

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

EDUARDO NICOLAS ALVEAR
GONZALEZ,

Defendant.

CRIMINAL ACTION NO.
2:21mj48

TRANSCRIPT OF ZOOM PROCEEDINGS

Norfolk, Virginia

February 12, 2021

BEFORE: THE HONORABLE LAWRENCE R. LEONARD
United States Magistrate Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE

By: Andrew Bosse
Assistant United States Attorney
Counsel for the United States

FEDERAL PUBLIC DEFENDER'S OFFICE

By: Rodolfo Cejas
Assistant Federal Public Defender
Counsel for the Defendant

1 (Hearing commenced at 2:12 p.m.)

2 * * * * *

3 (Recording begins at 2:21 p.m.)

4 MR. BOSSE: ...and from there he's been continuing
5 to broadcast his conspiracy theory videos and live streams
6 to his network of followers. In one of the live streams,
7 Gonzalez notes that the other man in the apartment, JM, is
8 going to change his shirt, the shirt which had the name of
9 his company on it, and Gonzalez says that he's doing this to
10 protect the home.

11 There is no information the government has that he
12 intends to return to California or has a fixed address
13 there. The two more recent addresses on file for him are
14 connected to his estranged wife.

15 I want to talk about what happened earlier this
16 week on February 8th as law enforcement is narrowing down
17 where he is and is trying to find out if he is still at the
18 apartment on Laskin. They use a ruse to try to determine
19 that. They had an officer from the Virginia Beach Police
20 Department in uniform knock on the apartment door. The ruse
21 was that there had been a 911 hang-up call traced back to
22 that area and so an officer was checking the apartments to
23 make sure everything was okay.

24 The officer knocks on the door of the apartment and
25 hears whispering. The door is then answered by the person

1 associated with the apartment, JM. The officer asks JM if
2 he is the only person there. JM says he's the only person
3 there, meaning that he lies to the officer to help his
4 friend, the defendant, hide.

5 This same person, JM, appears on several of the
6 defendant's YouTube live streams, which appear to be
7 broadcast from that apartment, and in several of them, he
8 appears to be smoking marijuana with the defendant. That
9 same night, this Monday night, Mr. Gonzalez is again live
10 streaming to his fellow conspiracy theorists, and he's
11 speaking in one portion of a live stream video to a man with
12 a foreign accent.

13 Part of the title of this video references "smoking
14 in the Capitol." He called the video, "Smoking with
15 brotunda." Here is what Gonzalez says. He says -- and I'm
16 going to use profanity, but I think it's necessary --
17 "Fucking cop comes over this morning. Like, you see why I
18 fucking hid in the closet praying to God. It was so scary,
19 bro. You know I do have an escape route, by the way. I
20 have a lick one. There is a lioness," and that's the term
21 he uses for one of his female followers. "There is a
22 lioness who lives here up the street." The other man on the
23 videos talks about, "Oh, you've got a bolt hole," and later
24 explains a "bolt hole" means somewhere to dash to. And
25 Gonzalez says, "I've got a bolt hole, dude. That's right.

1 It's like bugging out, bug out." The other man says, "It's
2 always good to have a plan B." And Gonzalez says, "Yeah.
3 Yeah, it's always good, and I'm so happy that she reached
4 out and said that because now I feel a little like, fwew, I
5 could actually probably do something in case that were
6 real." And he then says, "We are here now. We are alive
7 and safe. I think the whole riot is going to be safe, like,
8 we'll be good, absolutely." And then he says, "I'm out of
9 weed."

10 I want to talk a little bit about the live streams.
11 Actually, I can skip this part. I've mentioned that some of
12 them show him using drugs. He's open about using/smoking
13 marijuana on these live streams from here in Virginia, which
14 is illegal, and he's proud of what he did. One of the live
15 streams he sets as his background a photograph of the
16 Capitol building.

17 Getting back to this week, on Tuesday, the 9th, FBI
18 and others executed a search warrant at the residence where
19 he's staying. In addition to the electronic devices they
20 are looking for, they find a rifle that's claimed by JM, was
21 not seized. They also found marijuana and a number of
22 steroids, of Anabolic steroids, two vials of a substance
23 called Gonadotropin, a vial of a substance called
24 Trenbolone, a vial of a substance called SP Super Trim, and
25 multiple other vials.

1 There are other pills that are found there that are
2 often used in conjunction with taking steroids, like blood
3 pressure medication, pills to stop estrogen production. The
4 defendant didn't affirmatively state that the drugs were
5 his, but he said he understood that he could potentially be
6 charged for them. And that's the point, Your Honor, which
7 he is arrested on the warrant from the District of Columbia.

8 I'll say that the defendant was cooperative with
9 the FBI at the arrest. He spoke to them after being read
10 the *Miranda* warnings, and he admitted that that was, in
11 fact, him inside the Capitol. He said he was a documentary
12 filmmaker and was trying to live stream from inside the
13 Capitol. Claims he didn't realize it was wrong to invade
14 the Capitol during this riot.

15 He explained that he went up and down some
16 hallways, and then at one point said that he asked a police
17 officer how to get out. He said he did not want to go back
18 to L.A. because of this whole thing going on, referencing
19 the Capitol events, we believe, but said he liked this area
20 and that the man JM had offered to let him stay here.

21 At his post-arrest interview, the defendant
22 admitted that he believed in some conspiracy theories but
23 denied that he was closely affiliated with the conspiracy
24 theory known as QAnon. A lot of that is inaccurate, which
25 I'm going to get to, and it's important. The defendant is

1 not just a dabbler in conspiracy theories, including QAnon.
2 He seems to be a true believer and promotes these baseless
3 theories to what was at one time a significant online
4 audience that he claims a good number in the tens of
5 thousands.

6 Also, the idea that he just stumbled into the
7 Capitol, if that's the argument, is incorrect for the
8 reasons I've narrated above. His own video evidence shows
9 that that is not the case. Also, he saved photos and
10 footage in a computer folder called "Capitol storming." He
11 talks about how he barged into the Capitol. While narrating
12 that, he says, "Never back down."

13 On his Twitter feed we have postings like, "Revolt,
14 revolt, revolt," and "Civil War time," and, "It's about time
15 for a revolution." And these are from the Twitter postings
16 associated with, "A Good Lion Entertainment" or "A Good Lion
17 Media," which is his, quote, unquote, production company.

18 THE DEFENDANT: False.

19 MR. BOSSE: And I see the defendant is nodding his
20 head no, and I'm happy to have him explain that, but I'm
21 going to continue on.

22 There is another post on this Twitter statement
23 that says, "We charged the Capitol to make a statement. We
24 own the Government. Our forces will be needed again out
25 there."

1 THE DEFENDANT: Is needed.

2 THE COURT: Let me interrupt you for a second,
3 Mr. Bosse, and direct these comments to Mr. Gonzalez.

4 Mr. Gonzalez, you have an attorney here who will
5 speak for you, and when it's his time to talk, he'll do so.
6 If you wish at any point to meet privately in a breakout
7 room with your lawyer, when there's an appropriate time to
8 do so, you can do that, but please do not interject in this
9 proceeding.

10 THE DEFENDANT: Sorry, Your Honor.

11 THE COURT: All right. Go ahead, Mr. Bosse.

12 MR. BOSSE: Thank you, Your Honor. There is a
13 Twitter statement that says, "We charged the Capitol to make
14 a statement. We own the government," and then says, "Our
15 forces will be needed again out there," is a statement that
16 he was supporting patriots by taking the Capitol and smoking
17 people out, referring to giving them marijuana.

18 There's a posting which he appears to be responding
19 to something that lawyer Rudy Giuliani said where the
20 defendant says, "And next time we will go harder, stronger
21 " -- sorry, "We will go stronger, harder, and we will break
22 more shit."

23 There is talk about the glory of this uprising and
24 references to his involvement in a siege. There are
25 re-tweets of a statement about reported election fraud that

1 says, "Maximum penalties are now on the table." And there's
2 posted video of him just feet away, again, from the
3 frontline as the crowd starts to breach the police line.

4 There is a video inside the Rotunda. "I and
5 thousands of others literally just stormed the Capitol. You
6 bet I smoked maga out up in there, five joints lit up at
7 once." And there are also re-tweets of QAnon conspiracy
8 content.

9 I want to talk a little bit about these conspiracy
10 theories because in my view they're directly relevant to his
11 motivation here and to whether he poses a risk of flight and
12 is a danger to the community.

13 The QAnon belief system, if you can call it that,
14 involves a conspiracy of government and Hollywood elites
15 who, in the views of the people who hold this, are running
16 some sort of underground child sex trafficking ring and are
17 harvesting a substance called Adrenochrome, I guess
18 supposedly from the glands of the children.

19 And the defendant's videos show that he is very
20 much into this nonsense. He's made purported documentaries
21 about people in the entertainment entry, which he calls
22 Pervywood, and talks about the substance Adrenochrome,
23 claims celebrities are using the substance Adrenochrome.

24 In addition to the conspiracy theories -- by the
25 way, on the videos he also talks about driving drunk and

1 getting into a near fatal accident. And he's open about
2 what seem to be pretty regular drug usage, which he
3 broadcasts. He also talks about being fired from the job he
4 had in information technology.

5 And I've spent now a couple of hours of my life
6 this week, that I will never get back, listening to the
7 defendant talk about his various beliefs. There is a belief
8 that we may be living in a simulation. There is talk that
9 we are living on a flat Earth, or what the defendant calls a
10 dome firmaments, and that the Smithsonian Institution is
11 hiding evidence of giants.

12 He is interested in Hollywood and media celebrities
13 being involved in some kind of satanic child sex trafficking
14 cult that includes the purported harvesting of this
15 substance, and he talks about elites sacrificing children
16 and drinking their blood. Talks about drugging children,
17 filming abuse, and killing children.

18 According to this conspiracy fantasy, it's so
19 bizarre, it is almost impossible to believe that people
20 believe it, but apparently he does. And there is also
21 mentions of the number 17, which, and I'm a novice, but I
22 understand that is a code for Q, related to QAnon.

23 Your Honor, that's the substance of my proffer, and
24 I'll reserve argument. Thank you.

25 THE COURT: All right. Thank you, Mr. Bosse.

1 Mr. Cejas.

2 MR. CEJAS: I'm sorry. My apologies. Thank you,
3 Your Honor. I would note -- I'll respond to the
4 government's proffer during argument. However, what I would
5 note, as far as Mr. Alvear Gonzalez is concerned, he's 32
6 years old. He's lived most of his life in California. I
7 would just reiterate the information contained in the
8 pretrial services report.

9 He has no prior criminal history whatsoever, no
10 instances where he has been charged with any sort of crime
11 and did not appear. He has been in this area for a brief
12 period of time. I would note that I've spoken to the
13 individual known as JM. That person is willing -- he is
14 willing to serve as a third-party custodian, willing to
15 remove the firearm from his residence.

16 However, understanding that the -- anticipating
17 that the government would make the argument that it did or
18 concerning JM, we've also -- I've also spoken to Mr. Alvear
19 Gonzalez's wife, Erica. She is willing for him to live
20 there with herself and her -- their, I believe, 4-year-old
21 daughter, Luna, who is also there.

22 THE COURT: Where, Mr. Cejas?

23 MR. CEJAS: I'm sorry. This is in California,
24 Judge. This is in California. And she does not have any
25 firearms at her address. She has no prior criminal history

1 whatsoever. She did not attend anything in Washington, D.C.
2 on January 6th, and as far as I know, she's not affiliated
3 with any of the other matters that the government has
4 brought up.

5 I would also note, and maybe I can reserve this for
6 argument, but in the videos that we are aware of, there is
7 nothing showing that Mr. Gonzalez was engaged in any acts of
8 violence. There is nothing to show that -- other than maybe
9 statements he made -- that he was one of the ones on the
10 front lines. He may have been behind them, certainly not
11 ones breaking through the windows.

12 In the many videos that I'm sure all of us have
13 seen in the past four days, there is nothing there to
14 suggest, nothing, and I reviewed quite a number of those
15 from the impeachment trial, Mr. Gonzalez is not in those
16 videos, and those videos are, obviously, the very worst. He
17 would be easy to spot because, as is indicated in the
18 affidavit, I believe, he was wearing flag pants.

19 So there is no one identified with flag pants
20 engaged in the kinds of activities that we saw in those
21 videos this week. The other thing I would note is that in
22 reviewing the evidence, the United States D.C. office chose
23 to charge him with misdemeanors, which means that that was
24 the most severe conduct that he engaged in. He is not
25 charged with a felony here. They certainly had time to

1 charge him, indict him, and they chose to charge him with,
2 well, misdemeanors, two of which are class B misdemeanors.

3 So I will reserve the rest for argument, Your
4 Honor.

5 THE COURT: All right. Thank you, Mr. Cejas.

6 MR. CEJAS: Thank you.

7 THE COURT: Mr. Cejas, before I get to the
8 argument, I would like to know the proposed, either JM in
9 Virginia Beach as a third-party custodian, or the
10 defendant's ex-wife who you said lives in California.

11 MR. CEJAS: That's correct.

12 THE COURT: Any more specific about that? What
13 city in California does she live in?

14 MR. CEJAS: Your Honor, I'm sorry. She is in
15 Ventura, California, I believe, and I have an address which
16 I could provide to the Court at the appropriate time.

17 THE COURT: All right. Do you know how long she's
18 resided there?

19 MR. CEJAS: She has been there, I believe, for --
20 they were there together for approximately five years. She
21 has been at that address, I believe, four years.

22 THE COURT: All right. Thank you, Mr. Cejas.

23 MR. CEJAS: Thank you.

24 THE COURT: All right. Mr. Bosse.

25 MR. BOSSE: Thank you, Your Honor. Your Honor,

1 I'll note, with respect to Mr. Cejas's statement, is true
2 about the current charges. I'll say that the U.S.
3 Attorney's office is still investigating and is considering
4 a felony charge under 1512, but because it's not lodged yet,
5 and at this point would be speculative, I'm not hanging my
6 argument on that. My argument is that while the defendant
7 is currently facing misdemeanor charges, the nature and
8 circumstances of this offense are exceptionally great.

9 The defendant was driven by bizarre conspiracy
10 theories, that he not only holds, that broadcasts to many
11 others to join a mob that stormed and invaded the United
12 States Capitol and temporarily disrupted the certification
13 of our election results. He joined an insurrection against
14 the government that was intended to impede the peaceful
15 transition of power.

16 He did not just end up in the wrong place at the
17 wrong time. His own videos, postings, and comments make
18 that abundantly clear. He's near the front lines as a
19 violent mob assaults and breaks through a police line
20 protecting the Capitol.

21 He is then rushing into the Capitol with a mob, and
22 later, as he's narrating it to his followers, he calls it
23 taking our country back, talking about people looking for
24 doors to break in, and then he's using drugs inside the
25 Capitol rotunda and passing them out to others. And then

1 we've got the statements that he makes on Twitter, "Revolts,
2 Civil War, we own the government, our forces will be needed
3 again out there," and talking about the glory of this
4 uprising, which he's proud of.

5 Your Honor, in one of the videos that he posts that
6 he took inside the Rotunda, what he says is, "I and
7 thousands of others literally just stormed the Capitol." It
8 couldn't be more clear the seriousness of what he did, and
9 the weight of the evidence is overwhelmingly strong. He
10 posted videos of himself committing the crimes. He bragged
11 about it while broadcasting them later, which raises one of
12 many concerns here, and that is the absolute impunity that
13 he acted with and continued to act with after the fact.

14 The defendant, based on his belief and these
15 bizarre conspiracies, thinks that he did nothing wrong by
16 joining an insurrection against the government of the United
17 States, and, in fact, is celebrating that. And then to put
18 the last nail in, he admits that it was him to the FBI,
19 which while doing a search warrant, they find the electronic
20 devices they are looking for, and they also find marijuana
21 and what appear to be a number of different kinds of
22 Anabolic steroids.

23 Looking to the history and characteristics of the
24 defendant, I'm looking at the 3142(g)(3)(A) factors, and
25 with the exception of criminal history and record of

1 appearance of prior court proceedings, the defendant does
2 not have a criminal history. Every single one of these
3 factors weighs greatly against him. Physical condition
4 seems fine. As to his mental condition, he's perfectly
5 competent and lucid, but the belief structure that he has
6 embraced makes him both dangerous and a risk of flight.
7 He's fallen under the sway of a web of conspiracy theories
8 that is not just bizarre but dangerous.

9 If you believe that so-called elites, government
10 elites, Hollywood celebrities, et cetera, are members of
11 some kind of satanic cult, sex trafficking children on a
12 massive scale, harvesting some substance from them,
13 sacrificing them, drinking their blood, this is sheer
14 wild-eyed nonsense.

15 But if you believe that, what wouldn't you do? The
16 defendant was not just there sitting in his basement
17 absorbing this material. He is acting on it, amplifying it
18 and re-broadcasting it. And what does he do with it? One
19 thing he might do with that set of beliefs is take part in
20 an insurrection that you believe is going to stop these
21 people and storm the Capitol building, which he did.

22 Another thing he might do is make threatening
23 statements about what's going to happen next time, which he
24 did. Another thing that he might not have the greatest
25 respect for is the authority of a court of the United States

1 and its requirement that you appear there to face the
2 consequences of your crimes.

3 We have already seen, because he has shown us and
4 gloated about it, what this defendant thinks of the
5 authority of the United States government. He didn't just
6 call for a revolution, he tried to help start it himself.
7 Why in the world should we think he will appear to face the
8 consequences of his actions, whether he's here or in D.C. or
9 all the way across the country in Ventura, California, even
10 further from the Court that has jurisdiction over his case.
11 And that's before, Your Honor, we get to the specific
12 evidence of his intent with respect to flight. He cancels
13 his flight back to California, surely, knowing from the
14 news, that other insurrectionists are being detained at the
15 airport. He appears to have cut off his phone, and he's
16 hiding out in Virginia Beach. And I'm not surmising when I
17 say hiding out. He knows that what he did is illegal, and
18 he suspects the police are looking for him. When an officer
19 comes to the door, he hides in the closet while his
20 roommate, JM, who is harboring him there, tells a bald face
21 lie to a uniform police officer to continue hiding him.

22 Then on a broadcast to his followers the same
23 night, he talks about having a, quote, escape route, one of
24 his female followers that he believes he could escape to
25 also in the local area and says, "I'm so happy that she

1 reached out because now I can actually probably do
2 something."

3 We don't have to guess what he's going to do when
4 he's out of custody, Your Honor. He's already told us.
5 Looking at the other factors, family ties, none. He's
6 estranged from his parents and siblings. Until right this
7 moment, my understanding was that he was estranged from his
8 ex-wife. I have no idea what that situation or that
9 scenario is like or whether it would be a safe place for
10 him, for his ex-wife, for his daughter, or for the people of
11 Ventura, California.

12 Employment, none that we are aware of other than
13 making and posting wild conspiracy theory documentaries. He
14 was apparently fired from the last job he held. Financial
15 resources, he's been appointed counsel, and so if he was
16 honest on that form, they're not great. The length of
17 residence in the community appears to be a few weeks,
18 staying with a person who has shown by his actions and
19 statement that he's absolutely unfit to be any kind of
20 third-party custodian.

21 The defendant appears to have two community ties
22 here, one of whom was actively harboring him, hiding him
23 from the police and lying to protect him, and the other who
24 is supposedly his escape route. His past conduct, I won't
25 reiterate, is outlined in what I said before. History

1 relating to drug abuse appears extensive, and he is wide
2 open about it. The only point in his favor is a lack of a
3 criminal record, but he's been open about committing crimes;
4 drug use, drunk driving, and taking part in an insurrection
5 against this government.

6 Almost every factor points heavily against him.
7 The defendant wants to evade, capture -- wanted to evade
8 capture. Now that he's been captured, if he's set free,
9 there is no reason to think that he is not going to go
10 underground and try to do the same thing again. There is
11 nothing that the Court could put in place that's going to
12 stop him from fleeing and from failing to appear. He's
13 already indicated that he's trying to avoid the consequences
14 of his actions, and now he's facing jail time. And for the
15 same reasons, Your Honor, he is a danger to the community.
16 He acted with impunity, and he's proud of what he did, and
17 his motivations are passing bizarre.

18 He's absolutely a danger to any community that he's
19 in, and even if the Court disagreed that we've made the
20 necessary showing on that, the government's position is the
21 evidence is as clear as can be that he's a flight risk
22 because he said that he's a flight risk, and given what we
23 know about him, there is no set of conditions that are going
24 to contain that risk.

25 Your Honor, thank you for allowing me to make a

1 longer proffer and argument than is typical. That's all I
2 have.

3 THE COURT: All right. Thank you, Mr. Bosse.

4 All right. Mr. Cejas, I'll hear your argument.

5 MR. CEJAS: Thank you, Your Honor. Your Honor, I
6 think -- and I'll address the two issues, danger to the
7 community and then risk of flight. As far as danger to the
8 community is concerned, essentially we have a one-time
9 event, and certainly the events of January 6th at the
10 Capitol are unprecedented, so I'm not going to try to
11 minimize those in any case. I think what's important,
12 however, is that the agency, the United States, which viewed
13 his activities, which had his videos, whose had everything
14 there, chose to charge him with a misdemeanor.

15 In looking at the guidelines just briefly, he would
16 be facing a range around zero to six months. As I said
17 before, in many of the disturbing videos that we saw, he --
18 and I'm referring to during the impeachment trial and the
19 other videos Mr. Bosse references, there is nothing showing
20 that he is engaged in acts of violence. There is nothing
21 showing that he was engaged in threatening behavior.

22 Is the evidence strong? Yes. I'm not going to
23 suggest otherwise, considering it's all on video. But
24 certainly not danger to the community as I believe that is
25 anticipated by Congress and by the President in enacting

1 this section of the Bail Reform Act.

2 The government makes much of the conspiracy
3 theories. Certainly, conspiracy theories, they are
4 concerning, but the fact that someone believes something is
5 not a crime. The fact that they tout them is not a crime.
6 It doesn't show that they are a greater danger necessarily.

7 Many of the things -- and I took a look at the
8 website, Good Lion website, there are some interesting
9 videos there. Much of what Mr. Bosse said in his argument,
10 particularly that we are going to take our country back, is
11 a quote from the President right before the rally occurred.
12 You know, we are going to raise hell, we are going to do all
13 of these things, is a quote from the President right before
14 these things occurred. Any information, statements
15 regarding the Beach State, regarding many of the conspiracy
16 theories that Mr. Bosse references, have been quoted
17 repeatedly by the former President of the United States.

18 So I would suggest that if they are not -- they do
19 not necessarily suggest that that individual is dangerous,
20 and certainly that's arguable, but be that as it may, there
21 is nothing to suggest that they pose a danger or make
22 Mr. Alvear Gonzalez more dangerous in any way.

23 Unfortunately, if people want to believe that the
24 earth is flat, that's not a crime. There are some people
25 who don't believe that anyone went to the moon. That's not

1 a crime. There are people who believe -- I've got clients
2 who tell me that the sun goes into the water, that's why it
3 turns orange. That's not a crime. It may be strange; it
4 may be a variety of things. It's not a crime.

5 As far as risk of flight is concerned, I think the
6 Court can establish conditions or a combination of
7 conditions to ensure his appearance in court. One, the
8 Court can require that he stay with his wife. Two, the
9 Court can require electronic monitoring. I'm certain that
10 Mr. Alvear Gonzalez has never been in jail before.
11 Certainly, he would understand that if he were -- if he were
12 to fail to appear in court, he would face a potential
13 penalty significantly greater than what he may face now.

14 I think it's important to note that although the
15 police did a knock and talk the day before, it was a ruse.
16 They did not tell the individual there that they were
17 looking for Mr. Alvear Gonzalez in any case. Even in the
18 video that he created the next day, there is no indication
19 that he ever attempted to flee. He did not go anywhere, and
20 then when the FBI showed up, it's my understanding that he
21 was extremely cooperative. He gave them -- I believe they
22 had a password for his phone. They secured his phone. No,
23 they had a search warrant for his phone. He provided the
24 password, he provided the external hard drive, and he gave
25 statements thereafter.

1 Whether or not he believed it was a crime or not,
2 again, people can believe what they want. That doesn't
3 matter as far as it relates to risk of flight or danger to
4 the community. I believe that the Court can establish
5 conditions or a combination of conditions. I confess that
6 perhaps Mr. JM is not the best candidate given the
7 circumstances. Although I did speak to him, he is willing
8 to turn Mr. Alvear Gonzalez's passport over to pretrial
9 services. He's willing to remove any firearms from the
10 home, if the Court did consider him. But, in any case, even
11 if the Court permitted him to go back and to stay with his
12 wife, the passport can be turned in here.

13 So I understand that these events of January 6 were
14 unprecedented. I understand the concerns about the
15 conspiracy theories. I would suggest that some of those are
16 protected by the First Amendment in this fight. The nature
17 of them, I do not believe that they, in and of themselves,
18 create a danger to the community. I would even note that we
19 have a congresswoman who was elected as a member of The
20 QAnon crew, so, from Georgia, again, most recently.

21 So it may not be whatever, but it's not evidence
22 that he will not show up in court when he is required to.
23 Thank you.

24 THE COURT: All right. Thank you, Mr. Cejas.

25 The Court evaluates every case when the government

1 moves for detention independently and individually, and the
2 principle behind that is never more apparent than in the
3 case brought before the Court today.

4 The defendant has been charged with two Class A
5 misdemeanors and two Class B misdemeanors. Those offenses
6 should not be minimized because of the nature of the charge
7 brought. In other words, just because they are Class A or
8 Class B misdemeanors does not mean that the nature and
9 circumstances of the offense can't be extraordinarily
10 serious.

11 The Court's not going to weigh in on evaluating the
12 momentousness of the January 6th attack on the Capitol.
13 That's for others to decide. But the Court has to take that
14 into consideration in determining whether there are
15 conditions or a combination of conditions that can be
16 fashioned that would assure this defendant's appearance in
17 court and to protect any other person in the community.

18 The nature and circumstances of these offenses are
19 extraordinarily serious. The weight of the evidence appears
20 to be substantially strong in no small part by the
21 defendant's own doing by virtue of his social media
22 outreach, his live streaming, his recording for posterity
23 the events in which he engaged.

24 With respect to the defendant's personal history
25 and characteristics, the defendant has no criminal history.

1 He has no ties, though, to this community or to the District
2 of Columbia where his case is pending. His physical
3 condition appears to be fine. His mental condition appears
4 to be healthy, albeit apparently affected in some respects
5 by a series of rather strange beliefs. But as Mr. Cejas
6 points out, believing in strange things is not a crime.

7 There is a First Amendment right to believe what
8 one wants to believe, and ordinarily that doesn't come into
9 play in determining whether or not someone poses a risk of
10 flight or a danger to the community unless those beliefs
11 turn to actions, and the actions here, as been emphasized by
12 the government, include a very blatant storming of the
13 Capitol and deliberate and expressed intentions to evade
14 accountability for that, to evade capture, to seek an escape
15 route.

16 Brazen doesn't begin to describe the notion of
17 announcing over the Internet not only what you've done on
18 January the 6th but what you call for to happen afterwards
19 and how you plan to escape and to evade law enforcement and
20 responsibility.

21 The last factor is the nature of the risk posed to
22 the community by the defendant's release, and the Court is
23 not weighing whether or not someone who believes in QAnon
24 poses a risk of danger to the community just based on those
25 beliefs. The question for the Court is whether or not those

1 beliefs may tend to lead to action, action that could cause
2 a risk of harm to the community.

3 According to the government, the defendant has
4 expressed numerous intentions to advocate for a violent
5 revolution. I don't know that there is any other way to
6 describe that. And so when I look at the conditions that
7 are available to the Court, electronic monitoring involves
8 an ankle bracelet. It's been the Court's experience in the
9 past that those can be cut off.

10 The Court has to weigh not whether there is any
11 guarantee that the defendant will appear but whether the
12 Court can be reasonably assured that he will appear. In
13 other words, can the Court be reasonably assured that the
14 defendant would adhere to the conditions placed on him by
15 the Court, including the potential for electronic
16 monitoring?

17 The defendant has pointed first to this individual
18 JM in Virginia Beach as a third-party custodian, and I'm
19 going to find immediately that JM is not an appropriate
20 third-party custodian based on the representations by the
21 government about his efforts to not only lie to the police
22 officer the night before the defendant's arrest but to aid
23 and abet the defendant's hideout to law enforcement.

24 With respect to the defendant's ex-wife, the Court
25 has no information about this person other than she lives in

1 Ventura, California, and that together with the defendant
2 they share a 4-year-old child. This person has not been
3 interviewed or vetted by probation, and so the Court simply
4 cannot consider whether or not the defendant's ex-wife would
5 be a suitable third-party custodian.

6 So as I look at the available conditions available
7 to the Court, I, frankly, am at a loss as to what conditions
8 I could impose that would assure this defendant's appearance
9 based on so many of the comments and announcements he's made
10 to the public at large and based on his conduct both on the
11 day of January 6th and on the days thereafter.

12 The government's burden is to prove the defendant
13 is a risk of flight by a preponderance of the evidence, and
14 I'm going to find the government has established that. The
15 government's burden is to prove that the defendant is a risk
16 of danger to the community by a preponderance -- excuse me,
17 by clear and convincing evidence, and I'm going to find that
18 the government has established that as well.

19 This is an unusual case presenting unusual facts
20 for the Court to consider, but weighing all of the evidence
21 and argument that has been made here this afternoon, I'm
22 going to find that there are no conditions or combination of
23 conditions that I can impose that will assure the
24 defendant's appearance, will reasonably assure that
25 appearance, and reasonably protect any other person or the

1 community. So I'm going to issue a written order of
2 detention.

3 Now, Mr. Bosse, does the defendant have a schedule
4 in the court in the District of Columbia?

5 MR. BOSSE: I don't believe he has an appearance
6 date scheduled yet. I'm checking right now with the
7 attorney on the case, but I believe the answer is no. I'll
8 correct that if I find out. Here it is. Not until he is
9 transported. By the time that he is transported and makes
10 his initial appearance there, the ensuing dates will be set
11 out.

12 THE COURT: All right. Then, I will go ahead and
13 sign a commitment order transferring the defendant to the
14 District of Columbia, and his next court appearance will be
15 scheduled once he arrives there.

16 All right. Mr. Bosse or Mr. Cejas, is there
17 anything further for the Court to address regarding this
18 case?

19 THE DEFENDANT: May I speak to Mr. Cejas?

20 MR. CEJAS: Yeah. If we can have a breakout room,
21 Judge.

22 THE COURT: Certainly. Lisa, if you would place
23 Mr. Cejas and Mr. Gonzalez in a breakout room so that they
24 can discuss matters privately, I'd appreciate it.

25 All right. If that's all, thank you, counsel.

1 Thank you, Mr. Gonzalez. The Court will stand in
2 recess.

3 THE DEFENDANT: Thank you, Your Honor.

4 (Hearing adjourned at 3:01 p.m.)

5 CERTIFICATION

6
7 I certify that the foregoing is a correct
8 transcript, to the best of my ability, of the court's audio
9 recording of proceedings in the above-entitled matter.

10
11 X _____/s/ _____x

12 Jody A. Stewart

13 X _____2-23-2021 _____x

14 Date

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JODY A. STEWART, Official Court Reporter