that -- how am
11 I even supposed to say that that means he will still pose a
12 danger?

13 MR. DREHER: Well, I think there are a couple of
14 things that I would point to, Your Honor.

15 First, as Your Honor already noted, I do think
16 actually that the *Munchel* decision -- although while it has
17 some -- as you said concededly broad language in part,
18 because also --

19 THE COURT: Well, it has language that is
20 irreconcilable within it. It has this language, specific
21 circumstances drawn, you know, and, at the same time, they
22 say -- they also have language saying, oh, but, look, if
23 somebody is really trying to attack the police -- has taken
24 action against the police, if someone is part of -- you
25 know, in one of these gangs, you know, we might not apply

1 that to them. So I don't know how those two are
2 reconcilable. I guess that's the district court's
3 conundrum, interpreting what the Circuit is trying to tell
4 us to do. But, you know, how am I supposed to reconcile
5 that here?

6 MR. DREHER: Your Honor, I think as I said -- as
7 the Court just noted, there are -- it does seem like the
8 *Munchel* decision at least recognized that there is a
9 different category of dangerousness granted both to -- the
10 reference, for example, to police officers or based on the
11 factors that they note with respect to what the Munchels did
12 not do, and perhaps those who vandalized property or that
13 committed other acts of violence or mayhem.

14 But I think there are also factors with respect to
15 a defendant's background and then their conduct on
16 January 6th that can distinguish those defendants from the
17 defendants in the *Munchel* decision.

18 And I think it's -- so just to give some concrete
19 examples in this case, I think that the fact that
20 Mr. Munchel's criminal history was limited to his earlier
21 convictions for marijuana possession -- and his codefendant
22 had no criminal history -- can be contrasted with, for
23 example, someone who did have a prior arrest; that
24 individual's conduct, as the Court noted in the original
25 detention order -- that would be Mr. Worrell in this case,

1 his being arrested for impersonating a law enforcement
2 officer, that those kinds of -- that kind of prior conduct
3 can establish, in the government's view, a pattern of
4 conduct that makes it more likely than someone who is not
5 sort of -- is an aberration that someone was carried away by
6 the moment or something and did something that they were --
7 would not be inclined to do --

8 THE COURT: Well, I don't know that the D.C.
9 Circuit thought that Munchel and Eisenhart were carried
10 away. They came prepared with weapons. They had planning.
11 They left their weapons -- most of their weapons except a
12 taser outside on the Capitol grounds. They came prepared
13 for an assault. And I think -- I think -- my recollection
14 is that Mr. Munchel afterwards wanted to join one of these
15 gangs. But, nonetheless, the Circuit's view was there
16 wasn't enough evidence of dangerousness to keep them locked
17 up. And as I said, the government lived with that and
18 released them on pretrial release, both Munchel and the
19 mother, Eisenhart.

20 MR. DREHER: I appreciate that. And I think that
21 the other two things that the government would --

22 THE COURT: I mean, what district court judges
23 don't like, Mr. Dreher -- and you can pass this along to
24 Mr. Crabb and to everybody else at the U.S. Attorney's
25 Office is -- you know, if something goes to the Circuit

1 and -- you know, what does -- what we don't want after the
2 D.C. Circuit's decision in *Munchel* is to be put through
3 these paces of pretrial detention hearings and only for an
4 appeal to the Circuit which is going to say "*Munchel*"; you
5 know, pretrial release or send it back for another
6 reconsideration and the government just caves; it doesn't --
7 you know, because they know they can't meet the standard --
8 which is why I asked you to address all of those different
9 factors. And yet there is some language in *Munchel*, you
10 know, that seems to suggest that if you actually assault
11 police officers, actually broke through windows, doors, or
12 barricades, aided, conspired, planned, and coordinated with
13 such actions -- they are in a different category of
14 dangerousness than those who cheered on the violence or
15 entered the Capitol after others cleared the way. But
16 people who are walking around with zip ties and a taser
17 through the Senate Chamber looking for members of
18 Congress -- like a lot of us, is pretty dangerous -- and
19 then afterwards saying, gosh, maybe we should join one of
20 the gangs to keep this up. You know, but nonetheless the
21 government didn't try and meet the standard of *Munchel*; the
22 government just folded and granted pretrial release.

23 So, you know, am I going to go through an exercise
24 here where if it is appealed to the Circuit -- and I don't
25 know -- honestly, I don't see why anybody post *Munchel*

1 doesn't appeal every pretrial detention as part of the cases
2 that I've handled from January 6th that went to the
3 Circuit -- maybe they'll clarify what they were talking
4 about in this opinion -- because one could read this
5 opinion, you would concur, that January 6th is over.

6 So, like, how are you going to show that people
7 are still dangerous?

8 MR. DREHER: I do agree that the opinion
9 emphasizes and focuses a lot on future dangerousness. But I
10 still think that January 6th plays a large role in the
11 Court's analysis that would be perfectly appropriate and is
12 perfectly appropriate under *Munchel*, which is the Court's
13 analysis of dangerousness.

14 But I think the Court in *Munchel* -- the panel in
15 *Munchel* spent too much time -- or at least a decent amount
16 of time in their opinion asserting that distinguishing
17 language with respect to individuals who committed these
18 other acts, that they -- that the Court's order or opinion
19 used to set off as a separate category of dangerousness.
20 So, in this case, because we have a defendant that we think
21 falls into that category, we think --

22 THE COURT: It looks like stuck in language -- it
23 looks like stuck in language that I am finding a bit of a
24 struggle to reconcile with some of the other things that are
25 said in the opinion. I find it a bit of a puzzle myself.

1 MR. DREHER: I appreciate that.

2 THE COURT: You don't?

3 MR. DREHER: Well, I wish I had a better answer
4 for you maybe is what I can say on how to perfectly
5 reconcile those elements of the opinion beyond the
6 government's view, which is that those -- the elements
7 that -- the portions of the opinion that describe the
8 defendants who are -- that appears to have set them off as a
9 separate category, we think, are reflective really of the
10 Court's reasoning with respect to the *Munchel* opinion.

11 In other words, although the Court obviously
12 didn't say that an essential sign should be an evaluation of
13 a defendant's dangerousness, we believe that the Court's
14 opinion did not necessarily pertain to individuals like
15 Mr. Worrell or of the defendants who did engage in property
16 destruction or acts of violence.

17 And I think that one reason -- I think I mentioned
18 this briefly in response this morning. I do think that one
19 distinguishing factor is someone who is willing to commit an
20 act of violence right in front of a line of police officers
21 or those individuals who actually directly approached the
22 police officers at the United States Capitol -- in the
23 government's view that is, sort of, the most disturbing
24 evidence that a potential defendant will ever be to
25 potential punishment for that conduct. So we think that is

1 highly indicative of someone's future dangerousness in the
2 sense that if they're willing to do that in the open, on
3 U.S. Capitol grounds, in front of all of these officers,
4 we'd submit that that raises troubling -- is a troubling
5 indication with respect to their future conduct.

6 And the last thing I would note is that this
7 case also involves --

8 THE COURT: Do you understand the problem with
9 that argument, Mr. Dreher, because -- let's take the
10 Munchels, for example. I mean, all of these people who were
11 in the Capitol knew they weren't supposed to be in the
12 Capitol. I mean, the police had been pretty clear; they
13 were not supposed to be there, so everybody there was doing
14 something they knew they should not be doing.

15 And that -- you know, the Munchels were deep
16 inside -- deep inside the Senate Chamber but, nonetheless,
17 the Circuit didn't conclude that that blatant illegality in
18 the face of a police line that had been broken with them not
19 supposed there be -- that was pretty blatant, too. But,
20 nonetheless, the Circuit's view -- gosh, take a taser, take
21 some zip ties, walk around the Senate Chamber -- it's not a
22 sign of future dangerousness.

23 MR. DREHER: Well, with respect, Your Honor, I
24 think that what the -- I think two things. One is, the
25 government agrees that most of the conduct that day was

1 conduct that the defense would blatantly and -- was
2 obviously illegal, and should have been known to any
3 individual who engaged in that conduct.

4 That said, I do think -- and I think it's
5 blatantly an aspect of the *Munchel* opinion that contains
6 that other language -- there are still degrees of illegal
7 conduct and the type of dangerousness that is associated
8 with that conduct. And here, for example, someone who
9 actually physically assaults or attempts to assault a police
10 officer --

11 THE COURT: You would agree that *Munchel* has very
12 much narrowed what that conduct is that was applied to
13 assault offenses for any -- almost any offense conduct on
14 January 6th?

15 MR. DREHER: I think that the government
16 would agree that for individuals that have not committed any
17 property vandalism, that didn't engage in any violent
18 conduct and that weren't part of these other, sort of,
19 larger conspiracies or networks or groups of individuals who
20 were preplanning some of the events on January 6th -- they
21 are someone who came in with the crowd into the Capitol
22 building; and unlike the fact pattern of the defendant
23 *Munchel* -- so they don't have anything in their background
24 necessarily that would flag a risk of dangerousness and
25 their conduct since January 6th like in this case doesn't

1 involve an implied threat to witnesses or anything like
2 that, that there is some set of defendants that would
3 probably fall within the group described in *Munchel*; and,
4 for those defendants, I agree that the Court set out a
5 standard that would -- that the government would have to use
6 evidence showing --

7 THE COURT: Yes. I mean *Munchel*, to my mind, uses
8 the *Chrestman* factors that I set out in my *Chrestman*
9 decision and then added on to it tests for future
10 dangerousness that are going to be pretty difficult to meet
11 absent, as you said, membership in a gang and actual almost
12 photographic videotape evidence of assaulting a police
13 officer. Would you agree?

14 MR. DREHER: I think I would agree that it would
15 be easier to do with those elements. I think there may
16 be -- I think there are some other -- I think there are some
17 other classes of defendants for whom it would not be as
18 difficult to meet, for those engaged in property
19 destruction, for example, as noted in the *Munchel* opinion.
20 But I do agree with you that opinion emphasizes or adds that
21 emphasis on future dangerousness; I agree with that.

22 THE COURT: And the line about January 6th is in
23 the past is illuminating about how the Circuit is going to
24 view these cases.

25 Are you done, Mr. Dreher?

1 MR. DREHER: Yes, Your Honor.

2 THE COURT: All right. So let me go back to
3 Mr. Kelly or Mr. Jenkins; there were a couple of questions
4 that I just had for you.

5 And that is, one, what am I supposed to make of
6 this DVD you sent, Exhibit D? I mean, I've looked at it.
7 It's short; it clearly shows Mr. Worrell. There is no
8 timestamp; it looks like it's been spliced. What's the
9 source of it?

10 You know, why -- if it came from Mr. Worrell, why
11 wasn't it shown at the prior detention hearing? So many
12 questions about that. You haven't talked about it.

13 MR. KELLY: Yes. I think it was just to show that
14 he was -- he was in attendance, that he was law abiding. He
15 was not disturbing the peace. He wasn't certainly
16 interested in being disruptive --

17 THE COURT: But what -- let me ask you, is this --
18 who is speaking?

19 MR. KELLY: Mr. Kelly. James Kelly.

20 THE COURT: Mr. Kelly. Mr. Kelly, was that the
21 entire videotape, or was it edited?

22 MR. KELLY: That's all the videotape that we have
23 to my knowledge, Your Honor.

24 THE COURT: Where did you get it?

25 MR. KELLY: This was from a camera of somebody --

1 it wasn't a body cam of his own; I think that may have run
2 out of juice, out of battery.

3 THE COURT: Was it from his GoPro -- was it from
4 his GoPro camera?

5 MR. KELLY: I can't speak to that, Your Honor.

6 THE COURT: Okay. So that was all you were given.
7 You haven't seen the original?

8 MR. KELLY: No, I haven't -- no, I have not seen
9 the original. There is no reason to edit or redact or
10 withhold anything; that would be inculpatory to him because
11 he didn't do anything wrong.

12 THE COURT: Okay. And let me just ask you. There
13 are pictures of people in orange hats; who are those people?

14 MR. KELLY: Orange and black apparently seem to be
15 signatory of those who have some sort of gang affiliation.
16 I have been told and understand that this was not a Proud
17 Boys event; it was not organized by Proud Boys. There was
18 no color, so to speak, worn by Mr. Worrell holding himself
19 out as a Proud Boy. There were wives and family members in
20 attendance with them at this event, a couple of little old
21 ladies.

22 Certainly, nobody expected that there was going to
23 be all of this commotion that ultimately resulted and have
24 that effect.

25 THE COURT: Well, Mr. Kelly, you can appreciate my

1 puzzlement, again, as to what is supposed to be exculpatory
2 about the video clips you've shown me because -- as short as
3 it was, if you show the defendant now hanging around with
4 all of these -- it seems to me looked -- they were wearing
5 orange hats. I just wanted the confirmation that those were
6 huge Proud Boy groups; that's number one.

7 And then, number two, you say he wasn't doing
8 anything illegal. He was moving police barriers closer to
9 the Capitol and that, to me, at the time -- given the fact
10 that the police were being pressed against this police line
11 by this mob, strikes me as questionable behavior and whether
12 he is fully law abiding, to move a police barrier closer to
13 the Capitol.

14 MR. KELLY: Well, he certainly wasn't crossing in
15 that direction because he never entered the Capitol
16 building. So it really wouldn't square with the fact that
17 he did not enter the Capitol building so it wasn't in his
18 interest to push against or move against the police line.
19 He was just merely standing there off to the side.

20 THE COURT: But in the video clip, Mr. Kelly, you
21 show the person making the video clip moving the police
22 barrier. I presumed that that was the defendant moving the
23 police barrier. Is that incorrect?

24 MR. KELLY: The defendant was not to my knowledge
25 moving the police barrier at all. He was just a bystander

1 to this entire event -- participant if you will.

2 THE COURT: No. It was -- it was an aspect of the
3 video clip that looked like the person making the video was
4 moving the police barrier, and that's why I wanted to know
5 was this -- was the defendant the source of the video? Was
6 he the person making it? Otherwise, I am not really sure
7 what I am supposed to make of it other than there is a
8 really big crowd of Proud Boys there all wearing large hats
9 and hanging out with the defendant.

10 MR. KELLY: Well, he was not in attendance as a
11 Proud Boy. He was there with family members and, like I
12 said, a couple of elderly ladies that were there. Certainly
13 they wouldn't have included more vulnerable folks to be in
14 the midst of any kind of dangerousness for some sort of
15 hostility by any means.

16 In light of the fact that Mr. Worrell has no
17 violent history, there is no predisposition for violence
18 whatsoever if he is allowed on house arrest. He is a
19 law-abiding citizen and, certainly, a welcomed neighbor in
20 the naval community up until this point with all of the
21 media blitz gone public.

22 THE COURT: Mr. Kelly, in all of the photographs
23 that the government has produced and video clips -- and the
24 video clip that you produced in Exhibit D, including of
25 Mr. Worrell, despite his cancer condition, he is not -- and

1 the concern that you are expressing now about transmission
2 of COVID and being exposed to COVID -- in none of those
3 pictures that I have seen is he wearing a mask.

4 MR. KELLY: He had a gator, Your Honor.

5 THE COURT: I'm sorry. Say that again.

6 MR. KELLY: He had a gator, Your Honor, around his
7 neck. A gator, which is -- it wraps the neck, and it can be
8 lifted up over his nose and his mouth; he did wear a gator.

9 THE COURT: Well, in the photographs that I have
10 seen, including the photograph of him squirting the bear
11 spray at the law enforcement line, is he wearing his
12 gator --

13 MR. KELLY: It may have been --

14 THE COURT: -- in the midst of the mob?

15 MR. KELLY: It may have been -- it may have been
16 not at his mouth or across the lower portion of his face at
17 that point in time; I am uncertain of that.

18 But he did wear a gator to the event anticipating
19 that there could be some density of the crowd.

20 Again, I am just referring to the cancer -- that
21 the symptoms have worsened and deteriorated in a very
22 substantial way during his incarceration; and that's really
23 the basis for our emergency motion for reconsideration.
24 It's gotten much worse.

25 THE COURT: Mr. Dreher, you have seen a lot of

1 photographs of Mr. Worrell. Have you ever seen him with his
2 gator up or a mask?

3 MR. DREHER: No, Your Honor.

4 THE COURT: All right. Mr. Kelly is there
5 anything further?

6 MR. KELLY: We just -- simply that we are just
7 requesting the emergency consideration of this detention
8 order which we've had an ample opportunity to cover this
9 afternoon.

10 And we believe that, in the interest of
11 Mr. Worrell's safety and in light of the *Munchel* decision --
12 that this is a nonviolent offender; no previous disposition
13 for dangerousness in his home community or a flight risk;
14 that he simply be released to the house arrest subject to
15 the usual conditions. And he will be strictly complying
16 with such an order and have an opportunity for oncology
17 treatment and care which cannot -- would never be provided
18 at the carceral facilities, detention, jail or prisons,
19 which the government submits would be a safe environment,
20 but it would be completely the opposite; that was the
21 subject of the class action in the first place --
22 particularly of a cancer patient.

23 As a matter of compassion, as justice requires, if
24 Your Honor would allow him for home detention, and he will
25 certainly be in compliance with the *Munchel* decision and the

1 reasoning in good faith.

2 Thank you, Your Honor.

3 THE COURT: All right. The Court is ready to rule
4 on the defendant's emergency motion for reconsideration of
5 the Court's decision that he be subject to pretrial
6 detention; and that was an order that was issued with full
7 explanation of the reasons in consideration of the
8 appropriate factors, that was a decision that was made prior
9 to the *Munchel* decision by the D.C. Circuit being issued.

10 The Court is going to deny this motion at this
11 time. One of the bases for the motion is that there is
12 newly discovered evidence not previously available. That
13 "newly discovered evidence," as best I can make it out, is
14 that the defendant has lack of access to a particular
15 medication, like medications for his non-Hodgkin's lymphoma.

16 It's the government's opposition and detailed
17 proffer today about conversations and medications between
18 the jail facility where the defendant was held and the
19 efforts by and to get his treating physician to step forward
20 and communicate as to the authorizations for that medication
21 is very illuminating, in terms of this doctor not being able
22 to provide records, you know, admitting he was using an off
23 usage -- off-label usage of one of the medications; didn't
24 seem particularly cooperative with the medical facility
25 where the defendant was held, you know, which is sort of

1 a -- you know, an interesting response; that he doesn't have
2 records and he can't provide the compound, and it was
3 just -- appears to have been really a lack of cooperation.

4 In addition, the defendant could have had his
5 girlfriend or partner bring the medication but he didn't
6 want to bother her with that; so it's a little bit of a
7 disconnect in the facts as the Court is seeing it, the
8 efforts made to actually get the cream to the defendant and
9 what actually occurred here.

10 In any event, the defendant is on his way to D.C.
11 jail where they can get him whatever additional medications
12 that he needs to treat his lymphoma. If there is some other
13 issue that comes up once he gets to Washington, D.C., I am
14 sure defense counsel will bring that to the attention of
15 whoever the presiding judge is when this case is ultimately
16 formally charged with an indictment and assigned -- randomly
17 assigned to a judge who will then preside over the case.

18 I do appreciate that -- defense counsel has
19 asserted that this condition, this lymphoma condition --
20 non-Hodgkin's lymphoma that the defendant has had now for at
21 least 14 years subject to some continuing treatment might
22 make him more vulnerable to COVID. But, frankly, I have
23 seen a lot of photographs of the defendant during the course
24 of even this detention hearing -- at this detention hearing
25 and the prior detention hearing, and I really have not seen

1 this defendant wearing a mask, wearing his -- a scarf or
2 anything in the middle of a mob; so his concern about
3 transmission of COVID given his medical condition is a
4 little bit late blooming to me.

5 With respect to the issues raised in the papers
6 and only slightly at this hearing, that there was -- that
7 the Court committed some kind of clear error in its
8 consideration of the 3142(g) factors, the defendant clearly
9 disagrees with the Court's conclusions from -- my
10 consideration of those factors that are required to be
11 considered; but there is nothing that the Court has heard
12 that persuades me that there was an error in the
13 consideration of those factors even post *Munchel*.

14 Even though *Munchel* does have some language in it
15 that is difficult to reconcile with some of the language in
16 other places in the decision, but whatever -- whatever the
17 Circuit said about January 6th has past is really going to
18 be in some ways, you know, a challenge to show future
19 dangerousness given the fact that January 6th is over and
20 past.

21 The Circuit did carve out a category of the
22 offender of January 6th events, this defendant fits squarely
23 within that statement; although the defendant who actually
24 took action to assault police officers by spraying bear
25 spray directly at a police line, and the other part -- the

1 other category that the Circuit talked about were people who
2 actually broke windows and did other things to let people
3 into the Capitol building. And the government's theory of
4 this which appears from where this defendant was located
5 where he sprayed the bear spray, where there was a thin line
6 on -- I think it was the west plaza of the Capitol that
7 police officers -- that was actually where a major breach
8 into the Capitol occurred -- the defendant's actions in this
9 army and making the police fall back was actually quite
10 helpful to the mob in getting into the Capitol at that
11 location.

12 So, to summarize, the defendant is charged with
13 serious felonies; he included preplanning with paraphernalia
14 that he took with him to this riot, from a tactical vest,
15 radio communications, a can of pepper spray gel. He
16 discharged the pepper spray gel at the thin line of police
17 officers at a location where the mob ultimately was able to
18 break into the Capitol. He coordinated with others in
19 joining the Proud Boys in advance to get there.

20 His own videotape shows him with this big crowd of
21 Proud Boys with orange caps on. And they all -- you know,
22 he assembled with the Proud Boys to walk to the Capitol to
23 stop the electoral vote count. It is true, indeed, he did
24 not breach the interior of the Capitol building; and -- but,
25 nonetheless, the efforts that he took to threaten to injure

1 and assault police officers with pepper gel spray, to my
2 mind, meets the *Munchel* category of people for whom
3 dangerousness is a warranted finding, particularly given
4 this defendant's criminal history which I will not go into
5 having already exhausted it before; and, most disturbingly,
6 the defendant's statements at the time of his arrest, that
7 the FBI will be coming for him again if he were to find the
8 name of the Twitter user who exposed his identity online.

9 So upon consideration of the defendant's emergency
10 motion for reconsideration, and all of the other papers
11 submitted in connection with this reconsideration motion,
12 the defendant's motion is denied.

13 As before, Mr. Worrell is to be brought to this
14 district, and he is to appear before a magistrate judge
15 here. I think I set the date of April 8, 2021, at
16 10:00 a.m. unless he is indicted before then. If he is
17 indicted before then, he will appear in front of the
18 Article III judge to which the case is randomly assigned.

19 Is there anything further today from the
20 government, Mr. Dreher?

21 MR. DREHER: No, Your Honor.

22 I would just note for defense counsel that D.C.
23 jail did say that they can coordinate with either the
24 government or the D.C. jail to get records to the D.C. jail
25 in advance that will expedite Mr. Worrell's preplanned

1 pharmacy record when he gets there. So I just wanted to
2 alert defense counsel as to that fact, if that would be
3 helpful.

4 THE COURT: Yes. If Mr. Kelly or defense counsel
5 can get the records out of Dr. Rucker any more ably than you
6 or the jail -- the prior jail was able to. Mr. Rucker
7 apparently has some trouble -- Dr. Rucker has some trouble
8 with his medical records.

9 MR. KELLY: He didn't have any medical records,
10 Your Honor. Dr. Rucker doesn't have any medical records; he
11 just simply examined Mr. Worrell at that time and at that
12 meeting.

13 Also, we would like to just have an idea of a
14 timeline in which he will be receiving those medications
15 that we have been discussing, and that's referring to the
16 sirolimus cream and the naltrexone hydrochloride which is
17 for his autoimmune deficiency. If we can have some idea of
18 a timeline for that and, also, when he will be able to get a
19 medical oncology examination to --

20 THE COURT: Mr. Kelly, you are going to have to
21 wait until he gets to D.C. and, hopefully, that will be
22 soon.

23 MR. KELLY: Thank you.

24 THE COURT: It seems like there was a lot of time
25 wasted at the last jail getting all of these things put into

1 place, but that's not going to be used for an excuse for
2 emergency motions at this point.

3 He is going to get to the D.C. jail. The D.C.
4 jail has very adequate medical intake, and they will take
5 care of it; and you are just going to have to stay on top of
6 it, Mr. Kelly. Perhaps there will be a more responsive
7 doctor here in D.C. who can provide both authorizations for
8 prescriptions and prescriptions that are on-label uses that
9 can actually be prescribed by legitimate doctors.

10 All right. Is there anything further today from
11 you, Mr. Kelly?

12 MR. KELLY: No, Your Honor.

13 I appreciate your consideration of our oral
14 argument today here. In any event, we'll look forward to
15 his future oncology examination to be able to deal with this
16 cancer situation and with high hopes that he will not
17 contract any type of infections, including COVID-19.

18 Thank you, Your Honor.

19 THE COURT: All right. You are all excused.

20 (Whereupon, the proceeding concludes, 4:06 p.m.)

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CERTIFICATE

I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings to the best of my ability.

PLEASE NOTE: This hearing was held via videoconference and telephonically in compliance with the COVID-19 pandemic stay-safer-at-home recommendations and is therefore subject to the limitations associated with the use of technology, including but not limited to telephone signal interference, static, signal interruptions, and other restrictions and limitations associated with remote court reporting via telephone, speakerphone, and/or videoconferencing capabilities.

This certificate shall be considered null and void if the transcript is disassembled in any manner by any party without authorization of the signatory below.

Dated this 9th day of April, 2021.

/s/ Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter