

ORAL ARGUMENT NOT YET SCHEDULED

No. 21-3066

United States Court of Appeals for the D.C. Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

EDWARD JACOB LANG,
Defendant-Appellant

**MEMORANDUM OF LAW AND FACT ON BEHALF OF
DEFENDANT-APPELLANT, EDWARD JACOB LANG**

On Appeal from the U.S. District Court for the District of Columbia,
No. 21-Cr-00053(CJN) - (Carl J. Nichols, District Judge)

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**CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES
PURSUANT TO CIRCUIT RULE 28(a)(1)**

- A. **Parties.** The Defendant-Appellant in this case is Edward Jacob Lang. The Appellee in this case is the United States of America. All parties who appeared before the District Court appear before this Court.
- B. **Rulings Under Review.** The ruling under review is the decision of the U.S. District Court for the District of Columbia (Nichols, Carl. K.), docketed September 20, 2021, denying the defendant-appellant bond. “Motion for Release from Custody as to EDWARD JACOB LANG (1); DENIED for reasons set forth on the record. Motion to modify Conditions; DENIED without prejudice. Further Order to be issued by the Court.”
- C. **Related Cases.** This case was originally filed in the District Court for the District of Columbia (21-CR-00053-CJN-1). This appeal is from the decision by the lower court to deny bond to the Defendant-Appellant. Other than those proceedings, there are no related cases in this Court or in any other court.

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I. INTRODUCTION

An emerging set of case law on how to apply the Bail Reform Act (hereinafter “BRA”)¹ to J6 Defendants has continued.

Edward Jacob Lang (hereafter “Lang”, “Jake”) was arrested in January 2021 and remains in the DC Jail. No weapons, anti-government reading material or paraphernalia was seized from Jake’s apartment. Jake’s history shows respect for the system, the Courts, and does not establish a single incident outside of the instant charges where he showed hostility towards any government or law enforcement employee.

Jake’s story in the last 10-months is troublesome. His case shows how difficult the DC Jail policies make it for attorneys to communicate with their clients. All communications are monitored under the DC Jail policy. Also, Jake’s actions on J6 does not define him as a person. Respectfully, those actions, did not support the District Court’s (hereafter “the court”) conclusion that Jake is a future danger, and no set of conditions could reasonably assure his appearance in court. 18 U.S.C. § 3142(e)(1).

Since Jake’s arrest, every communication has been monitored, and not a single concern was addressed in his bond application.

¹ 18 U.S.C. 3141, *et seq.*

The BRA stresses² liberty as the norm, and extreme cases applying detention. The conditions Jake requested, along with his history of upstanding citizenship, present no *reasonable, articulable reason* the Government can articulate as to how Jake presents an *identifiable threat* to his community or *local* law enforcement. All of Jake's communications, social media and movements can be monitored on home-detention.

Lang stands for a few other principles. *First*, how better access to discovery can present the constitutionally afforded best defense; *second*, when a Defendant shows he wants to be heavily involved in his defense, and his own attorneys cannot schedule video calls or send him regular mail, then circumstances can be rearranged for a particular Defendant to have his own devise while still in jail; and *third*, how a particular defendant's conditions of confinement should be applied to the BRA.

Our bond application highlighted just the tip of the iceberg of law enforcement's violence against protestors on J6. We explained Rosanne Boyland and Phillip Anderson, and how Jake showed Mr. Anderson humanity in saving his life. Mr. Anderson stated, but for "Jake, I would have been killed by the police on January 6. I am alive today because he saved my life." (See **Exhibit A** to bond application). We highlighted others who were trapped and being beaten by officers

² On December 31, 2020, the Bail Reform Act of 2020 was presented in Congress.

just feet away from Jake. These examples are what we know now – with little to no substantial contact with Jake and his ability to discuss hundreds of hours of video discovery, and thousands of pages of materials.

The point is, Jake established he seeks to raise affirmative defenses, and such defenses must be relevant and applicable under the BRA – as should *his* conditions of confinement.

This Court should answer and clarify BRA case law.

II. JURISDICTIONAL STATEMENT

Jake remains detained without bond. On September 23, 2021, the court denied Jake’s application for bond in an oral decision.³ A Notice of Appeal was timely filed. This Court has jurisdiction pursuant to Fed. R. App. 9 and Cir. R. 9.

III. STATEMENT OF ISSUES

1. Whether the court erred in finding Lang presented an articulable future threat to an individual or the community;
2. Whether Jake’s conditions of confinement in the DC jail should be taken into consideration when evaluating his release under the BRA; and if the court erred in not granting, as alternative relief, Lang with an alternative means to review his discovery; and
3. Whether the court’s denial of bond erred in applying the BRA standards in deciding the government could not demonstrate that Lang could not be released on bond because there was “no condition or combination of conditions [that would] reasonably assure the

³ No written decision has been received or posted on ECF as of this date.

appearance of the person as required and the safety of any other person and the community”. 18 U.S.C. § 3142(e)(1).

IV. STATUTES AND REGULATIONS

Applicable, transcripts, statutes and cases are contained in the addendum.

V. STATEMENT OF THE CASE

Jake was unarmed on January 6th. As a U.S. citizen, he appeared to stand for Liberty, the Constitution, and assert his First Amendment Rights. Instead, he was met with officer’s executing excessive force – spraying and beating others to death, leading Jake having to literally save someone’s life. If there is any doubt – ask Phillip Anderson, who clung to Ms. Boyland as she died.

Not all of Mr. Lang’s actions can be deemed heroic and lifesaving, but none of the alleged conduct justify the denial of bond.

VI. SUMMARY OF THE ARGUMENT

The Court erred in denying Jake bond, focusing on the belief “Lang does pose a threat to future violence . . . [because he] views the current United States government as illegitimate, and it is at least possible he may not comply with future legal orders or respect the rule of law.” (*See* Tr. at p. 72- 73). The Court also held that, “Mr. Lang’s history and characteristics, perhaps we could suggest that some conditions of release might be possible without further violence or risk of flight, although some of that evidence is quite the contrary.” (*Id.* Tr. at p. 76.).

The Court also determined that the conditions of confinement and denial of attorney client-privilege issues are not a factor that the Court can consider when considering a bond application under the BRA.⁴

VII. ARGUMENTS AND APPLICATION OF THE LAW

POINT ONE

THE DISTRICT COURT ERRED AS A MATTER OF LAW BY FAILING TO TAKE INTO CONSIDERATION JAKE’S PRIOR HISTORY AND HOW HE POSED NO ARTICULABLE FUTURE THREAT.

The Court erred in its assessment of dangerousness. During Jake’s bond hearing, the Court narrowed down the issue of whether there is a specific articulable risk that Government can articulate to establish dangerousness. The Court went back-and-forth with the AUSA, and together they crafted this explanation. (*See* Tr. at p. 42, ¶ 11 – p. 44, ¶ 7).

After this colloquy and a brief recess, the Court made numerous findings, starting with the premise that, “Mr. Lang does pose a threat of future violence.” (*See* Tr. at p. 72, ¶ 18 – ¶ 22 – p. 73, ¶ 1).

The Court, then continued to emphases – “in the future” Jake poses a risk of somehow “advocating violence in favor of his political beliefs.” (*See* Tr. at p. 76, ¶ 7 – 9). This conclusion was advanced by the unsubstantiated belief about an

⁴ The Court reserved decision on some of these matters and directed defense counsel to try and pursue them with the Department of Corrections, which we have been doing since such day all to no avail.

“illegitimate government” and the notion that Mr. Lang could possibly “encourage others.” (See Tr. at p. 77, ¶ 3 – 8 and ¶ 23 – p. 78, ¶ 5).

Here, the court erred in ruling that Jake’s political beliefs place him in a position where he views the “current United States government as illegitimate,” and how those beliefs can somehow, someday make it “possible” that Jake “may not” in the future comply with legal orders or the law in general. In rendering such decision, the Court takes a huge gap from Jake not agreeing with voting results to potentially committing future crimes – all while he is *still* awaiting trial on this case.

The explanation that the Government proposed, which was adopted, is overly broad and is not based on the history and facts about who Jake is as a person. The Court found that Jake is at risk of committing or *advocating* violence and is a danger to “all law enforcement” who stand in his way.

First, an individualized assessment of Jake does not lead to the conclusion that if he believes the current administration is illegitimate then he could pose violence against “all police officers.” If Jake’s political beliefs are going to be completely used against him – then our request must also be taken into consideration – Jake be released to his father in Narrowsburg, NY.⁵ All of the facts used against

⁵ A suburban community more than an hour north of NYC.

Jake to come to this conclusion, respectfully, are solely based on the actions of January 6th, and none other.

Second, if Jake's political beliefs are going to be a main factor used against him, then the true severity of what happened on January 6th, must also be addressed. The main issue surrounding January 6th wholly evolves around "centralized power" and a national – District of Columbia, level of politics; not local or individual state politics and beliefs or disputes. The level of politics and tension of January 6th, in no way shape equate to "all law enforcement," especially local law enforcement in Upstate, NY, hundreds of miles from NYC or DC.

The location we requested is in an area of zero "centralized power" in the realm of real political decisions or enforcement issues.

More importantly, as highlighted, an event with such events and emotions will never happen again. The political beliefs and disbeliefs of Americans will never boil to a point, even close to a level of that on January 6th.

Therefore, its illogical to make a finding that a 26-year-old-man, (1) with no history of a single instance of disrespect for law enforcement, the law, or the judicial system,⁶ (2) who does have a history of starting up various business, in pursuit of the American Dream; and (3) who grew up with a very disciplined family.

⁶ All of Mr. Lang's prior interactions with the Law establish respect for the rule of law, and for the Court as a sanction for which it stands. As the Court highlighted, Mr. Lang "has a relatively clean record. He has only one prior conviction, a

Overall, the Court erred in its finding of dangerousness with regards to Jake, when his background clearly presents otherwise.⁷

Jake's history does not logically add up to a legal conclusion that the court found because:

- (1) even if he believes the “current United States government as illegitimate”;
- (2) those beliefs can somehow make it “possible” that Mr. Lang;
- (3) “may not” in the future comply with legal orders or the law “in general”; or
- (4) “may advocate” or “insight violence to advance his political beliefs”.

The facts presented to the court failed to establish a future threat to any individual, or the community at large, and falls extremely short of establishing an articulable, specific explanation, as to how Jake presents a danger, thus establishing dangerousness.

misdemeanor possession of a controlled substance, though I note there are some additional pending matters. As the defense has noted, at least at times during January 6th, he was looking out for the lives of others”. (See Tr. at p. 74, ¶ 18– 23).

⁷ See Section I, *supra* (highlighting no weapons, anti-government reading material, or paraphernalia were seized from Lang's apartment). Additionally, Lang is not a gun owner, never even owned a gun but has strong beliefs about American Citizen's Second Amendment Rights. These beliefs should not just be used against him for the worst, but rather placed in its proper context with how guns and violence apply to Lang's application for pre-trial release.

Lastly, even this Court can “order appellant’s pretrial release subject to appropriate conditions, including home detention and electronic monitoring.” *United States v. Tanios*, 856 Fed. Appx. 325, 326 (D.C. Cir. 2021)(citing *United States v. Munchel*, 991 F.3d 1273, 1282 (D.C. Cir. 2021)).

A dangerousness determination based upon findings of facts, which are clearly erroneous cannot meet the requirement set forth in *Munchel*, *Hale-Cusanelli*⁸, or *Tanios*. Second, the court failed to consider whether Jake presented an identifiable or articulable future threat to the community, or any other person as required under this Court’s *Munchel* decision. *Munchel*, 991 F.3d at 1282-1283.

Here, the court erred and contradicted its reasoning in applying *Munchel*, and if Lang presented an identifiable or articulable future threat to the community or any other person. *See Munchel*, 991 F.3d 1273 (D.C. Cir. 2021). The Court placed an overwhelming emphasis upon the *alleged* offense conduct, and minimal weight on Lang’s defense and saving others.⁹ The conclusion that Lang “could” insight

⁸ *Hale-Cusanelli*, 3 F.4th 449 (D.C. Cir. 2021).

⁹ *See* ECF Doc. 31 at p. 14 (explaining by Government: “LANG tried to get the attention of law enforcement to get assistance for a woman that was unconscious in the crowd of rioters being pushed out of the tunnel. He also appears to have helped drag another individual out from underneath other rioters that had been pushed out of the tunnel... other rioters, not including LANG, began violently attacking the officers with a variety of sticks and weapons.”).

violence against “any” and “all” law enforcement officers to advance his political opinion is a legal fiction.

If individuals across the United States are charged with similar or harsher crimes than Lang, and others are being released on bond, that is clearly a denial of equal protection of the law. If we are to only focus on the DC District, and only J6 Defendants, then as attorney Tankleff argued: “In this county, in this area, Michael Foy, Emanuel Jackson, David Lee Judd, David Allen Blair, Robert Sanford and Federico Klein have all been granted bond, that are all violent cases, including many that contain assault cases. Each one of those were granted bond as Mr. Lang should.” (See Tr. at p. 5, ¶ 25 – p. 6, ¶ 4).

The evidence presented now should not weigh more heavily against him, then if he committed a similar crime elsewhere. Other courts have regularly considered factors that predate the alleged offense conduct in connection with their assessments of dangerousness. See *United States v. Chimurenga*, 760 F.2d 400, 402, 405 (2d Cir. 1985) (affirming releasing on bond defendant charged with conspiracy to commit armed robbery with “no criminal record,” “had been working on a doctorate,” and “had a strong sense of family”); *United States v. Eppolito*, No. 05-CR-192 (E.D.N.Y. Jul. 11, 2005) (ordering release of defendants charged with murder- and drug-related offenses even when “[t]he offenses charged . . . could hardly be more serious,” but

defendants’ “history and characteristics” including “family ties,” “employment,” and “length of residence in the communities” was in favor.).

The court in highlighting all of Lang’s actions, failed to reference or place proper emphases on all the violence going on around Lang, and nonetheless how he risked his life to help several people that needed help, and how such actions warrant a defense of others.

This is a case that screams for a *Munchel* expansion– for bond to be granted for having a defense of others defense to assault, and attempted assault charges, in conjunction with there not being a reasonable logical explanation that Lang is dangerous. Lang will not witness excessive force at the hands of officers again before this case is resolved, and thus there are various conditions or a “combination of conditions of release would reasonably assure the safety of the community” if Lang is placed on home incarceration with electronic monitoring. *Cf. Tanious*, No.21-3034 (D.C. Cir., 2021).

In light of the above, the Court erred in its assessment of dangerousness. Despite there being indication that the Court would reduce its findings to a written order, to date, there is no such written order. Jake is firm and unequivocal in his position that the Court’s conclusion about dangerousness lacked sufficient explanation. As was recently argued in *Tanios*, “Judicial decisions should be reasoned decisions, and this is particularly true for detention orders.” *See* USCA

Case #: 21-3034, Doc. #: 1908073 (*citing* 18 U.S.C. § 3142(g)(requiring written statement of the reasons for detention))”.

POINT TWO

CONDITIONS OF CONFINEMENT: LANG CLEARLY DEMONSTRATED THE CONDITIONS AT DC JAIL JUSTIFY HIS RELEASE UNDER THE CONSTITUTION AND THE BRA.

The Court’s continued concern of those housed at the DC jail was made apparently apparent throughout the course of Lang’s bond hearing, where one example took place on the record. (*See* Tr. at p. 10, ¶ 6-10). In addressing Lang, as an individual from all others, we stressed on the record a number of factors. (*See* Tr. at p. 31, ¶ 19 – p. 33, ¶ 4).

Overall, the Court downplayed all our concerns, including our ability to send our client regular mail and ruled against us. (*See* Tr. at p. 80, ¶ 4 – 10).

While the Court went above and beyond to act as if it cares, greatly, about attorney-client communication, the court did not to address the issues before it, during Mr. Lang’s Bond application. Rather, the court stated: “I, again, am not prepared to order any specific relief for Mr. Lang as it relates to this issue except to say that it does seem that there should be a way to ensure that Mr. Lang can have confidential communications with his lawyers relatively often.” (*See* Tr. at p. 80, ¶ 16 – 20). Rather, the concern of the court seemed to focus on how the “D.C. Jail has adopted adequate COVID protocols and policies to protect the rights of criminal

defendants are the very issues that are pending in front of Judge Kollar-Kotelly.” (See Tr. at p. 80, ¶ 13 – 15; *see also* p. 81, ¶ 17-21).

The conditions of confinement at the DC Jail rose to a level of such severity that Judge Royce C. Lamberth recently found “that the Warden of the DC Jail Wanda Patten and Director of the D.C. Department of Corrections Quincy Booth are in civil o of court.” (See *U.S. v. Worrell*, Order dated 10/13/2021, Document 106).

The conditions of confinement, as outlined in the BRA of 2020 should be an element for the Court to consider. The conditions of confinement at the DC jail prevent Mr. Lang from participating in his own defense. He is unable to receive mail we send him. Counsel must wait weeks to have a video call with him. In-person visits are not privileged. The constitutional deprivations and issues should not be left to a civil suit. They should be rectified by the Court considering whether bond is warranted.

A. THE DISTRICT COURT ERRED IN FINDING THAT LANG, AS ALTERNATIVE RELIEF, SHOULD NOT HAVE MORE ACCESS TO DISCOVERY THAN THAT ALLOWED UNDER THE DC JAIL POLICY.

The court missed the point about Mr. Lang’s access to the discovery. If there is no condition by which discovery can be reviewed while he is incarcerated in a meaningful manner, that factor must be taken into consideration when evaluating an

application for bond. (*See also* Point Two, Section B, *infra*)¹⁰. If a defendant is denied the opportunity to participate in his own defense, including reviewing discovery material and communicating with his attorneys then a clear appellate reversible issue would exist if a trial occurred and the defendant claimed he was denied the opportunity to review discovery and participate in his own defense. As highlighted in *Eppolito*, a “Defendants' presence in jail prior to trial will substantially impede the work of their attorneys. Extensive wiretaps and other evidence will require many hours of consultation between attorneys and clients that are difficult under jail conditions.” *U.S. v. Eppolito*, No. 05-CR-192, 4 (E.D.N.Y. Jul. 11, 2005).

Lang needs to adequately prepare for his defense as this matter will most likely go to trial. Lang can do that from the inside of his house, without posing a single threat to the community or any individual. Alternatively, if there are no conditions to secure the safety of the community because of his alleged actions on January 6th, and his messages shortly thereafter (which he has neither been charged for nor do any of them constitute a crime), then we have respectfully requested that Lang be granted access to his discovery in a manner that exceeds the DC jail policy currently set in place. Lang is not like others in the jail, yet the court continued to stress others. However, the record before the court clearly established how Lang is

¹⁰ Undersigned counsel has continued to communicate with the DC Dept. of Corrections and DOC all to no avail to date.

targeted daily. Lang's conditions have been so severe and substantial that we, as his attorneys, even let him explain such to the Court. Lang highlighted a number of factors. (*See* Tr. at p. 57, ¶ 1 – p. 58, ¶ 12).

The DOT Policy¹¹, dated March 15, 2021, provided by the Government raises several issues that create several problematic matters that will deny defendant fully and adequate access to a laptop to review discovery.

The totality of the program does not muster a constitutional challenge about a defendant having adequate access to the discovery and participating in his own defense. Considering the constitutionally deficient program at DOC, bond should be granted.

B. IT IS RESPECTFULLY SUBMITTED THAT THIS HONORABLE COURT CRAFT A RULE ON JUST HOW THE CONDITIONS OF CONFINEMENT SHOULD APPLY TO THE BAIL REFORM ACT.

On December 31, 2020, the Federal Bail Reform Act of 2020 was introduced “to amend title 18, United States Code, to amend provisions relating to the release or detention of a defendant pending trial, sentence, or appeal, and for other purposes.”¹² The BRA of 2020 sought to address the problem we are raising here,

¹¹ Procedure for Voluminous or Electronic Evidence Review at the Department of Corrections During the COVID-19 Pandemic (dated March 15, 2021).

¹² <https://www.congress.gov/bill/116th-congress/house-bill/9065/text?r=3&s=1> (last visited 11/23/2021).

that “the conditions of confinement, including access to adequate medical, mental health, and dental treatment, access to medications, and *the person’s ability to privately consult with counsel and meaningfully prepare a defense*”, should be considered under BRA.¹³

The DOT Policy¹⁴, dated March 15, 2021, creates several problematic matters that will deny Mr. Lang full and adequate access to a laptop to review discovery, just a few are identified below:

- (1) Electronic discovery (i.e., CD’s, DVD’s, USB flash drives) cannot be mailed to the prisoner (*See*, ¶ #1 of Policy);
- (2) After receipt of the discovery, the inmate will be put on a waitlist to review the discovery. (*See*, ¶ #2 of Policy);
- (3) An inmate will be allowed up to two (2) weeks to review the electronic evidence and if he needs more time, there is a waitlist (*See*, ¶ #3 of Policy);
- (4) If an inmate needs more time, he may file a grievance (*See*, ¶ #3 of Policy);
- (5) After an inmate has conducted his review, the attorney should collect the evidence (*See*, ¶ #5 of Policy);

¹³ <https://www.congress.gov/bill/116th-congress/house-bill/9065/text?r=3&s=1#H06B3552C2B34418C9469B7A9495C157F>

¹⁴ Procedure for Voluminous or Electronic Evidence Review at the Department of Corrections During the COVID-19 Pandemic (dated March 15, 2021).

The constitutionally deficient program at DOC should entitled Jake to be released on bond.

POINT THREE

BRA 3142 FACTORS AND VIABLE DEFENSES:

THE DISTRICT COURT ERRED AS A MATTER OF LAW IN ASSESSING LANG’S HISTORY AND CHARACTERISTICS IN CONJUNCTION WITH THE NATURE AND SERIOUSNESS OF THE OFFENSE BY DETERMINING THAT LANG, WHO STANDS CHARGED WITH VIOLENCE AND DID NOT SHOW REMORSE SHORTLY THEREAFTER MUST BE SUBJECT TO MORE HARSH TREATMENT AT THE DETENTION STAGE.

The Court erred in its application of the BRA 3142, in: (1) failing to adequately apply the fact that Jake saved other’s lives; and that (2) Jake attempted to save others, who were subject to substantial excessive force beatings.

Instead, more emphasis was placed on the weight of the evidence and nature and circumstance of the offense. Lastly, the Court placed entirely too much emphasis on how Mr. Lang did not show remorse within the days following January 6th.

We highlighted numerous problems, (*See* Tr. at p. 13, ¶ 22 – 15, ¶ 2, p. 23, ¶ 4 – p. 25, ¶ 2), which all were ruled against. (*See* September 20, 2021, at p. 72, ¶ 1 – 75, ¶ 3).

It is well settled that “Detention until trial is relatively difficult to impose.” *United States v. Singleton*, 182 F.3d 7, 9 (D.C. Cir. 1999). “[T]he default position of the law . . . is that a defendant should be released pending trial.” *United States v. Taylor*, 289 F. Supp. 3d 55, 62 (D.D.C. 2018) (*quoting United States v. Stone*, 608

F.3d 939, 945 (6th Cir. 2010)). To detain a defendant on grounds of dangerousness, the government must establish clear and convincing evidence “that no condition or combination of conditions will reasonably assure the safety of any other person and the community,” 18 U.S.C. § 3142(f)(2), or, in other words, that pretrial detention is the only means by which the safety of the community can reasonably be assured. *United States v. Smith*, 79 F.3d 1208, 1209 (D.C. Cir. 1996).

Review of release and detention orders pursuant to the BRA, apply the clear error standard. *Munchel*, 991 F.3d at 1282. “The clear error standard applies not only to the factual predicates underlying the Court's decision, but ‘also to its overall assessment, based on those predicate facts, as to the risk of flight or danger presented by defendant's release.’ ” *United States v. Hale-Cusanelii*, 3 F.4th 449, 454-55 (D.C. Cir. 2021) (quoting *United States v. Mattis*, 963 F.3d 285, 291 (2d Cir. 2020) (quoting *United States v. Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004))).

The evidence must prove that the defendant actually poses a danger, not that he does so in theory. *United States v. Patriaca*, 948 F.2d 789 (1st Cir. 1991).

A. THE DISTRICT COURT ERRED IN FAILING TO PROPERLY APPLY THE OFFICER’S AMOUNT OF EXCESSIVE FORCE AND THAT MR. LANG SAVED PHILLIP ANDERSON, AND HOW HE ATTEMPTED TO SAVE OTHERS INCLUDING ROSEANNE BOYLAND.

The Government, in Opposition and on the record, properly credited Lang with waving his hands in the air, in an attempt to stop the violence leading to the

death of Roseanne Boyland. While the cause of death is in dispute, the Government highlighted a point. (*See* Tr. at p. 40, ¶ 2 – 14; *See also* attorney Metcalf, Tr. at p. 15, ¶ 19 – 16, ¶ 23, p. 31, ¶ 2 – 5, p. 16, ¶ 24 – 17, ¶ 8, 20, p. 20, ¶ 10 – 21, ¶ 5, p. 30, ¶ 9 – 25).

The Court little to no weight to the presumption of innocence, and whether Jake presented various defenses that will be present at trial. (*See* Tr. at p. 74, ¶ 6-8).

It is respectfully submitted that Lang’s defenses, particularly that of the defense of others or defense of a third party especially those subject to excessive force was diminished and completely downplayed at the Court.

B. THE DISTRICT COURT ERRED IN PLACING MORE STRESS ON THE WEIGHT AND SERIOUSNESS OF THE EVIDENCE COUPLED WITH LANG NOT SHOWING REMORSE AFTER JANUARY 6, AND FAILED TO APPLY VARIOUS OTHER RELEVANT FACTORS.

Emerging in this area of case law recently, the *Klein* Court provided guidance as follows: “[t]he Court first considers “the nature and circumstances of the offense charged.” 18 U.S.C. § 3142(g)(1). Chief Judge Howell has set forth a number of considerations, which this Court finds helpful, to differentiate the severity of the conduct of the hundreds of defendants connected to the events of January 6. *United States v Klein*, ---F.Supp.3d (2021)(citing *United States v. Chrestman*, ---F. Supp. 3d ---, 2021 WL 765662, at p. 7 (D.D.C. Feb. 26, 2021).

The *Klein* Court explained six considerations. *Id.* Additionally, the *Klein* Court highlighted how even if the weight of the evidence factor weighs firmly in

favor of detention, this factor “is the least important.” *Id.* (quoting *United States v. Gebro*, 948 F.2d 1118, 1121–22 (9th Cir. 1991)).

Here, however, the court’s findings on the 3142 factors placed a clear emphasis on the firm belief that “[t]he time and place of the charged offenses raise their severity and suggest that Mr. Lang does pose a threat of future violence.” (*See* Tr. at p. 72, ¶ 18-20).

Devoid from the court’s analysis are a breakdown or single reference to various other factors, that weigh in Lang’s favor. For example, the court’s findings do not reference how the record is devoid a scintilla of evidence of “prior planning”, how Lang is not alleged to be a member of any anti-government group, or bring any weapons with him.

Further, the court’s findings do not reference how the record is devoid a scintilla of evidence that Lang coordinated with any groups, or participated in a coordinated efforts with others, as the facts support the conclusion that Lang was there and saw others getting hurt and attempted to defend others subject to excessive force at the hands of the officers.

Rather, the court’s finding constantly referenced how Lang did not show remorse thereafter. The Court referenced numerous times its interpretation of how “[o]ver the next few days, Mr. Lang appeared proud of his actions and publicly boasted about what he did.” (*See* Tr. at p. 72, ¶ 15-16). Instead, of analyzing Mr.

Lang's background and the family which raised him, the court channeled in on statements alleged to have been made on the internet after the incident. (*See* Tr. at p. 75, ¶ 22-25).

Politics has become a very passionate topic, where many Americans have taken to the internet to make statements - ridiculous, untruthful statements do not make a person dangerous. Celebrities and artists stating such rhetoric are and were not dangerous by virtue of these statements. However, the court took into consideration statements attributed to Lang.

An example is Breitbart, which identified 15 of some of the worst verbal violent threats (top 5 below):

- (1) Kathy Griffin: 'Beheads' Trump in Graphic Photo,
- (2) Madonna – "I've thought a lot about blowing up the White House",
- (3) Snoop Dogg, "Shoots" Trump in the Head in Music Video,
- (4) Robert De Niro – "I'd Like to Punch Him in the Face", and
- (5) Joss Whedon: "I Want a Rhino to [F---] Paul Ryan to Death",

Available at <https://www.breitbart.com/entertainment/2017/06/14/15-times-celebrities-envisioned-violence-against-trump-and-the-gop/> (last visited Oct. 25, 2021).

Here, with regards to conditions, the court highlighted that there is “no amount monitoring” which could “sufficiently deter” Jake from future unlawful conduct. (*See* Tr. at p. 73, ¶ 5 – 9). The court erred in its assessment of dangerousness because

its own “predictive judgment about future conduct” was not based on the totality of Jake’s prior conduct. Rather, the court relied on merely January 6th events and Jake’s statements on Telegram to formulate and draw such a drastic conclusion.

The court entirely ignored all the special conditions proposed: house arrest, GPS monitoring, and under a complete umbrella where the government would continue to monitor every single message Lang would send out. Again, the record is devoid of a single complaint or concern about Lang’s messages during the last ten months. Lang, just as *Tanios*, would be subject to a virtual jail cell from inside his home.

CONCLUSION

For the reasons stated above, this Court should reverse the Order detaining Jake and release him under strict conditions.

Dated: December 7, 2021

Respectfully Submitted,

Martin Tankleff

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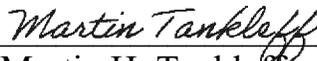
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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a) & 32(g), D.C. Cir. Rules 28(a), 28(c), 28(e) and 32, I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(c) because it contains 5,145 words, excluding the parts exempted by Fed. R. App. P. 32(f) and Cir. R. 32(e)(1). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and (6) and D.C. Cir. Rules 28(a) and 32 because the brief was prepared in 14-point Times New Roman font using Microsoft Word.

Dated: December 7, 2021



Martin H. Tankleff

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(d) and D.C. Cir. R. 25 that on December 7, 2021, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

For ECF filers, the initial briefs are to be filed in electronic format only, unless the court requests paper copies. (Cir. R. 31(b)) However, in the Order filed on October 5, 2021 (Document #1916876), the Court directed that, "The parties are directed to hand-file the paper copies of their pleadings."¹⁵ Therefore, briefs have been filed via ECF and physical copies will be mailed via overnight express mail as soon as physically practicable.

Dated: December 7, 2021



Martin H. Tankleff

¹⁵ Pursuant to Cir. R. 9(a)(1), "an original and 4 copies of a memorandum of law and fact setting forth as many of the matters required by Circuit Rule 9(b) as are relevant." However, the Court Clerk directed counsel to file an original and 8 physical copies with the Clerk of the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD JACOB LANG,

Defendant.

CR Action
No. 1:21-053

Washington, DC
September 20, 2021

3:37 p.m.

_____/

TRANSCRIPT OF ARRAIGNMENT/STATUS CONF./MOTION HEARING
BEFORE THE HONORABLE CARL J. NICHOLS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1

P R O C E E D I N G S

2

COURTROOM DEPUTY: Your Honor, this is criminal case year 2021-053, United States of America versus Edward Jacob Lang. Pretrial officer is Andre Sidbury, present by telephone.

3

Counsel, please come forward to introduce yourselves for the record, beginning with the government.

4

5

MS. JACKSON: Good afternoon, Melissa Jackson on behalf of the United States.

6

7

THE COURT: Ms. Jackson.

8

Let me just say that whoever is at the podium should feel free to take off his or her mask. I find that aids the court reporter, certainly aids me, aids opposing counsel in understanding whoever is at the podium.

9

10

11

Then when you are seated, if you could put your mask on. So one person on that side of the podium with a mask on at a time. Thank you.

12

13

14

15

Ms. Jackson.

16

MR. METCALF: On behalf of Edward Jacob Lang, Steven Metcalf, M-e-t-c-a-l-f. Good afternoon, again, Counsel, and good afternoon, Your Honor. Thank you.

17

18

THE COURT: Good afternoon.

19

20

MR. TANKLEFF: Martin Tankleff on behalf of Mr. Lang. Good afternoon, Your Honor. Good afternoon, Counsel. I am also of Metcalf & Metcalf.

21

22

23

24

25

1 THE COURT: Thank you, Counsel.

2 So we are here on the defendant's motion. I've
3 reviewed all of the materials that have been filed, at least
4 the papers. I've reviewed a number of the exhibits, both
5 photographic and other, including many of the videos.

6 I think the most efficient way to proceed this
7 afternoon is to hear first from defense counsel as to why I
8 should modify Mr. Lang's current conditions, in particular
9 why I should release him. I will hear from the government
10 on the government's contrary view, and then I will let
11 defense have a brief rebuttal.

12 I think it would be helpful to focus not just on
13 the various factors under the Bail Reform Act but the
14 argument that you've made about Mr. Lang's current
15 conditions at the jail and his ability or lack thereof to
16 review discovery materials.

17 I don't know if that's you, Mr. Metcalf, or you,
18 Mr. Tankleff, but please approach.

19 Oh, yes. Thank you. Ms. Lesley reminds me that
20 we need to arraign the defendant.

21 Could you please do that, Ms. Lesley?

22 COURTROOM DEPUTY: Mr. Metcalf or Mr. Tankleff,
23 please come forward.

24 May the record reflect that defendant, Edward
25 Jacob Lang, and counsel have received a copy of the

1 superseding indictment. Do you wish to waive the formal
2 reading of the 13-count superseding indictment and enter a
3 plea?

4 MR. METCALF: Yes.

5 COURTROOM DEPUTY: In Criminal Case No. 21-053,
6 how do you wish to plead?

7 MR. METCALF: Not guilty.

8 COURTROOM DEPUTY: Thank you.

9 MR. METCALF: Thank you.

10 Your Honor, while I'm up here, there is just one
11 minor housekeeping issue regarding our exhibit that we
12 produced with our reply. Can I address that issue just real
13 quick?

14 THE COURT: Yes.

15 MR. METCALF: Okay. So when we filed our reply
16 last Friday, we were not able to upload that video as an
17 actual exhibit. It's referred to in the papers, and it is
18 also highly sensitive material. So we submitted an email
19 today circulating that video, and we spoke with counsel
20 today. And we do not mind -- we actually request that that
21 video be marked under seal, so Exhibit A, which is the only
22 exhibit to our reply, be marked under seal.

23 And for all intents and purposes of today, there
24 are three minutes of that video that we would like to
25 address and/or show to the Court.

1 THE COURT: Thank you.

2 It sounds, Ms. Jackson, as if you've discussed
3 this question with defense counsel and you are okay sealing
4 the video at least for now?

5 MS. JACKSON: Yes, Your Honor.

6 THE COURT: I will grant the motion to seal the
7 video at least for present purposes.

8 MR. METCALF: Thank you, Your Honor.

9 THE COURT: Thank you.

10 So we have arraigned Mr. Lang on the superseding
11 indictment. Who is going to take the lead for defense
12 counsel and defense on the motion to change the conditions
13 of pretrial detention?

14 MR. METCALF: Mr. Tankleff is going to go first
15 and take the lead, and then I would ask just the ability to
16 address a couple issues before the Court.

17 THE COURT: Sure.

18 MR. METCALF: Thank you.

19 THE COURT: Mr. Tankleff?

20 MR. TANKLEFF: Thank you, Your Honor.

21 In 1988, I was charged with double homicide in the
22 state of New York. I was granted a million dollars' bail.
23 There is no reason why my client, Jacob Lang, should be
24 incarcerated with no bail.

25 In this county, in this area, Michael Foy, Emanuel

1 Jackson, David Lee Judd, David Allen Blair, Robert Sanford
2 and Federico Klein have all been granted bail, that are all
3 violent cases, including many that contain assault cases.
4 Each one of those were granted bail as Mr. Lang should.

5 The conditions of Mr. Lang's confinement are
6 depriving him of his right to counsel, depriving him of
7 access to view evidence against him, depriving him of
8 personal hygiene items, religious services. He's been
9 placed in the hole or segregation a number of times. He's
10 denied truly privileged communications --

11 THE COURT: What does that mean, "placed in the
12 hole"?

13 MR. TANKLEFF: The hole is another word for
14 special housing or segregation. You would be moved from
15 your normal housing unit to another area of the jail where
16 your accessibility is even more limited.

17 I know each jail throughout this country have
18 different classifications or criteria. Many of them are
19 either called special housing units, administrative
20 segregation, administrative segregation [sic]. Sometimes
21 they even call it involuntary protective custody.

22 When you go from a normal housing unit to a
23 segregated unit or a special housing unit, you are even
24 restricted more so. When myself and Mr. Metcalf went to
25 visit Mr. Lang, the attorney visits were, essentially, in a

1 cubical like this and completely exposed. So every
2 conversation we had with Mr. Lang, everyone in the room
3 could hear.

4 Mr. Lang was held in a cage-like environment on
5 the other side of plexiglass, where we had to speak to him
6 by phone. Every single word that he said, everyone could
7 hear. When we left, we said, Well, what if Mr. Lang wanted
8 an in-person, private consultation? We were told that he
9 would have to quarantine for 14 days after such a visit.

10 We recently learned that if Mr. Lang is not
11 vaccinated, we could not visit Mr. Lang back to back. We
12 would actually have to wait 14 days.

13 It gets even worse when we --

14 THE COURT: Why is Mr. Lang not vaccinated?

15 MR. METCALF: Personal choice of his. And I don't
16 think the jail is actually optioning whether it is the
17 Johnson & Johnson, Moderna or the Pfizer.

18 I know in various states throughout the country,
19 Johnson & Johnson has been the preferred choice of the jails
20 because it's a one-shot deal. I don't know that D.C. Jail
21 offers other options. I am involved in a case in Texas
22 where Johnson & Johnson was the initial offering; however,
23 if something is requested differently, it is offered.

24 But just to show you the problems of sending
25 discovery, we brought with us today an envelope of discovery

1 that we actually sent to Mr. Lang twice. Twice it was
2 returned to us with a notation saying, "Return to shipper.
3 Reason for return: Receiver refused delivery".

4 Mr. Lang has never seen this, and we have never
5 been able to get an explanation of why us sending discovery
6 in a printed format with no other restrictions are being
7 returned to us.

8 The system of discovery that's set up right now is
9 inadequate for Mr. Lang to actually have his rights
10 protected. As the government has established, that we are
11 changing over to a Relativity system. As the government has
12 stated, that this is going to be somewhat of a hurdle for
13 even attorneys to get used to. The one thing I haven't seen
14 in any papers whatsoever is for those individuals who are
15 incarcerated, their ability to access Relativity. We have
16 proposed --

17 THE COURT: Counsel, could you hold on one second?

18 Ms. Lesley, is there anything we can do about the
19 reverb we are hearing, the feedback, or is that --

20 MR. TANKLEFF: Do you want me to step back?

21 THE COURT: I can hear you fine.

22 MR. TANKLEFF: I can step back.

23 THE COURT: I think that will be fine.

24 MR. TANKLEFF: One thing I learned in law school
25 was --

1 THE COURT: Or maybe just push the microphone away
2 from you a little bit.

3 MR. TANKLEFF: How's that?

4 THE COURT: Thank you.

5 MR. TANKLEFF: Sure.

6 As our moving papers established, there is a
7 number of computer programs throughout this country that for
8 individuals who are incarcerated, they get a significant
9 amount of time for discovery.

10 However, with the level of security -- I guess I
11 should say clearance issues or security status issues with
12 discovery in this case, I would be remiss to say that I
13 don't think the government would allow much of the discovery
14 to enter into the D.C. Jail if Mr. Lang remains
15 incarcerated. That is why we have proposed that he be
16 released on bail, on bond, so he can have access to the
17 discovery, review it with his attorneys.

18 I mean, there are hundreds of hours of video. I
19 think in one of the recent submissions they said there are
20 100 days' worth of video.

21 THE COURT: Are you aware of a decision holding
22 that a defendant who should otherwise be detained should
23 nevertheless be released just in order to allow the
24 defendant to participate in pretrial discovery?

25 MR. TANKLEFF: Am I aware of a decision? No,

1 Your Honor. But I am aware that the Sixth Amendment
2 guarantees a defendant the right to participate in his own
3 defense, the right to assist in his own defense. Mr. Lang
4 is not able to assist in his own defense, which is a
5 deprivation of his Sixth Amendment rights.

6 THE COURT: That's true, is it not, of essentially
7 everyone at the D.C. Jail right now because of the policies
8 and procedures that the D.C. Jail has set up; and whatever
9 rule I adopt for Mr. Lang, shouldn't it apply to everyone,
10 either his access or that he should be released to enable
11 him to participate in his defense? Don't I have -- wouldn't
12 that, in effect, apply to everyone else?

13 MR. TANKLEFF: It would, Your Honor. Each case
14 has to be evaluated individually. Not every case has the
15 level of discovery that each case has. Not -- each case
16 doesn't have the level of security levels of discovery.

17 Mr. Lang has multiple levels. I believe the
18 government said we are up to Disclosure 10. You know, for
19 us to be able to work with Mr. Lang, if he was free on bond,
20 he could come to our office on a regular basis. We could
21 speak to him on a regular basis.

22 The jail system set up a legal email system. And
23 recently, we tried to send Mr. Lang something. I think it
24 was 1,000 characters, which was rejected, where the email
25 system says that it can handle up to 30,000 characters.

1 The level of discovery in this case seems that it
2 is going to continue to be ongoing. And each time the
3 discovery is disclosed to us, there would be a delay in
4 getting it to Mr. Lang for his ability to review it. And as
5 I said before, with Relativity coming into place, we don't
6 know how relativity will be implemented within the jail.

7 If Mr. Lang is going to be given a fair
8 opportunity, he should be given bond to alleviate the
9 conditions of confinement and guarantee his Sixth Amendment
10 right to counsel and to participate in his own defense.

11 And Mr. Metcalf will take over from here.

12 THE COURT: Thank you, Counsel.

13 MR. METCALF: Your Honor, may I have just about
14 10 seconds real quick with Mr. Lang?

15 THE COURT: Please.

16 MR. METCALF: Thank you.

17 (Discussion off the record.)

18 MR. METCALF: Thank you, very much, Your Honor.

19 A couple of things that I would like to address
20 with regards to this application were outlined and
21 highlighted in our reply papers. And that was our ask. And
22 our ask is to not focus on isolated instances in this
23 application, not to focus on a two- or three-minute time
24 span. It's to, essentially, take into consideration the
25 totality of the circumstances that Mr. Lang was faced with

1 on that day and at the end of that, that this day or
2 circumstances anywhere substantially close to this are never
3 going to exist again.

4 So Mr. Lang, as alleged by the government, first
5 basically got to the tunnel at around 2:41. After -- and
6 that lasted anywhere going back and forth until about 5:00.

7 Now, what we submitted to Your Honor as Exhibit A
8 in our reply is a video that took me -- I can't tell you how
9 many times to watch to actually see what was going on there
10 because I was constantly being told it. And maybe for one
11 reason or another, I didn't want to believe it, and it was
12 right in front of my face the whole time.

13 The video -- I don't know if Your Honor has had a
14 chance to look at it.

15 THE COURT: I have.

16 MR. METCALF: It actually shows a story that there
17 was more to this situation than what first meets the eye,
18 than what's been portrayed in the media and how a single
19 snapshot could capture.

20 Two main instances that we want Your Honor to
21 focus on. That one video in particular and the time frame
22 of that video, approximately, from my calculations, at about
23 3:05. If you see the one bottle get thrown and ricochet off
24 of someone's head and, basically, hit the camera. And then
25 some goop comes on the video. It's a white substance that

1 comes on the video.

2 Around that exact same time -- I think we marked
3 it as two hours and five minutes into the video until about
4 two hours and eight minutes into the video -- if you focus
5 in the right-hand corner of that video, you see an elderly
6 woman with a red sweatshirt on who is completely helpless,
7 who is defenseless, and she is being beaten with batons.
8 She is being beaten by multiple officers.

9 There is, actually, one officer at one point
10 during that time frame -- I think it is about two hours and
11 seven minutes into that video, where one officer is not
12 wearing the typical gear. He has a white shirt on and a
13 helmet. And you see him beating this woman with a baton.

14 THE COURT: What time is that, approximately?

15 MR. METCALF: Based on my calculations, I believe
16 that to be approximately 3:07.

17 At the same time, there's an officer on a ledge
18 literally spraying that woman as the other officer is
19 beating her. So you have multiple officers beating this
20 woman, and you have another officer engaging in the spray.

21 Now, the spray is something I want to focus on.
22 There are various different reasons why people showed up
23 that day. Mr. Lang is a young 26-year-old who grew up with
24 a strict-regimen family, where he idolized his father. His
25 father was a businessman, a strong businessman he wanted to

1 emulate and wanted to take after, and he actually created
2 skills in social media.

3 On January 6th, he had a website platform that was
4 about to take off. He went there to promote himself, have
5 his voice heard. And what these individuals were met
6 with -- now, this is Mr. Jacob Edward Lang [sic]. If we
7 talk about the 3142 factors in there, he's not involved in
8 any group, no anti-government group, no affiliations with
9 any Proud Boys, any members at all. There is no showing
10 that he even went there to meet anybody.

11 He has a dress shirt on underneath his jacket. He
12 was trying to find out business opportunities in D.C. the
13 day before, and he went there for his voice to be heard,
14 maybe so people would see him on Facebook. What ended up
15 happening, though, is not anywhere close to what was
16 intended to have happen or what was intended to go on that
17 day.

18 You want to speak out about the government; that's
19 your First Amendment rights. And what are you met with?
20 You are met with officers, tear gas, flash bangs, knee
21 bangers or -- I forget exactly what they are called at this
22 specific second -- and then what Phillip Anderson described
23 as orange gas that literally made you -- and when I say
24 "what we described", it's in our initial moving papers --
25 that literally made people almost pass out instantly. Tear

1 gas, mace, flash banging. And that video of this woman
2 captures this story.

3 THE COURT: Well, your client was there with a gas
4 mask. Right?

5 MR. METCALF: At one point or another, yes, he did
6 have a gas mask on.

7 THE COURT: Was it his gas mask?

8 MR. METCALF: Say again?

9 THE COURT: Was it his?

10 MR. METCALF: I don't know about how he actually
11 came into possession of the gas mask, Your Honor. I know
12 that the government alleges in their opposition that he
13 picked it up at one point, at approximately 3:01. I was
14 trying to figure out that whole situation and I -- according
15 to my calculation, I saw different times throughout the
16 evidence that he had that gas mask beforehand. So I don't
17 know when or how he actually did come into possession of
18 that gas mask, Your Honor.

19 So the point being, when they got to that point
20 and when the officers formulated that line, there were
21 people stuck there. There were people who had to react and
22 had to actually take action on behalf of other people. And
23 there were people substantially being injured. There were
24 numerous counts of excessive force happening right in front
25 of these people. Not to justify the actions but to explain

1 what was going on that day.

2 And then if you fast-forward a little bit later,
3 it actually did happen. There is a woman who physically
4 died right there on those stairs. There is a woman who was
5 passed out unconscious, and videos have circulated about
6 officers beating her while she was down. Unfortunately, I
7 don't have that video in our discovery where I could
8 pinpoint it to present it to Your Honor, but that is what is
9 circulating right now.

10 Mr. Lang, at one point or another, was trying to
11 stop this chaos. He was trying to stop this mess. He was
12 caught on video waving his arms, screaming. "There are
13 people down there. They need to get saved."

14 I actually pulled up the application of Mr. Foy,
15 another bond application that was done, and the video is
16 quoted in that application, and the words that are quoted
17 are Mr. Lang's words, trying to notify the police that
18 people are underneath a crowd of people and they are being
19 hurt and they are dying.

20 And there was no reaction other than the continued
21 threat of violence that just continued to ensue from these
22 officers. So there were people who had to act in a certain
23 way.

24 Jake then picked up Phillip Anderson out of that
25 mess. He tried to do what he could with regards to Rosanne,

1 and the government even acknowledges that in their papers at
2 Page 14. And then he picked up another unconscious man.
3 This is not about race. This is not about politics. This
4 is not about anything other than him jumping into a chaotic
5 situation and trying to do what he can to save other people.

6 We ask Your Honor to take that into consideration.
7 We ask you to take that into consideration when you are
8 doing a distinction based on *Munchel*. We understand that
9 *Munchel* does --

10 THE COURT: So how does that jibe with Exhibit CC,
11 whereas, I understand it, your client wrote, "Can't wait for
12 the 20th. I am getting a fucking arsenal together. This
13 group is with zero fear of the Feds. They know this is war.
14 This is war. You obviously weren't at the Capitol this
15 week. Let me show you what war is. If anything goes down
16 where we need to mobilize and show up like the Minutemen,
17 the regional leader messages everyone and we come armed"?

18 MR. METCALF: Your Honor, Exhibit CC of the
19 government's opposition having to do with the Telegram
20 messages? Is that what you are referring to?

21 THE COURT: Yes.

22 MR. METCALF: Your Honor, those messages --

23 THE COURT: That's after the event.

24 MR. METCALF: Say again?

25 THE COURT: Those messages were sent after

1 January 6th. Correct?

2 MR. METCALF: Yes, I'm not disputing that.

3 THE COURT: So how are those consistent with your
4 argument, as I understand, all Mr. Lang was doing was trying
5 to protect innocent people from the violence of the officers
6 on the scene?

7 MR. METCALF: It's not all that he was doing. He
8 was also having his voice heard. It was also his ability to
9 network or do things on social media that allowed him to
10 build a business. Now, those beliefs could be misguided and
11 were definitely misguided at that point, but they were talk.
12 They actually never did anything. They actually never led
13 to anything. It was a situation that's nothing more than
14 hyperbole, Your Honor.

15 THE COURT: You concede, do you not, that he's on
16 camera swinging a baseball bat at the officers?

17 MR. METCALF: So time frame.

18 THE COURT: Do you concede that?

19 MR. METCALF: Yes, I do concede that, Your Honor.

20 THE COURT: And do you also concede that at one
21 point he swung a riot shield or whatever you want to call it
22 that appears to have been taken from an officer, he swung it
23 at an officer or slammed it against an officer? Do you
24 concede that?

25 MR. METCALF: Okay. So going back to the bat --

1 THE COURT: Do you agree that there is evidence,
2 pretty clear video evidence that your client swung a riot
3 shield or shoved a riot shield or hit an officer with a riot
4 shield?

5 MR. METCALF: What I saw with the riot shield was
6 the Facebook post pointing, This is me, and that the riot
7 shield got slammed on the floor.

8 THE COURT: Have you viewed all of the videos the
9 government has introduced here?

10 MR. METCALF: Introduced here?

11 THE COURT: Yeah.

12 MR. METCALF: Out of the 47 pieces of exhibits, I
13 would say potentially two or three may be the only ones I
14 did not see, and that is only because at that time I was not
15 able to open up my computer. But I have gone through every
16 single one of those exhibits in as much detail as I possibly
17 can.

18 THE COURT: So you contest that there's evidence
19 that the government has proffered showing Mr. Lang hitting
20 an officer, just to use a generic term, with a riot shield?

21 MR. METCALF: No, I don't contest that. What I
22 would say to Your Honor is this --

23 THE COURT: Do you agree or concede that Mr. Lang
24 kicked an officer on the ground?

25 MR. METCALF: The kicking charges --

1 THE COURT: Answer the question. Do you concede
2 that there is evidence that your client kicked an officer on
3 the ground?

4 MR. METCALF: That we are still looking into, so I
5 cannot concede that at this point.

6 THE COURT: Okay.

7 MR. METCALF: But what I can say to Your Honor is
8 if you look at the two points that Your Honor's talking
9 about, with regards to the baseball bat, with regards to the
10 shield, the time frame here -- not excusable, but 4:26, 4:27
11 is approximately the time when Rosanne Boyland died right
12 there on those steps.

13 Mr. Lang tried to help her. Was unable to. Was
14 pulling other people out. His actions at that time -- I
15 don't know if they were -- and this is why we are presenting
16 to Your Honor about looking into the defense of others, what
17 they were doing. And what I could tell at that point and
18 what I submit to Your Honor is that the baseball bat was
19 used in a way where he was hitting the shields.

20 There is also -- if you look at them in its
21 totality, there is somewhat of a movement of trying to push
22 the police back and trying to push everybody else back.

23 There is not -- as the Klein Court put it, there
24 was no intention to actually harm. Some of those shields
25 were not six feet. Some of those shields were not covering

1 these officers' entire bodies at all. So it was more of
2 warning signs. It was more of trying to separate two
3 crowds. It was more of adrenaline after picking up a woman
4 who just died, having to save another person, after seeing a
5 bunch of people hit. There are so many different factors --

6 THE COURT: Am I right that we are talking about a
7 period that is almost two hours after your client -- and we
8 talked about it before. I think the time period you
9 mentioned was 2:41. What we are talking about now are
10 events that happened roughly two hours later.

11 MR. METCALF: Yes.

12 THE COURT: So your client was there for two
13 hours. Didn't step away. Didn't walk away from the
14 Capitol. Stayed there. Was he, essentially, at the -- I
15 don't mean this to be specific, but at the general front of
16 the crowd at the tunnel?

17 MR. METCALF: He was more towards the front of the
18 crowd, yes.

19 THE COURT: That whole time?

20 MR. METCALF: A little bit longer -- there are
21 certain points that are unaccounted for.

22 THE COURT: So what was he doing that whole time?
23 Was he trying to save people that whole time?

24 MR. METCALF: So there is a one ten-minute gap
25 between, I think, 3:30 and 3:40. I think he was trying to

1 catch his breath. I think he was actually having medical
2 attention given to him. I think there was various different
3 things he was doing aside from the front. There are
4 different times he did step back and come back; that is
5 correct, Your Honor. It is longer than a two-hour period.

6 THE COURT: I was just talking about the fact that
7 when we are talking about the shield and the -- whatever you
8 say happened with it, that's some two hours after Mr. Lang
9 is first observed at the beginning of the crowd in the
10 tunnel. So it's a long period of time he was there. And
11 I'm trying to understand whether your argument was that he
12 was trying to save people that whole time or protect people.

13 MR. METCALF: Well, at first -- so they identify
14 him at 2:41. At 2:41, there is a lot of people already in
15 front of him. There is a lot of people in the tunnel at
16 that point in time. He goes by the front gateway of the
17 tunnel and either snaps a photo or is recording. Then he
18 goes somewhere else. Not on camera for a couple of minutes.
19 Then when he comes back more towards 3:00 is when there is
20 that joint pushing movement that's described in the
21 government's papers.

22 So there was people pushing one way, officers
23 pushing the other way, people falling in the middle, then
24 more of the crowd coming behind. So it was chaos in various
25 different ways and various different senses of the word.

1 THE COURT: Who caused the chaos?

2 MR. METCALF: Say again?

3 THE COURT: Who caused the chaos?

4 MR. METCALF: That's what I don't know,
5 Your Honor. People being there. Also, as I explained
6 before, when they came there, they were met with certain
7 types of violence and a certain level of violence from the
8 officers. So I don't think it is just one person. I don't
9 think it is one group of people. I think that there are
10 various different factors at play here where there are
11 officers who actually may have escalated this scenario and
12 brought it to something that it wasn't.

13 And then what I am asking Your Honor to consider
14 is after the pushing movement got to a point where the
15 officers lined up at that entryway, there were people stuck
16 in that area; and that's where Mr. Lang's actions are
17 alleged to have substantially -- or to substantiate it at
18 that point in time.

19 And at that point in time is where I am saying
20 that they were looking to save people. There's actually one
21 of the government's exhibits, I believe it is Exhibit E,
22 where you could hear him saying, There's women in there.
23 Get the women out.

24 Your Honor, throughout this time, there is a
25 different scenario going on based on what the officers are

1 doing. So the entire time he was not trying to save people,
2 no. But there are certain parts of that time where he
3 absolutely, unequivocally was.

4 And we ask Your Honor to take that into
5 consideration when applying *Munchel*, when looking at the
6 assault counts in this case, in looking at the severity of
7 those assault counts, and in weighing each one of these
8 factors.

9 The government puts him in his own category.
10 There can be a category for those with a defense of others
11 or those with an actual defense that explains their behavior
12 because absent that, you have people swinging bats and
13 throwing sticks at officers and if you don't look at the
14 entire scenario in these videos in its totality, you can't
15 make sense of it.

16 But when you go down to what was actually
17 happening at that time and people were getting sprayed in
18 their face with gases and there was tear gas coming in this
19 way and batons being hit over people's heads and people -- a
20 woman laying down unconscious, her being hit over the head
21 with a baton and then when people tried to save this woman,
22 them getting hit over the head with batons and completely
23 dropping like flies -- when you see this going on in front
24 of you, it explains certain scenarios and explains context
25 to what actually happened here this day and context to what

1 Mr. Lang is alleged to have done because without that
2 context, it doesn't make sense.

3 THE COURT: So let's go back to one of the first
4 questions I asked you, and that is how at least some of this
5 argument is consistent with -- or maybe even answer a
6 different question, which is, isn't, for example, what he
7 said after the event relevant to the question in front of me
8 about the Bail Reform Act?

9 MR. METCALF: Yes, it is.

10 THE COURT: Yeah. So you don't dispute that he
11 wrote what he wrote in the post period of January 6th.

12 MR. METCALF: Absolutely --

13 THE COURT: The government, I think, says that
14 that -- well, I don't know that they say this, but one could
15 argue that that puts him in a different category than people
16 who merely committed violence that day.

17 But he said, We are going to do this again if we
18 need to. And so why isn't that highly relevant to whether
19 there is a significant risk of future dangerousness?

20 MR. METCALF: Okay. So, Your Honor, in going
21 through the factors, the nature and circumstances of the
22 offense, there's various different components that the
23 courts have analyzed. So, yes, those statements,
24 100 percent, are relevant to your analysis. We admit that
25 they may have been wholly misguided in one way, shape or

1 form. They were put out there on the World Wide Web.

2 But when you take into consideration the various
3 different factors that are also looked at in weighing the
4 nature and circumstance, I ask Your Honor to take into
5 consideration that there's no evidence of prior planning.
6 There's no evidence of him going there that day with a
7 weapon. That baseball bat was being passed around, and it
8 was, essentially, ripped away from someone who potentially
9 could have done ten times more harm with that bat. As silly
10 as that sounds, when you see these other guys swinging the
11 bat, it is nowhere in comparison to the way Mr. Lang swung
12 the bat.

13 I will give you another example, Your Honor.
14 There is a video of his true nature. I had to rewind this a
15 couple of times. It's either Exhibit K2, where it's a
16 minute-long video. You see Mr. Lang with a bunch of others,
17 and it seems as if they're approaching the officers and
18 everyone is kind of standing back and people are getting
19 aggressive.

20 An officer falls down, and Mr. Lang actually picks
21 him up. When Mr. Lang picks him up, the people behind him
22 seem to get frustrated that he actually picks the officer
23 up, and then the video cuts off. So I believe that that is
24 actually K2.

25 There are certain things that Mr. Lang did that

1 were not the intention of harming these officers. It was
2 more of advancing the crowd, moving the crowd in one way or
3 the other and trying to get the officers to move in one way
4 or the other and if people were trapped behind them, being
5 able to have these people get out without being
6 substantially injured.

7 I just want to double-check, Your Honor, real
8 quick about that video.

9 THE COURT: I'm reviewing K2 as you speak. It's
10 not apparent to me that that's the one, but it may be.

11 MR. METCALF: Your Honor, if I could just step
12 back to my phone. I actually have it at the top of my
13 phone. Is that okay?

14 THE COURT: Yes.

15 MR. METCALF: Thank you.

16 THE COURT: Of course.

17 MR. METCALF: It's actually Exhibit Q, Your Honor.

18 THE COURT: Okay. I am pulling that up.

19 MR. METCALF: So, Your Honor, to clarify a couple
20 of things, K2 and Exhibit E are two videos that we were
21 looking at in comparing and contrasting the allegations
22 about kicking. And the one main discrepancy that we have
23 here is that there is another individual wearing a very
24 similar jacket, who I keep mistaking for Mr. Lang. In those
25 two exhibits, there seems to be more of, like, a collar with

1 this individual's jacket. And that is precisely how
2 Mr. Lang is identified by officers in 302s, by officers in
3 general.

4 When I saw different exhibits of what his jacket
5 looked like and not having that actual collar and not being
6 able to flesh this out with Mr. Lang because we haven't been
7 able to send him his bond application or any other papers
8 for the last couple of weeks, that is why -- I didn't mean
9 to be offensive or defensive, but there are a couple of
10 things we still need to look into to see if Mr. Lang has
11 been mistaken because I've mistaken him in a whole bunch of
12 these videos on more than one occasion.

13 THE COURT: So that means we don't know whether he
14 tried to help an officer up or not?

15 MR. METCALF: No. It means in K2 and E, we don't
16 know and cannot concede whether or not he is kicking at the
17 officer.

18 THE COURT: What about in Q?

19 MR. METCALF: Q, that appears to be Mr. Lang.

20 THE COURT: Kicking the officer.

21 MR. METCALF: This is what I am saying to
22 Your Honor. He is kicking at what appears where the officer
23 is standing, just like with the bats a little bit later on.
24 But then it doesn't seem as if he hit this officer. This
25 officer goes on the floor, and he picks him up. The others

1 behind him seem to go after the officer as he is picking him
2 up.

3 This is what I am saying to Your Honor is that
4 when you look at each one of these actions that he's alleged
5 to have done, he's not giving it his full intent to actually
6 harm these officers. It's more of trying to create a space
7 between those in the crowd and the officers coming back and
8 at certain points to allow for the people stuck behind the
9 officers to get out without being substantially injured.
10 That's what we are proposing to Your Honor.

11 When you review the evidence, the intent to harm,
12 you go through each one of the seven assault counts, these
13 officers -- there is one officer said that he had a
14 headache. The injuries are not there because Mr. Lang did
15 not want them to be there. His intention was not to harm
16 these officers.

17 This is a man who reacted and actually sprung into
18 action when he saw people being beat right in front of him
19 and excessive force being done to women who were
20 defenseless. That is what we are presenting to Your Honor.
21 Because the shields were not covering their whole bodies,
22 there are different portions in time where he could have
23 done it a completely different way if his intent was to
24 harm. That video also captures that exact point.

25 MR. TANKLEFF: Your Honor, if I may. If you look

1 on Q -- it's at 12 seconds -- you can actually see Mr. Lang
2 grabbing the officer's hand and picking him up. It's
3 exactly at 12 seconds.

4 THE COURT: Grabs an officer's hand.

5 MR. METCALF: Your Honor, when we spoke about the
6 statements and those misguided statements and those
7 statements that could have been of rage on the day after and
8 how they are relevant, I ask Your Honor to consider his
9 planning. There is no evidence of him planning. I ask
10 Your Honor to consider that he is not part of any
11 anti-government group. He's not affiliated with any of
12 these organizations, never was. There's no planning of him
13 meeting up with any of these organizations on that day.

14 Mr. Lang was essentially there by himself. He
15 wasn't meeting up with people. This was not a coordinated
16 scenario with regards to Mr. Lang. There is no earpiece.
17 He's not talking to anybody as we've seen in these other
18 cases. That is not the situation with regards to Mr. Lang.
19 I ask Your Honor to take that into consideration. I ask
20 Your Honor to take into consideration what we are talking to
21 you about him picking up these officers.

22 We are also asking you to take into consideration
23 his ability -- or what he did to actually try to save
24 people. If you're going to take his words into account,
25 take his words into account about women being there. Take

1 his words into account about trying to get the women out.
2 Take Phillip Anderson's words into account when he thought
3 that he was going to die. But for Jake Lang pulling him out
4 of this crowd and these people off of him, he believed that
5 he was going to die.

6 There are people who had to react that day. There
7 are certain reactions that were going to happen that day,
8 and there are people who sprung into action. That's what we
9 are asking Your Honor to take into consideration. There is
10 no leadership role here. There is no de facto leadership
11 role here. So there are various different aspects of the
12 nature and circumstances that can be broken down.

13 When you take all of these factors into play, you
14 can conclude that the nature and circumstances, although
15 serious, although involve these assaults, also involve a
16 defense of a defense of others, which brings context and an
17 explanation to these actions on this day, and weigh that in
18 favor of him not being detained anymore.

19 And, Your Honor, to circle back to something that
20 Mr. Tankleff mentioned to Your Honor, in the jail, Mr. Lang
21 is not treated the same. Mr. Lang is singled out. He is
22 punished different than other people. He is used as a
23 scapegoat on various different occurrences. Him going to
24 the hole at one point for two months at one time was for
25 sheer reason of people just potentially not liking him for

1 what the jail instills into the minds of everyone who is in
2 there.

3 There are various different factors there that
4 separate Mr. Lang apart. When he was in the hole for two
5 months, he was filtering his water through his sock. He was
6 not able to speak to us. He still hasn't gotten a haircut
7 or a shave. So regardless of medical reasons or religious
8 beliefs on getting vaccinated or not, Mr. Lang has been
9 placed in a whole other category for reasons I cannot
10 explain that literally have deprived this man of being able
11 to assist in his defense. And that has been the situation
12 since his arrest. We have not been able to adequately
13 communicate with Mr. Lang, no matter what lengths we go
14 through, no matter what policies we try to abide by.

15 There are various different times that we try to
16 email. I will give Your Honor an example. I went away for
17 the first time in about two years with my family about two
18 weeks ago. I emailed the jail saying I wanted to have a
19 video visit with Mr. Lang. I told them, specifically, On
20 this Monday, I am going to be traveling. I am not going to
21 be in front of a computer. They set up my visit with
22 Mr. Lang for that exact time I told them I was going to be
23 traveling.

24 There are various different instances and hurdles
25 that lead to this detention being wholly unconstitutional.

1 THE COURT: I think I have it. I would like to
2 hear from the government, and I will, of course, give you an
3 opportunity to do rebuttal.

4 MR. METCALF: Thank you, Your Honor.

5 THE COURT: Ms. Jackson.

6 MS. JACKSON: Good afternoon, Your Honor.

7 Timing matters in this case and the timeline
8 matters, specifically as it relates to the factors that
9 Your Honor needs to take into consideration in evaluating
10 the detention decision, in particular both the nature and
11 circumstances of the event, of the charges itself, the risk
12 that Mr. Lang poses to the community and his characteristics
13 and history.

14 To start off, it actually doesn't start at 2:41.
15 One of the reasons we have such a firm grasp on the timeline
16 for Mr. Lang is he filmed himself almost continuously
17 throughout the day. We have recovered those videos from his
18 phone. He also posted many of them on Instagram, Facebook
19 and social media, where he had thousands of followers.

20 You can see him when you go through all of the
21 evidence starting first at the rally and then going down to
22 the Capitol, climbing the scaffolding and hanging from the
23 side from around 2:30 on and then climbing to the top of the
24 scaffolding, which is how he gets to the second level of the
25 lower west terrace and approaches the tunnel or the archway,

1 the entrance through which the president typically walks out
2 on Inauguration Day, which is where the bulk of this
3 occurred.

4 Then around 2:41 he enters. It's a bit chaotic
5 from 2:41 until approximately 2:57, as captured in his own
6 videos that he, again, filmed himself and posted to social
7 media. What he said and did in the order in which he said
8 and did matter. As you can hear from that video, yes, he
9 said, Get the women out of the way, when he first gets
10 there. But before he said that, he said, Lock your shields
11 and push back up. This is our house. And afterwards he
12 said, If you are not going to fight, move. Let us in. This
13 is our house. We paid for this F-ing building. This is our
14 country.

15 The government has now charged Mr. Lang in a
16 superseding indictment with charges beginning for his
17 behavior around 2:57 p.m., where the government alleges you
18 can see Mr. Lang kicking at and slamming a door against the
19 head of a sergeant, who is in a prone position as he tries
20 to hold on to a shield at the front of those doors.

21 This is captured in Exhibit E and Exhibit F that
22 the government provided to the government -- I mean to the
23 defense and the Court. I believe we might have confused
24 defense counsel by putting the white box around Mr. Lang and
25 Sergeant J.M. around that time because there is another

1 gentleman who wears a leather jacket. However, as included
2 in the still, in our motion, Mr. Lang is clearly visible
3 wearing that blue Trump hat and swim goggles, which he
4 appeared to have brought with him to a rally for some
5 reason, which is the same outfit he is seen wearing in the
6 many previous videos he filmed of himself earlier that day,
7 including while hanging off the scaffolding as he climbed
8 up.

9 In that video, when you take them in conjunction,
10 not just the body-worn camera of Sergeant J.M., who is prone
11 forward, bent over, holding on to a shield as he is kicked
12 at and has a door hit into him, but also Exhibit E, the clip
13 from the YouTube video, which corresponds to the same time
14 frame. You can see Mr. Lang and other rioters slam the door
15 into the sergeant's head. It happens quickly, which is why
16 we included a still so you could actually see the sergeant's
17 badge number on his helmet as he is prone forward.

18 You will also see repeated kicks. Yes, you can't
19 see his face. He is bent forward. However, it is the same
20 pointy black boots and gray pants that Mr. Lang was wearing
21 that day that were recovered from his home later on. And
22 he's standing in the same -- or rather, the kicker is
23 standing in the exact same position as Mr. Lang is in
24 Exhibit E at the same time frame, leading to the reasonable
25 conclusion that, in fact, he is the one kicking.

1 From that point, it goes forward. He enters and
2 exits screaming, making weird guttural screams and yelling,
3 What are we doing, as his eyes are -- he appears to have
4 been pepper-sprayed repeatedly but keeps coming back.
5 Although he is not charged for that, it does indicate his
6 state of mind and what he was choosing to do over and over
7 again.

8 From 3:08 to 3:13 -- this has led to another
9 charge, a 111 -- he repeatedly joins the group heave-hoe
10 pushing effort as this group of rioters in this small
11 tunnel -- I've been there -- the doorway is about 10 feet
12 wide -- the tunnel itself is a little bit wider -- are
13 pushing with all of their might against the guards blocking
14 the door.

15 In the process, as captured in Exhibit -- in the
16 YouTube clip -- I believe it is Exhibit L -- one of the
17 officers gets smashed between a shield and the doorjamb as
18 the whole group heaves and hoes, including Mr. Lang. You
19 can see him first come in at that first clip in K1, stop to
20 wash his eyes out, join the pushing again. There is a
21 break. Comes back, joins the pushing again.

22 You can just see him run forward in K2 and get the
23 behind the people in front of him. He is a bit shorter, so
24 it becomes harder to see him, and then you kind of have to
25 watch his hat to see where he is going.

1 Altogether, you see him joining the heave-hoe and
2 hurting people. That is what happened is people were hurt.
3 Just as you can see that officer screaming in pain to get
4 free, as captured in Exhibit L, which is -- corresponds to
5 approximately 3:12 to 3:13, at the end of it, people were
6 hurt. That's not the only officer that was hurt. Others
7 officers suffered internal bleeding who were stuck inside of
8 that group and pushed and shoved.

9 One of the tragedies of January 6th is there are
10 so many assaults and so many people assaulting the officers
11 that we cannot correspond exact injuries to particular
12 assaults by each defendant on every case because -- for
13 instance, the officer who was dazed and had headaches
14 afterwards that the defense counsel referenced, that is
15 Officer I.F. He was hit by multiple people around the exact
16 same time frame with a baton-like object or stick-like
17 object. So can we say for sure that it was Mr. Lang versus
18 one of the other defendants attacking the officers at the
19 same time that caused that injury? No. But, yes, people
20 were hurt.

21 From there it continues forward. Around 3:18 to
22 3:20, he is pushed out of the crowd. There is a large pause
23 in the violence from approximately 3:20 to 3:50 p.m. During
24 that time frame, just as he had previously, Mr. Lang stops
25 to take a selfie and a video that he posts on Instagram. He

1 had stopped earlier, around 3:05, I believe, to go outside
2 and say, We are the real men, screaming and yelling, Get in
3 there! Get in there! He then stops at 3:30. You can see
4 him in a blue paisley shirt on the edge saying, A little
5 pepper spray in the morning, while he smiles real big,
6 taking a break. Then he goes back. He goes back with
7 exuberance. It keeps growing from that point forward.

8 At 4:01 p.m., he doesn't just attack an officer.
9 You can see him crowd-surf over other rioters to get to the
10 front and then punch an officer in the head repeatedly.

11 Then around 4:05 to 4:10, that is when defense
12 counsel's cited example of the woman in red, who is in not
13 in her 50s or 60s -- she is a defendant. She has been
14 arrested. She was in her 40s. That occurred in the tunnel
15 around 4:05 to 4:10. The way you can tell is that the
16 exhibit is labeled 1400 hours, meaning it starts at 2:00, so
17 meaning two hours and five minutes in is around 4:05 to
18 4:10. So that's after he assaulted multiple officers.

19 That occurs on, if you are looking at the tunnel,
20 essentially the left-hand side of the tunnel. He, on the
21 far right side of the tunnel, proceeds to kick and punch at
22 Detective P.N., who is wearing a bright neon vest and had
23 fallen to the ground.

24 I fought with myself repeatedly about whether I
25 was overloading the Court with exhibits on this issue. We

1 did so for a reason, because we wanted to be precise in how
2 we were describing what occurred. I actually regret not
3 including two more exhibits about this exact offense. All
4 of these -- this behavior, his actions that day, these are
5 not everything. These are just a few for each incident.

6 That particular incident is also captured on the
7 body-worn camera from Sergeant J.M., who is standing
8 directly behind that detective as he is kicked and punched,
9 where you can see Lang hit and kick at the detective as he
10 is on the ground.

11 It's also captured in Exhibit A that defense
12 counsel provided to Your Honor, the USCP footage. If you go
13 to approximately 4:11 p.m., which would be two hours and
14 11 minutes in, you will be able to see, fairly violently,
15 Mr. Lang punch and kick at someone who appears to be on the
16 ground. When you combine that with the body-worn camera
17 capturing the detective who had fallen on the ground, it
18 becomes very clear who he is kicking and punching at.

19 I did include on purpose the additional portion
20 where he is grabbing the detective's arm. Frankly, I
21 watched it many, many times. I can't tell if he is trying
22 to help him or pull him into the crowd. It's not clear.
23 But it is after already punching and kicking the detective
24 who had been on the ground. Maybe he had some regret and
25 felt bad or maybe he was trying to pull him out. I don't

1 know.

2 Then after 4:11, that takes us to 4:26. That's
3 when the rioter who passed away, who is referenced by
4 defense counsel, is blue. Mr. Lang, to his credit, waves
5 like this. You can see him on the USCP footage, Exhibit A
6 that defense counsel provided, at two hours and 26 minutes
7 in or so trying to get the attention of officers.

8 Unfortunately, other people start hitting them violently
9 with sticks and batons as they are trying to give her help,
10 but they are able to pull her out.

11 She did, unfortunately, pass away. As has been
12 publicized in the press, the findings and conclusions, it
13 appeared to be a drug overdose as opposed to for another
14 reason. But I'm sure at the time, it certainly seemed like
15 she had been crushed to the persons there regardless of the
16 reasons why after the fact.

17 So you go from 4:26, a couple more selfies in
18 there. And then at 4:44, 4:43, that's when Mr. Lang, at
19 this point, has a shield and is repeatedly hitting.

20 It is hard to watch those ten minutes even just of
21 the shield. You'd think it wouldn't be so scary because
22 it's a shield attacking an officer, but at least he has a
23 shield to protect him, but it is still frightening because
24 those are pretty violent hits. They are not just shoves.
25 And there is nobody being protected. There is no defendants

1 or rioters or other folks that that particular officer is
2 doing anything against. He is just standing there trying to
3 guard the archway, along with his fellow officers.

4 And what's the most frightening was the time that
5 you can see him kind of come at an angle with the shield and
6 slice downward. Why does that matter? Because as defense
7 counsel pointed out, the shields don't cover the whole body.
8 So if you slice downward, you are going to hit him in the
9 legs.

10 Why does it matter? Because the context and
11 timing matters here because it indicates his state of mind
12 that day. What is he trying to do? Well, he's not just
13 doing one quick check with the shield and walking away.
14 He's not just standing there to stop the opposition from
15 going forward. He is repeatedly hitting, violently,
16 aggressively, strongly, and trying to do it in a way that
17 will hurt them.

18 THE COURT: So in light of all of this conduct,
19 does a presumption of detention trigger?

20 MS. JACKSON: Statutorily?

21 THE COURT: Yes.

22 MS. JACKSON: No, Your Honor, there is no --

23 THE COURT: Statutory. Even though this is a
24 crime of -- as you argue, a crime of violence?

25 MS. JACKSON: Because it's a crime of violence, we

1 are allowed to seek detention based upon that reason, and
2 111(b)s are categorically a crime of violence, and therefore
3 the analysis ends there. Can we at that point seek
4 detention? Yes. And we are seeking detention because --

5 THE COURT: Right. The question is whether a
6 presumption arises from the statute.

7 MS. JACKSON: No, Your Honor. Ironically, had he
8 committed destruction of property, there would be a
9 presumption. But for some reason, attacking officers with a
10 weapon is not enough to create a presumption.

11 THE COURT: I think I have the timeline. I have
12 the facts of the day.

13 Obviously, he makes an argument about all of the
14 stuff you've talked about. He did some things that are
15 favorable or paint him in a better light, including, as you
16 conceded, raising his hand when the woman was in obvious
17 duress.

18 My main question is, under D.C. Circuit opinion
19 and *Munchel* and more generally, there has to be a specific
20 articulable risk that his pretrial release would enhance.
21 What is, in the government's view, that specific,
22 articulable risk?

23 MS. JACKSON: I believe in *Munchel*, the Court
24 stated that those who actually committed violence were in a
25 separate category and therefore the exact analysis and

1 issue --

2 THE COURT: They did, although they didn't have
3 occasion to identify what the specific articulable risk
4 therefore was.

5 MS. JACKSON: Correct, Your Honor. But they have
6 since, for instance, in Hale-Cusanelli, stated it's really
7 just an individualized assessment, no different than any
8 other case.

9 Counsel had cited a number of, very quickly, off
10 the cuff, various defendants who have been released. They
11 are different than the ones I prepared for because they are
12 not the ones listed in his reply. But I would note that all
13 of those cited, as far as I am aware, don't come close to
14 Mr. Lang, both in terms of his threat forward and his
15 actions that day.

16 So to answer the first question, his actions that
17 day supply an independent basis in and of itself to provide
18 a reasonable risk of dangerousness, a clear and convincing
19 conclusion that he is a danger to all law enforcement that
20 stands in his way. Why? Because he made a decision not
21 once, not simply in a reactionary posture, but over and over
22 again over a period of hours.

23 THE COURT: So would you say the government, if
24 forced to articulate it with specificity, is that the risk
25 that in any future engagement with law enforcement, he would

1 engage in violence? Is that the way you would put it?

2 MS. JACKSON: I would specify it as such that the
3 defendant continues to pose a danger to the community if
4 released given his risk of committing or advocating violence
5 in support of his political beliefs, which I think I pulled
6 that language specifically from Hale-Cusanelli, but I am not
7 positive.

8 I think a more applicable or comparable case would
9 be U.S. versus Christopher Quaglin, which is a case I do
10 handle, so I know the facts much better. But we argued for
11 his detention. Mr. Quaglin, like Mr. Lang, engaged in
12 violence over a prolonged period of time. In his case, it
13 was from 1:00 to approximately 3:20 p.m. He used a weapon
14 against officers as one of the multiple assaults that he
15 committed.

16 He was wearing a gas mask. He appears to have
17 brought the gas mask in advance, unlike Mr. Lang. I will be
18 very clear. I am not aware of any preplanning by Mr. Lang
19 to engage in violence. I don't believe he brought that gas
20 mask with him because it can be seen falling from the face
21 of another rioter in the tunnel earlier that day and he can
22 be seen picking it up off the ground and putting it on, nor
23 have I seen any evidence of receipts or financial purchases
24 indicating he bought something in preparation.

25 The only thing he bought in preparation, it

1 appears to me, are the goggles, which are designed to keep
2 gas from getting in your face, I would assume or that's the
3 intention. It's not like he was going swimming at the
4 Capitol that day or in D.C. Other than that, there is no
5 preplanning.

6 What there is -- the government contends that his
7 actions on January 6th alone -- let's say he was quiet
8 afterwards and did nothing else. That alone should be
9 sufficient to reach a conclusion by clear and convincing
10 evidence that he poses a danger to any and all law
11 enforcement and our society if it contradicts his ideologic
12 beliefs.

13 He was willing to engage in that behavior despite
14 a large number of law enforcement officers near him. He was
15 willing to do it in front of a crowd. He was willing to do
16 it repeatedly. He was willing to do it despite the fact
17 that he knew that the news was there and media was there.
18 Not only was he willing to do it, he boasted about it that
19 day and posted about it on his social media, basically
20 telling the world what he had done.

21 If you add that to his after-the-fact actions --
22 and this is where he comes more in line to Quaglin -- unlike
23 somebody who said, Oh, my God, I can't believe I just did
24 that, or showed some remorse or some shock and appall at
25 what they had committed, he went full-fledged the other

1 direction.

2 While he did not plan in advance, he certainly
3 started to use the social media skills that the defense
4 counsel flagged that he had been developing, including his
5 own website. Liberty Centric, I believe, is what it was
6 called. He started to use those skills to further plan and
7 advocate violence against the government and specifically to
8 stop president Joe Biden from taking office.

9 He did that not only by boasting, generally,
10 hunting down a video of him committing some of the crimes,
11 the shield, waving it up at his head, and finding that so he
12 could post on his own Instagram with a "This is me" above it
13 and saying, "Look at all of the crowd cheering for me," or
14 something along that line, but then he went to an extreme,
15 new level.

16 He sought out -- basically, it is like mailing or
17 something like spamming people who thought he might have
18 similar ideologic beliefs to try to get them to join this
19 Telegram chat to create a state militia system that he
20 organized by region, where he would assign leaders to the
21 different regions and ask them to plan and prepare so they
22 could meet and vet people.

23 He taught them how to take out their personal
24 information so that they would be anonymous but made clear
25 that he didn't have to be anonymous because, A, he wasn't

1 afraid of the Feds or the government and we couldn't do
2 anything besides kill him to make him stop.

3 He then made it very clear when people disagreed
4 with him that he believed violent action was necessary to
5 stop -- and this is where timeline matters again. He didn't
6 stop on January 6th. He was shot in the foot; that's why he
7 stopped. That's why he stopped with the bat. He didn't
8 stop with the planning to interrupt the inauguration until
9 he was arrested.

10 He was arrested on January, I believe, 16th. If
11 you look at the texts that are included in Exhibit CC or
12 DD -- I am not sure which one -- he mentions planning for
13 January 17th and January 20th and how it's the duty as
14 Americans. And the 17th was the next day. So we don't know
15 what could have happened, what was planned or what might
16 have occurred because he was arrested.

17 That is why he was stopped. That is the only
18 reason he stopped sending out those missives to these groups
19 of anonymous people with similar beliefs about what and how
20 they should tackle stopping president Biden from taking
21 office.

22 THE COURT: Let's assume for all intents and
23 purposes that the government has established that he needs
24 to be continued to be detained. It does seem that the
25 current situation in the jail is such that it's become, has

1 been, continues to be quite difficult for all sorts of
2 communications or activities that would typically be done to
3 mount a defense.

4 MS. JACKSON: I will concede --

5 THE COURT: What is the government doing about
6 that?

7 MS. JACKSON: Yes, Your Honor. Some of the
8 problems with the jail and access to discovery are
9 structural problems with the jail itself.

10 As we noted in our most recent status update,
11 which was filed, I believe, the 23rd -- it's just in the
12 second-to-last paragraph where we explain the government is
13 in communications with FPD and the jail to try to increase
14 access for defense counsel.

15 But I would note that defense counsel failed to
16 mention some of the things that do exist, right, or that
17 were mentioned really quickly or obliquely in some of the
18 filings.

19 First, I think as defense counsel has said to me
20 previously, they speak regularly on the phone, almost on a
21 daily basis, with the defendant, or at least that was a
22 comment in one offhand conversation I had with defense
23 counsel. But my understanding is that there is phone
24 communication that is available.

25 Second, as described in the policy from -- I

1 believe it is March of 2021, which the government provided
2 to defense in April in an email, there is an option for
3 providing electronic evidence with a laptop for the
4 defendant to review voluminous electronic discovery. Is it
5 perfect? No. Is there a wait list? Possibly.

6 But what we haven't heard from the defense is how
7 many times have they tried to do that, come to the jail?
8 Yes, it is harder because they live in New York and he is
9 charged here in D.C. If they were local counsel, some of
10 this would be much easier. It just would.

11 But how many times have they come here with a hard
12 drive of the 10 different productions of discovery we have
13 provided or the key exhibits, like the video that they filed
14 and the body-worn camera or the exhibits from this, and
15 provided it through the jail to the defendant to be able to
16 review? Because he has that ability.

17 I would note also that the fact that he has to
18 quarantine after a private, in-person meeting with defense
19 counsel does appear to be his choice; that is one of the
20 things he must analyze when trying to decide whether he
21 wants to be vaccinated or not. He is not being forced to be
22 vaccinated, but that means the jail reasonably has to
23 protect other people in the jail and keep them from getting
24 sick. So it seems to be --

25 THE COURT: And, indeed, some of the jail's rules

1 about COVID are at least a reaction to or required by
2 litigation involving the jail in front of Judge
3 Kollar-Kotelly.

4 MS. JACKSON: Yes, Your Honor.

5 THE COURT: I am not suggesting at all that she
6 has required any particular rules, but she certainly has
7 litigation in front of her that involves the jail, at large,
8 and the rules, policies and procedures that the jail has to
9 follow to, on the other hand, ensure there isn't a massive
10 outbreak, and on the other, to ensure that people have
11 access to information and the like. I am pretty loathe, I
12 must say, to insert myself into that case.

13 MS. JACKSON: Your Honor, that highlights one
14 major concern that the government has with some of the
15 arguments the defense has made regarding why he should be
16 released, specifically their allegations regarding
17 mistreatment at the jail and/or access or policies and
18 procedures which they believe inhibit communication.

19 There is a reason that that should be addressed in
20 civil discovery. I don't have access. The government
21 doesn't have access to the lots of jail surveillance in
22 video that exist, the interviews of the officers that might
23 have had to led to a reason why somebody was put in the hole
24 or isolation, the reports or hearings that were held after
25 each of those. I don't have access to any of that.

1 THE COURT: But you agree that the question of
2 whether the defendant is presently having access to
3 information he needs in his own defense is relevant here.

4 MS. JACKSON: Absolutely, Your Honor.

5 THE COURT: There may be other ancillary issues
6 about the hole or treatment or whatever that may or may not
7 be relevant here. But the core question, which is can he
8 mount the constitutionally required minimal defense in light
9 of the present detention, is live in his criminal case.

10 MS. JACKSON: Yes, Your Honor.

11 I guess -- taken to its fullest extreme, the
12 defense counsel's argument would mean not a single human
13 being who was arrested on January 6th could be held ever
14 because there is too much discovery and then therefore they
15 wouldn't be able to access it.

16 So that means no matter how egregious, no matter
17 how much evidence of future planning and inciting additional
18 violence, as is the case with Mr. Lang, we would be unable
19 to hold them because there is just too much evidence. That
20 doesn't make sense. There have to be additional solutions.

21 In fact, the government is working towards those
22 solutions right now, which is why in the latest status
23 update, we provided the update that there are ongoing
24 discussions about increasing options. For instance, there
25 have been other developments, such as the laptop policy that

1 was instituted in March of 2021, that allow review of
2 voluminous electronic evidence.

3 THE COURT: Can you say a little bit more about
4 that? Do I have it right that the laptop policy permits, if
5 attempted, defense counsel to bring to the jail a laptop
6 that presumably --

7 MS. JACKSON: Hard drive, basically.

8 THE COURT: A hard drive that doesn't have
9 internet access but on which maybe the jail would review it,
10 maybe not, but the defendant could review whatever discovery
11 defense counsel loads onto the hard drive.

12 MS. JACKSON: Essentially, yes. They are placed
13 in a separate area so they can review it for up to two weeks
14 at a time. Now, does that mean you are going to have to
15 take some breaks between, yes, reviewing the evidence. But
16 it does offer an option, an option that was developed, I
17 believe, as a result of the litigation before Judge
18 Kollar-Kotelly.

19 I would note that there is a Relativity platform.
20 And right now there is not internet access to the relativity
21 platform or the Evidence.com platform. But in this case,
22 for instance, Your Honor, we provided over 200-plus videos
23 of body-worn camera to defense counsel, not to mention many,
24 many, many videos, both USCP surveillance, the three hours
25 you have in before you, in addition to the many videos the

1 defendant filmed of himself committing these various
2 incidents to defense. That's been provided months ago, many
3 months ago. Nothing I included in my motion is new. It was
4 all in prior discovery to defense counsel for months.

5 So to the extent -- I know it's hard to sort
6 through a lot of the evidence, and I have offered defense
7 counsel assistance to the extent they want to identify
8 particular videos or have me point them in a particular
9 direction to help make sense of it. But it is possible to,
10 for instance, download the 10-key body-worn cameras that
11 actually matter from that tunnel, the five -- four key
12 videos that really matter and the USCP video on one hard
13 drive and provide it to defendant to review per the policy
14 instituted in March of this year.

15 Is that everything? No. But I'm not aware of the
16 need to review absolutely anything that exists in provided
17 discovery, even if it actually is not material or relevant
18 to the defendant's case.

19 We are taking an extremely wide view of discovery
20 in this case because if this were a bank robbery, everybody
21 would be charged as a codefendant but it is too many people
22 and we can't. So instead they are charged separately, for
23 the most part, but essentially are still codefendants, and
24 therefore they receive each other's discovery.

25 Much of the stuff that will be in Relativity, as I

1 tried to explain to counsel earlier, is not going to be
2 relevant or interesting at all to defendant in this case.
3 They don't need to know every single 302 of how we
4 identified Joe Schmo who went in the Senate gallery, but
5 they are being provided that anyway.

6 There is going to be a lot, but as it relates to
7 him in particular, it's not going to be as much and it's
8 conceivable to identify it and provide it to him via the
9 policies that currently exist, not to mention any that might
10 be developed through these discussions that defense, FPD,
11 the government and the jail are working on at the time.

12 THE COURT: I think I have it, Ms. Jackson. I'd
13 like to hear from defense counsel unless there is something
14 you think is absolutely critical.

15 MS. JACKSON: Give me just -- no, just one second.
16 I have scribbles, and I wanted to make sure I didn't ignore
17 my own stars, but I think I got them all.

18 No, Your Honor. I don't have anything further.

19 THE COURT: Thank you, Counsel.

20 MR. TANKLEFF: With the Court's permission,
21 Mr. Lang would like to make a statement to the Court before
22 I close out.

23 THE COURT: If defense counsel thinks that's
24 advisable.

25 You may approach, Mr. Lang, and you may take off

1 your mask.

2 THE DEFENDANT: Thank you, Your Honor.

3 Your Honor, I know this case is a national media
4 sensation. It's easier to forget that we are dealing with
5 individuals here, people not characterized by misleading and
6 dehumanizing statements like terrorists, white supremacists.
7 These things have been blaring on the media 24/7. It's hard
8 to understand that we are dealing with individuals
9 sometimes.

10 I am a 26-year-old young man. I am an
11 entrepreneur. I grew up with a very disciplined family. My
12 dad is military. His dad is military, a Vietnam War
13 veteran. Dad is Coast Guard.

14 I wrestled four years varsity in high school,
15 waking up two hours early before school, working out with
16 the team three hours after school. My team was very
17 successful in Pennsylvania, top-five team in the state of
18 PA.

19 I was also part of the Scholastic Bowl team, the
20 mathematics team that would travel around Pennsylvania and
21 do Scholastic Bowl. I won the geography bee. I was even
22 part of rigorous curriculum called Gifted and Talented
23 Education, GATE programming. It's for the top one percent
24 of the kids tested in the school.

25 So I had a very structured -- and I know about

1 following rules and what's to be expected of somebody with
2 that much responsibility, such as any responsibilities that
3 the Court were to give me for being released.

4 I went on to wrestle in Hunter College in
5 Manhattan. I was varsity also there my freshman year. I
6 decided to follow in my father's footsteps. After wrestling
7 for one year varsity and figuring out that college wasn't
8 exactly for me, I wanted to be an entrepreneur, just like my
9 father and his father before him.

10 I started building websites for other small
11 businesses, helping to stimulate the economy, being a --
12 basically a business helper, whatever they needed, graphic
13 design, websites and things like that nature.

14 You know, my family and I, we are lovers of
15 America. We love our constitutional rights. We love the
16 police. My father is an ardent supporter of all kinds of
17 police-backed groups. We grew up with the police being our
18 best friends in my neighborhood. It wasn't anything to be
19 scared of.

20 At my local church, I volunteer two times a week
21 at the soup kitchen handing out food. If the government has
22 my phone, they've seen my more recent actions of being very
23 religiously minded and very disciplined as far as a
24 volunteer type of man. I love to volunteer. These are
25 things, moving forward, that I can say about in my past.

1 About that day, you know, I can tell you that the
2 most basic human right, in my opinion, is to be able to tell
3 your side of the story. For eight months and four days,
4 244 days, I have been locked up in solitary confinement.
5 The first three months I was in D.C. Jail, it was 23 and 1;
6 23 hours in your cell, one hour out. You got about
7 15 minutes to shower, 45 minutes to call your family and
8 whatnot.

9 After that, we were on medical. Two hours out off
10 your cell, 22 hours in your cell. This was more. After
11 that I got thrown in the hole for singing the national
12 anthem and for asking for Bible study, because we have been
13 denied all of our religious rights in the jail. So I
14 started asking the guards, Hey, can we get out of our cell
15 separate for Bible study and to be able to worship God? And
16 they threw me in the hole for asking questions, basically.
17 I was in the hole with no disciplinary charges -- it was
18 called pending investigation -- for over three months.

19 Just two days ago during the rally that they had
20 here in D.C., they woke us up in the early morning hours,
21 like classic psychological warfare. Didn't tell us where we
22 were going. Told us to grab our mattresses. Didn't tell us
23 what was going on. Marched us through the jail. Stuck us
24 in the basement of the jail and kept us there in cells with
25 no bathroom, no sink, no way to grab water and didn't tell

1 why we were there, how long we were staying, what was going
2 on.

3 As I was singing the national anthem with my
4 fellow men in the jail, I got punched in the ribs by one of
5 the guards. This is just the type of torture and mental --
6 psychological warfare that were going on on a daily basis.

7 And about last week, they cut my rations on my
8 Kosher food in half. I am getting half of the food I am
9 supposed to be getting. The other inmates, January sixers,
10 in this jail, they get a laptop and the videos are cut off.
11 You can see edits in the videos because the government is
12 hiding some police brutality, a lot of police brutality.

13 So what they are saying is not relevant to me, it
14 may not be exactly relevant to me, but guess what? It is
15 relevant to the case and to the entire structure of what
16 happened in that tunnel.

17 That tunnel was brutal, brutal in many ways. The
18 first ten minutes I was in that tunnel, I had my camera up
19 and hands down, just filming, being peaceful. Then I
20 started witnessing disgusting police brutality, and things
21 moved on from there.

22 THE COURT: Counsel, I would strongly advise you
23 to --

24 MR. METCALF: Yes.

25 THE DEFENDANT: That is all I have to say about

1 that. I was there to film. That is all I am going to say.

2 THE COURT: I have serious problems with you
3 letting your client get into the facts of that day in open
4 court with a live case against him.

5 MR. METCALF: Absolutely, Your Honor. That is
6 exactly what we spoke to him about not doing, and that is
7 where his statement -- he's not going any further from
8 there.

9 THE COURT: Okay.

10 THE DEFENDANT: I just was referring to the fact
11 that some of the video evidence that they are claiming on
12 the laptops that is not relevant to us is because in that
13 tunnel there was things that happened that the government
14 doesn't want exposed as far as the police actions. I was
15 there to witness those personally. So that's why I was
16 referencing just the beginning of what I saw in the tunnel
17 just being a filmer there.

18 I have a religious exemption to the vaccine.
19 There's aborted fetus cells that are in the vaccine. Me
20 being a Jewish Christian man, I cannot take the vaccine. I
21 can't. So when my counsel comes to visit me, quarantine for
22 14 days, that means you are, again, reset. One hour out of
23 your -- one hour in your cell, 23 hours locked in.

24 Right now currently I am looked in my cell 18 and
25 a half hours a day. It's still sensory deprivation. No

1 religious services. No hygienic services. I can't get a
2 nail clipper. I can't shave my face. I can't get a
3 haircut. There are so many things that that jail has been
4 subjecting us to that makes it impossible for me to be of a
5 right mind to even assist in my counsel if I were to have
6 these videos.

7 And these videos are being cut off. Some of the
8 other people have laptops in there, and you can see the
9 videos are literally sliced between things that the
10 government doesn't want the people to see. So what's not
11 relevant to them is very relevant to us.

12 I don't see a way where I can assist in my own
13 defense. I mean, just that video that I just saw right
14 there was the first minute I have seen of myself in 244 days
15 of anything, the video of me pulling up the officer. I
16 haven't seen anything. I don't know what we are talking
17 about here. I have no frame of reference. It's horrifying
18 to me because I want to tell my side of the story and I also
19 want to have the videos to back it up and to me be able to
20 see this stuff.

21 Talking about my future actions and whatnot, there
22 are certain conditions of my release that can mitigate, 100
23 percent, any kind of Telegram or social media services and
24 stuff. So I can just be home to assist in my counsel, watch
25 the videos, be able to talk to Steve and Marty with a laptop

1 in front of me and say, Go to this second of the video.
2 What do you see here? Go to this second of the video.

3 Because for three-quarters of a year, I haven't
4 even been able to say, Can you go to this second of the
5 video? Can you go to that second of the video?

6 And I believe with the right amount of provisions
7 by the Court over me, I can be at home, be peaceful, be
8 watching the evidence against me and actually mount a
9 defense that is guaranteed to me by the constitution.

10 THE COURT: Thank you.

11 THE DEFENDANT: That's all I have to say, Your
12 Honor.

13 THE COURT: Thank you, Mr. Lang.

14 MR. TANKLEFF: Your Honor, I just want to touch on
15 a few issues. First, I would like to acknowledge that
16 Jake's mother and father are in this courtroom today. They
17 are here today to support Jake because if Jake were granted
18 bond, Jake would be living with his father. Jake's father
19 has a position where he is willing to put up property and
20 money. Jake's mother has offered to cosign the bond
21 application.

22 One of the issues we have to be concerned with, or
23 really not even concerned with, is that Jake poses no risk
24 to the community.

25 In *U.S. versus Munchel*, the Court addressed that

1 the circumstances of January 6th would not present
2 themselves ever again. If Jake were granted bond, this
3 Court could enable or enact a number of conditions. He
4 would be required to live with his father. He would be on
5 home detention, electronic monitoring except for certain
6 conditions where he could go to church, he could go to his
7 attorney's offices. He would be under the supervision of
8 pretrial services. They could require installation of a
9 landline. If he has a passport, they could have him
10 surrender a passport. He could be required to be regularly
11 drug tested.

12 But when the government says that there is no
13 articulable threat, it is pure speculation. It is purely
14 speculative that Jake would pose a threat to his community.

15 THE COURT: Isn't that always true? I mean, isn't
16 it always the case that we are making a predictive judgment?

17 MR. TANKLEFF: Not all of the times.

18 THE COURT: Really?

19 MR. TANKLEFF: Sometimes prior conduct --

20 THE COURT: You have to make a predictive judgment
21 about future conduct based on past conduct. You don't know
22 if it's going to happen or not.

23 MR. TANKLEFF: Correct. But when you look at
24 Jake's totality, in this case, Phillip Anderson says, If not
25 for Jake, I would be dead. That's who Jake is. Jake has

1 done so much good in his life. There was a situation where
2 there was a mother in the Bronx who didn't have gifts for
3 Christmastime. He went out and bought gifts and brought it
4 to her.

5 Really what the Court should be concerned with and
6 focus on is the ability to grant bond, focus on the
7 conditions that can be imposed upon Jake that would enable
8 him to live at home with his father, possibly work with his
9 father, because his father has offered him the ability to
10 work, and participate in his own defense.

11 As Mr. Lang just said, the risk to his safety lies
12 remaining in the jail. The abuses that he has suffered in
13 that jail would not exist if he were free and being able to
14 defend himself and participate in his own defense.

15 THE COURT: Have you attempted to get Mr. Lang
16 hard drives pursuant to the jail's current laptop policy?

17 MR. TANKLEFF: We have not.

18 THE COURT: Hard drives containing videos or the
19 like?

20 MR. TANKLEFF: Correct. But I don't think with
21 the government's position that all of the videos have been
22 able to be brought into the jail because of the security
23 issues.

24 THE COURT: Have you tried?

25 MR. TANKLEFF: We have not tried yet.

1 THE COURT: You haven't tried?

2 MR. TANKLEFF: No.

3 THE COURT: So how am I supposed to --

4 MR. TANKLEFF: What the government said, which was
5 very interesting --

6 THE COURT: Hold on a second.

7 MR. TANKLEFF: Sure.

8 THE COURT: How am I to conclude that the current
9 policy is unworkable for him if you haven't attempted to
10 work under the current policy?

11 MR. TANKLEFF: One of the issues that we can
12 prove, Your Honor, if we can't simply mail Mr. Lang mail, it
13 is being returned to us, we are supposed to rely that the
14 system they have in place will function.

15 The government just said that they are only
16 allowed to review discovery two weeks at a time. In one of
17 the government's submissions, they said there is 100 days of
18 video. So what is Mr. Lang supposed to do? How long would
19 it take Mr. Lang in jail to review the discovery?

20 THE COURT: Are you going to review all of that
21 discovery? It seems to me that the problem here -- and I'm
22 not suggesting this is the solution -- we have a massive
23 amount of information and evidence on video. That's true
24 for every single defendant whether the defendant is in the
25 jail or not. It's true for every single defense counsel.

1 In part, your argument seems to be Mr. Lang needs
2 to be in a position to review every single hour of every
3 single video. And it's not clear to me that that's a
4 reasonable position because your job as lawyers is to sift
5 through some of that and to provide him with, right, the
6 most relevant stuff.

7 Not suggesting he doesn't have a right to do that.
8 I am just saying, in practical terms, he very likely does
9 not need to review every single minute of every video. He
10 needs to review the most salient parts, as do you.

11 From what I am hearing is the information that is
12 at least most salient to his case, the stuff that the
13 government is presently relying on to justify in its view,
14 your client's continued pretrial detention, he has not seen
15 but you have not attempted to show him under the current
16 jail policy.

17 MR. TANKLEFF: We submit that under the current
18 jail policy, he wouldn't even be able to review just the tip
19 of the iceberg because he would only be limited -- there is
20 a waiting list for access to the computers. Then there is a
21 limited period of time they can have access to those
22 computers.

23 So, if you think about it, there is a waiting
24 period to get access to the computers. Then you are only
25 allowed up to two weeks to review the discovery. To me,

1 that is a deprivation. If he was free, there wouldn't be a
2 waiting period. There wouldn't be a limitation on reviewing
3 the discovery. There wouldn't be --

4 THE COURT: The government's argument is that's
5 true for every detainee at the jail or at least every
6 January 6th detainee.

7 MR. TANKLEFF: But not every detainee has this
8 amount of discovery in his case. Every case has to be
9 evaluated differently.

10 THE COURT: Every detainee could say, I want to
11 review all of the information that's out there, generally.
12 And how do you know whether other detainees have as much
13 video evidence about them?

14 MR. TANKLEFF: I don't. But we are not here to
15 discuss --

16 THE COURT: You just said, other detainees don't
17 have as much. You just made a representation that other
18 detainees don't have as much video evidence to review.
19 There maybe some with more.

20 MR. TANKLEFF: Some of the detainees don't have as
21 many counts. So, obviously, the indictment has to be
22 supported by evidentiary evidence, which could be videos or
23 documents. Some of the other defendants don't have as many
24 counts as Mr. Lang does. Mr. Lang was just issued a
25 superseding indictment. So there is going to be more

1 discovery coming forward.

2 THE COURT: The problem is you are complaining
3 about a policy, which may or may not be the best policy in
4 the world -- it may actually not get the balance right. I
5 am not sitting here opining on the policy. The problem is
6 you have a policy that you haven't actually -- at least as
7 it relates to videos, you haven't attempted to work under.
8 And that is one of your major arguments for why he should be
9 released.

10 MR. TANKLEFF: One of the other major arguments is
11 the deprivation of counsel. When we go to visit Mr. Lang,
12 there is nothing privileged. If we want a private room, we
13 are limited to one period of time and then he gets
14 quarantined for 14 days. That's a serious issue.

15 I mean, if I can't sit with my client and have a
16 conversation where no one else is listening -- on a day we
17 went to see Mr. Lang, there was an attorney sitting two
18 cubicles down. We heard everything she said to her client
19 because it's a completely exposed area. How is somebody
20 supposed to be confident that they can communicate with
21 their attorney if there is no privacy, there is no
22 privilege? And then you are saying, If you want that
23 privacy and you want that privilege, we are going to
24 penalize you by quarantining you for 14 days afterwards.

25 So it seems for somebody to exercise their Sixth

1 Amendment right to counsel, you suffer by doing that.

2 THE COURT: Because he won't get vaccinated. I
3 understand he says he has a firmly held religious belief not
4 allowing him to get vaccinated, but that's a choice.

5 MR. TANKLEFF: But if his attorneys are
6 vaccinated, the likelihood of us exposing him to COVID is
7 very slim, based on all the medical science.

8 THE COURT: But you can't be possibly asking me to
9 revisit the jail's current COVID policies here.

10 MR. TANKLEFF: I am not suggesting that, Your
11 Honor. All I am suggesting is that their policy is not
12 based on what I would say is science or logic because the
13 attorneys are actually vaccinated. And in many
14 jurisdictions, if you are vaccinated, you can go to a
15 restaurant. You don't have to wear a mask. What would be
16 the difference with us going to visit our client in jail?
17 There really is none. So the policy that's in place is just
18 ineffective.

19 THE COURT: I am not even disagreeing with that.
20 I am just not prepared to take a position. I mean, there's
21 an entire case going on in this courthouse in front of a
22 different judge involving the entire D.C. Jail and the rules
23 that have been adopted about COVID. I am not prepared to
24 second-guess my colleague on her oversight of her injunction
25 or otherwise the generally applicable rules. The rules are

1 the rules.

2 I get that they have an effect on your client, and
3 I have to assess that in light of his request to get out,
4 but it seems to me that, again, that would mean that every
5 single client who's unwillingly to get vaccinated would have
6 an argument there is a 14-day quarantining requirement post
7 meeting with counsel and so therefore they should be
8 released.

9 MR. TANKLEFF: I don't think every individual can
10 make that argument because not every attorney has sought to
11 see their client in person, not every one of those
12 individuals has the same level of discovery, not every one
13 of those individuals have the same desire to be as actively
14 involved in their own defense. If a defendant wants to be
15 involved, he should have that right because that is his
16 right. Mr. Lang has asserted that he wants to be as
17 involved in his defense, which is his right. He has the
18 right to review the evidence.

19 If he can't even review printed discovery and
20 printed motions that we send to him because the jail's
21 rejecting them saying, Reason for return: Receiver did not
22 want -- how can Mr. Lang refuse these documents if he never
23 saw them? This just goes to show you that the policies that
24 are in place in the D.C. Jail are ineffective because they
25 are depriving our clients, Mr. Lang, access to legal

1 materials that we are sending to him.

2 THE COURT: Thank you, Counsel.

3 MR. TANKLEFF: Thank you, Your Honor.

4 THE COURT: Here is how I am go going to proceed.
5 I am going to take a brief recess. I know it's late. But I
6 would like to just attempt to resolve the motion today on
7 the record, but I need somewhere between five and 10 minutes
8 to gather my thoughts.

9 So let's go to a recess, a brief one. I will come
10 back and I will either issue my decision from the bench or
11 basically tell you that I need to take it under advisement
12 and we will be writing something or have another hearing or
13 whatever.

14 Let me do that now. Thank you.

15 (Break.)

16 COURTROOM DEPUTY: We are now back on the record.

17 THE COURT: So as I indicated before we took the
18 recess, I've considered this matter and I am prepared to
19 decide, at least in part, defendant's motion for release.

20 In particular, after considering the parties'
21 arguments in the filings, their representations at this
22 hearing, including the statement by Mr. Lang, the entire
23 record before me, including the various videos and exhibits
24 I've reviewed, I find the following regarding the
25 Section 3142(g) factors, which I must consider in this bond

1 review hearing:

2 The first factor is the nature and circumstances
3 of the charged offense. As for this first factor, the
4 nature and circumstances of the charged offense is Mr. Lang
5 originally faced 11, now faces 13 charges, including some
6 very serious felonies. These include crimes of violence,
7 assaults against officers and assaults with deadly weapons
8 and at least one assault that resulted in injury.

9 The statutory offenses are themselves very
10 serious, but the particular circumstances here make them
11 even more troubling. The government alleges that Mr. Lang
12 was at times at the very front of a large mob seeking to
13 enter the Capitol. Mr. Lang appears to have been one of the
14 leaders, and by "leader," I don't mean preplanning leader
15 but just physically the leader and instigators of the
16 violence, as reflected in the video.

17 The government has presented a large amount of
18 video and photo evidence, including some from Mr. Lang's
19 social media accounts of Mr. Lang in front of the crowd,
20 verbally encouraging violence, hitting Capitol Police with
21 at times a metal baseball bat, another time a riot shield
22 and also kicking a police officer. These actions were in
23 full view of officers of the law, the cameras, and he was
24 even filming himself at the scene, which certainly suggests
25 a lack of respect for the rule of law.

1 The defense contests the government's allegations
2 and asserts that any of Mr. Lang's violent actions were in
3 response to violence on the part of law enforcement
4 personnel or in response to seeing someone trampled and
5 killed at a protest, that defendant had planned to be a
6 peaceful First Amendment activity, thus so says the
7 defendant, the circumstances of the charged offenses are
8 peculiar and unlikely to happen again and so Mr. Lang is not
9 a threat of future or further violence.

10 I do not find this argument particularly
11 persuasive. The conduct here spanned more than two hours
12 and was not in a momentary heat of passion but was conduct
13 that, as I said, continued over the course of several hours.
14 And it appears there was very little remorse about those
15 actions. Over the next few days, Mr. Lang appeared proud of
16 his actions and publicly boasted about what he did. And I
17 will discuss some of that evidence in a minute.

18 The time and place of the charged offenses raise
19 their severity and suggest that Mr. Lang does pose a threat
20 of future violence. All of this occurred while a joint
21 session of Congress was meeting to certify the results of
22 the presidential election. While the transition of power is
23 obviously now complete, these circumstances suggest that
24 Mr. Lang views the current United States government as
25 illegitimate and it is at least possible he may not comply

1 with future legal orders or respect the rule of law.

2 Altogether, the nature and circumstances of the
3 charged offenses weigh heavily in favor of continued
4 detention. In particular, the brazenness of Mr. Lang's
5 actions in full view of officers and cameras, again, suggest
6 that he may view the present government as illegitimate and
7 that no amount of monitoring or surveillance or other
8 conditions of release would sufficiently deter him from
9 future unlawful conduct.

10 The second factor is the weight of evidence. The
11 evidence against Mr. Lang is very strong. His social media
12 accounts and subsequent public comments place him at the
13 scene of the charged conduct. Even the evidence Mr. Lang
14 himself submitted to the Court, both an affidavit from
15 someone apparently unlawfully inside of the Capitol building
16 and the video included with his reply, place him at the
17 scene of the offenses.

18 The government has also proffered substantial
19 evidence, as I noted, from Mr. Lang's social media accounts,
20 surveillance footage and police-worn body cameras showing
21 him repeatedly attacking Capitol Police, as I mentioned
22 before, with a metal bat, a riot shield and quite likely
23 with his feet by kicking them.

24 To be sure, some of the videos are blurry. And to
25 be sure, it is difficult to understand in all of them what

1 is happening in context. But in other videos, it is quite
2 clear. And by cross-referencing the timestamps in the
3 video, as the government was doing to some extent during
4 this hearing, before I said that I had it all, and the
5 evidence against Mr. Lang appears quite strong.

6 Mr. Lang is, of course, entitled to a presumption
7 of innocence regarding his guilt, and he may have various
8 defenses that he will present at trial. But as I've noted,
9 the weight of the evidence, at least right now, is against
10 him. And given that, this factor weighs also in favor of
11 continued detention.

12 As to the third factor, the history and
13 characteristics of Mr. Lang, this factor tends to suggest
14 that it's possible that some condition of release could
15 assure his peacefulness and presence at future proceedings,
16 although some of the other evidence may not. I will discuss
17 that in a minute.

18 Mr. Lang has a relatively clean record. He has
19 only one prior conviction, a misdemeanor possession of a
20 controlled substance, though I note there are some
21 additional pending matters.

22 As the defense has noted, at least at times during
23 January 6th, he was looking out for the lives of others.
24 According to an affidavit from Mr. Anderson, when Lang
25 learned that Anderson wasn't able to breathe and was being

1 crushed by the crowds, Mr. Lang alerted officers in the
2 crowd and enabled Anderson to get out. Mr. Anderson credits
3 Mr. Lang with saving his life that day.

4 The defense also asserts that Mr. Lang has ties to
5 his community, including local law enforcement, local
6 businesses, friends and family. That may be true, although
7 Mr. Lang has not presented substantial evidence about that,
8 but Mr. Lang's parents are here. They have proposed putting
9 up bond for him, which are important and suggest he has ties
10 that would tend to assure both his appearance and his
11 non-dangerousness.

12 On the other hand, the government, I think quite
13 rightly, points the Court to defendant's apparent pride in
14 his violent actions on and around January 6th and his
15 efforts to organize others through Telegram and social
16 media.

17 As I indicated earlier, after the events after
18 January 6th, in Telegram and as reflected in various
19 exhibits but I think importantly in Exhibit CC submitted by
20 the government -- that is C as in Charlie, C as in
21 Charlie -- Mr. Lang wrote, among other things -- this is
22 before the inauguration, "Can't wait for the 20th. I'm
23 getting a fucking arsenal together." That is one line.
24 Another is, "This group is with zero fear of the Feds. They
25 know this is war. This is war. You obviously weren't at

1 the Capitol this week. Let me show you what war is."

2 And then on another line, "If anything goes down
3 where we need to mobilize and show up like the Minutemen,
4 the regional leader messages everyone and we come armed."

5 I think these messages, which, again, happened
6 after January 6th, they were not in the heat of the moment
7 and they reflect at least a risk that in the future Mr. Lang
8 would, as the government put it, be at risk of committing or
9 advocating violence in favor of his political beliefs.

10 Again, Mr. Lang wasn't just caught up in a
11 15-minute or 30-minute heat-of-the-moment action. His
12 actions on January 6th spanned over two hours. And then he
13 did a number of things after the event to reaffirm the
14 appropriateness of what he had done.

15 Based on that evidence and the evidence otherwise
16 submitted to the Court, Mr. Lang's history and
17 characteristics, perhaps we could suggest that some
18 conditions of release might be possible without further
19 violence or risk of flight, although some of that evidence
20 is quite to the contrary.

21 Finally, the fourth factor, which is the danger to
22 the community posed by defendant's release, overlaps in many
23 ways with what I have already discussed. On the whole, in
24 my view, this factor weighs in favor of continued detention.
25 As I mentioned, Mr. Lang directly attacked law enforcement

1 personnel in full view of thousands of people on camera over
2 the course of several hours.

3 Evidence suggests he was under the belief that the
4 United States' current government is illegitimate. He led
5 and encouraged others in the day of the January 6th attack
6 and through his internet-based messages, appears interested
7 in the possibility of continuing to attack the United States
8 government.

9 I won't repeat, again, what is contained in
10 Exhibit CC and some of the other January 6th messages, but I
11 do think they are very important here because unlike various
12 other cases, including cases I have, we have a defendant who
13 both engaged in substantial violence on the day of
14 January 6th and then thereafter in his own messages both did
15 not reflect any remorse about those events and indeed said
16 very concerning things about the inauguration.

17 And as the government argued today, the reason we
18 don't have to test the proposition of whether Mr. Lang might
19 have done something on January 6th is because he got
20 arrested.

21 So in light of Mr. Lang's disregard for the rule
22 of law, his beliefs that I've discussed, his willingness to
23 use violence on the day of January 6th, in my view, there
24 are not conditions of release that would prevent him from
25 being a danger to the community, either because of his own

1 direct action or incitement of others to action against law
2 enforcement personnel, the United States government or
3 others. For that reason, I am not going to modify his
4 pretrial detention and I'm denying his motion to the extent
5 that it seeks release from jail.

6 We have, however, also discussed a number of
7 issues relating to the current conditions of confinement at
8 the jail. It seems to me that the most important issues
9 that have been raised are, one, whether and to what extent
10 Mr. Lang is able to review, as he would like and as he has a
11 right to do, the evidence that has been produced and will be
12 produced by the government relating to this case. Much of
13 that, of course, is video evidence. It's quite voluminous.
14 That's one concern. And the other concern is the concern
15 about the manner -- both the confidentiality of, the amount
16 of and the way in which Mr. Lang can communicate with
17 counsel.

18 As to Mr. Lang's review of the evidence, either
19 that already provided in discovery or that will be provided
20 by the government, the D.C. Jail has various policies in
21 place to permit, at least to some extent, the review of that
22 information by defendants. And it has become apparent to me
23 in this hearing today that the defense has not attempted to
24 use those procedures to allow Mr. Lang to review the video
25 and other record evidence.

1 I, therefore, don't believe it is appropriate for
2 me to order any change on Mr. Lang's behalf or otherwise as
3 it relates to the so-called laptop policy. If defendant and
4 defense counsel attempt to use that policy and it turns out
5 that it is wholly unworkable, either under its present form
6 or, as I understand it, some modifications that might be
7 made in the future, I am here to entertain additional
8 motions to relieve Mr. Lang, as appropriate, of whatever
9 restrictions are then applicable, whether that means
10 providing him with a laptop for all time or something else.
11 But it seems to me that right now we have, essentially, an
12 unripe dispute because defense counsel has not attempted to
13 work under the currently operating policy.

14 As to communications with counsel, I think that is
15 more ripe because I don't think there is any present dispute
16 that if Mr. Lang wishes to meet with his counsel in person,
17 he would have to quarantine for 14 days because of his
18 current unvaccinated status.

19 I think -- although it's not clear -- but I
20 believe I understand this correctly that that would be if he
21 were to meet with counsel in a confidential, small-room
22 setting, if he were to choose that option, i.e., to have
23 confidential attorney-client communications, then he would
24 have to quarantine for 14 days thereafter. Alternatively,
25 if he didn't doesn't want to quarantine for 14 days

1 thereafter, he has to meet with counsel in a setting that
2 counsel says does not sufficiently protect his confidential
3 communications.

4 I think that this is not unproblematic. I am
5 certainly concerned about ensuring that Mr. Lang has the
6 ability to talk with counsel. It also appears, however,
7 that Mr. Lang is presently able to speak with counsel by
8 phone. So what we are really talking about are those times
9 that his New York counsel would like to meet with him in
10 person.

11 It seems to me this issue presents questions
12 beyond just this case because whether and to what extent the
13 D.C. Jail has adopted adequate COVID protocols and policies
14 to protect the rights of criminal defendants are the very
15 issues that are pending in front of Judge Kollar-Kotelly.

16 I, again, am not prepared to order any specific
17 relief for Mr. Lang as it relates to this issue except to
18 say that it does seem that there should be a way to ensure
19 that Mr. Lang can have confidential communications with his
20 lawyers relatively often.

21 As far as I know, Mr. Lang has a closely held and
22 legitimate religious objection to taking the vaccine. There
23 isn't any evidence to the contrary here. And in light of
24 that, it's not exactly as if it is just his choice, at least
25 not in the traditional sense, about getting vaccinated

1 versus having to quarantine after having met with his
2 counsel.

3 Having said all of that, I basically view this
4 issue in the same way as I do with respect to the access to
5 videos; and that is, I am not prepared to intervene at this
6 time into how these communications are occurring. But I am
7 willing to entertain a future motion in the event that it
8 continues to be the case that Mr. Lang's defense is
9 seriously impeded by his inability to have confidential
10 communications with counsel.

11 The last thing I will say on this topic is that
12 this issue or these issues about client communications with
13 counsel, client communications with the Court for defendants
14 who are detained at the D.C. Jail are very much top of mind
15 for the bench. There are communications weekly between a
16 group of judges and the D.C. Jail about the current
17 policies. There's obviously Judge Kollar-Kotelly's case.
18 So the Court is aware of them. And I am here in the event
19 that Mr. Lang would like to file a renewed motion
20 specifically about this issue or, as I said, about the
21 physical evidence.

22 But for present purposes, I think the ruling is --
23 well, I know the ruling, but in a technical sense the ruling
24 is Mr. Lang's motion to be released pretrial is denied. His
25 motion to -- what I will consider it as to modify the

1 conditions of his confinement at the jail, either with
2 respect to physical evidence review and to be able to
3 communicate with his lawyers, is denied without prejudice to
4 his renewing that motion next week, two weeks from now,
5 whenever in the event that circumstances arise such that
6 either the physical review has been attempted under the
7 current policy and as to the client communications that more
8 evidence and more work has occurred to try to make these
9 communications be effective.

10 I will just say one last thing. The continued
11 detention of all defendants at the D.C. Jail -- I think the
12 government well knows this -- where there is complicated
13 discovery and where the COVID protocols are slowing down or
14 otherwise making it very difficult for client communications
15 or mounting of a defense to occur, there is a lot of tension
16 there. And I think the system is starting to show some of
17 this tension. And it can't be the case that defendants are
18 largely unable to participate in their defense while they're
19 detained.

20 In this case, I do not believe that the
21 appropriate course is to release Mr. Lang pretrial or to
22 modify the conditions of his detention. But, again, that is
23 why I am denying that portion of the motion without
24 prejudice because it may be that in two or three weeks, that
25 there is sufficient additional evidence about his inability

1 to mount the defense. Then I will reconsider that portion
2 of the decision.

3 With that, thank you, Counsel.

4 You have a question, Counsel?

5 MS. JACKSON: Yes, Your Honor. Your Honor didn't
6 say -- defense counsel, on Page 9 of their motion, made a
7 general argument regarding human rights violations at the
8 jail and that being a basis for relief.

9 I didn't hear Your Honor address that particular
10 argument specifically.

11 THE COURT: Yeah. Thank you. That portion of the
12 motion is also denied without prejudice. I'm not privy to
13 enough evidence, certainly, to grant that motion. In the
14 event that the defense either mounts more evidence or
15 certainly wants to file some sort of civil complaint, I or
16 someone else will take it up.

17 MR. TANKLEFF: Thank you, Your Honor.

18 MR. METCALF: Thank you, Your Honor.

19 THE COURT: I guess housekeeping. Next hearing
20 date.

21 MS. JACKSON: There are two outstanding issues
22 left beyond the detention hearing. The first is we extended
23 a preliminary plea offer to defense counsel for Mr. Lang
24 back in June of this year. My understanding is particularly
25 given the current superseding indictment, they do not want

1 to put that on the record today and would like to instead do
2 it at the next hearing after they have time to advise him,
3 of course, of the new charges.

4 THE COURT: Do you object to that approach?

5 MS. JACKSON: I do not object to that approach. I
6 think that's the right approach. The plea offer remains
7 open, and we did not say it expired today.

8 The second issue is just what we are doing from
9 here on forward. I've discussed with defense counsel a
10 45-day continuance, tolling in the interest of justice,
11 given the voluminous amount of discovery, which apparently
12 the defendant has not been able to look at at all, and the
13 complexity of this particular case, including the new
14 superseding indictment with additional charges that the
15 defense counsel is facing. My understanding is that defense
16 counsel is not objecting to tolling on that basis.

17 THE COURT: Counsel, do you agree with that? Let
18 me just say that for the reasons I just discussed, I would
19 not be inclined to grant a 45-day continuance here. I would
20 like to do shorter, precisely because Mr. Lang remains
21 detained. If he were not detained, I would be willing to
22 entertain 45 days or longer. This tension still exists, and
23 I am thinking it is more appropriate to be back together in
24 30 days, whether by phone or otherwise.

25 I am happy to hear from counsel.

1 MR. METCALF: Your Honor, counsel has actually --
2 do you mind if I get my calendar real quick?

3 THE COURT: No.

4 MR. METCALF: Thank you.

5 THE COURT: Please.

6 MR. METCALF: The government has been actually
7 pleasant to work with at times, even though she told
8 Your Honor something that I thought was off the record.

9 So at this point, in light of Your Honor's
10 decision today, in light of us having to reassess how we are
11 going to be able to get Mr. Lang more discovery and how this
12 flash drive scenario is going to play out and in speaking
13 with him, I think in the interest of justice, I don't
14 disagree with 45 days, but I'll ultimately refer to
15 Your Honor if you want to go -- or if you want to reschedule
16 the next appearance for 30 days.

17 THE COURT: Why don't we do this. I've said it
18 three times now, but I am concerned about Mr. Lang as a
19 detained defendant and other detained defendants not having
20 their cases just linger because the case is voluminous or
21 otherwise. I don't want this case to just wallow because
22 we've set it out for 45 days. So I would like to set it for
23 30 days. I want to do a status conference on October 20th
24 at 2:00 p.m. It can be by phone.

25 I'm also perfectly amenable, if it turns out as we

1 approach that date, that the parties for good cause say,
2 We'd like another two weeks or whatever. But I think it's
3 better to try to do a 30-day status conference rather than
4 extend the time for the reasons I've discussed.

5 Are the parties available at 2:00 p.m. on
6 October 20th?

7 MS. JACKSON: Yes, Your Honor.

8 MR. METCALF: Yes, Your Honor.

9 THE COURT: Okay. So we will do another status on
10 2:00 p.m., October 20th. I find the ends of justice are
11 best served and outweigh the interest of the public and
12 Mr. Lang in a speedy trial, and the time between today's
13 date and the next status conference shall be excluded in
14 computing time within which the trial must commence in this
15 case under the Speedy Trial Act.

16 Again, if it turns out that for whatever reason
17 the parties think that it would be substantially more
18 productive to push that status off by two weeks or a month,
19 that's fine. I just don't want on the front end to assume
20 that 45 days is an appropriate amount of time for someone
21 who is in the detained camp. Okay?

22 MR. METCALF: Your Honor, I have a request, if I
23 may.

24 CAPTIONER: Sir, can you take your mask down,
25 please?

1 THE COURT: You may approach the podium. That
2 might be easier.

3 MR. METCALF: Thank you, Your Honor.

4 In light of your decision today, we are
5 respectfully requesting an order for the D.C. Jail, if we
6 send over a flash drive, to allow the flash drive to contain
7 highly confidential material and have that highly
8 confidential material be accessible to Mr. Lang.

9 There's one issue that was discussed is there are
10 different levels of the sensitivity of the material and if
11 we send him certain things that are marked highly
12 confidential, they are not going to actually provide that
13 information to Mr. Lang.

14 So in light of that, would Your Honor be willing
15 to issue an order indicating that the jail is allowed to
16 provide Mr. Lang with highly sensitive material if provided
17 by counsel?

18 THE COURT: Does the government have a view on
19 this?

20 MS. JACKSON: I think we've stated from the
21 beginning that the current policy allows him to review
22 highly sensitive material as provided to the jail under the
23 current voluminous --

24 THE COURT: That's the problem I have is that you
25 haven't attempted to do this, as far as I can tell, and you

1 haven't been refused it. You are asking me to order
2 something that may be fully permissible under the policy or
3 not. I haven't been presented with a situation in which
4 this has been rejected.

5 MR. METCALF: Your Honor, you are talking about
6 literally policy where we would have to physically go to the
7 D.C. Jail and give it to employees, where every single
8 action we've ever taken has been shut down, from phone calls
9 to -- he calls us. That's perfectly fine. But when we try
10 to set up a phone call, when we try to set up a legal visit,
11 when we go there and giving him a piece of paper, when we
12 mail him things, every single thing that we have done has
13 been completely shut down.

14 It was our understanding --

15 THE COURT: Is it your understanding that the D.C.
16 Jail policy allows confidential information to be given to
17 detained defendants?

18 MR. METCALF: Yes. But I don't want highly
19 confidential material to become a problem, so I was just
20 trying to get ahead of it because my understanding was if
21 there is something that is highly confidential, it could not
22 get shown to Mr. Lang. That's why I was simply making that
23 request.

24 And I've read the policy. I've spoken to as many
25 people as I can. I've called up the D.C. Jail on 80

1 different occasions trying to figure this stuff out, and it
2 never works. There is a hurdle every single time I try to
3 do something.

4 So that's why I was just asking for a court order
5 to make it nice and easy, but if it is part of the policy,
6 then that's fine. I will go back. If there's an issue with
7 it, then --

8 THE COURT: I just don't know what I am supposed
9 to be ordering. D.C. Jail, comply with your policy? Or
10 D.C. jail, notwithstanding your policy, you still have to
11 give Mr. Lang highly confidential information?

12 MR. METCALF: Or it's ordered that Mr. Lang is to
13 be able to obtain a flash drive from his attorneys that
14 contain discovery on it so it doesn't get shipped back in
15 the mail. Or if we go there, we don't get shut down.

16 Just something additional to allow us to be able
17 to do something, Your Honor. That's all I'm asking for.

18 THE COURT: Ms. Jackson?

19 MS. JACKSON: Your Honor, the government's concern
20 is the following: I don't know why the jail doesn't allow
21 mail to go through from defense counsel to defendant. I
22 know that there are concerns regarding -- I don't know the
23 reason or the basis for that policy, and so I don't feel
24 comfortable representing on their behalf why it should be
25 changed or not.

1 Perhaps we could, at the next hearing if this
2 remains an issue, ask that somebody like the general counsel
3 for the jail or someone else be available to articulate the
4 bases for that position so that you can make an informed
5 decision about what needs to be changed, if at all.

6 THE COURT: Here is my view. The D.C. Jail needs
7 to comply with its policies as to Mr. Lang. It needs to
8 permit him to see information that otherwise would be
9 permissible for any defendant to see. Right?

10 And I will enter an order in addition to the
11 general order about this hearing saying that the D.C. Jail
12 must comply with its laptop policy with respect to Mr. Lang.

13 MR. TANKLEFF: Your Honor, may I approach for one
14 second?

15 THE COURT: Sure.

16 MR. TANKLEFF: I think I could maybe, possibly
17 narrow this down. What we are really asking the Court is to
18 modify the protective order to allow Mr. Lang to be part of
19 the protective order and gain access to everything that
20 counsel had to actually execute the protective order, to
21 gain access to those materials. I think that's kind of --
22 we can narrow it down that way. By modifying the protective
23 order, that would give him access.

24 THE COURT: That is not a D.C. Jail issue. That
25 would be true whether he is detained or not. And on that, I

1 want you to meet and confer with the government and make a
2 proposal. Modifying the protective order is true for every
3 defendant. It's not a D.C. Jail issue. Right? So if you
4 want a modification of the protective order, that is
5 independent of D.C. Jail's policy.

6 MR. TANKLEFF: The protective order identifies
7 certain highly classified, highly sensitive material that we
8 really can't send Mr. Lang because --

9 THE COURT: Again, that is not a D.C. Jail
10 problem. It is a protective order problem. I haven't heard
11 one minute about the protective order today until just now.
12 That's exactly the kind of thing you need to confer with the
13 government about before coming to me. Ask the government if
14 they are prepared to loosen the protective order protections
15 as to highly confidential information. You would have to
16 ask them that whether he was detained or not. So that's one
17 thing.

18 Whatever happens there, you then have a separate
19 question about the D.C. Jail. To date, I have no
20 information in front of me that the D.C. Jail is failing to
21 comply with a policy as to laptop or hard-drive information,
22 because you guys haven't tried. I am fine entering an order
23 saying the D.C. Jail shall comply with all policies as to
24 Mr. Lang. I don't know what I am supposed to do beyond
25 that.

1 MR. TANKLEFF: Okay. Thank you, Your Honor.

2 THE COURT: I will entertain a motion to modify
3 the protective order.

4 MS. JACKSON: Your Honor, the government -- I
5 guess I did not make this as clear as it should have been.
6 On the top of Page 31 in our motion, the current policy
7 enables the defendant to review electronic evidence marked
8 as highly sensitive in his cell. It is not prohibited by
9 the protective order under the government's interpretation
10 of what the protective order means, meaning that should
11 defense counsel bring a hard drive to the jail and then they
12 arrange for him to view it, it can include USCP
13 surveillance, such as the footage provided in Exhibit A,
14 which is the only thing that has been marked highly
15 sensitive in this case.

16 THE COURT: That may very well be the case. I
17 would encourage the parties to have a discussion about what
18 defense counsel thinks they can't show Mr. Lang under the
19 protective order. It may be that the government's view is
20 nothing; you can share everything you want with him, and the
21 D.C. Jail should permit it to go to him.

22 If that's the case and I need to enter an order to
23 that effect, I will, of course, do that. That's the way it
24 is supposed to work.

25 If on the other hand there is some information

1 that would not be permissibly shown to Mr. Lang under the
2 protective order for whatever reason, that's a protective
3 order issue, not a jail issue. And I can't force the jail
4 to give him something that he can't see under the protective
5 order. Okay?

6 Thank you, Counsel.

7 MR. METCALF: Thank you, Your Honor.

8 MR. TANKLEFF: Thank you.

9 (Proceedings concluded at 5:57 p.m.)

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C E R T I F I C A T E

I, **Lorraine T. Herman, Official Court Reporter**, certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.

September 21, 2021
DATE

/s/
Lorraine T. Herman