

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	No. 21-cr-117 (TFH)
	:	
RYAN NICHOLS,	:	
	:	
Defendant.	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S
MOTION FOR RELEASE FROM PRETRIAL DETENTION**

The United States of America respectfully submits this opposition to Defendant Ryan Nichols’s motion for pretrial release (ECF 55). The government seeks the defendant’s continued detention pending trial pursuant to 18 U.S.C. §§ 3142(f)(1)(A) (Crime of Violence), 3142(f)(1)(E) (Felony Involving a Dangerous Weapon), and 3142 (f)(2)(B) (Serious Risk to Obstruct Justice). Contrary to the defendant’s claims, the factors outlined in 18 U.S.C. § 3142(g) strongly favor detention, and there is no condition or combination of conditions that will adequately protect the safety of the community and protect against further obstructive conduct by Nichols.

Nichols viewed the 2020 election as fraudulent, and he was determined to prevent Congress’s certification of the election results on January 6, 2021, through any means necessary. Nichols called for war against his fellow citizens, and he arrived at the Capitol prepared for battle. After the riot, during which he assaulted law enforcement officers and incited others to violence, he showed no remorse; rather, he bragged about his role, declared himself a leader in the forthcoming “revolution,” and called for more violence. Fearing arrest, Nichols then apparently concealed evidence of his crimes, directed others to destroy evidence, and fled law enforcement before surrendering.

Now seeking his release, Nichols attempts to defend his conduct on January 6, casting

himself as a hero who was merely fighting back against officers who were “terrorizing” civilians. The Court should reject these claims, which are unsupported by the evidence and simply not credible. Indeed, Nichols now presents himself as, in essence, a political prisoner who is the subject of a “desperate and disgraceful” prosecution. These claims, which are preposterous, appear to reflect the same anti-government, conspiratorial views that motivated Nichols’s violent conduct on January 6, 2021. Nichols has demonstrated his commitment to acting upon these views with violence and without respect for the law. Because Nichols presents a clear, concrete, and continuing danger to the community, and because of the continuing risk that he will engage in obstructive conduct, this Court should deny his motion for release and order his continued detention pending trial.

PROCEDURAL HISTORY

Nichols was charged by complaint on January 17, 2021 and arrested the following day. (ECF 1). On January 22, 2021, a magistrate judge in the Eastern District of Texas conducted a thorough detention hearing and ordered him detained pending trial pursuant to 18 U.S.C. § 3142, finding that there was clear and convincing evidence that no condition or combination of conditions could reasonably assure the safety of the community. As the court explained:

[T]he testimony I have heard today paints a picture not of a peaceful protest that got out of hand, but of a planned and predetermined, premeditated attempt to attack the Capitol. The text messages lay out a plan to drive to D.C. with weapons and to acquire body armor on the way. I saw evidence of threats and antagonizing language toward the crowd I am concerned about evidence of other acts in the past, as well as substance use. And for these reasons, Mr. Nichols will be detained pending trial.

*See Gov. Ex. 01 (Transcript of Jan. 22, 2021 Hearing) at 120-21.*¹

¹ The defendant submitted a copy of the transcript, which was split into two exhibits on ECF. The defendant’s motion refers to the transcript as Exhibit 3 (as does an exhibit list filed by the defendant), but the transcript documents appear at ECF 57 as Exhibits 5 and 6. As a general matter, the defendant’s references to exhibit numbers in his filing do not align with their numbering on

Nichols and his co-defendant, Alex Harkrider, were subsequently indicted, and Nichols is currently charged in a superseding indictment (ECF 59) with five felonies and three misdemeanors: (1) civil disorder in violation of 18 U.S.C. § 231; (2) obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2); (3) assaulting a law enforcement officer with a deadly or dangerous weapon (OC spray), in violation of 18 U.S.C. § 111(a)(1) and (b); (4) entering a restricted building or grounds while using and carrying a deadly and dangerous weapon (crowbar and OC spray) in violation of 18 U.S.C. § 1752(a)(1) and (b)(1)(A); (5) engaging in disorderly and disruptive conduct on restricted ground while using and carrying an deadly and dangerous weapon (crowbar and OC spray), in violation of 18 U.S.C. § 1752(a)(2) and (b)(1)(A); (6) disorderly and disruptive conduct in the Capitol in violation of 40 U.S.C. § 5104(e)(2)(D)); (7) engaging in an act of physical violence on Capitol Grounds, in violation of 40 U.S.C. § 5104(e)(2)(F); and (8) parading, picketing, and demonstrating in the Capitol in violation of 40 U.S.C. § 5104(e)(2)(G).

FACTUAL BACKGROUND²

Calling for Violence in the Wake of the 2020 Presidential Election

In Facebook posts following the 2020 Presidential election, Nichols repeatedly claimed that the election was fraudulent, and he called for “war” against his fellow citizens, described those who voted for President Biden “true traitor[s] to the country,” and called for violence against government

ECF. Furthermore, where the defendant refers to video exhibits, those files have not been provided to the government, although the government believes it has identified the cited videos in its holdings. The government has requested that defendant ensure those videos are provided to the Court, and the government is providing the Court and defense counsel copies of all video exhibits cited in this filing.

² At Nichols’ initial detention and preliminary hearing in the Eastern District of Texas, the government presented the testimony of FBI Task Force Officer Gregory Harry. Nichols’ wife, Bonnie Nichols, testified on behalf of the defendant. The government incorporates that testimony here by reference. At a detention hearing, the government may also present evidence by way of a proffer, and it does so here. *See United States v. Smith*, 79 F.3d 1208, 1209-10 (D.C. Cir. 2010).

officials, including President Biden and Vice President Pence. For example:

- November 5, 2020: “Make no mistake.. This is DOMESTIC TERRORISM.. You are being held HOSTAGE in your own country.. Rules can be made up at anytime now to fit any election need... The Democrats have set a very dangerous precedent this year for how we move forward as a country. There will soon come a point of no return.. The damage will be done, and there will be no recourse or action or reversal. Trust your gut, people. We can no longer trust our government.”
- November 6, 2020: “Y’all ready for WAR? They just turned PA and GA blue.. That was mathematically impossible.. We’re not going to let this one slide.” In response to comments on this post, Nichols wrote, “domestic terrorism is happening right now. Make no mistake. We are ALREADY at war.”; and “war is the answer to terrorism. Hope that democracy wins, because war will be next. The narrative is already set for civil unrest. What happens next is not going to be good for this country.” Another user wrote that “It’s time to march on Washington. This is what our second amendment was made for” and Nichols responded “agreed”.
- December 9, 2020: “Y’all MF’s in for a rude awakening... 🤖👊 US My oath of enlistment was for ALL enemies, both foreign AND domestic!”
- December 12, 2020: “You better realize what’s coming. Your country has been SOLD to CHINA.. China gave us a god damn virus, they stole our elections, bought our politicians, and WE are allowing this fucking shit to happen right under our nose. What happened to standing up for what is right? What happened to saying NO to terrorists and unpatriotic Washington thugs? What happened to FIGHTING FOR YOUR COUNTRY?”
- Excerpt from December 14, 2020: “I’ve had hating ass people all weekend to shame me for feeling patriotic and taking a stand against the domestic terrorism thats currently plaguing our country. ‘Why would you want to attack other Americans?’ ‘What makes you feel that way?’ ‘Why are you so defensive?’ Even better, ‘WHY ARE YOU ON THE OFFENSIVE?’” [text omitted] So just because you got ‘voted’ in (with Dominion voting software) doesn’t mean we’re going to listen or follow a fucking thing you say. We aren’t shutting down. We aren’t going to back down. We aren’t giving up the 2nd amendment. We WILL be heard. If you won’t hear us in court peacefully, then you’ll hear us in the streets non-peacefully. The patriots are giving you a chance (government) to do it correctly. If you don’t we will do it ourselves.” (all parenthesis in original)
- Excerpt from December 20, 2020 message to a U.S. Senator: “The election was stolen, and we patriots are NOT going to stand by and let it happen. We want this fixed, or we’re prepared to fix it ourselves. We’re giving you all the chance to make it right before we should up to Washington and FORCE it to be fixed.”
- December 24, 2020: “Any Democrat found guilty of treason should be executed.. Any Republican found guilty of treason should be VIOLENTLY executed!”

- December 24, 2020: “It’ll be fixed January 6th, or the Patriots will fix it ourselves.. When the Patriots move to fix it, we’re bringing the wrath of God, and there’s not a FUCKING thing you can do to stop it. [emojis]”
- December 28, 2020: “Pence better do the right thing, or we’re going to MAKE you do the right thing.. 🇺🇸”
- December 28, 2020: “The time for games is OVER.. Patriots will be in Washington DC on Jan 6th! If Pence doesn’t do the right thing, WE FIGHT”
- December 30, 2020: “On Jan 6th, the Patriots of this country will have a decision to make.. Mine has already been made.. What is yours?”

Planning for Violence on January 6, 2021

Text messages between Nichols and his co-defendant, Alex Harkrider, reveal his planning for violence on January 6, 2021, and his recruitment of Harkrider to join him. Although the evidence indicates that Nichols deleted these messages from his phone, and although he directed Harkrider to do the same, the messages were recovered from Harkrider’s phone. Examples include the following:

December 12, 2020:

Nichols: The time is coming Alex
Where we, as patriots, may have to take back the country by force.
If the courts won’t allow justice to prevail, we have to bring justice ourselves.
If the case won’t be heard, then all is lost.
If the case won’t be heard, then we have officially been sold to China with no returns available.

Harkrider: I better hurry and get me an AR

Nichols: Yes. The time is now to get one

Harkrider: While I still can

Nichols: Things gonna get bad bro
I can see the division today
The right finally said ENOUGH

December 14, 2020

Nichols: I’m thinking of joining the Proud Boys³ chapter in Texas.. Would you be open

³ The Proud Boys is a nationalist organization with multiple U.S. chapters and potential activity in other Western countries. The group describes itself as a “pro-Western fraternal organization for men who refuse to apologize for creating the modern world; aka Western Chauvinists.” Proud Boys members routinely attend First Amendment protected events, where they sometimes engage in violence against individuals. Numerous Proud Boys have been arrested

to doing that with me?

December 24, 2020

Nichols: I'm going to Washington DC for Jan 6th.. Wanted to make sure you're still going so I can reserve a hotel.

December 25, 2020

Nichols: I gotta know one last time..
You down for Washington DC on Jan 6th?

Harkrider: Yeah

December 27, 2020

Nichols: Are you ready bro? 1775 is about to go down in this bitch
[sends screenshot of Zello alerts discussing "J6 & J20" "STOPTHESTEAL operation" "chat to debrief, discuss, debate and decide the #SavetheStealJ20 Intel Brief posted above" "stand up boots online and boots on the ground rallypoint"]

Nichols: We've got front seat tickets to the REAL revolution

Harkrider: Shits wild

Nichols: [sends two screenshots with texts from the #STOPTHESTEALJ20" Zello channel]

Harkrider: We still going on the 6th then? Or holding off until the 20th?
Or both?

Nichols: Both

December 30, 2020

Nichols: Jesus Christ bro..
Something has gone wrong
[screenshots of Twitter posts and news articles]
I think Pence is BAD..
I think he's going to single handedly put Biden in on the 6th.
10,000,000+ people projected in DC on the 6th
[sends image]
Got another patriot going with us!

January 1, 2021

Nichols: [sends hyperlink to and image of body armor]
\$257
Protects against 5.56 and 7.62⁴

and charged for violent activities at the Capitol. On December 15, 2020, Nichols informed Harkrider that he had applied to join the Proud Boys.

⁴ These are the two most common rounds used by law enforcement and the military. *See* Gov. Ex. 01 at 19

We're going to need first aid kits and tourniquets
I need to speak with you in person
Whenever you're free today or tomorrow

Harkrider: For the DC trip? Just let me know what you need from me.
We can get on the phone if we need to.

Nichols: We have to speak in person lol
What I'm about to relay can't be done over the phone

January 3, 2021

Nichols: Still some other stuff we have to talk about before we leave.
"The Line in the sand" (quotation in original)
Dad and I are building a gun container in the truck today.
You're more than welcome to help us prepare this vehicle if you want.

Nichols: It's time to defend the Republic of the United States against DOMESTIC
enemies.
LOL do I scare you?
.. "Ryan has lost his fucking mind" is probably what you're thinking.
It's been heavy in my mind as well. Trust me

Harkrider: haha you know I'm down to clown if it comes to protecting our freedom, rights
and family.

I don't look for fights, but I will absolutely put one up and pick up arms if my
country is threatened.

Nichols: (loved Harkrider's last text)

Nichols: That's what I love you bro.

I can't wait to do this together.

Just know I have intel that Washington will be a Warzone

Big possibility that actual battle goes down

Harkrider: I'm looking forward to it. When are y'all building that?

Nichols: Multiple group sources confirming
Mother fucking partiers are MAD
I'm building all afternoon.
I'll send you pics as we build it out.

I know how to get the guns legally into DC now.
It's called "transporting"
Harkrider: I'll bring every freedom blaster I own then
Perfect
Nichols: Hell YEA!!!
That guitar case is perfect. It's legal to carry in that
Harkrider: We're stopping in Kentucky on the way for those plate carriers too right?
Nichols: I'm going to call tomorrow morning and make sure we can stop and pick up.
Bring yours though

Nichols: We need walkie talkies

Nichols and his father built a box specifically for the purpose of bringing firearms and ammunition to the Washington, D.C. area on January 6, 2021, and Harkrider and Nichols brought several firearms and ammunition to the area, although it does not appear that either brought firearms to the Capitol. Nichols and Harkrider also secured ballistic plates and carriers that they wore at the Capitol, where Nichols was also armed with a crowbar (and temporarily a can of OC spray) and Harkrider with a tomahawk.

As he planned to travel to Washington, D.C., Nichols also joined groups on Zello (a cell phone application that emulates walkie-talkies) that were focused on the election and plans for January 6. For example, on December 27, 2020, Nichols subscribed to a "Patriot Ride Sharing" channel and a "DEFEND J20" channel (J20 is a reference to January 20, the date of the inauguration). He was also a member of a "SHTF Intel" Zello channel, and, on January 2, 2021, he subscribed to a "STOP THE STEAL J6" (referring to the January 6 certification of the election) channel. For at least one of these channels, Nichols apparently used a code word to establish his bona fides and gain access. He also sent an audio message on January 1, 2021, in which he stated that he and Harkriderr would be traveling to D.C., with a "couple of other patriots" and sought to coordinate with others for January 6, 2021. As part of this coordination, Nichols notified others of his arrival in D.C. on January 5, 2021, discussed having received "intel" and pictures from others,

and discussed “scanning the area” before the rally on January 6.

Confronting Law Enforcement in Washington, D.C. on January 5, 2021

On the morning of January 5, 2021, Nichols commented on Facebook: “Hunting pedo politicians in DC us👊🌐.” That evening, Nichols and Harkrider joined a large group near the White House in downtown Washington, D.C., and Nichols recorded the events on a GoPro camera. Videos recorded by Nichols and others show Nichols in a large crowd that evening, saying, “[C]ops don’t know what’s going on. Too many of us, not enough of them,” and then later yelling out, “Those people in fucking Capitol building are our enemy.” Gov. Ex. 02 (GoPro Video, Timestamps 00:10, 03:07). Shortly thereafter, Nichols and Harkrider are walking when one of them (likely Nichols) says “there’s gonna be a fucking war tomorrow.” Nichols later says “There’s the White House. We here. We here. If you think you’re stealing the election, we’ve got another fucking thing coming for you.” Gov. Ex. 03 (GoPro Video, Timestamps 00:25, 02:50). Thereafter, Nichols, Harkrider, and others confront Metropolitan Police Department (“MPD”) officers, and it appears Nichols yells at least three times, “You can’t stop what’s coming tomorrow!” Gov. Ex. 04 (GoPro Video, Timestamp 03:48). The MPD officers order the crowd to stay back, but they do not comply and eventually the officers release crowd control spray. Nichols then yells at the officers, “Hey you all start spraying me, I’m going to start whooping ass around here.” *Id.* (Timestamp 04:33). Shortly thereafter, Nichols is captured yelling at the MPD officers:

Now you lost everybody on both sides. Now you lost everybody on both sides. Now you lost everybody on both sides. Because you don’t want to fucking protect the Constitution. So you lost both sides of support. We had your fucking back, but we ain’t got your back no more! We’re the business owners! We’re the veterans! We’re the veterans and business owners! We had your back! But we ain’t got your back no more! We don’t got your back no more! Because you don’t got our back! So we had your back until you didn’t have ours! And so now you don’t have ours! So now, I’m a marine and we got other marines around here! We ain’t got your back no more! You better have our back and you better have our back or we’re gonna fucking show you! Heads will fucking roll! We will not be told ‘no’ any longer!

We're tired of people protecting Antifa. We're not going to have it anymore! So tomorrow, tomorrow is the last fucking stand!

Gov. Ex. 05 (GoPro Video, Timestamp 04:50); Gov. Ex. 06 (@bgonthescene Video, Timestamp 00:00) (a video of the same events from a vantage point showing Nichols).

Threatening Tirade on the March to the U.S. Capitol on January 6, 2021

On the morning of January 6, 2021, Nichols outfitted himself with tactical gear, a carrier with a ballistic plate, a crowbar, a walkie-talkie, and steel-toed boots, and he posted the following photograph of himself and Harkrider to Facebook:



Starting at approximately 1:40 p.m., Nichols livestreamed his and others' march to the Capitol on Facebook, in a video he titled "Million + Patriots Marching to Capital! " Gov. Ex. 07 (Livestream March Video, Timestamp 07:40). As he marched and as his father and wife watched, Nichols unleashed an expletive-laden, threatening tirade, stating, among other things:

- "I'm hearing that Pence just caved. I'm hearing reports that Pence caved. I'm telling you

if Pence caved, we're gonna drag motherfuckers through the streets. You fucking politicians are going to get fucking drug through the streets. Because we're not going to have our fucking shit stolen. We're not going to have our election or our country stolen. If we find out you politicians voted for it, we're going to drag your fucking ass through the streets. Because it's the second fucking revolution and we're fucking done. I'm telling you right now, Ryan Nichols said it. If you voted for fucking treason, we're going to drag your fucking ass through the streets. So let us find out, let the patriots find out that you fucking treasoned this country. We're gonna drag your fucking ass through the street. You think we're here for no reason? You think we patriots are here for no reason? You think we came just to fucking watch you run over us? No. You want to take it from us, motherfucker we'll take it back from you."

- "So we're going to fucking fight and we're going to take back what is ours. And if you are patriot, then get on board and if you're not then get the fuck out of my way, because I'll drag your fucking ass through the street. You want it? You got it. So let me find out Pence let me find out myself that you treasoned the country, we'll fucking drag your ass too."
- "We ain't taking it no more. So you want to take it from us, well we're here to take it back from you." At this point someone else in the video yells, "cut their freaking heads off." Nichols agrees yelling, "Cut their heads off. Hey Republican protestors are trying to enter the House right now at the capitol is the word that I'm getting. So if that's true, then get up in there. If you voted for treason, we're going to drag your ass through the streets."
- A woman chimes in, "we're really nice people actually". Nichols promptly corrects her, "We're nice people but when you treason our country, we'll drag your ass. They're not veterans, we are. She's not a fighter, I am. Everybody here ain't here to fight. I am."
- Nichols chants "Lock and load, lock and load, lock and load."
- "Know that Ryan and Alex are here in Washington, DC marching on the Capitol, apparently Pence just caved and if Pence caved we're going to fucking take it back, because we're not going to let it be stolen. So we're up here fighting."

Throughout the livestream, Nichols' wife posted messages of support, including "stay safe boys!", "USA!", "God Bless these Men and Women!", "COME AND TAKE IT!" and "GOD BLESS AMERICAN AND WE THE PEOPLE! . . . DEFEND OUR VOTE! STOP THE STEAL!"

Violent Conduct at the U.S. Capitol

Once on Capitol grounds, Nichols and Harkrider made their way to the inauguration stage which was in the process of being constructed on the Capitol's lower west terrace and where law

enforcement battled to protect an entrance to the building referred to as “the tunnel.” As Nichols and Harkrider marched toward the tunnel at approximately 3:16 p.m., rioters continued to attack law enforcement, pulling away protective shields, and throwing projectiles at officers. Gov. Ex. 08 (CCTV, Timestamp 1:16:00) (The timestamp on the CCTV footage is two hours behind the actual time. Thus, the timestamp of 01:16:00 corresponds to 3:16:00 p.m.); Gov. Ex. 09 (Patriots Storm U.S. Capitol Video, Timestamp 54:15) (showing Nichols and Harkrider moving into the tunnel). Nichols and Harkrider lower their heads and shoulders and join the mob, heaving against the line of officers. Gov. Ex. 08 (CCTV, Timestamp 1:16:40-1:18:00).

Over the following two minutes, the officers manage to push the rioters, including Nichols and Harkrider, out from inside of the tunnel. Gov. Ex. 08 (CCTV, Timestamp 1:16:40-1:18:00). As the officers do so, the rioters are grabbing the officers’ protective riot shields and Harkrider assists in passing one of the shields back to the mob. Gov. Ex. 08 (CCTV, Timestamp 1:18:15). Within less than a minute, MPD Officer Michael Fanone is pulled away from the police line and out of the tunnel into the crowd, although Nichols and Harkrider are not close to Officer Fanone at this time. Gov. Ex. 08 (CCTV, Timestamp 1:18:50). By 3:20 p.m., uniformed law enforcement officers established a clearly visible police line at the entrance to the tunnel. Gov. Ex. 08 (CCTV, Timestamp 1:20:00). Nichols can be observed facing the front of the tunnel, standing directly in the center, staring, yelling, and pointing at the officers. Gov. Ex. 08 (CCTV, Timestamp 1:22:17-1:22:25]. Nichols and Harkrider remain in that location, staring at the line of officers for several minutes, and Nichols can be seen yelling at and gesturing emphatically toward the line of officers. Gov. Ex. 08 (CCTV, Timestamp 1:30:05-1:31:02).

Contrary to Nichols’s claim (at 11-12), it does not appear that Nichols sought to assist Officer Fanone. As Officer Fanone was dragged into the crowd, Nichols can be seen grabbing at

Officer Fanone, before Officer Fanone is then pulled away. Gov Ex. 10 (GoPro Raw360 Video, Timestamp 4:40-5:09) As Fanone is pulled further into the mob, Nichols makes no apparent attempt to assist him; rather, he turns his back to Fanone several times, appearing to speak to Harkrider several times. When Officer Fanone passes by Nichols and Harkrider, Nichols makes no apparent effort to assist him. Gov Ex. 10 (GoPro Raw360 Video, Timestamp 6:30). Although a group of individuals later surrounds Fanone and assists in bringing him back to the police line, Nichols is not part of that group. Instead, Nichols remains in the mob, pointing toward the line of officers guarding the tunnel Gov Ex. 10 (GoPro Raw360 Video, Timestamp 6:30-8:02).⁵

Having observed assaults on Officer Fanone and other law enforcement, Nichols does not leave the scene; instead he moves back toward the police line guarding the tunnel and joins the crowd pushing against the officers. The rioters turn more violent, with some climbing overhead

⁵ In addition to the video evidence, there are several other reasons to doubt Nichols's claim that he sought to assist Officer Fanone during the riot. First, Nichols had been part of the mob pushing against the law enforcement line in the tunnel for more nearly 30 minutes before Officer Fanone was pulled out of the tunnel and into the crowd, belying any interest in protecting, as opposed to assaulting, law enforcement. Second, as described below, Nichols speaks extensively about the events at the Capitol after the riot. Not only does he never mention assisting any officers, he brags about clashing with law enforcement—both U.S. Capitol Police and MPD. Third, Nichols presents these claims in a purportedly “sworn” statement, but self-serving statements such as this that lack corroboration and are not subject to cross-examination deserve little weight.

For similar reasons, the Court should not credit Nichols's claims (at 13-15) that he witnessed an officer, whom he calls “White -shirt,” assault individuals who were inside the tunnel. Putting aside Nichols's characterization of the events, it is hardly clear that Nichols was in a position to observe them. The incident described by Nichols (at 13-15) appears in Gov. Ex. 08 (CCTV) at Timestamp 2:06:15-2:11:24. First, Nichols does not appear in the CCTV footage during this time frame. Second, Nichols can be seen well outside the tunnel around this time frame in another video. *Compare* Gov. Ex. 08 (CCTV) starting at Timestamp 2:11:29 *with* Gov. Ex. 09 (Patriots Storm U.S. Capitol Video) at Timestamp 1:07:26. Nichols is far outside the tunnel entrance, with dozens of rioters between him and the tunnel entrance, and it is difficult to imagine how he would have been able to see what was occurring inside. Likewise in Gov. Ex. 08 (CCTV) at Timestamp 2:12:17, Harkrider and Nichols remain in the crowd far outside the tunnel. *See* Gov. Ex. 09 (Patriots Storm U.S. Capitol Video) at 1:08:17. Nichols has not “walked away in disgust” as he claims (at 15); instead he remains watching the assault on the tunnel and then points at a rioter attempting to break a window to the Capitol.

and swinging from the top of the tunnel to stomp and kick law enforcement and throwing projectiles. Gov. Ex. 08 (CCTV, Timestamp 1:54:00-2:00:00). Videos from the crowd during this time depict Nichols waving the rioters forward toward the police line. Gov. Ex. 11 (One Big Flag Video, Timestamp 2:03-2:30). Right after Nichols' beckons the crowd, a canister is passed forward which Harkrider grabs and passes toward the police line.

Nichols pushes his way back toward the police line, standing immediately in front of the law enforcement line guarding the tunnel entrance and waving the mob forward toward police. Gov. Ex. 08 (CCTV, Timestamp 2:01:14-2:01:17). Moments later, and as is captured on multiple videos, Nichols signals to another rioter to pass him an OC canister, he takes possession of the canister, positions it over the officers' riot shields, and disperses the spray twice onto the officers, who lower their heads to avoid the spray. Gov. Ex. 08 (CCTV, Timestamp 2:02:34-2:02:41); Gov. Ex. 12 (Nichols Spraying Video, Timestamp 00:23). After assaulting the officers with the OC spray, Nichols remains near the front line of rioters for several minutes as other rioters hang from the top of the tunnel swinging and stomping at the officers.

Between approximately 4:10 and 4:15 p.m., Nichols watched as small window into the Capitol near the tunnel is broken. Nichols was one of the first people to climb through it into a conference room inside the Capitol. Gov. Ex. 13 (Window Video, Timestamp 1:37-2:00 [*see also* Pants are falling down at 1:55-2:00; Gov. Ex. 14 (Parler Video, Timestamp 00:00 to 00:40)).⁶ Once inside, according to Harkrider's own words, and as depicted in the photograph below, he and Nichols "barricaded the doors with desks and chairs."

⁶ Nichols now claims (at 15) that he was told the broken window led to a "meaningless conference room" and that he entered "out of curiosity." Nichols' attempt to downplay the significance of another violent and destructive breach of the Capitol is unpersuasive. Nichols was directly in front of the window as it was broken, was one of the first to enter.



While Nichols is inside, another window to the room is broken. Gov. Ex. 13 (Window Video, Timestamp at 3:29-4:45.

Shortly thereafter, Nichols crawled to the edge of a window near the tunnel, crowbar in hand, and begins speaking to others in the crowd. After they exit the conference room, Nichols encouraged and assisted another rioter entering through the window. Gov. Ex. 09 (Patriots Storm U.S. Capitol Video, Timestamp 1:22:25). Nichols and Harkrider then exited onto a balcony where Nichols took a bullhorn from another rioter and continued to incite the crowd, waving his crowbar menacingly and yelling, among other things:

- Listen, listen, listen, I just got intel. They are labeling us as anarchists They are talking about using lethal force against us as we have stormed the Capitol. They are talking about using lethal force against you.
- Get in the building! Get in the building! This is your country. Get in the building! This is

your country! Get in the building! We will not be told no! We will not be told no! This is your country! This is your country! Get in there!

- This is the second revolution right here folks!
- This is not a peaceful protest!
- If you have a weapon, you need to get your weapon! If you have a weapon, you need to get your weapon! If you have a weapon, you need to get your weapon! If you have a weapon, you need to get your weapon! If you have a weapon, you need to get your weapon!
- Pedo Pence has turned on you! Pedo Pence has turned on you! Pedo Pence! Pedo Pence! Pedo Pence!
- If you are prepared to fight, you need to get your weapon!

Gov. Ex. 15 (Political Trance Video, Timestamp 6:25-9:44)⁷

At approximately 4:39pm, Nichols is captured on video standing on a ledge above the tunnel on the upper west terrace, crowbar in hand, motioning the crowd toward the Capitol and yelling “This is our country! This is our country!” Gov. Ex. 16 (Parler Video, Timestamp 00:35-00:45).

Throughout these events, Nichols celebrated his conduct on social media, posting the following:

⁷ Incredibly, Nichols now claims (at 16) that it wasn’t until exiting the Capitol—after having witnessed horrific violence carried out by the rioters around him, assaulting law enforcement, and, by his own admission “storming the Capitol”—that Nichols realized a riot was occurring. But rather than leaving or attempting to quell the violence, Nichols instead incites the crowd, directing them to enter the building, to continue fighting, and to gather weapons against law enforcement.

Ryan Nichols
19h • 🌐

We're in 🇺🇸🇺🇸



40

1 Share

Like

Share



Ryan Nichols is with Alex Harkrider at United States Capitol.

19h • Washington D.C. • 🌐

In front of Nancy Pelosi's smashed office at the Capital Building!

We ain't done yet! We just got started! 🇺🇸

EDIT** apparently this wasn't Nancys office. Guess that was around the other side of the building.



Ryan Nichols is feeling pissed off with Alex Harkrider at United States Capitol.

18h • Washington D.C. • 🌐

Patriots stood their ground today! 🇺🇸

We aren't done yet, either!

You want to steal our election, and not hear us in court?

Good! Now you'll hear our civil unrest!



83

16 Comments • 4 Shares



Ryan Nichols

21h • 🌐

It's 2nd American Revolution Day! 🇺🇸🇺🇸



35

5 Shares

Like

Comment

Share

Calls for Further Violence and Obstructive Conduct Following the Riot

In the waning hours of January 6, 2021, Nichols took to social media to call for more violence and proclaim himself a leader in the “revolution.” Nichols also threatened those who disagreed with him, tagging one witness on Facebook and saying, “[B]ut you won’t come step up and say shit though. You’re a coward, and we would smash your face. Steal our election, won’t hear us inn court, then we will no longer be peaceful. So fuck you and your liberal mindset. Patriots are here to fuck people like you up now.”

At 8:13 pm on January 6, 2021, Nichols posted a nearly 11-minute video to Facebook, titled “Are Patriots Calling For Violence? Why Weren’t You Here? WE HAVE TO TALK!” Gov. Ex. 18 (Post-Riot Livestream). In it, Nichols recounted the day, his criminal conduct, and his desire for further violence:

- We stormed the Capitol today and made our voices heard. We clashed with DC PD we also clashed with Capitol PD.
- We heard that Pence did the wrong the thing. And as we got the Capitol building the consensus across the board was the same, that if Pence did the wrong thing and sold us out, then we have to fight.
- Pence did the wrong thing and allowed them to continue with the vote. So we stormed the Capitol building, and they stopped the vote. And they went down into the tunnels and hid, like the fucking cowards that they are. Instead of coming out there and addressing ‘we the people’ they ran. Because they knew they were doing the wrong thing. So we clashed with Capitol Police.
- So, if you won’t hear us, if you’re telling us our vote doesn’t matter, and then you steal the election, and then you tell us we have no recourse of action. And you tell us that we just need to stand there and take it, yes, the patriots are calling for violence at this point!
- Yes we are calling for violence at this point!
- So if you want to know where Ryan Nichols stands, Ryan Nichols stands for violence!
- Ryan Nichols is done allowing his country to be stolen and I understand that the first revolutionary war folks, it was violent. We had to be violent and take our country back. Well guess what? The second revolutionary war. Right now, the American revolutionary

war that's going on right now. It started today.

- It's going to be violent. And yes, if you are asking is Ryan Nichols going to bring violence? Yes, Ryan Nichols is going to bring violence.
- Folks, it's been stolen from you. There is election fraud. There is evidence of election fraud. They showed the election fraud today.
- Folks, the real criminals, the real enemy is in the Capitol building.
- And if you're looking for a leader, I'll be your leader! If you're looking for guidance in this second American revolution, I will be your leader! Come seek me out. I will tell you where I'm going to be, what I'm going to be doing, Alex will be doing it, we will be with other veterans, other patriots, and we're here to take this country back.
- So, yes, I'm calling for violence! And I will be violent! Because I've been peaceful and my voice hasn't been heard! I've been peaceful and my vote doesn't count! I've been peaceful and the Courts won't hear me. So you're fucking right, I'm going to be violent now! And I'm here in Washington, D.C. and it just got started. We shut down the vote today, because those coward ass politicians ran into the tunnels when we stormed the Capitol. I was inside the Capitol today. I was in the Capitol Building. I've got pictures from insides and videos from inside the Capitol Building.⁸
- I've seen the last of you treasonous, bastard, elected politicians, stealing our country! So I don't care if I have to die for it. Give me liberty or give me death! But I'm prepared to fucking die for this! I took a constitutional oath, to uphold for the United States and its people, for all enemies, foreign and domestic. So help me god. I will fucking die for this. But before I do that, I plan on making other people die first, for their country, if it gets down to that.
- So, yes today. Ryan Nichols. Ryan Nichols grabbed his fucking weapons [holds up and waves crowbar] and he stormed the Capitol and he fought for freedom! For [unintelligible] election integrity. I fought. I stormed up there against police and I pushed them back.

When Nichols discovered Facebook had removed this video, he posted "Facebook won't let my TRUTH be spoken! Come join PATRIOTS in DC and FIGHT for your country! [American flag emojis]."

Following January 6, Nichols continued to share election-related conspiracy theories with

⁸ Nichols apparently deleted this evidence, as he also deleted text messages between him and his co-defendant, him and his wife, and him and his father.

other Facebook users, including his wife and Harkrider.⁹ According to one post by Nichols: “The only enemy is our ELECTED OFFICIALS. It’s time to make them pay.” He also posted, “We will not bend. We will not break. We will never give in. We will never give up. We will never surrender. Headed home to better reorganize. This fight for our country has just began.”

Nichols reference to reorganizing was not idle chatter. Rather, on January 7, Nichols had a conversation on Facebook where he discussed “recruiting more patriots today” and stating that he “did get frustrated last night, but I’ll never give up. It’s time to get better organized and regroup for the 20th,” an apparent reference to the upcoming inauguration. Nichols continued, referring to his belief that the election was stolen: “Everyone deserves to stand trial. If found guilty, the death. Because the crime is treason. Not theft.” In the same conversation, Nichols acknowledged he was aware that he had been “reported to FBI”. The other user responded that he could not “find anywhere we’ve stepped outside the law”, to which Nichols responded “Even entering the Capitol?” “And clashing with police as they sprayed and beat us?” Nichols continued, “I think what happened NEEDED to be done. If not then, then never. I did what I felt God told me to do. What was laid upon my heart. To go defend this nation and it’s integrity.”

Obstructive Conduct After January 6

As evidenced by Nichols’ Facebook, he was aware that the FBI was likely looking for him. But Nichols did not turn himself in; rather, he changed his appearance, left the state, directed other

⁹ Many of his post-January 6, messages express a continued belief in Qanon and related conspiracy theories. For example, Nichols sent a “Q drop,” shared messages from prominent QAnon figures, and shared messages about “the storm” arriving. Likewise, his wife shares messages after January 6 from prominent QAnon figures, shares her belief that the “Deep State [] playing a role in the fraudulent election” and “Yea I don’t think Pence is good.” Other post-January 6, messages from Nichols express a belief that mass military arrests were underway, a belief in the “Hammer & Scorecard” election conspiracy theory, reporting from “good sources” that Speaker Pelosi had been arrested at the border trying to flee the United States, and an assertion that the Pope had been arrested.

to destroy evidence, and destroyed evidence himself. Nichols deleted some of his Facebook posts and messages. Nichols also deleted all the text messages between himself and his co-defendant from his phone and twice directed Harkrider to do the same, texting him on January 8, 2021, “Delete it all, including our text conversation together. Also delete them from your phone as well” and on January 9, 2021 “Watch the video and then delete what you have.”

Also missing from Nichols’ phone were all text messages between himself and his wife, himself and his father, and other threads (some of which remain on Harkrider’s phone). As noted above, Nichols was involved in numerous “intel” and planning groups prior to January 6, 2021. For example, located on Harkrider’s phone was a screenshot of a Zello conversation from a group labeled ““#STOPTHESTEALJ20” that Nichols had sent him. Between January 8, 2021 and January 9, 2021, Nichols unsubscribed from all four channels. Further, although Nichols brought certain firearms with him to Washington, D.C., they were not located during a search of his residence. Nichols also destroyed or secreted other evidence from January 6, 2021, including the tactical vest he wore that day, his hat, the ballistic armor plate he wore, the yellow gloves, the walkie-talkie he carried, his go-pro, and the crowbar, none of which were located during a search of his residence.

LEGAL STANDARD

The Bail Reform Act (“BRA”) explicitly authorizes detention when a defendant is charged with (1) a crime of violence—here the defendant is charged violating 18 U.S.C. § 111(a)(1) and (b), which qualifies as a crime of violence under the BRA, *see United States v. Padilla*, No. CR 21-214 (JDB), 2021 WL 1751054, at *5 (D.D.C. May 4, 2021); or (2) with a felony involving the possession or use of a dangerous weapon—here the defendant is charged with 18 U.S.C. § 231 and 18 U.S.C. § 1752(a)(1) and (b)(1)(A) and is alleged to have possessed and used dangerous weapons (OC spray and a crowbar) during the commission of those offenses. A defendant may also be detained if there

is a serious risk that the defendant will flee or attempt to obstruct justice. 18 U.S.C. § 3142(f)(2).

In determining whether a defendant should be detained pending trial, the Court considers four factors to determine whether some condition, or combination of conditions, will reasonably assure community safety or the defendant's appearance: (1) the nature and circumstances of the charged offenses; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or to the community that would be posed by the defendant's release. 18 U.S.C. § 3142(g). "In common parlance, the relevant inquiry is whether the defendant is a 'flight risk' or a 'danger to the community.'" *United States v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019). Most courts have concluded that the district court conducts a *de novo* review of the magistrate's order. *See United States v. Chrestman*, 525 F. Supp. 3d 14, 24 (D.D.C. 2021).

ARGUMENT

Having announced his intentions to go to war and to drag elected officials out of the Capitol, Nichols arrived at the Capitol ready to do so. His statements before, during, and after the riot, as well as his violent conduct that day, make clear the danger he poses if released pending trial. Similarly, Nichols's obstructive conduct after January 6, combined with his clear willingness to violate the law to advance his political goals, weigh strongly in favor of detention. For these reasons, the Court should deny his motion for release and order his continued detention.

The Nature and Circumstances of the Offense Charged

Courts in this district have recognized that the gravity of the conduct that occurred at the Capitol on January 6 cannot be understated. As Judge Moss aptly summarized in addressing another defendant's conduct:

[The defendant] and hundreds of others took over the United States Capitol; caused the Vice President of the United States, the Congress, and their staffs to flee the

Senate and House Chambers; engaged in violent attacks on law enforcement officers charged with protecting the Capitol; and delayed the solemn process of certifying a presidential election. This was a singular and chilling event in U.S. history, raising legitimate concern about the security—not only of the Capitol building—but of our democracy itself.

United States v. Cua, No. 21-107 (RDM), 2021 WL 918255, at *3 (D.D.C. Mar. 10, 2021).

In *United States v. Chrestman*, 21-mj-218 (BAH), 2021 WL 765662, at 7-9 (D.D.C. Feb. 26, 2021), the Chief Judge identified six factors to consider in assessing the nature and circumstances of offenses committed in connection with January 6: specifically, whether the defendant (1) has been charged with felony or misdemeanor offenses; (2) engaged in prior planning before arriving at the Capitol; (3) carried or used a dangerous weapon during the riot; (4) coordinated with other participants before, during, or after the riot; (5) assumed a formal or informal leadership role in the assault by encouraging other rioters' misconduct; and (6) the nature of the defendant's words and movements during the riot, including whether the defendant damaged federal property, threatened or confronted law enforcement, or celebrated efforts to disrupt the certification of the Electoral College vote. *Id.* In this case, the nature and circumstances of the offense charged and all six of the *Chrestman* factors weighs in favor of detention.

First, Nichols is charged with five felonies, three of which involve the use, possession, or carrying of a deadly or dangerous weapon and each of which arises from the Defendant's active, purposeful, and armed participation in an assault on the Capitol with the intent to stop the historically peaceful transition of power, the certification of the November 2020 election, and regular functioning of the United States Government. The nature and circumstances of the defendant's violent conduct could hardly be more serious.

Second, as outlined above, Nichols engaged in prior planning-- before arriving at the Capitol. Not only did he build a box to transport firearms and ammunition to D.C., but he also procured body

armor, joined various Zello groups related to the Capitol protest,¹⁰ amassed “intel” from others, applied to join the Proud Boys, and made clear his intentions for January 6 on social media.

Nichols claims (at 25) that his extensive planning with his co-defendant was done “in the same fashion that they planned all their prior search and rescue missions.” It is doubtful that any legitimate planning for charitable rescue missions resembled the planning they undertook for January 6—building a box to transport firearms, securing ballistic plates and body armor (which they did not already possess), telling his co-defendant that he had information about January 6 that could only be relayed in person, and identifying those in the location they were traveling to as “DOMESTIC enemies.”¹¹ In sum, Nichols engaged in extensive pre-planning and anticipation of violence against elected officials, his fellow citizens, and to prevent President Biden from assuming office.

Third, Nichols carried a dangerous weapon during the riot—namely, a crowbar—and possessed and used an OC canister. The crowbar carried and brandished by Nichols, and the OC spray

¹⁰ Nichols claims (at 26) there are “no communications with extremist groups,” but Nichols was active in Zello channels containing extremist groups’ planning for January 6, 2021. He also apparently applied to join the Proud Boys in anticipation of January 6, 2021. Nichols also claims he did not author a “manifesto[]”, but he was a prolific author on Facebook calling for violence to obstruct the certification of the vote. Nichols asserts there are “no maps” or “entry points with big red circles”, but Nichols deleted much of the evidence of his planning, including Zello, Signal, Telegram, and text messages. The evidence collected thus far shows Nichols coordinating with others, sharing messages with rally points, and discussing how to get to Washington, D.C.

¹¹ Nichols also claims that he outfitted himself with weapons, tactical gear, radios, and ballistic plates because he was worried about “Antifa” and other counter-protestors (at 2, 9, 25-26). Judge Sullivan’s reasoning in *Sabol*, is instructive: “But whether [the defendant] arrived prepared to engage in violence against the government or against counter-protesters is a distinction that is of little significance when evaluating the danger he poses to the community. . . . Regardless of the opponent, and despite his claims that certain tactical gear had alternative uses, [the defendant’s] own admissions reveal that he planned and prepared for a fight against perceived tyranny and then did in fact engage in violence against law enforcement officers protecting the U.S. Capitol on January 6, 2021, and the Court is not persuaded that the tactical gear was not brought for that purpose.” *Sabol*, 2021 WL 1405945, at *10, n.9.

he twice deployed, qualify as “dangerous weapons” for purposes of 18 U.S.C. § 3142(f)(1)(E). *See United States v. Chansley*, No. 21-CR-3, mem. op. at 13-14 (D.D.C. Mar. 8, 2021) (adopting definition of “dangerous weapon” under 18 U.S.C. §§ 111 and 113 in bond-review ruling, and holding a dangerous weapon is “an object that is either inherently dangerous or is used in a way that is likely to endanger life or to inflict great bodily harm” and that even objects with a “perfectly peaceful purpose[] may be turned into dangerous weapons when used in a manner likely to cause bodily harm”).

Indeed, by his own words and actions, Nichols repeatedly referred to the crowbar as a weapon—when he menacingly waved it at the crowd as he directed the rioters to get their own weapons and on the evening of January 6, when he posted an 11-minute video affirming that “Ryan Nichols grabbed his fucking weapons [holds up and waves crowbar] and he stormed the Capitol and he fought for freedom!” Contrary to Nichols’ assertion (at 28), the OC canister was not passed like a beach ball at a concert arriving in Nichols’ hands by pure chance; rather, as the video clearly depicts, Nichols sees the OC canister, specifically motions for another rioter to hand it to him, and then purposefully not once, but twice, deploys it over the heads of the rioters and at law enforcement guarding the Capitol. Gov. Ex. 12 (Nichols Spraying Video, Timestamp 00:23).¹²

Fourth, Nichols coordinated with other participants before, during and after the riot. Before the riot, he reported on “intel” he was gathering, passed along messages from “group sources,” joined several Zello groups which were active before and during the attack on the Capitol, and attempted

¹² Judges in this district have constantly detained defendants who assaulted officers with OC spray, as Nichols did. Perhaps most analogous to Nichols’s case is that of Cody Mattice, whom the Chief Judge recently ordered detained. *United States v. Mattice*, No. 21-cr-657-BAH, Detention Order (D.D.C. Oct. 26, 2021) (Attached as Exhibit 19). Like Nichols, Mattice obtained a canister during the riot and deployed it on law enforcement. Citing this conduct, Mattice’s pre-planning, and his statements that made clear his intent to engage in violence to disrupt the certification, the Chief Judge ordered Mattice detained, even though Mattice, unlike Nichols, never entered the U.S. Capitol. *Id.* at 5-13.

to recruit others to join him in D.C. Contrary to Nichols’ claim (at 27-28), he brought a two-way radio with him on January 6. While at the Capitol, Nichols assisted other rioters in challenging law enforcement and took to a megaphone to call for other rioters to enter the Capitol and gather their weapons. After January 6, Nichols issued another call for violence, stated that he was returning home to reorganize, discussed recruiting additional “patriots”, and planned to return to D.C. for the inauguration.

Fifth, Nichols assumed a leadership role in the assault by encouraging and directing other rioters’ misconduct. During the march toward the Capitol, he uttered violent threats and incited those around him. Once at the Capitol, Nichols pushed his way to the police line where he deployed OC spray at law enforcement. Nichols was in the immediate vicinity as a window to the Capitol was broken and was one of the first people to enter through it. Once inside, Nichols barricaded the doorway and as he exited the window, Nichols encouraged another rioter to enter. He then stood on the ledge, grabbed a bullhorn, and began inciting the crowd—directing rioters to illegally enter the Capitol, grab their weapons, and fight, before chanting “Pede Pence” over and over again. After leaving the Capitol, Nichols broadcast a video in which he declared himself a “leader” in “this second American revolution” and explicitly called for more violence.

Sixth, Nichols barricaded an office inside the Capitol and threatened and confronted law enforcement both on January 5 and again on January 6. Nichols did not set out to engage in protected First Amendment activity on January 6, 2021; rather, as his statements made clear, he prepared for “war” against “domestic enemies” whom he believed had “treasoned” the United States by certifying the 2020 election. Even in the aftermath of January 6, the Defendant continued to spread dangerous conspiracy theories and discussed plans to return to D.C. on January 20, 2021 to disrupt the inauguration. His arrest on January 17, 2021 prevents us from knowing what further efforts he might

have made to accomplish this goal.

Nichols's conduct reflects characteristics inconsistent with a person who could follow orders given by this Court, or indeed, any branch of the federal government. Nichols repeatedly defied orders of law enforcement officers, first on January 5 and then again on January 6 while they were trying to restore order at the Capitol; instead, he incited further violence and clearly viewed himself as a leader in doing so.

The Weight of the Evidence Against the Defendant

The weight of the evidence against the defendant is overwhelming. Both his written and recorded statements demonstrate his intent to obstruct the Congressional proceeding and to engage in violence.¹³ After January 6, Nichols admitted and bragged that he had clashed with, and pushed back, law enforcement and had intended to prevent the certification of President Biden's election.

Nichols claims (at 30) that the weight of the evidence against him is weak, particularly "the allegation that he possessed and used a dangerous instrument" and in support of this argument suggests that the Government "will not be able to prove that [Nichols] entered a conference room with [the crowbar]." The defense is wrong. As noted above, Nichols indisputably possessed, brandished, and menacingly waved the crowbar on Capitol grounds and while inside the Capitol. In

¹³ The defense suggests (at 32) that this factor should be afforded less weight based on his claims of self-defense and defending others. As a legal matter, in the context of 18 U.S.C. § 111, these defenses are only available in a "narrow range of circumstances" and which cannot be made when the individuals asserting the defense "is the attacker". *United States v. Acosta-Sierra*, 690 F.3d 1111, 1126 (9th Cir. 2012). In any event, Nichols's claims are simply unsupported by the evidence, and his uncorroborated assertions regarding his mental state should not be credited. Incredibly, Nichols claims (at 20) that the law enforcement officers guarding the Capitol were the perpetrators of "an unlawful attack" and that the rioters were "helpless women and men in the tunnel" and "innocent victims." That Nichols continues to view law enforcement as the enemies and aggressors should weigh heavy in considering his motion for release. *See United States v. Fitzsimmons*, 21-CR-158, 2021 WL 4355411, at *7 (D.D.C. Sept. 24, 2021) ("Also relevant here is [defendant's] lack of remorse or even acknowledge of wrongdoing. Although contrition is not a defense, it has some bearing on the character of the defendant.").

his own words, “Ryan Nichols grabbed his fucking weapons [holds up and waves crowbar] and he stormed the Capitol and he fought for freedom!” Video footage captures Nichols inside the Capitol, leaning out of a broken window with crowbar in hand, and again on the Capitol grounds waving his crowbar. Nichols also questions with whether the government can establish beyond a reasonable doubt that Nichols possessed or used a dangerous instrument, namely the OC spray. Specifically, Nichols contends (at 29) that “[a]t no time did Nichols exert dominion and control over the bottle,” and that the “idea that holding and or using any item in this context equivocated to legal possession is lunacy.” As the video depicts, Nichols specifically signaled for the canister from another rioter and then discharged it twice at law enforcement before passing it to another rioter. The evidence strongly suggests that the canister discharged by Nichols was stolen or otherwise obtained from law enforcement during the riot. The canister appears to be a law-enforcement issued OC/pepper spray canister with an inventory number on it and a powerful spray. As the video depicts, law enforcement officers within the tunnel ducked to avoid Nichols’ assault.

The History and Characteristics of the Defendant

The Defendant’s history and characteristics reveal an individual who believes he is above the law, does not have to answer to law enforcement, and is prone to violence. Both prior to the assault on the Capitol, during the attack, and afterward, Nichols expressed his disdain for the United States Government and the rule of law. Nichols espoused disbelief in the outcome of the 2020 Presidential election and violently acted on that belief. There is no indication that his views have changed or that he would not continue to act on those beliefs. Given his participation in the obstruction of the normal functioning of the government, his disbelief in the legitimacy of the United States government, and his prior statements on Facebook that he does not believe he is obligated to follow orders that he deems to be “unlawful” or which would “challenge [him]

morally”, there is no reason to believe Nichols will obey any pretrial release conditions. *See Sabol*, 2021 WL 1405945, at *14 (finding that notwithstanding the defendant’s community service, lack of criminal history, and supportive friend and family, this factor weighed in favor of detention because the defendant’s “willingness to act violently during what he perceived to be a ‘battle’ and a fight against tyranny is extremely troubling. That he acted violently against law enforcement protecting the peaceful transition of power based on a belief that the 2020 Presidential Election was stolen is also very alarming. This recent conduct indeed raises concerns about [the defendant’s] character and the danger [the defendant] may present to the community if he were released.”)

Further, Nichols does not believe the law applies to him as it does to everyone else and “[a]ctions demonstrating a willingness to allow personal beliefs to override the rule of law” weigh against a defendant seeking pre-trial release.” *United States v. Languerand*, No. 21-CR-353 (JDB), 2021 WL 3674731, at *9 (D.D.C. Aug. 19, 2021). During the search of the Defendant’s home in Texas, law enforcement located marijuana, a pipe, and an at-home drug test along with a cache of firearms.¹⁴ While Nichols may disagree that marijuana should be a controlled substance, the fact remains that it was, at all times, illegal for him to possess or consume marijuana in Texas. In an apparent effort to evade Texas law, Nichols procured a California medical marijuana card—which has no validity in Texas (not to mention the card provided to the Government expired in 2018).¹⁵

Nichols also exchanged messages with his co-defendant about procuring and using “acid” in preparation for his trip to the Capitol and sent several messages to his co-defendant regarding

¹⁴ 18 U.S.C. § 922 makes it a felony for a habitual drug user to possess firearms.

¹⁵ The Defendant’s father told the FBI that he had a California card because “you can’t get that in Texas,” demonstrating his awareness that his son’s marijuana use was not legal in Texas.

Nichols's history of using ketamine, mushrooms, and DMT—all of which are controlled substances and none of which Nichols has a prescription for at-home or personal use. Nichols's wife testified that she had no awareness of him using Ketamine, LSD, or DMT, further calling into question her suitability as a third-party custodian. Gov. Ex. 1 (Transcript of Jan. 22, 2021 Hearing) at 105.¹⁶

As testified to at the initial hearing, Nichols has a history of violent outbursts. For example, neighbors told the FBI about an incident when Nichols apparently discharged a firearm at a low-flying plane. Gov. Ex. 1 at 49. At least one neighbor captured video of the plane and what sounded like gunshots from Nichols' backyard. Nichols later bragged about shooting at the plane. The neighbor stated they were afraid of Nichols because of his confrontational nature. After the plane flew overhead, a neighbor saw Nichols throwing "an assault rifle in the back seat of his truck", grabbing a pistol, and stating that he was "headed to the airport to find out where that plane come from." Rather than call the police, Nichols armed himself, left his home and family, and sought out to take the law into his own hands.¹⁷

Similarly, in 2018, Nichols is alleged to have assaulted several construction workers because they had moved a trailer. Nichols disclaims any responsibility for the assault, instead

¹⁶ Richard Stone informed the FBI that Nichols used a lot of psychedelic drugs. Stone has apparently retracted "comments that were formed by anger, fear, and hate" because he "now" realizes that his opinion of Nichols was "false in more ways than one." Stone never specifies which statements made to the FBI were purportedly false or how he came to conclude that his prior statements were false. Absent offering his testimony, under oath and subject to cross, the Court should give his recantation little weight, especially since Nichols' drug use is otherwise corroborated.

¹⁷ Nichols' citation to a stock letter from the FAA is disingenuous at best. The stock letter related to the FAA's investigation into Nichols's own complaint about the low-flying aircraft, not into the allegation that he had discharged a firearm at the plane—the latter of which is not within the scope of the FAA's investigation.

casting blame on the victims. The police report “indicates that [the] impartial witness testimony is that one of the people responsible for moving those vehicles had apologized to Mr. Nichols. . . . But the man -- in parentheses Nichols – wouldn’t let it go. Nichols then continued downstairs and was chest-bumping the other individual. The one who apologized.” Gov. Ex. 1 at 52.¹⁸ According to the report, the impartial witness saw Nichols “push[] and hit the other individual. And then they observed Mr. Nichols push a second person, an older Individual.” The officers investigating the assault concluded that “the statements provided by Mr. Nichols and his wife were not consistent with the other impartial witnesses who were not associated with the incident and were at a different location. They were not consistent.” Indeed, “two neutral third parties” corroborated the construction workers’ statements that Nichols was the aggressor and had assaulted them, in contrast to Nichols’ and his wife’s claims.” Gov. Ex. 1 at 53.

Finally, although Nichols’s filing (at 39-43) contains a variety of complaints regarding his conditions of confinement (many if not all of which the government would dispute) and discussion of a medical condition (PTSD), these claims simply have no bearing on this Court’s determination regarding detention under the BRA. *See United States v. Lee*, 451 F. Supp. 3d 1, 7 (D.D.C. 2020) (“[T]he relevant statutory inquiry is not the benefits that a defendant’s release would bring about (however significant) or the harms that his incarceration would cause (however substantial). Rather, the statute requires the Court to evaluate “*the danger*” that “*would be posed by the person’s release.*”) (emphases in original). *United States v. Gallagher*, Criminal No. SAG-19-0479, 2020 WL 2614819, at *3 (D. Md. May 22, 2020) (“In some circumstances, clearly, a particular

¹⁸ The police report indicates there were “two impartial witnesses” who worked at an adjoining business (not members of the construction crew) who observed the assault. One of those witnesses described Nichols as a “hot head” who would often curse and yell at the adjoining business’s workers. Ultimately, the victims elected not to pursue charges and the case against Nichols was dismissed.

defendant's medical condition could reduce that defendant's risk of flight or danger to the community, and the health condition would therefore fall within the factors appropriately considered in the context of § 3142(g). Absent those circumstances, however, a particular defendant's health conditions, and the possible risks posed to the defendant by incarceration, do not affect the § 3142(f) and (g) analysis.”). Nichols cites no contrary authority.¹⁹

The Nature and Seriousness of the Danger to Any Person or the Community

In determining whether Nichols presents a danger to the safety of any other person and the community, the Court considers the four BRA factors and “must identify an articulable threat posed by the defendant to an individual or the community,” though “[t]he threat need not be of physical violence, and may extend to ‘non-physical harms such as corrupting a union.’” *Munchel*, 2021 WL 1149196, at *7 (quoting *United States v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988)). Further, the Court considers whether the danger the defendant poses to the community is concrete and continuing. *Sabol*, 2021 WL 1405945, at *18.

Like the defendant in *Sabol*, Nichols has displayed a clear disregard for the law “based on what appears to be a sincerely held, but tremendously misguided, belief that he was acting valiantly and patriotically to fight against a tyrannical government that ‘stole’ a presidential election.” *Id.* at *17. Further, like *Sabol*, Nichols “appears to have been motivated to act violently that day not solely by the presence of the group or President Trump’s encouragement, but also by his belief

¹⁹ To be clear, the government is committed to ensuring the proper treatment all of inmates, regardless of their detention status. But it is also critical that such issues are addressed in the proper forum, which is not through litigation under the BRA. It is well established that civil litigation is the proper venue to address complaints of mistreatment by the jail. See *United States v. Brooks*, 2020 U.S. Dist. LEXIS 230323, at *10 (D.D.C. Dec. 7, 2020) (“As the government correctly rejoins, any such constitutional claim must be raised via a separate civil suit and cannot be part of a compassionate-release motion in the underlying criminal case. Courts all over the country have concurred.”)

that he is a ‘warrior’ in a fight against perceived tyranny, and there is ample reason to believe that fight is not finished for Mr. Sabol and others like him, making the threat of further violence present, concrete, and continuing.” *Id.*

As discussed above, Nichols apparently believes that he is a patriot, a political prisoner, and being persecuted by the government. The Court should be “particularly concerned that nothing seems to have changed for [the defendant] since January 6th. Unlike many of the rioters now facing charges for their conduct, [the defendant] has expressed no remorse for his actions at the Capitol . . . Rather, in the months since January 6th, [the defendant] has repeatedly referred to himself and his fellow rioters as ‘Patriots’ . . . accused the FBI of “persecuting the patriots who stood up for their constitutional rights [on January 6th] . . . [and] there is no indication that [the defendant] has given up the conspiracy theories which have led him into the confrontations described above.” *Languerand*, 2021 WL 3674731, at *10–11. The same can be said for Nichols.

Nichols was an active participant in what he described as a “war” and “revolution” against “domestic enemies”—namely, his fellow citizens, law enforcement, and elected officials. Nichols engaged in a concerted and violent effort to stop the certification of the November 2020 election. Both on before, during, and after the attack on the Capitol, Nichols showed a repeated and sustained disregard for the orders of law enforcement. On the night of January 5, 2021, he clashed with MPD, forecasting that he “would not have their backs” at the Capitol the next day. Indeed, he did not. Instead, at the Capitol, Nichols pushed his way to the police line guarding a tunnel, waved other rioters forward, used his force to push against law enforcement in an effort to breach the Capitol, and twice deployed OC spray at law enforcement, before breaking into the Capitol himself and inciting further violence.

After the riot at the Capitol, Nichols bragged repeatedly about “clashing” with law

enforcement and “storm[ing] up there against police and I pushed them back.” His efforts to obstruct the investigation of his crimes—by destroying evidence and directing others to do the same—strongly suggest that he would do the same in the future and would have little regard for this Court’s orders. The facts in this case show that Nichols’s dangerousness is not limited to “the particular circumstances of January 6,” and he should therefore be detained. *Munchel*, 991 F. 3d at 1283.

CONCLUSION

For the foregoing reasons, the defendant’s motion should be denied, and this Court should order the defendant’s continued detention pending trial

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
DC Bar No. 481052

/s/ Luke M. Jones

LUKE M. JONES
VA Bar No. 75053
Assistant U.S. Attorney
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-7066
Luke.Jones@usdoj.gov

/s/ Danielle Rosborough

Danielle Rosborough
D.C. Bar No. 1016234
Trial Attorney, National Security Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
202-514-0073
Danielle.Rosborough@usdoj.gov