

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMUEL LAZAR,

Defendant.

CR Action
No. 1:21-525

Washington, DC
August 31, 2021

2:57 p.m.

TRANSCRIPT OF CONTINUED DETENTION HEARING
BEFORE THE HONORABLE ROBIN M. MERIWEATHER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

1
2 COURTROOM DEPUTY: Criminal case number 2021-525,
3 the United States of America versus Samuel Lazar. Douglas
4 Collyer representing the government, David Benowitz
5 representing the Defendant, Da'Shanta' Valentine-Lewis is
6 the pre-trial services officer, Autumn Hickey is the
7 proposed third-party custodian, the Defendant is
8 participating by video.

9 This case is called for an arraignment and a
10 continuation of a detention hearing.

11 THE COURT: Just a moment.

12 COURTROOM DEPUTY: Mr. Benowitz, were you going to
13 be on video?

14 MR. BENOWITZ: I wasn't planning on it. I am a
15 little under the weather.

16 COURTROOM DEPUTY: Okay.

17 THE COURT: So I see that it looks like the
18 indictment was returned after our last hearing. Are defense
19 counsel prepared to go forward with the arraignment on those
20 charges today?

21 MR. BENOWITZ: Your Honor, we are actually not
22 prepared. Mr. Lazar was unexpectedly transferred from
23 Lehigh Valley Detention Center to Philadelphia. We've had
24 no contact with him until today. So we were just able to
25 catch up, essentially, and show Mr. Lazar the photos, and

1 there are some Facebook posts that Mr. Collyer produced this
2 morning. We were just able to have some conversation about
3 that. So we are not really prepared to go forward with an
4 arraignment. I think just to finish the detention hearing
5 would be an accomplishment, frankly.

6 THE COURT: Okay. Thank you, Mr. Benowitz.

7 Turning then to the detention hearing, resuming
8 where we were at the last hearing, the United States had
9 presented some photographs as exhibits that had been
10 discovered shortly before the hearing, and we continued the
11 hearing so that defense would have an opportunity to review
12 them and make argument.

13 Mr. Benowitz, did you get enough of an opportunity
14 to speak with Mr. Lazar for me to at least hear from the
15 government and something from the defense on how this new
16 information effects the previously-made arguments?

17 MR. BENOWITZ: Yes.

18 THE COURT: Okay. Great. I thought that was what
19 you were saying, but I just wanted to be clear for the
20 record.

21 MR. BENOWITZ: Yes, Your Honor.

22 THE COURT: Okay. Thank you.

23 Mr. Collyer, I'll hear from you on that. But
24 before we do that, I did have a question for you. In the
25 detention memorandum there's an assertion. Let me find the

1 page -- there's a description of -- it's probably in the
2 history and characteristics portion. It indicates that for
3 one of the state court offenses, Mr. Lazar had been
4 sentenced to 23 months. Yeah, this is the page, Page 14 of
5 the detention memorandum, the first sentence under history
6 and characteristics, where it says, "There are prior
7 misdemeanor convictions including a 2004 conviction for
8 criminal mischief for which he was sentenced to a
9 time-served sentence of 23 months in jail."

10 Our pre-trial report seems to only list a fine. I
11 will admit I didn't backstop that against the EDPA pre-trial
12 report. But I was wondering what that 23 months in jail,
13 what the factual basis was for that representation in the
14 memo.

15 MR. COLLYER: Yes, Your Honor. I believe that is
16 what was referenced in the police report regarding the 2016
17 gun incident. In reviewing the reports from the 2016
18 incident where he attempted to obtain a firearm, those
19 police reports reflect that in 2004 he served 23 months,
20 which would thus make him ineligible to have a firearm.

21 THE COURT: So that was going to be my follow-up
22 question. Is it the government's position or belief that
23 Mr. Lazar is not eligible to have firearms?

24 MR. COLLYER: It would appear to be so, Your
25 Honor, that there's at least two occasions where a NICS

1 check was run and he was denied.

2 THE COURT: Okay. You can now make arguments
3 about the additional information posted in our last
4 substantive argument on the detention.

5 MR. COLLYER: Thank you, Your Honor.

6 On August 16th, 2001 the government became aware
7 of photographs that depict the defendant's participation in
8 a rally on or about August 17th, 2020, which consisted of
9 his holding and aiming firearms on a public street corner,
10 reportedly in Palmyra, Pennsylvania's business district.

11 In the photos the defendant is holding an assault
12 rifle that has a 30-round magazine inserted in it. Now,
13 whether there are rounds in that magazine, I can't say, but
14 it appears from the photo that the gun could be loaded.
15 These actions are so dangerous that the community itself
16 took note of it online, and that is what led to that
17 posting.

18 Additionally, last night I began to review the
19 defendant's Facebook search warrant returns, and there's a
20 post on his page that he did not originally write but it
21 says, "Arm up. March to D.C. euthanizing every Antifa, BLM
22 member you find on the way. Drag every last one of the
23 democrats and DNC members out of their offices and homes and
24 publicly execute them for their crimes against this country
25 and its citizens."

1 Now, the defendant did not write those words,
2 however, it appears from the post that he loved that post,
3 and then screenshotted it, drew a circle around those words,
4 then drew an arrow pointing to those words and posted it.
5 So the government would submit that even though he didn't
6 write those words, he has certainly adopted those words as
7 his own.

8 He also posted a meme that says, "Operation occupy
9 the Capitol, taking back our country from corrupt
10 politicians, January 6th, 2021, all 50 states, 12:00 noon,
11 #WeAreTheStorm, #1776rebel, #OccupyCapitals." Again, this
12 was posted by a man who went to D.C. wearing body armor, had
13 his face painted in camoflauge design, was armed with pepper
14 spray and called for in battle.

15 The government has presented a pattern of criminal
16 behavior by this defendant, but not just a pattern of
17 criminal behavior, a pattern of escalating criminal
18 behavior. In 2004, it was criminal mischief for damaging
19 property. In 2016, it was lying to obtain a firearm. In
20 2020, it was possessing and aiming firearms on a public
21 street and adopting posts about executing politicians and
22 ethanizing other people.

23 Finally, on January 6th, 2021, it was assaulting
24 police officers at the U.S. Capitol. Which begs the
25 question, Your Honor, what's next if this defendant is

1 released?

2 For those reasons stated today and the reasons
3 stated previously, the government submits that there is no
4 condition or combination of conditions that can reasonably
5 assure the safety of the community or any person, and that
6 the defendant should be detained. Thank you.

7 THE COURT: What is the time frame of the Facebook
8 posts? Can you tell that from what you've searched? Are
9 they dated?

10 MR. COLLYER: In the format in which I was
11 reviewing it, they are not dated. I can tell from the
12 context around it that they predate January 6th, 2021, and I
13 believe would have been in or about December of 2020.

14 THE COURT: Okay. Thank you.

15 Who will be arguing for the defense?

16 MR. BENOWITZ: Your Honor, I will.

17 THE COURT: Okay.

18 MR. BENOWITZ: Thank you.

19 Your Honor, first I wanted to just respond to the
20 Court's question about the criminal mischief convictions
21 that the Court raised with Mr. Collyer.

22 THE COURT: Yes.

23 MR. BENOWITZ: My understanding is that Mr. Lazar
24 served approximately 45 days in jail on these charges.
25 Which, again, my understanding were misdemeanors that may

1 have carried more than one year, the possibility of more
2 than one year in jail. I think, again -- and I don't
3 believe I've seen the police reports related to the further
4 -- to the more recent case that Mr. Collyer referenced.

5 My theory, frankly, is that this may have been
6 listed somewhat inartfully as a time-served, 23-month
7 sentence. It may have actually been a suspended sentence
8 with time served. In other words, he served approximately
9 45 days of a 23-month sentence, which would have been
10 possible if there were several misdemeanors strung together.
11 Of course, in 2004, Mr. Lazar was, I believe, approximately
12 18 or 19 years old, for further context.

13 With respect to the photographs that referenced
14 this rally in August of 2020, there's again -- we would
15 agree there is no evidence that these weapons -- the weapon
16 that Mr. Lazar -- if it, in fact, was a real weapon, whether
17 it was loaded, and it certainly was not fired. There is
18 certainly no evidence that it was fired.

19 And I think that there may have been -- in fact,
20 there was some confusion on Mr. Lazar's part. Mr. Lazar
21 certainly had attempted to purchase a firearm when he
22 sustained the further conviction, I believe misdemeanor
23 conviction, in 2015 or 2016, with respect to his filling out
24 the ATF form. I'm familiar with that form, and it can be
25 confusing. Because Mr. Lazar is not a felon, but he does

1 have a conviction that carries more than one year in jail,
2 which I think can be confusing for a layperson.

3 He certainly understood after that conviction that
4 he couldn't purchase a firearm. And I think -- I've seen
5 this with other people where they certainly don't
6 understand. They understand they can't purchase a firearm,
7 but as far as temporarily holding one, posing with one, as
8 is shown in these photographs, that's certainly a different
9 story.

10 With respect to the Facebook post that Mr. Lazar
11 -- or at least someone with access to Mr. Lazar's
12 Facebook -- screenshotted and liked and as well as the meme,
13 of course, this all predates January 6th. Of course,
14 Mr. Lazar didn't actually write the post. He certainly
15 didn't create this meme.

16 And I would, again, point to the huge
17 differentiating factor in this case, which is the time
18 between January 6th and the time that Mr. Lazar was arrested
19 in this case. There is simply no -- you know, that belies
20 the very point that the government is making, which is the
21 government asserts that there is this escalating course of
22 conduct; and that just is not the case, based on the time
23 between January 6th and today.

24 As we previously discussed, Ms. Hickey, who is
25 living with Mr. Lazar at his home in Pennsylvania, has been

1 qualified as a third-party custodian. The Court could place
2 Mr. Lazar on the most extreme form of home confinement,
3 which I believe is home incarceration, which would not allow
4 Mr. Lazar to leave his home for anything but court-approved
5 activities, such as a doctor's appointment or anything
6 related to his case.

7 I think that for those reasons that there are
8 clearly a combination of conditions that the Court can
9 impose in this case that would assure the safety of the
10 community. I don't believe -- the government has not
11 asserted risk of flight as a concern in this case. So I
12 will not be arguing that.

13 THE COURT: Okay. Thank you, Mr. Benowitz.

14 Mr. Collyer, did you have any further rebuttal
15 arguments?

16 MR. COLLYER: Yes, Your Honor, just briefly.

17 Even if this concept of somebody knowing they
18 can't purchase a firearm but not knowing that that means
19 they can't hold the firearm, even assuming that to be true,
20 assuming that to be understood here, it still doesn't
21 explain what the defendant did.

22 What this defendant did was hold firearms, aiming
23 them into the air, aiming them down the street, of a public
24 street, in what appears to be very plainly the middle of the
25 day.

1 Also, the time frame between January 6th and now
2 is not relevant. The defendant -- first off, it's
3 escalating criminal behavior where he's gone years between
4 criminal activity but has returned to criminal activity,
5 which as I said, has escalated. But, also, it essentially
6 amounts to an argument of "I haven't assaulted somebody
7 since the last time I assaulted somebody. I haven't used
8 violence since the last time I used violence," which was
9 eight months ago. So it's really not relevant or indicative
10 of a non-violent tendency at all to say, I haven't used
11 violence in eight months.

12 With respect to the third-party custodian, I would
13 just note that the defendant is an adult. A third-party
14 custodian -- there is no adult who is going to tell the
15 defendant what he can and can't do, if he wants to do it.
16 He's an adult. Another adult is not going to stop him from
17 doing what he wants. So the concept of a third-party
18 custodian, I would submit, is just not something that would
19 hold up as a valid reason for releasing him.

20 Thank you very much.

21 MR. BENOWITZ: Can I just respond to one point
22 that Mr. Collyer made?

23 THE COURT: Yes.

24 MR. BENOWITZ: Thank you.

25 With respect to the third-party custodian, the

1 point of the third-party custodian is not so much to be
2 directing the defendant, Mr. Lazar. It's to be monitoring.
3 And as the Court knows, to report to the Court if there's a
4 violation of conditions of release. Of course, the
5 third-party custodian is really one of several conditions
6 that can be put into place. The main one being home
7 incarceration with electronic monitoring, which is really
8 the cornerstone of the conditions that allow -- in recent
9 years as they've been instituted, have allowed more people
10 to be released because it's this very, very strict
11 confinement, but it allows people to be outside of a
12 detention facility.

13 THE COURT: Thank you.

14 I'm cognizant of the fact that I have another
15 hearing set for 3:30. I will keep this brief. I am just
16 planning to deliberate for a bit, and I'm going to turn off
17 my camera but stay connected.

18 (Break.)

19 THE COURT: Okay, Ms. Kay. I'm ready to resume.

20 COURTROOM DEPUTY: Okay, Your Honor.

21 THE COURT: The pending motion before the Court
22 requests that the defendant, Samuel Lazar, be held without
23 bond pending trial. Under the Bail Reform Act, the
24 government argues in its detention memorandum that there are
25 no conditions or a combination of conditions that the Court

1 could set that would reasonably assure the safety of the
2 community if Mr. Lazar were to be released.

3 The United States has the burden of proving by
4 clear and convincing evidence that Mr. Lazar poses too great
5 a danger to the safety of the community to be released. The
6 defense opposes that motion, seeks release and asserts that
7 stringent release conditions, such as home incarceration
8 with a third-party custodian, would adequately ensure the
9 safety of the community.

10 Turning to just the eligibility for pre-trial
11 detention, 18 United States Code, Section 3142(f)(1)(a),
12 makes Mr. Lazar eligible for detention because of the nature
13 of his charges. The charges under 18 United States Code
14 Section 111, that he's been charged with, meet the criteria
15 for a crime of violence, as the Court recognized in the
16 *United States v. Klein*, which is 2021 Westlaw 1377128 and
17 *United States versus Padilla*, which is 2021 Westlaw 1751054.

18 Having established that Mr. Lazar is eligible for
19 pre-trial detention, I must conduct an analysis that is
20 guided by the Bail Reform Act as well as recent D.C. Circuit
21 precedent interpreting that statute. Under the Bail Reform
22 Act, I am required to consider four factors to determine
23 whether Mr. Lazar should be held without bond pending trial.
24 Those four factors are the nature and circumstances of the
25 charged offense, the weight of the evidence, Mr. Lazar's

1 history and characteristics and the nature and seriousness
2 of the danger to the community that would be posed by
3 release.

4 The Court's assessment of danger must be
5 forward-looking, as clarified in *United States versus*
6 *Munchel*, which is a D.C. Circuit opinion. To detain a
7 defendant on the grounds of dangerousness, the Court must
8 find that the defendant poses a continued, articulable
9 threat to an individual or the community that cannot be
10 sufficiently mitigated by release conditions.

11 The Munchel panel noted that the violent breach of
12 the Capitol on January 6th was a grave danger to our
13 democracy, and that those who participated could rightly be
14 subject to detention to safeguard the community.

15 The fact that the defendant posed a danger on
16 January 6th does not, standing alone, justify pre-trial
17 detention. Instead, the Court must find that the defendant
18 poses a threat of committing violence in the future, now
19 that the circumstances of January 6th have passed. That is
20 from *United States versus Munchel*.

21 I should also note that the Court in *Munchel*
22 indicated that individuals who are charged with engaging in
23 violence on January 6th are in sort of a different category
24 of dangerousness than individuals who were present on that
25 day and did not engage in violence or cheer it on. But

1 noneththeless, I still have to apply the Bail Reform Act to
2 either category of defendant, since there is no categorical
3 rule or presumption of pre-trial detention based solely on
4 charges of violent crimes at the Capitol.

5 In order to assess this prospective threat of
6 danger to the community, I can look to a defendant's past
7 conduct. In support of that I would note that *United States*
8 *v. McFarland* is a case that addresses that point; that's
9 2021 Westlaw 1614821. *McFarland* explains this point and
10 provides examples of other cases where that same principle
11 has been recognized. The past conduct I look to can include
12 the alleged conduct underlying the charges, as well as other
13 charges that is indicative of dangerousness. However, as
14 Judge Bates noted -- Judge Bates from this Court noted in
15 *United States versus Klein*, when a defendant's conduct on
16 January 6th, 2021 appears to be an aberration, that makes it
17 more difficult to assess the defendant's future
18 dangerousness. So bearing all of those principles in mind,
19 I will now go through the Bail Reform Act factors of this
20 case.

21 First, I have assessed the nature and
22 circumstances of the charged offense. The factors that
23 Chief Judge Howell identified in *United States versus*
24 *Chrestman* are a helpful tool to evaluate whether the nature
25 and circumstances of the offense charged here weigh for or

1 against pre-trial detention.

2 *Chrestman* identifies six considerations that help
3 inform this analysis: Whether the defendant is charged with
4 felony or misdemeanor offenses, whether there is evidence of
5 prior planning, whether the defendant carried or used a
6 dangerous weapon, whether there is evidence that the
7 defendant coordinated with others before, during or after
8 the riot, whether the defendant assumed a formal or de facto
9 leadership role in the assault and also the defendant's
10 words and movements during the riot. In this case at least
11 four of those *Chrestman* factors are present. Mr. Lazar has
12 been charged with felonies. The fact he dressed in
13 protective gear, with dark face --

14 COURTROOM DEPUTY: Excuse me, Your Honor. Your
15 Honor. Your Honor.

16 THE COURT: -- there were social media posts that
17 indicated that individuals should rise up and come armed;
18 and also suggesting that some people -- just a moment.

19 COURTROOM DEPUTY: Your Honor, can you hear me?
20 Can anyone else hear me?

21 MR. BENOWITZ: Yes, I can hear you.

22 COURTROOM DEPUTY: Oh, okay. All right.

23 Your Honor, I see you saying something but I can't
24 hear you.

25 THE COURT: I just realized that I couldn't hear

1 anyone else, and I understand from Amanda that you were
2 saying something.

3 COURTROOM DEPUTY: Yes. Let me just check to make
4 sure we have a court reporter. I thought maybe you might
5 have been reading a little too fast for the court reporter
6 but let me see. Lorraine, are you ok?

7 COURT REPORTER: Yes, thank you.

8 COURTROOM DEPUTY: If anyone is ever speaking too
9 quickly, and sometimes I'm not always -- doing a couple
10 things and I don't catch it. Please feel free to interrupt
11 so that you can get an accurate record. Thanks.

12 COURT REPORTER: Thank you.

13 THE COURT: Okay. Did anyone else say anything
14 when I was unable to hear?

15 COURTROOM DEPUTY: No, it was just me.

16 THE COURT: Okay.

17 Thank you. Sorry about that. I had turned my
18 volume down. Okay.

19 Here are at least four of the *Chrestman* factors
20 are present. Mr. Lazar has been charged with felonies. The
21 fact that he dressed in protective gear with dark face paint
22 and was armed with chemical spray indicates at least some
23 degree of advanced planning.

24 In addition, the United States proffered that
25 Mr. Lazar had social media posts and reposting a comment

1 indicating that individuals should rise up and come armed,
2 and that some of the people should be executed or
3 euthanized. These alleged social media posts, we don't have
4 a specific date, but the representation is that they were
5 from sometime in December of 2020 from the context. The
6 chemical spray or the dangerous weapon, that was sprayed at
7 law enforcement.

8 There is no evidence of coordination with others
9 in advance of the attack, specific others, other than the
10 Facebook reposting. I should note that with the Facebook
11 reposting, there's allegedly parts of that message were
12 circled and arrows were drawn. But there was not evidence
13 of specific individuals being coordinated with in advance of
14 January 6th. And the use of the bullhorn does not quite
15 amount to a leadership role, in my view, but there is
16 proffered evidence that Mr. Lazar yelled "forward" and
17 encouraged others to advance, and also encouraged the mob to
18 attempt to take weapons from law enforcement by yelling,
19 "Let's get their guns".

20 Mr. Lazar's alleged conduct demonstrated a
21 complete disregard for the rule of law, culminating in an
22 attack on law enforcement with a chemical spray. While this
23 appears to have lasted only seconds, and there is no
24 evidence that Mr. Lazar was engaged in a prolonged physical
25 struggle with law enforcement, the charged offense is both

1 serious and violent. As a result, I find that the nature
2 and circumstances of the charged offense place strongly in
3 favor of pre-trial detention.

4 Turning to the weight of the evidence, that also
5 weighs in favor of pre-trial detention. The United States
6 has submitted two videos, which the Court viewed. One
7 body-worn camera video shows Mr. Lazar brandishing and
8 deploying a chemical spray in the direction of law
9 enforcement, who were attempting to prevent the mob of
10 rioters from advancing beyond barriers.

11 Although it is difficult to identify Mr. Lazar's
12 voice among the mayhem, the United States has proffered that
13 the video captures him yelling "forward" and using
14 expletives to tell officers to "stand down". In a video
15 from later that afternoon, Mr. Lazar states, "We maced
16 them." This overwhelming evidence of dangerous conduct on
17 January 6th, also weighs in favor of pre-trial detention.

18 Next I have to consider Mr. Lazar's history and
19 characteristics. Those are mixed. Mr. Lazar has a criminal
20 record, which includes prior misdemeanor convictions for
21 criminal mischief, under Pennsylvania law, in 2004. At
22 least one of which carried a potential sentence exceeding
23 one year. It is unclear whether Mr. Lazar ever served that
24 amount of time as there is conflicting information about
25 whether he served 23 months, according to a police report,

1 or approximately 45 days. It is possible that some portion
2 of that sentence was suspended, which would explain the
3 discrepancy. Regardless, there does not seem to be a
4 dispute about whether the charge could have resulted in a
5 sentence that exceeds one year, which is significant because
6 it would mean that Mr. Lazar is an individual who is not
7 legally permitted to possess firearms. Those are from 2004,
8 and as the defense noted, 17 years ago, Mr. Lazar was much
9 younger at that time.

10 More recently, the government has proffered that
11 Mr. Lazar was convicted for making a false statement on a
12 form in 2016, which was an attempt to obtain a firearm. The
13 context of that has been represented to be as follows: That
14 Mr. Lazar wanted to buy a weapon at a gun show and made
15 misrepresentations about his criminal history. He did not
16 ultimately obtain the firearm. The government also proffers
17 that he attempted to have a sibling get the firearm, but
18 that this purchase was rejected, but the false statement led
19 to a criminal conviction.

20 Mr. Lazar has no convictions for crimes of
21 violence. I don't see anything in the criminal mischief
22 that suggests that it would inherently be a crime of
23 violence. There are no direct firearm convictions in
24 Mr. Lazar's history.

25 He also has strong community support. The defense

1 submitted exhibits in advance of the August 11th detention
2 hearing, which included letters from individuals who know
3 Mr. Lazar. One of those letters states, I quote, Sam Lazar
4 is nothing but a respectable, caring, passionate,
5 self-giving, honorable man. Sam is an asset to his
6 community and everyone around him. Also references to how
7 he puts his family first. There also is an email from a
8 neighbor who comments -- describes him as one of the kindest
9 and caring people that she has in her life. Others talk
10 about his patience and kindness with his children.

11 There are numerous, numerous letters. I won't
12 quote all of them. There are many letters attesting to the
13 strong community support and friendship and relationships
14 that Mr. Lazar has, including letters from neighbors and
15 friends who have known him for varying periods of time. So
16 those are all positive. That is the positive aspect of the
17 history and characteristics, are the family ties, community
18 ties, community support.

19 Also, one thing I also considered under history
20 and characteristics are the exhibits that were submitted
21 from before the last hearing that we discussed today, which
22 included pictures of Mr. Lazar with a variety of firearms,
23 allegedly on a public street in August of last year.

24 Those photos, there has been no corroboration that
25 those are real firearms, that they were, in fact, loaded as

1 opposed to appearing to be loaded. But it is significant,
2 given that Mr. Lazar has a criminal history, which would
3 prohibit him from lawfully possessing such firearms that he
4 was shown posing with weapons, including -- just a minute --
5 including an assault rifle, while participating in a rally
6 with a visible 30-round magazine, which may or may not have
7 been loaded.

8 Overall, I find the history and characteristics
9 are mixed. So I find this factor to be neutral, as there
10 are some parts of it that favor detention and some parts of
11 it that would favor release.

12 So then I have to turn to the fourth factor, which
13 is the nature and seriousness of the danger to the community
14 that would be posed by release. Here the specific
15 forward-looking risk that I am considering is whether
16 Mr. Lazar poses a risk of engaging in violent or otherwise
17 dangerous conduct at the least. In this context, the
18 concern is that such conduct would be engaged in in
19 furtherance of political activity or beliefs similar to
20 January 6th.

21 In evaluating this, I have to consider whether if
22 there is such a risk, could release conditions adequately
23 mitigate that risk, including the proposal from the defense
24 that the Court use a third-party custodian and set
25 conditions such as home confinement.

1 I find this case to present a close question,
2 because although the conduct alleged from January 6th is
3 violent and serious and strongly favors detention, as I
4 noted in discussing the first factor, I must recognize as
5 the other courts have recognized in some other cases that
6 some time has passed since January 6th. And the question
7 is, is there a current threat?

8 Ultimately, I conclude that there is still a
9 current danger of releasing Mr. Lazar. In particular, the
10 recency of the rally. I recognize that was prior to the
11 election, but the rally, the firearms in August of 2020,
12 followed then by the comments on social media in December,
13 and then the conduct on January 6th suggests that the
14 January 6th conduct was not truly such an aberration that it
15 is not predictive or indicative of ongoing danger.

16 I would also note that, I believe, Mr. Collyer
17 asserted at one of the earlier hearings, there is still an
18 ongoing perception or belief by many individuals at this
19 time, an illegitimacy of the current United States
20 president. Although it's true there is no independent
21 evidence of that, I don't think the Court has to put on
22 blinders in evaluating this and ignore that these types of
23 issues that were addressed in those Facebook posts are still
24 in circulation among the public, among some segment of the
25 public.

1 So I find that the nature and seriousness of the
2 danger to the community also weighs in favor of detention,
3 because I think the combination of conduct between August
4 and January, to me at least, indicates that the Court would
5 need to be concerned that upon the release, Mr. Lazar would
6 engage in similarly dangerous conduct.

7 So when I balance all four of these factors, I
8 find that the government has carried its burden proving by
9 clear and convincing evidence that there are no conditions
10 of release that would reasonably assure the safety of the
11 community.

12 I gave serious consideration to home
13 incarceration. And I will say, I think, but for the August
14 2020 rally and weapons, I might have found that to be
15 sufficient. But when I combine all of the information
16 before me, I find the danger of release is too great.

17 And for those reasons, I conclude that Mr. Lazar
18 should be held without bond pending trial. Of course, the
19 defense can appeal my decision to the presiding district
20 judge. In this case that would be Judge Jackson. The
21 appeal does not have to wait for written order from me. I
22 have given a detailed ruling.

23 We have a court reporter so I believe a transcript
24 of my ruling today would provide the written basis for my
25 ruling; that said, I do intend to memorialize this in an

1 order, and it will read very similarly to what I just stated
2 on the record today.

3 Ms. Kay. Do we know the next court date before
4 Judge Jackson?

5 COURTROOM DEPUTY: No, Your Honor. Her courtroom
6 deputy wasn't able to provide a next date.

7 THE COURT: In terms of the transport of
8 Mr. Lazar, although Mr. Lazar has been moved somewhere, let
9 me at least add it is within the same state, I had issued an
10 order staying his transport pending the detention decision.
11 Do counsel want that order to remain in place until any
12 potential appeal before Judge Jackson or would the parties
13 be content with me lifting that stay at this time?

14 MR. BENOWITZ: Your Honor, can I have a moment
15 with Mr. Lazar?

16 THE COURT: Yes.

17 COURTROOM DEPUTY: Okay. Just wait a minute.
18 Hold on.

19 MR. BENOWITZ: As well as Mr. Barbari.

20 COURTROOM DEPUTY: Okay. Wait a minute. Hold on.
21 I need to close the breakout room that I have with the other
22 people. Okay. What happened to my defendant? Hold on,
23 everybody. I am having some problems here.

24 Mr. Stern?

25 MR. STERN: Yes, ma'am?

1 COURTROOM DEPUTY: What happened to Mr. Shorter?
2 Did you lose him in the breakout room?

3 MR. STERN: No, I haven't done anything. We were
4 together. We were just reviewing paperwork. I just got on
5 this screen. I didn't even know I was --

6 COURTROOM DEPUTY: Okay. Okay, Mr. Benowitz, I am
7 going to put you in a breakout room with Mr. Lazar. Hold on
8 a minute. We will have to find our defendant.

9 THE COURT: Will Mr. Shorter still be in there?

10 COURTROOM DEPUTY: Well, I looked. When I went to
11 close the breakout room, Mr. Shorter wasn't in the breakout
12 room. I closed it, thinking he would pop up on the regular
13 screen.

14 MR. STERN: He was in my sight until five or ten
15 seconds ago.

16 COURTROOM DEPUTY: Well, maybe he will come back
17 on. Hold on. Let's see.

18 THE DEFENDANT: I am here, Samuel Lazar.

19 COURTROOM DEPUTY: I know you are here.

20 THE COURT: Mr. Lazar, we are trying to put you in
21 a room virtually with your attorneys.

22 COURTROOM DEPUTY: Okay.

23 Here is Mr. Lazar. Mr. Shorter, can you hear me?
24 I don't think you are connected. Just in case, I can't see
25 your name. Okay. We've got to find Mr. Shorter again.

1 Hi, Mr. Shorter. Can you hear me?

2 DEFENDANT SHORTER: Yes, I can hear you.

3 COURTROOM DEPUTY: Somehow when we closed the
4 breakout room, we lost you. I think you and Mr. Stern were
5 finished speaking, I'm sure.

6 DEFENDANT SHORTER: Yes.

7 COURTROOM DEPUTY: Okay. We are just waiting.

8 Just a moment.

9 (Break.)

10 COURTROOM DEPUTY: Your Honor, I cannot give them
11 too much time in breakout because we have to start
12 Mr. Shorter's hearing.

13 THE COURT: I know. I know.

14 COURTROOM DEPUTY: I will give them one more
15 minute.

16 THE COURT: Ms. Kay, you can give them a couple
17 minutes since we will be able to start Shorter as soon as we
18 wrap this up.

19 COURTROOM DEPUTY: Okay. Well, do you want me to
20 start Shorter now?

21 THE COURT: No, I don't think so. I just mean I
22 don't have very much left to do in Lazar.

23 COURTROOM DEPUTY: Okay. It's 4:18 now. I don't
24 know how long Mr. Shorter's hearing is going to go.

25 THE COURT: We can at least start it.

1 COURTROOM DEPUTY: Oh, yeah, we will have time to
2 start it. Okay. We just may not complete it.

3 MR. STERN: I don't believe the hearing will be
4 terribly long based on what I plan and the government plans.

5 COURTROOM DEPUTY: All right.

6 THE COURT: Did we lose Mr. Lazar?

7 COURTROOM DEPUTY: I'm sorry. The phone rang. I
8 didn't realize everyone had come back out. He is still in
9 the breakout room. I just closed it.

10 THE COURT: Okay.

11 MR. BENOWITZ: Your Honor, after consulting with
12 Mr. Lazar, we'd like to ask the Court to order him to remain
13 at his current facility pending the appeal.

14 THE COURT: I lost you. Pending what?

15 MR. BENOWITZ: Pending an appeal.

16 THE COURT: Pending the appeal?

17 MR. BENOWITZ: Yes.

18 THE COURT: Mr. Collyer, any objection to that
19 request?

20 MR. COLLYER: Your Honor, the government would
21 request that Mr. Lazar be transported to the District of
22 Columbia for further proceedings on the indictment.

23 THE COURT: You would ask that he be brought to
24 the District of Columbia for further proceedings?

25 MR. COLLYER: Yes, Your Honor.

1 THE COURT: Okay. Thank you. I will take that
2 under advisement. I need to get started on my next hearing.
3 If I decide to lift the stay, it will be done by order.
4 Okay.

5 Are there any other issues that need to be
6 addressed before I remand Mr. Lazar into custody?

7 MR. COLLYER: Your Honor, I understand that there
8 is no next date at this time. The government would ask that
9 the Court toll speedy trial time from today until the next
10 court appearance before Judge Jackson. My understanding is
11 that defense has no objection to that.

12 MR. BENOWITZ: Your Honor, this is David Benowitz.
13 That's correct, we have no objection to the tolling of the
14 speedy trial clock.

15 THE COURT: Okay. Until what date, since we don't
16 know the date?

17 MR. COLLYER: Whenever the next appearance before
18 Judge Jackson will be. To be set, is my understanding.

19 THE COURT: Okay. I need to put an end date on
20 the tolling.

21 MR. BENOWITZ: Your Honor, if we can select 60
22 days, I think that's approximately 60 days.

23 THE COURT: Okay. Would 60 days work for the
24 United States?

25 MR. COLLYER: Yes, Your Honor. Thank you.

1 THE COURT: Since that's probably longer than it
2 will take to get before Judge Jackson, is there any other
3 rationale for it to be the ends of justice to toll that
4 time?

5 MR. COLLYER: Yes, Your Honor. As the Court's
6 aware, there is voluminous discovery in this case. I have
7 entered a protective order that is just awaiting Judge
8 Jackson's signature, which will allow me to informally
9 produce discovery to defense; however, the formal production
10 of that discovery will take some months still from today.

11 THE COURT: Okay. Thank you. I will exclude time
12 for 60 days beginning today.

13 Ms. Kay, do we know what the 60th day from today
14 is? If not, we can fill it in after the hearing, perhaps.

15 COURTROOM DEPUTY: I don't, Your Honor.

16 THE COURT: Okay. I will exclude time for 60 days
17 from today. Just one second while I get that date, which
18 would be -- it falls on a Saturday, October 30th. So I will
19 run that through the next business day, which will be
20 November 1st, 2021.

21 I find that exclusion of time best serves the ends
22 of justice and outweighs the interests of Mr. Lazar and the
23 public in a speedy trial, given that it will provide time
24 for the parties to get a next hearing date before Judge
25 Jackson, which appears likely to include an appeal of the

1 detention ruling, and will also take into account what is
2 anticipated to be very voluminous discovery and provide an
3 opportunity for the United States to organize, review and
4 begin producing that discovery subject to approval of the
5 pending motion for protective order. So for those reasons,
6 ends of justice continuance of the speedy trial clock is
7 warranted through November 1st, 2021.

8 Was there anything further from the government or
9 the defense?

10 MR. COLLYER: No, Your Honor. Thank you.

11 MR. BENOWITZ: No, Your Honor.

12 THE COURT: Thank you.

13 I remand Mr. Lazar into the custody of the
14 marshals to be held without bond for the reasons stated on
15 the record; that concludes this matter.

16 Thank you to the third-party custodian for being
17 available throughout the many hearings that we had in this
18 case. That concludes this matter. Counsel, you are
19 excused. Mr. Lazar, you can let -- oh, I see there is
20 someone there. You can let them know that your hearing is
21 done. Thank you.

22 MR. BENOWITZ: Thank you, Your Honor.

23 (Proceedings concluded at 4:24 p.m.)
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C E R T I F I C A T E

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

Please Note: This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

September 6, 2021
DATE

/s/
Lorraine T. Herman