

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-28-10
)	Washington, D.C.
vs.)	April 14, 2021
)	10:07 a.m.
KENNETH HARRELSON,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF DETENTION HEARING
VIA ZOOM PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript
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1 P R O C E E D I N G S

2 COURTROOM DEPUTY: Good morning, Judge. Can you
3 hear me?

4 Good morning, Your Honor. This is Criminal Case
5 No. 21-28-10, the United States of America versus Kenneth
6 Harrelson.

7 Jeffrey Nestler for the government.

8 Nina Ginsberg and Jeffrey Zimmerman for the
9 defense.

10 John Copes on behalf of Pretrial Service.

11 The defendant is appearing via videoconference for
12 this hearing.

13 THE COURT: Okay, Counsel. Good morning to you
14 all.

15 Mr. Harrelson, good morning to you. Can you hear
16 me okay?

17 THE DEFENDANT: Yes, I can, Judge.

18 MS. GINSBERG: I can hear you as well, Your Honor.
19 I think your screen seems frozen, but your voice is coming
20 through well.

21 THE COURT: Okay.

22 Yeah, we may have some -- given where I am, my
23 Internet connection is not as strong as it is ordinarily.
24 And so if at any point in time anybody is having difficulty
25 hearing me or my video feed gets disconnected, please let me

1 know. So in any event, I apologize if we -- if there are
2 any technical issues, and if the feed here is not as strong
3 as ordinarily it would be. I'm just not in town and not on
4 a WiFi connection that's as strong as it would be
5 ordinarily.

6 Okay. So with that, we're here this morning on
7 the bond-review motion that was filed on Mr. Harrelson.
8 I've read all of the parties' papers, including the papers
9 that were filed last evening by Mr. Harrelson and his
10 counsel. So everybody can rest assured that I've reviewed
11 everything that has been put in writing by the parties.

12 Maybe the place to start here is with some of the
13 legal issues that are at the threshold in terms of detention
14 eligibility for detention. You know, the defense has made
15 the argument that Mr. Zimmerman -- excuse me, Mr. Harrelson
16 is not seemingly -- made the argument that he's not eligible
17 for detention, and I'm happy to hear more from you all on
18 that.

19 Essentially two arguments; one is that he's not
20 eligible for detention under Subsection (f) of the Bail
21 Reform Act, 3241(f) [sic], and -- excuse me, 3142(f); and
22 that, secondarily, the rebuttable presumption doesn't apply.

23 I've held in other cases that are similar to
24 those, like Mr. Harrelson, in which the defendant is both
25 charged with destruction of government property, even under

1 an aiding and abetting theory, that that charge and the
2 indictment on that charge, both render somebody eligible for
3 detention and causes the rebuttable presumption to take
4 effect.

5 And so if either side wants to provide further
6 argument as to those legal issues at the threshold, I would
7 be happy to hear them.

8 So anyway, why don't we start there and then we'll
9 turn to the evidence itself.

10 So does anybody want to add anything?
11 Ms. Ginsberg?

12 MS. GINSBERG: I would just like briefly to say
13 that I understand the Court's reasoning and I'm familiar
14 with a lot of the prior decisions that you've made with
15 respect to other defendants.

16 What I believe may be different in this case is
17 that the government has conceded that it has no evidence
18 that Mr. Harrelson personally destroyed property. And while
19 I did not hear all of the other detention hearings, I did
20 not see in any of the pleadings any concrete evidence that
21 Mr. Harrelson aided and abetted or conspired with a specific
22 individual for whom the government presented evidence that
23 that individual destroyed property.

24 So while I recognize the charge has been supported
25 by a Grand Jury indictment based on a finding of probable

1 cause, that -- in circumstances where the government is not
2 offering proof that Mr. Harrelson personally destroyed
3 property and where -- unless Mr. Nestler can point to other
4 defendants with whom Mr. Harrelson is alleged to have
5 conspired, who actually did destroy property, we would say
6 that the Court should not base its presumption finding
7 simply on the indictment itself.

8 THE COURT: Okay.

9 Mr. Nestler, did you want to respond to that,
10 either as a legal matter or in terms of the evidence?

11 MR. NESTLER: Yes, Your Honor, I'll have both.

12 One, as a legal matter, the Grand Jury's
13 indictment, the Grand Jury's finding of probable cause that
14 Mr. Harrelson committed the offense of felony destruction of
15 property under Section 1361 is itself sufficient to trigger
16 the rebuttable presumption. Judge Moss held something very
17 similar a few years ago in the case *United States v. Taylor*,
18 that's 289 F.Supp.3d 55. It's a 2018 case.

19 And Judge Moss cited two different appellate
20 cases, one from the Sixth Circuit, the *Stone* case, and one
21 from the D.C. Circuit, the *Smith* case, which held that the
22 indictment alone would have been enough to raise the
23 rebuttal presumption that no condition would reasonably
24 assure the safety of the community under 3142(e).

25 THE COURT: Yeah.

1 So let me -- and let me just go ahead and
2 interrupt, Mr. Nestler.

3 This is my view of things, and I wanted to give
4 the parties an opportunity to convince me otherwise. But,
5 you know, there is a Circuit -- we looked, and there is a
6 Circuit case, although it's an unpublished one, that's
7 directly on point here. It's called *United States versus*
8 *Williams*, 903 F.2d 844. The case is from 1990. But it's a
9 case that, as I said, is directly on point. It's a per
10 curium decision.

11 And the Circuit wrote, "Williams contends on
12 appeal that the District Court erred in finding probable
13 cause based solely on the return of the indictment by the
14 Grand Jury. Courts of Appeals, however, have uniformly held
15 that a judicial officer may rely on a Grand Jury indictment
16 to establish probable cause for purposes of triggering the
17 rebuttable presumption of Section 3142(e). To require an
18 independent finding of probable cause apart from those of
19 the Grand Jury for purposes of Section 3142(e) would be a
20 waste of judicial resources. Moreover, the evidence of
21 record amply supports the finding."

22 What I do is I read the Circuit opinion that says
23 that the Court can and will rely upon a Grand Jury
24 determination of probable cause to make the finding of
25 probable cause required by 3142(e) and that there's no

1 independent duty by the District Court -- placed on the
2 District Court by the Bail Reform Act to make a probable
3 cause determination.

4 The Circuit seems to suggest that the Court may
5 have some -- the trial court may have some discretion in
6 doing so and so, perhaps, isn't necessarily bound by what
7 the Grand Jury has found.

8 But certainly for the Court to rely on the
9 Grand Jury finding of probable cause, I don't think is an
10 error, and there's no independent obligation under the Bail
11 Reform Act to make a probable cause determination.

12 So that's my view of the law. And, Mr. Nestler,
13 I'll let you sort of continue and speak to the evidence, if
14 you wish.

15 MR. NESTLER: Yes, Your Honor.

16 And the government does not concede that
17 Mr. Harrelson did not destroy any property personally or as
18 an aider and abettor under *Pinkerton* or conspiracy
19 liability. The government is not putting forth evidence at
20 this time that Mr. Harrelson personally ripped the door
21 handle off the door or smashed a window or sprayed a
22 chemical irritant on the doors.

23 But Mr. Harrelson was part of the group of people
24 who were pushing up against the doors, such that some of the
25 rioters were spraying chemical irritants and some of the

1 police officers were spraying it back.

2 To say that Mr. Harrelson is not legally
3 responsible for the damage caused to the door at that time
4 is just not something that we think is borne out by the
5 evidence. And so we don't believe there's any further
6 inquiry that needs to be made about whether there's
7 sufficient evidence that Mr. Harrelson is responsible,
8 either as a principal or as an aider and abettor or under a
9 conspiracy theory, for damage caused to the doors or to the
10 remainder of the Capitol.

11 THE COURT: Mr. Nestler, it looks -- have we lost
12 Mr. Harrelson, Mr. Douyon, or is he still there with us?

13 COURTROOM DEPUTY: We lost Mr. Harrelson.

14 I'll send a message to the guard; he may dial in.

15 THE COURT: Okay.

16 All right. So let's put a pause on our hearing
17 here until we can get Mr. Harrelson back.

18 (Pause)

19 COURTROOM DEPUTY: Mr. Harrelson will be
20 reconnecting shortly.

21 (Pause)

22 THE COURT: Sorry, everyone, for the technical
23 challenges this morning.

24 (Pause)

25 THE COURT: Okay. Mr. Harrelson, can you hear us

1 now? You're on telephonically instead on the
2 videoconference. Can you hear me okay?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay.

5 If at any point --

6 COURTROOM DEPUTY: We appear to have lost the
7 judge now. Oh, he's reconnecting.

8 And sorry for the technical issues today,
9 everyone.

10 THE COURT: Mr. Harrelson, are you still with us?

11 THE DEFENDANT: Yes, I am, Your Honor.

12 THE COURT: Okay.

13 All right. So where we were is, Mr. Nestler was
14 articulating the government's position that the government
15 isn't conceding that Mr. Harrelson didn't himself destroy
16 property necessarily and, at a minimum, as a legal matter,
17 he's responsible for the destruction of property by others,
18 who were part of the group of people who had assembled
19 outside the door of the Capitol building that ultimately was
20 breached.

21 So I guess the bottom line is this for me, folks.
22 And I haven't -- based on my study of this issue and what
23 I've held in prior hearings, is that because the Grand Jury
24 has made a determination of probable cause with respect to
25 destruction of government property, felony destruction of

1 government property, that that offense charged, both
2 qualified as an offense -- as a listed offense in the
3 cross-section -- that I don't have it in front of me, but in
4 any event, that's listed among the offenses in that
5 terrorism section, plus carries a mandatory maximum penalty
6 of ten years, which satisfies the ten years or greater
7 component of the portion of the Bail Reform Act that
8 triggers the detention provision under Section (f)(1),
9 I believe it is.

10 In addition, that same charge triggers the
11 rebuttable presumption under Subsection (E). As I said, the
12 Grand Jury has made a determination of that charge, of
13 felony destruction of government property. And based upon
14 that finding, I think it meets the presumption under
15 Subsection (E).

16 It is, of course, a rebuttable presumption, and
17 the burden is on the defendant to come forward with some
18 evidence to rebut the burden [sic] -- to rebut that
19 presumption. And the defendant has certainly done so here
20 by noting factors concerning his background at a minimum
21 that he believes rebut the presumption.

22 And so the burden, then, remains with the
23 government to demonstrate by clear and convincing evidence
24 that there are no combination of conditions that will ensure
25 the safety of the community here. So that's where we are.

1 And so why don't I turn to Mr. Nestler, the
2 government. Since it is a de novo review, the government
3 bears the burden here. So I'll turn things over to you,
4 Mr. Nestler, and hear argument from you that you'd like to
5 supplement what's already in your written papers.

6 MR. NESTLER: Yes, Your Honor. Thank you.

7 So when we get to the facts and applying the
8 factors in 3142(g) and also the D.C. Circuit's guidance in
9 *Munchel*, we see that Mr. Harrelson here is one of the
10 planners, leaders, organizers of the group of individuals,
11 in this case, the Oath Keepers, who stormed the Capitol and
12 intended to disrupt Congress's proceedings and delay or stop
13 the certification of the Electoral College vote count on
14 January 6th.

15 We see from the Signal chats, Your Honor, that
16 Mr. Harrelson was "running the ground team," and we are
17 largely to believe that the ground team would be the team
18 that was there on the ground trying to go inside, rather
19 than the team that was the QRF which was hanging back with
20 the weapons or other members of leadership who would be
21 monitoring the situation from afar and potentially giving
22 direction, Mr. Harrelson was there running the ground team.

23 In the GoToMeeting sessions in November and
24 December and in very early January, we see Mr. Harrelson's
25 conduct escalating. He went from being an attendee of these

1 Oath Keeper meetings, online meetings, sometimes even using
2 his real name in these meetings. And never using his real
3 name after the November Election Day but always using one of
4 the pseudonyms: Hotel 26 or Gator 6, which was his name in
5 the Signal chats, both the national Signal chat and the
6 Florida Signal chat of which he was a member.

7 We see that Mr. Harrelson was not just a member of
8 the Florida Signal chat but he was one of the admins. He
9 and Mr. Meggs appear to have been the admins because the
10 records the government has and provided to defense counsel
11 show that both Mr. Harrelson and Mr. Meggs were the people
12 who were able to add others to that chat, suggesting they
13 had some sort of admin privilege.

14 When we talk about Mr. Harrelson's role, and I'm
15 going to skip over January 6th for a minute to talk about
16 more recently, to talk about his leadership role, it has not
17 abated, Your Honor.

18 On January 20th, he sent two emails to Kelly Meggs
19 purporting to resign as the POC for EFL, likely the point of
20 contact or person of contact for east Florida, for the Oath
21 Keepers, and trying to distance himself from the national
22 organization.

23 But we see in Signal messages that he was not able
24 to delete before the government got his phone, because he
25 did delete a whole swath of messages from 2019 and early --

1 I'm sorry, from early 2020 and 2021, and we only were able
2 to recover a few weeks' worth of Signal messages, or any
3 other messages from his phone, right around the time he had
4 been arrested. Likely he hadn't had a chance to delete
5 those yet. We see him in correspondence with several other
6 people who were in Oath Keepers leadership, both Florida and
7 national.

8 THE COURT: Mr. Nestler, what's the date of his
9 arrest?

10 MR. NESTLER: I believe it was around March 10th,
11 Your Honor.

12 I'm sorry. Let me pull that up.

13 THE COURT: That's okay.

14 I don't know that -- but it's at least two months
15 after -- or give or take two months after the events of
16 January 6th?

17 MR. NESTLER: That's correct, Your Honor.

18 It was in March. It was -- correct. It was on
19 March 10th, he was arrested.

20 THE COURT: Okay.

21 MR. NESTLER: And we have messages from late
22 February and early March, just from a very short window,
23 likely he hadn't deleted them yet, where he's in
24 communication with other members of the Oath Keepers,
25 including the leader of the Oath Keepers, talking about how

1 Mr. Harrelson did not -- and he was apologizing for not
2 having supervised Kelly Meggs closely enough, and having let
3 Kelly Meggs do whatever he's telling Person One Kelly Meggs
4 was up to.

5 Mr. Harrelson was disseminating messages to other
6 Oath Keepers on behalf of Person One here in late February
7 and early March.

8 THE COURT: Mr. Nestler, can I ask you, does the
9 government have a theory or an understanding of what the
10 regret was that Mr. Harrelson was expressing? I mean,
11 what's its understanding of how it is that Kelly Meggs fell
12 short? At least that seems to be the implication of that
13 text message exchange.

14 MR. NESTLER: So what Mr. Harrelson says is, "I
15 sent it," meaning the message that Person One had wanted to
16 disseminate, to another person affiliated with the Oath
17 Keepers whose name has been redacted. "I hope he sees
18 it" -- and I'm quoting here. "I feel like I let him and
19 everyone else in the state down, because I should have step
20 up to the plate when I realized that Kelly didn't do his due
21 diligence. But hindsight is 20/20 and it won't happen
22 again. I apologize and I am truly sorry."

23 And so we don't know, of course, what exactly
24 Mr. Harrelson means, but it looks like he's apologizing to
25 other members of the Oath Keepers, including Person One,

1 about not having done a good enough job of -- giving Kelly
2 too much responsibility or not having done a good enough job
3 on monitoring the job that Kelly was doing with regard to
4 due diligence.

5 THE COURT: Okay.

6 But the government's doesn't have any more
7 specific knowledge about what he's referring to.

8 I mean, as I said, the suggestion here is that
9 Kelly Meggs somehow fell short in carrying out his duties
10 and responsibilities and that Mr. Harrelson is bemoaning
11 that fact and that he didn't do enough to support Kelly
12 Meggs or ensure that Kelly Meggs did his job, but we don't
13 know what specifically he's referring to.

14 MR. NESTLER: Correct.

15 And we don't know whether that job was that they
16 should have done more in terms of stopping Congress's
17 certification or that job was they should have prevented
18 others in the group from stopping the certification.
19 I can't speak one way or the other about the job that
20 Mr. Harrelson was referring to Kelly Meggs having.

21 THE COURT: Okay.

22 MR. NESTLER: But the import of the message,
23 Judge, is that Mr. Harrelson is expressing a particularly
24 large and significant leadership role here within the
25 organization; that he would have had such power in order to

1 monitor and supervise Kelly Meggs in this situation.

2 He did pass along this message from Person One to
3 other people. We have, from Signal messages, other people
4 associated with the Oath Keepers.

5 And here he is just within a week of being
6 arrested, Your Honor, talking about the need to have
7 face-to-face meetings, trying to fix this mess, talking
8 about how Proud Boys leader, maybe an FBI informant, and
9 exchanging messages with Person One about pleadings in this
10 very case that looks like involve Mr. Caldwell and
11 Mr. Caldwell's detention.

12 And so we have all these messages talking about
13 Mr. Harrelson thinking that he might be surveilled, the need
14 for the "Deep State" to feel this pain. These messages were
15 from March of 2021, just last month, Your Honor. This does
16 not show that Mr. Harrelson's role has abated or that his
17 intentions with regard to disrupting the union and the
18 functioning of our government have abated, Your Honor.

19 Now, when we turn to Mr. Harrelson's actions on
20 January 6th itself, we see that Mr. Harrelson made his way
21 to the Capitol by about 2:00. We have some of the videos
22 from his phone and some of the exterior surveillance video.

23 THE COURT: Mr. Nestler, just -- I'm sorry to
24 interrupt.

25 Just to be clear --

1 MR. NESTLER: Of course.

2 THE COURT: You sent me three videos, two of which
3 are relatively short, and then the third, which is about
4 three minutes long.

5 Is the source of all of those videos
6 Mr. Harrelson's phone?

7 Well, let me back up. Let's leave that
8 three-minute video to the side, because, as I understand it,
9 it's a little bit more complicated than the way I've just
10 posed the question.

11 But what about the first two videos? Is the
12 source Mr. Harrelson's phone or some other source?

13 MR. NESTLER: Mr. Harrelson's phone.

14 Those are the original, raw videos from his phone
15 with the metadata and the file names as recorded on his
16 phone.

17 THE COURT: Okay.

18 And the third video was found because the
19 government essentially traced that video to Kelly Meggs's
20 phone, because the government believes Mr. Harrelson texted
21 the video to Kelly Meggs, who then saved the video to his
22 phone; is that correct?

23 MR. NESTLER: Only partially, Your Honor.

24 That third video was also found on Mr. Harrelson's
25 phone.

1 And in addition to that video -- I'm sorry,
2 I think you might have cut out for a second, Judge.

3 THE COURT: No. Go ahead, Mr. Nestler.

4 MR. NESTLER: Oh, sure.

5 So that third video, IMG_1399 was, in fact, found
6 in raw format on Mr. Harrelson's phone.

7 It was separately found on Mr. Meggs's phone,
8 which means that it got from Mr. Harrelson's phone to
9 Mr. Meggs's phone, and the government presumes that that
10 happened via an electronic transfer, a Signal message, or a
11 text message or some similar app, because it was saved in
12 Mr. Meggs's phone under a different file name, and the
13 creation date in Mr. Meggs's phone lines up with the date
14 and time that Mr. Harrelson would have sent it.

15 THE COURT: Okay.

16 But it was the -- what was deleted or what you
17 believe is deleted was the transmission, whatever text
18 message or Signal chat message was used to transmit the
19 video, that was deleted but the video itself still was saved
20 on Mr. Harrelson's phone?

21 MR. NESTLER: Correct, Your Honor.

22 THE COURT: Okay. I misunderstood that.

23 All right. Thanks for the clarification.

24 Go ahead, Mr. Nestler.

25 MR. NESTLER: You're welcome.

1 So Mr. Harrelson got to the Capitol around 2:00.
2 We see him filming the east steps where the police line has
3 been holding. And between about 2:00 p.m. and 2:20 p.m.,
4 the police line there is overrun, which we know from the
5 exterior surveillance video and public-source video.

6 And we know, because at 2:21, Mr. Harrelson has
7 ascended the steps and assumed what can be referred to as a
8 position of relative prominence there. He's at one of the
9 very top steps of the east steps on the Capitol there
10 outside the Columbus Doors, which are the doors leading into
11 the Rotunda, and he is looking out to the crowd.

12 And we see, at around that time over the next
13 several minutes, that's when the remaining members of the
14 stack, the other dozen or so people who were part of this
15 Oath Keepers' stack, beeline up to Mr. Harrelson. So
16 Mr. Harrelson is yelling. And you can see in one of the
17 photos we included, his mouth is wide open, he appears to be
18 yelling and waving.

19 The members of the stack part the crowd or the
20 crowd parts for them and they walk up with their hands on
21 each other's shoulders or flap jackets and they rendezvous
22 with Mr. Harrelson there, where the steps basically meet the
23 veranda outside of the Columbus Doors.

24 And that's where they remain for the next several
25 minutes, where Mr. Harrelson joins the stack, because, at

1 around 2:39 p.m. -- and this is the first video, IMG_1399,
2 is when the doors to the Capitol are breached for the second
3 time. The east Columbus Doors have been breached
4 approximately twice in short order, once around 2:30 and
5 once around 2:40.

6 And at 2:40, the doors are breached again, and
7 this is the breach through which the Oath Keepers, the stack
8 of these defendants entered the door.

9 First of all, one member of their group is right
10 up against the door. He is just pushing on the door. He is
11 one of the one or two people right literally touching -- the
12 right side door is facing the Capitol.

13 Mr. Harrelson and Mr. Meggs and other members of
14 their group are a little bit further back in the pack of the
15 mob that's trying to push to get in that's assaulting the
16 police officers, that's throwing bottles and flags and
17 flagpoles and spraying chemical irritants at the door, where
18 there's an incredible amount of yelling. Your Honor can see
19 and hear the video. The alarm bells are blaring. And it
20 literally is a mob trying to push the police officers out of
21 the way and rip those doors open in order to get inside.

22 And as I indicated earlier, we don't know when the
23 door handle was physically ripped off of the door, we don't
24 know when the doorstop, which the hydraulic stop on the top
25 of the door was broken, we don't know when all the other

1 damage was caused to the bronze on the outside of the door.
2 But it's reasonable that it would happen around this time,
3 during this second massive push of the mob to get inside of
4 the Capitol.

5 And Mr. Harrelson -- the first person who was a
6 part of their stack makes it inside. Within a minute or 60
7 or 90 seconds later, Mr. Harrelson and Mr. Meggs and the
8 rest of the stack make it inside.

9 And we included in our pleading, Your Honor, a
10 screenshot from the surveillance video of them all right in
11 the foyer, right after coming through the Columbus Doors.

12 And you can see there --

13 THE COURT: And can the government identify who it
14 is that they believe was sort of first of the group to come
15 through, the one that you've said is closest to the door?

16 MR. NESTLER: Not a charged defendant, Your Honor.

17 THE COURT: Go ahead, Mr. Nestler.

18 MR. NESTLER: Sure.

19 And so what we see here is in that screenshot,
20 Mr. Harrelson is there towards the bottom in red.

21 And the other members, who are charged defendants
22 here, Kelly Meggs, Connie Meggs, Sandra Parker, Laura
23 Steele, Donovan Crawl, Jessica Watkins, Graydon Young are
24 all there right behind him. And after they all make it
25 inside, the first thing they do is they go towards the --

1 into the Rotunda.

2 By the way, in that photograph, you can see
3 Mr. Harrelson holding up his left arm with his phone up.
4 And we know from the video that's him recording that exact
5 phone, that exact video.

6 They go into the Rotunda, and the next photograph
7 from a photo journalist, you see him there. He doesn't
8 appear to have been pushed inside or come inside not by his
9 own free will. You see him there, mouth agape, yelling.

10 And we know from the video itself that there was
11 screaming, there was hollering people. And we don't know if
12 it was Mr. Harrelson or not, we're still investigating this,
13 were yelling, "treason, treason," and "We took the Capitol."

14 That is exactly the part of the mob that
15 Mr. Harrelson is there with. They were there to take the
16 Capitol, to stop Congress from doing the job that Congress
17 was lawfully assembled to do.

18 Mr. Harrelson's job here -- so several of the Oath
19 Keeper stack members tried to go north down a hallway, and
20 I believe we addressed this at Ms. Watkins' hearing and
21 Mr. Cowl's hearing. And there was a group of police
22 officers from Metropolitan Police who were blocking that
23 hallway, that would have been the hallway going to the
24 Senate, and the police officers.

25 THE COURT: So, Mr. Nestler, let me interrupt you

1 at this point, because this is what I was thinking about
2 prior -- in preparation for this hearing.

3 I mean, there have been a number of -- in a
4 variety of these hearings, in all of these hearings, in
5 fact, I think I have asked the government what the evidence
6 was with respect to the particular defendant and their
7 conduct once inside (audio disconnected).

8 MR. NESTLER: I'm sorry, Your Honor, your audio
9 cut out for the past ten seconds or so.

10 THE COURT: Okay.

11 MR. NESTLER: I don't know if it was just me or
12 anybody else.

13 THE COURT: Okay. Let me start again.

14 And, Bill, if you have any problems hearing me,
15 just raise your hand and let me know.

16 But I've asked the question in prior hearings and
17 I've asked the question in every hearing about what the
18 government's evidence is with regard to -- what the
19 government's evidence is of the conduct of the particular
20 defendant once inside the Capitol building. And largely,
21 the government's response has been "it's something we're
22 still investigating."

23 And it struck me as, for the first time, the
24 government had, in this case, provided greater detail of the
25 government's belief of what this particular defendant did.

1 And I think the same was true of Ms. Watkins,
2 although I think the government was, if my memory serves,
3 the government (audio disconnected).

4 MR. NESTLER: Judge, I don't know if the hand rule
5 applies to just Bill.

6 THE COURT: Yeah, no, it applies to everybody.
7 Yeah, it applies to everybody.

8 What I was saying is that, with respect to
9 Ms. Watkins, I remember the government had made
10 representations about her traveling through the Capitol
11 complex. But it struck me, at least my recollection is,
12 that it was a little less certain than the representations
13 that are being made now.

14 So I guess what I'd like you to comment on is,
15 one, whether that's a fair assessment of the evidence; that
16 the government's assessment with respect to Mr. Harrelson is
17 more certain about his travels through the Capitol complex;
18 and, two, what gives the government that degree of
19 certainty, to the extent that you can share that, in terms
20 of the source of that information?

21 MR. NESTLER: Yes, Your Honor.

22 That is accurate to say, and that's because the
23 government's investigation has been continuing.

24 The government continues to pore over the
25 thousands of hours of surveillance video from the various

1 cameras in the Capitol complex, as well as the thousands or
2 tens of thousands of public-source videos.

3 And one of the things, I don't think it's
4 surprising to hear, Your Honor, is that as the investigation
5 proceeds and additional subjects and defendants are arrested
6 and the government receives access to cell phones that were
7 taking and recording videos inside the Capitol, and those
8 videos are either received by the law enforcement or made
9 publicly available on public sites, the government's able to
10 create a fuller, more complete picture of the travels of
11 various individuals inside the Capitol. That part of our
12 investigation is still very much ongoing.

13 And I was about to tell you, Your Honor, that
14 there is a portion about ten minutes or so where we don't
15 have Mr. Harrelson on camera within the Capitol complex.
16 I'm not saying that -- I don't know what he was doing at
17 that time. We don't know. We are continuing to look.
18 We're hoping to identify him on these additional camera
19 feeds.

20 But it is not so easy just to say this person
21 comes in and this is where they go. There were hundreds of
22 people, if not more, inside, and the system of monitoring
23 people through the camera and the various hallways and
24 passageways is not so straightforward.

25 THE COURT: I appreciate that.

1 I think -- but I was just struck by the
2 representations, and so I want to make sure that
3 I understand the state of the evidence.

4 The government says here on page 17 that once
5 inside the Capitol, Mr. Harrelson first attempted to go
6 north toward the Senate. Some of the co-conspirators were
7 the group of rioters (audio disconnected) of the conspiracy,
8 including Kelly -- south on.

9 MS. GINSBERG: Judge, we can't hear you.

10 THE COURT: You know what, folks? I'm going to
11 turn -- let me just go ahead and do this now. I'm going to
12 mute myself and call in.

13 (Pause)

14 COURTROOM DEPUTY: I can hear you now, Judge.

15 THE COURT: Okay. Good.

16 All right. Hopefully, this will work out better.
17 I'm on the telephonic line but still on my video. So the
18 audio ought to be clearer than it's been. So sorry about
19 that.

20 What I was doing, Mr. Nestler, is I was just
21 reading from your submission on pages 17 through 18 that
22 provide a fairly detailed description of what the government
23 believes Mr. Harrelson's movements were once inside the
24 Capitol.

25 And so what I wanted to ask is what -- when the

1 government makes this representation: What's the basis for
2 it or, put it differently, what's the degree of certainty
3 the government has in the accuracy of what it is
4 representing here?

5 MR. NESTLER: So we are certain that Mr. Harrelson
6 went north towards that -- or tried to go north, I'll say,
7 towards that hallway, connecting the Rotunda to the Senate
8 chamber.

9 There is surveillance video there from the Rotunda
10 and as well as from that hallway, as well as news-coverage
11 video, as well as Mr. Harrelson's own video he was recording
12 on his phone, because that was the first place that he went,
13 and that's when police officers now in that hallway were
14 keeping the crowd back and had deployed some sort of
15 chemical irritant.

16 Mr. Harrelson then goes back into the middle of
17 the Rotunda, and that's where his video cuts off. And so
18 our level of certainty decreases now that Mr. Harrelson is
19 not personally recording his own movements.

20 But Capitol surveillance video appears to show
21 Mr. Harrelson, again, it's not as clear as being on his own
22 phone, and Mr. Meggs, and other members of their group going
23 south. And that Capitol surveillance video captures this
24 group going around the area of Statuary Hall, which is
25 the -- I guess you would call the chambers south. I don't

1 know how familiar Your Honor is with the geography inside
2 the Capitol. I've had to get too familiar with it recently.

3 But from the Rotunda, if they turned right, they
4 would be going south towards the House chamber.

5 They get to around Statuary Hall, and that is
6 approximately where our surveillance video cuts off. So we
7 don't see, we don't know where Mr. Harrelson went after that
8 at that point; I don't know if that's where he stayed or if
9 he went elsewhere for the next several minutes.

10 And we're continuing to investigate. We are
11 fairly confident we'll be able to put some meat on those
12 bones, Your Honor, in terms of videos recovered from
13 people's phones and on surveillance video, but that part of
14 the investigation is still very much ongoing.

15 I will say --

16 THE COURT: Okay.

17 MR. NESTLER: -- at least one member of their
18 group appears to have traveled further south based on our
19 surveillance-video review than Mr. Harrelson and Mr. Meggs.
20 We don't me how far that person got towards the House.

21 THE COURT: All right. That's helpful. That's
22 helpful --

23 MR. NESTLER: Sure.

24 THE COURT: -- because -- I appreciate the
25 additional level of detail.

1 All right. So, Mr. Nestler, I cut you off there,
2 and so if you want to continue, you can go ahead.

3 MR. NESTLER: Thank you, Your Honor.

4 And so, again, we're not inside of Mr. Harrelson's
5 head, we don't know right now exactly what he was planning
6 or his co-conspirators were planning.

7 But we do know that Kelly Meggs, his comrade, one
8 of the other leaders of the group, tells someone later that
9 night, that very night, they had been seeking out Nancy
10 Pelosi.

11 And this other person, whose name is redacted
12 here, had sent a Signal message -- or a text message,
13 I'm sorry, to Kelly Meggs saying that that person was hoping
14 to see Nancy's head rolling down the front steps. And Kelly
15 Meggs' response was, "We looked for her" -- he wrote, "We
16 looked forward her." It's probably a typo. "We looked for
17 her."

18 That is very indicative, Your Honor, of what the
19 Oath Keepers themselves were doing -- what this group of
20 defendants were doing when they went inside, because we know
21 there was a leader of the Senate, Mitch McConnell, who had
22 been on the Senate side at this time, also where Vice
23 President Pence was at this time.

24 And we know that the Oath Keepers were aware of
25 where the various members of Congress were, because that

1 information was being relayed in the Signal chat about what
2 was going on, almost in real-time.

3 And we see that people were chanting -- and this
4 is their words, not ours, Your Honor, we quoted it in here,
5 they were chanting, "Fuck McConnell," as they were trying to
6 go north on that Senate -- towards the Senate chamber,
7 which, of course, would explain why the Capitol Police and
8 the Secret Service were evacuating people from that chamber.

9 And then the comments about Nancy Pelosi,
10 Your Honor, would also indicate that, if anyone was paying
11 attention to who was in charge of the House of
12 Representatives, they were going south looking for who was
13 in charge. Again, this goes for the reason that these
14 people were inside the Capitol and what they were up to and
15 what they were intending to do.

16 So we concede here, Your Honor, these are not
17 Mr. Harrelson's words, these are the words of his
18 co-conspirators and other members of the mob who were there
19 traveling with him, but they are indicative here of his
20 particular dangerousness, given his role with regard to this
21 organization and this team.

22 We know that he eventually made his way back
23 towards the Rotunda and towards the Columbus Doors there
24 that he had breached initially at around 2:40 p.m., and we
25 see that he has an interaction.

1 There's two still frames posted on page 19 of the
2 government's pleading, Your Honor. He has an interaction
3 with the Capitol police officer, wearing full riot gear,
4 wearing a helmet, carrying a riot shield, and that
5 officer -- this is purely based on the video, Your Honor,
6 puts his riot shield up against Mr. Harrelson's chest.

7 We don't know why, but there's an inference there
8 that a riot officer, who interposes a shield between an
9 individual and the officer, was likely doing that for safety
10 reasons and not for some other non-nefarious or non-safety
11 person, and we see there on the right-hand photo,
12 Your Honor --

13 THE COURT: So, Mr. Nestler, can I --

14 MR. NESTLER: Go ahead.

15 THE COURT: No. Go ahead, actually.

16 MR. NESTLER: So he then leaves the Capitol.

17 And I was going to get into evidence about the
18 QRF. But if there's any questions about his time at the
19 Capitol, I'm happy to address it.

20 THE COURT: No. That's fine.

21 I wanted to actually move you to the QRF, and, in
22 particular, the photograph on page 11.

23 And I have to confess -- let me back up. I mean,
24 I guess the first question is, the government's suggestion
25 here is that -- the government's theory seems to be that

1 there are at least two different hotels at play. There's
2 the Hilton Garden Inn that Mr. Meggs had purchased some
3 rooms, and then there's room at the Comfort Inn in Ballston.
4 And the belief is that the QRF, the quick reaction force,
5 the weapons cache, if you will, for the quick reaction force
6 was at the Comfort Inn in Ballston.

7 How confident is the government that Mr. Harrelson
8 actually -- let me put it differently: What's the evidence
9 and the degree of confidence the government has that
10 Mr. Harrelson didn't actually stay at the Comfort Inn but,
11 in fact, stayed at the Hilton Garden Inn?

12 MR. NESTLER: Not 100 percent, but fairly
13 confident, Your Honor.

14 And I'm happy to address the reasons for that
15 degree of confidence.

16 THE COURT: And the reason I ask is -- the reason
17 I ask is that the reply brief at least suggested that
18 Mr. Harrelson might have actually been at the Comfort Inn in
19 Ballston, as opposed to Hilton Garden Inn, and so,
20 therefore, is nothing unusual, nothing to see here, that
21 he's leaving the Comfort Inn with some baggage and luggage
22 items there that are photographed on the bottom of page 11.

23 MR. NESTLER: I saw that same suggestion in the
24 defense's rely brief, Your Honor, and I don't see any facts
25 to back it up. But the government has several facts to back

1 up its assertion.

2 First is Mr. Harrison's cell site information.
3 His phone, which we know he had on him because we were able
4 to obtain a warrant to track the cell phone pings from
5 Florida up to the D.C. area and back to Florida, which we
6 provided to defense counsel, show that he was in the area of
7 the Comfort Inn in Ballston earlier in the day on January
8 the 5th. And then from the remainder of the day on
9 January 5th, all day on January 6th, until the morning of
10 January 7th at around 9:00 a.m., was in D.C.

11 Now, I don't need to litigate now the reliability
12 of cell tower pings, I assume Your Honor is familiar with at
13 least some of the litigation on that, but that is fairly
14 good evidence that the government submits that Mr. Harrelson
15 was in D.C. that whole time. He did not cross back over to
16 the bridge and cross back over the river to Virginia until
17 about 9:00 a.m. on January 7th.

18 Secondly, Your Honor, is surveillance video. The
19 government obtained a large amount of surveillance video
20 from the Comfort Inn in Ballston for the period late in the
21 day on January 5th, all day on January 6th, and all day on
22 January 7th.

23 Again, our investigation is ongoing, this is not
24 100 percent, but we are looking for Mr. Harrelson and nobody
25 sees him until January 7th at around, I think it's about

1 9:00 a.m. when he showed back up at the Comfort Inn. One
2 would expect to have seen him there on the night of January
3 5th -- I'm sorry, I believe Mr. Harrelson left the -- I just
4 got a notice saying that he left the Webex, Your Honor.

5 COURTROOM DEPUTY: Yeah, I'll send Florida a
6 message. Just one moment.

7 THE COURT: Sorry, everyone. These hearings have
8 gone far more smoothly in the past and I apologize for both
9 the technical difficulties both on my end and with the
10 Department of Corrections.

11 All right. We've got Mr. Harrelson back.

12 Why don't you proceed, Mr. Nestler.

13 MR. NESTLER: Yes, Your Honor.

14 So, again, the government has reviewed
15 surveillance video and has not seen Mr. Harrelson on the
16 surveillance video until he appears on the morning of the
17 7th.

18 In addition to that, Your Honor, in the Florida
19 Signal chat on the morning of January 5th as his cell phone
20 location information shows, he is still driving north
21 from -- at this point from North Carolina up to the D.C.
22 area, he sends a message at 8:00 a.m. that says, "We get
23 that QRF hotel address yet?" That suggests that the QRF was
24 at a hotel and that Mr. Harrelson does not know the address
25 of the hotel. One would presume he knew the address of the

1 hotel in which he was personally staying. And we see that
2 there are -- Mr. Meggs replies just five minutes later,
3 "DM," asking for a direct message.

4 Then we see on January 7th, when Mr. -- again, his
5 cell phone location information suggests he stayed in D.C.
6 overnight. From January 6th to January 7th, his cell phone
7 was in D.C. proper. He asks at 8:55 a.m., "Where's my shit
8 at" into the group. And somebody responds to him just one
9 minute later, "Did you leave it at Comfort Inn in that
10 room?"

11 Again, why would Mr. Harrelson be asking where his
12 "shit" was at on the morning of January 7th, and why would
13 someone else's chat be saying, "Did you leave it at the
14 Comfort Inn in that room?"

15 Again, additional evidence that Mr. Harrelson did
16 not stay at the Comfort Inn but had stashed his weapons
17 there, because just about 20 minutes later, we see that he
18 arrives in the area of the Comfort Inn in Ballston, and then
19 we have him on surveillance video rolling a luggage cart
20 with what appears to be a rifle case around the same time
21 frame.

22 THE COURT: And which of these objects do you
23 think is the rifle case, is that the one in the middle?
24 There seem to be at least two objects on there.

25 MR. NESTLER: There appear to be three objects on

1 there, Your Honor.

2 And this is information that's being provided by
3 the FBI after analyzing the video itself; this is just the
4 still frame. And there may be additional -- I'm not
5 prepared to identify which of the objects, if not multiple
6 of the objects, contain weapons.

7 I will say that additional surveillance video from
8 the Comfort Inn shows not just Mr. Harrelson but other
9 individuals who were affiliated with the Oath Keepers,
10 including Person Three and others carrying up and down from
11 the lobby and back multiple different items that look
12 similar to this large carrying cases that appear to be
13 consistent with rifle cases, including, in one instance,
14 Your Honor, the government has seen an individual carrying
15 what appears to be a rifle underneath a sheet or a piece of
16 linen that has the outlines of such a weapon.

17 So this is not pure conjecture, Your Honor. It's
18 true that we don't see a rifle here, but the circumstantial
19 evidence is strong that Mr. Harrelson was collecting his
20 rifle or potentially other weapons.

21 THE COURT: And what do we know about what was
22 found at his home during the search? Now, this would have
23 been two months later, but I know there were weapons
24 recovered there. But what about any rifle cases or anything
25 that might match what we see here on the bottom of page 6?

1 MR. NESTLER: I'm not aware of any rifle cases
2 being recovered from his home, Your Honor.

3 The assault rifle that was -- or the AR-15,
4 I'm sorry, style rifle that was recovered from his home was
5 inside of the gun safe.

6 THE COURT: Okay.

7 And I misspoke. I meant to say the photograph at
8 the bottom of page 11, not page 6. Okay.

9 MR. NESTLER: Understood.

10 And, again, Your Honor, we had talked at many
11 prior hearings, as Your Honor is aware, about the QRF.

12 And the government has been -- has not publicly
13 stated much information about the location of the QRF or
14 exactly what they were doing. We're prepared to say so now;
15 that we believe that at least one QRF location was here, as
16 we put in our pleading, and that Mr. Harrelson and others
17 had stashed a large amount of weapons there and that people
18 who are affiliated with this group were at the Comfort Inn
19 in Ballston on January 6th, monitoring what was happening at
20 the Capitol, communicating with other members of the team,
21 including Mr. Harrelson on the Signal chats, and prepared to
22 come into D.C. and ferry these weapons in to the ground
23 team, which Mr. Harrelson was running, at a moment's notice,
24 if anyone said the word.

25 THE COURT: Okay.

1 All right. Thank you, Mr. Nestler. That's
2 helpful.

3 Did you want to add anything else before I turn to
4 Ms. Ginsberg?

5 MR. NESTLER: Brief indulgence, Your Honor.

6 I do want to hit a couple of points from the
7 defense's reply brief, which I know was filed last night,
8 that I wanted to make sure that we addressed, if that's okay
9 with Your Honor.

10 THE COURT: Yeah, of course.

11 MR. NESTLER: So first, the brief says that --
12 regarding Mr. Harrelson not knowing he was taking a picture
13 or a video. There's some sort of assertion that
14 Mr. Harrelson was just not paying attention to what he was
15 doing inside the Capitol.

16 And we disagree with that assertion, Your Honor.
17 We think that the evidence is -- or that he was confused
18 about what he was doing; that the evidence is clear that he
19 knew he was taking the videos, that he accesses those videos
20 later on the 6th, on the 7th, and on the 12th. So he would
21 not have been confused about knowing what was going on.

22 There was an assertion in the reply brief that
23 Mr. Harrelson may not have been paying attention in the
24 Signal chats, because there's not -- in the national Signal
25 chat when people were talking about their plans, because

1 Mr. Harrelson was not communicating with those others.

2 A couple of points on that, Your Honor. One, the
3 Signal chat we have, as we indicated at a prior hearing, was
4 extracted from a person's phone. And so the time stamp on
5 here that Mr. Harrelson deleted two messages on the night of
6 January 6th, we don't know if he deleted those messages --
7 if those messages were originally posted at that time or if
8 they were posted at a prior time and then deleted by him by
9 that time. It's unclear.

10 So Mr. Harrelson could have been posting and
11 likely was posting in the Signal chat at prior times but
12 just deleted those messages on the night of the 6th, at the
13 same time that he sent those messages to others saying he
14 didn't know he was in a chat with a bunch of blue falcons.

15 THE COURT: So can I ask, how does this work?
16 Because I'm just curious.

17 When you say "deleted messages" in the Signal
18 chat -- I mean, when I think of a chat, I think of a single
19 string of communications.

20 And I guess I think of sort of two possibilities;
21 one is, you can delete the entire chat, that is, you can
22 wipe the entire chat from your Signal app, that's one. The
23 other possibility is that your individual communications,
24 your addition to a dialogue, that can be deleted. Is it --
25 which of those two is it or maybe it's both? I don't know

1 how Signal works and whether the latter is something you can
2 do.

3 MR. NESTLER: The latter is something you can do.
4 And that's what Mr. Harrelson did here.

5 THE COURT: Okay.

6 MR. NESTLER: He deleted his message.

7 Now, we don't know if it was those --

8 THE COURT: Now, if those --

9 MR. NESTLER: Go ahead.

10 THE COURT: And I'm sorry to interrupt.

11 So if he deletes his message from his end of the
12 Signal chat, does that also delete his messages that appear
13 on somebody else's Signal chat; and such that if you were to
14 recover somebody else's phone, the fact that he deletes his
15 message won't appear on somebody else's phone?

16 MR. NESTLER: Yes.

17 So long as that person's phone was still hooked up
18 to the Internet and attached to the Signal chat at the time
19 that Mr. Harrelson did the deletion.

20 THE COURT: So once he deletes it, his
21 communications essentially drop out and can't be
22 recovered -- they can't be recovered?

23 MR. NESTLER: Correct, unless somebody else in the
24 chat happened to have screenshotted them in advance.

25 THE COURT: Right. Got you.

1 MR. NESTLER: Correct.

2 And just to be clear, Your Honor, we don't know if
3 he had posted something at 11:20 p.m. on the 6th and then
4 deleted it, or if his post had been earlier in the day or on
5 the 5th even, we don't know, and then he deleted it on
6 January 6th. We just don't know.

7 THE COURT: Right. Got you. Okay.

8 MR. NESTLER: And we don't believe it's a fair
9 inference that the defense claims that he was not paying
10 attention to what people were saying in the Signal chats,
11 considering that Kelly Meggs had told others that
12 Mr. Harrelson was running the ground team, he was actively
13 involved in the Florida Signal chat. So obviously he was
14 monitoring Signal on his phone; in fact, we believe he was
15 an admin of the Florida angle of the Signal chat.

16 And then finally, Your Honor, I just want to
17 address one brief piece about Mr. Harrelson's reply brief
18 saying that he was employed, prepared to return to his job
19 as a welder. That is not the government's evidence,
20 Your Honor. At his detention hearing in Florida on March
21 15th, Pretrial Services filed a Pretrial Services Report
22 that said he was unemployed, and, in fact, collecting
23 unemployment benefits.

24 THE COURT: Right.

25 MR. NESTLER: And both Mr. Harrelson and his wife

1 testified that he was unemployed.

2 THE COURT: Yeah, I noticed that and there was a
3 disjunction between the two that I was going to ask
4 Ms. Ginsberg about.

5 I mean, the letter suggests that he was -- the
6 letter that was submitted about his employment seemed to
7 suggest that he was a valuable member of a company, and yet
8 he testified that he wasn't actually employed at the time.

9 But no, I noticed that as well.

10 MR. NESTLER: Yeah. Thank you, Your Honor.

11 THE COURT: All right, Mr. Nestler. Anything else
12 you'd like to add?

13 MR. NESTLER: We highlighted in our brief,
14 Your Honor, Mr. Harrelson's likely perjuring himself about
15 the video and the case law for why that would be important
16 for the Court to consider. I don't need to belabor that
17 point, Your Honor.

18 But no, there's nothing else I need to add.
19 Thank you.

20 THE COURT: All right.

21 Ms. Ginsberg, I'll give you the floor now.
22 Mr. Nestler has had an opportunity to present the
23 government's case.

24 So, Ms. Ginsberg.

25 MS. GINSBERG: Thank you, Your Honor.

1 I think the easiest thing to address first is,
2 I think one of the more recent -- the most recent things
3 Mr. Nestler said was about the perjury or potential perjury
4 during the potential detention hearing.

5 I re-read that transcript this morning. And it is
6 absolutely clear from that transcript that when
7 Mr. Harrelson was asked about whether he recorded while he
8 was inside the Capitol, the question referred to the time
9 when he was holding up his phone and apparently recording
10 what was on the walls of, I believe it was the Rotunda,
11 maybe it was the Statuary Hall.

12 But it was clear from the question that was asked
13 that he was asked about whether he was recording at that
14 time. And it is also -- the government cannot dispute the
15 fact that that recording was not found on his phone. So his
16 answer that he was -- the phone malfunctioned or there was
17 some issue with the phone was not perjury. He didn't say
18 that he didn't try to record. He said that the phone didn't
19 work and that there was no video.

20 But he was not -- when he was being asked that
21 question, he was not directed to any other time that he
22 might have been using the phone to video -- create a video
23 of what was going on inside the Capitol.

24 THE COURT: Yeah, I guess I'm a little unclear on
25 what the position is there.

1 And I'm not making any calls here about whether he
2 perjured himself or not, but he was asked on page 25 of the
3 transcript at the very bottom: "Did you take photos and
4 videos when you were inside the Capitol on your telephone?"

5 "No."

6 The question is: "You did not?"

7 His answer is: "Well, there's -- it didn't.
8 Nothing was recorded."

9 "Did you take photographs?"

10 "No."

11 "Did you see a picture of yourself inside the
12 Capitol holding the phone up?"

13 "Yes, ma'am."

14 "And it's your testimony that nothing recorded on
15 your phone?

16 "It was -- it didn't record for some reason.
17 There was issues with the phone."

18 So I mean, you're right that there's a question
19 particular to him holding up the phone. But he's also asked
20 earlier: "Did you take photos and videos when you were
21 inside the Capitol on your telephone?" And he says, "No."

22 MS. GINSBERG: Well, the only other video that's
23 found is --

24 THE COURT: And he clearly did.

25 MS. GINSBERG: Well --

1 THE COURT: At least one.

2 MS. GINSBERG: Well, the only other one was the
3 gun, when he was out on the steps. And at least half of
4 that video is before he enters the Capitol. And he
5 continued -- you know, it is clear from that video that he
6 did continue to record while he was inside the Capitol.

7 But it certainly had been months since he (audio
8 disconnected).

9 MR. NESTLER: I'm sorry -- go ahead.

10 COURTROOM DEPUTY: Mr. Harrelson dropped off the
11 call again. I'll send the guard a message.

12 Sorry for the inconvenience.

13 THE COURT: I don't understand why he's dropping
14 off of a telephonic call. I mean, I guess being inside the
15 jail doesn't get you the best signal, but...

16 (Pause)

17 THE COURT: All right, Mr. Harrelson. Sorry about
18 that. I apologize that we're having as many technical
19 difficulties as we are this morning. But we have you now.

20 And so, Ms. Ginsberg, why don't you go ahead; we
21 were talking about you client's testimony at the detention
22 hearing.

23 MS. GINSBERG: Yes, Your Honor.

24 So it had been at least several months between the
25 time that the incident at the Capitol occurred and the time

1 that he appeared at the preliminary hearing.

2 The government had not provided any discovery to
3 his attorney prior to that hearing. So Mr. Harrelson hadn't
4 recently looked at those videos.

5 The majority of the videos that he did take were
6 taken outside the Capitol building. And whether he was
7 actually incorrect about whether he continued to record once
8 he entered the building, I don't think that there's a basis
9 for finding that he was intentionally perjuring himself at
10 that hearing. It's clear that there was part of the -- he
11 remembered and someone would remember that he tried to take
12 some video and it didn't record.

13 I don't think it's a reasonable inference that he
14 was intentionally lying about part of a video that started
15 not while he was in the building but continued while he was
16 in the building. And that being a video that there's no
17 evidence he saw any time after the time that, apparently, it
18 was sent to Mr. Meggs. So that was some period of time
19 before. And I think that while it's possible to argue that
20 he was not being truthful, I don't think that the weight of
21 the evidence supports that or that he was not being --
22 intentionally being untruthful.

23 With respect to the letter from his employer, that
24 is a -- we asked to have his employer draft something
25 quickly. He is a former employer of Mr. Harrelson's.

1 Mr. Harrelson did work for that company, doing the
2 work that is described in the letter from the owner of the
3 company. He was not recently employed. And it's
4 unfortunate that he used the language that he used.
5 I didn't see the letter until late yesterday evening. And
6 had I seen it in time to call him, I would have asked him if
7 that was accurate; and if not, he would have corrected it.

8 But there's no question that he did work and his
9 wife has confirmed that he did work for that company and
10 that he did do the type of employment and work on the type
11 of projects that are referenced in that letter.

12 And as I understand it, that the owner of the
13 company is prepared to hire him if he is released and have
14 him come back to work for the company.

15 THE COURT: Okay.

16 MS. GINSBERG: So I think as a sort of more
17 general matter, much of what Mr. Nestler argues about
18 Mr. Harrelson's intentions and even his actions are not
19 based on evidence of things Mr. Harrelson himself did or
20 things that Mr. Harrelson said.

21 He begins his opposition -- and, again, started
22 off today saying that Mr. Harrelson was part of -- was among
23 a stack of people in camouflaged paramilitary gear, who
24 planned a violent overthrow of the government.

25 The videos and the photographs that were available

1 to us, unfortunately we were not able to make them available
2 to the Court, show Mr. Harrelson clearly separated from this
3 stack of individuals who marched directly up to the Capitol.

4 And even the photographs included in the
5 government's pleading show Mr. Harrelson off to the side,
6 cheering on what was going on in front of him, in much the
7 same way that hundreds of people that were surrounding this
8 group of Oath Keepers in military garb, he was yelling words
9 of encouragement either at the group or just in general in
10 terms of what was occurring right there on the scene.

11 But to say that from those videos and from the
12 still photographs that Mr. Harrelson was doing anything that
13 was different from what at least 100 other people who were
14 in the immediate area were doing, is -- I think is not -- is
15 a false attrition.

16 It is certainly consistent with the government's
17 theory of what Mr. Harrelson's involvement was, but he is
18 not dressed in military garb. In fact, there's very little,
19 if any, evidence that he knows most of those individuals or
20 that he ever communicated with those individuals before or
21 after the events of January 5th and 6th.

22 So to say that --

23 THE COURT: Ms. Ginsberg, let's talk about once
24 he's inside.

25 And I won't ask you to affirmatively tell me what

1 your client's position is in terms of what he did or didn't
2 do.

3 But I guess the question I have for you, and maybe
4 you can answer it, is: The government's description on
5 pages 17 and 18 that purports to describe your client's
6 movements once he's inside the Capitol building, describing
7 him as first heading towards the Senate side of the chamber
8 and then eventually turning back around and then heading
9 toward the House side of the chamber.

10 I mean, as you sit here today, are you prepared to
11 dispute that characterization of your client's movements
12 inside the Capitol building?

13 MS. GINSBERG: Judge, I'm not.

14 But I don't have evidence -- I don't have
15 sufficient discovery that would enable me to do that.

16 All I can say, based on the evidence that we've
17 received so far and the images and videos that the
18 government provided the Court, that Mr. Harrelson is part of
19 a mob that moved towards the Capitol, that entered the
20 Capitol, and that moved, in large measure, at least
21 initially, as part of the mob throughout the Capitol.

22 And I have no idea if he actually went north
23 toward the Senate or south toward the House of
24 Representatives, who was around him, whether that was part
25 of a group.

1 If Your Honor looks at the photograph on page 16,
2 Mr. Harrelson is in the middle of a large group of people
3 that are not only Oath Keepers, who have been either
4 pushed -- who themselves pushed their way into the Capitol
5 or were part of a crowd that was pushed into the Capitol by
6 everybody else who was surrounding them.

7 But he clearly was not the person who forced open
8 the doors. He was behind the group of people that entered
9 the Capitol after the doors were open. Exactly where in
10 that crowd he was, it's impossible to tell. And it's
11 impossible to determine his motivations or his intentions as
12 part of that crowd from any of the evidence that we've been
13 provided.

14 I think the best that can be said is he was an
15 Oath Keeper, but that does not mean that he shared the views
16 or the -- that were expressed on any of the Signal chats
17 that were being exchanged during that day or that he had any
18 shared plans with the individuals that were part of this
19 large mob, other than to say he was in the middle of it.

20 THE COURT: I guess you're right.

21 I mean, we don't have any evidence, direct
22 evidence of his state of mind, at least with respect to the
23 Signal chats. But the government suggests there's a reason
24 for that, and that's possibly because he deleted his
25 communications on the Signal chat.

1 But we do have some evidence after the fact in
2 terms of his state of mind and his thinking of January the
3 6th. I mean, there are text messages or communications in
4 which he is not sort of walking away or walking back from
5 the conduct that occurred on the 6th, but, in fact, is
6 embracing it, and suggesting that people who are trying to
7 distance themselves from the Oath Keepers are being
8 disloyal, I'll just put it in the most neutral terms that
9 I can think of right now.

10 MS. GINSBERG: Right.

11 So first, with respect to deleting the Signal
12 chats, Mr. Nestler said they have evidence that he deleted
13 two Signal chats. There were, apparently, hundreds of
14 communications that went on that were shared on Signal
15 during these events.

16 If Mr. Harrelson deleted two Signal chats, there's
17 no evidence that he was part of any of the other
18 communications with the other individuals about what was
19 going on inside the Capitol.

20 If these communications were going on over an
21 extended period of time, he certainly -- there's no evidence
22 that he participated in any of them.

23 And for someone who is purportedly a leader of the
24 ground force, it's almost inconceivable to think that he
25 wouldn't be in constant communication with the other

1 individuals inside the building and giving direction about
2 what to do.

3 And the fact that there are only two Signal chats
4 that may have been deleted is, I think, evidence -- strong
5 evidence that he was not controlling the actions of the
6 other people, even if he was listening to them.

7 In fact, it's kind of difficult to imagine how
8 people could have been effectively communicating with each
9 other in the midst of that mob.

10 But we do have one lengthy printout of the Signal
11 chat -- the Signal chats that occurred prior to the 5th and
12 the 6th that were so-called "planning sessions." The
13 primary victim who's speaking during those chats, apart from
14 a redacted person, is Mr. Meggs.

15 There are, I think, only two or three occasions
16 where Mr. Harrelson, who was identified in the Signal chats
17 as Gator 6, makes any comments whatsoever. Gator 1 is the
18 predominant speaker throughout those chats. And I believe
19 the last entry for Mr. Harrelson prior to the 5th and 6th
20 was on January the 3rd, and he doesn't speak again until
21 January -- I believe it's the 7th.

22 So while the government can speculate that he was
23 monitoring these chats, that, again, is pure speculation.
24 But the chats themselves indicate that he did not contribute
25 to the conversation, the Signal conversations that were

1 occurring from any time between the 3rd and January 7th.

2 So to say that, based on the Signal chats and the
3 GoToMeeting sessions, that he was a leader in a clan to
4 storm the Capitol and violently disrupt the operations of
5 government, I think is just -- it's extremely far-fetched.

6 If, in fact, there was such a plan, there is
7 really no evidence that he was an active contributor to any
8 of the chats where there were -- where whatever plans were
9 being discussed occurred.

10 There's absolutely no evidence of what took place
11 on the GoToMeeting sessions. And the fact that
12 Mr. Harrelson was able to call the meeting as an organizer,
13 as opposed to an attendee, I don't think that there's
14 anything particularly meaningful about that.

15 At some point, there was -- and there's evidence
16 in the government's other pleadings and in testimony before
17 a different court that there was concrete a plan to provide
18 security details to speakers at the rallies on the 5th and
19 the 6th.

20 And there's even, if I recall correctly, a message
21 in one of the Signal chats from the head of the Oath
22 Keepers, saying -- confirming that there was a plan to
23 provide security for Roger Stone that's mentioned in a
24 number of chats and that is acknowledged by the agents
25 who -- the agent who filed the affidavit in Mr. James's --

1 in support of Mr. James's complaint.

2 So there is evidence that there was a plan, if you
3 call it that, to provide a security detail for speakers at
4 the rallies. And it is really speculation to suggest that
5 any role that Mr. Harrelson played with respect to other
6 members in Florida was something other than in connection
7 with the security details, is really -- there's just no
8 evidence to support that that is what he was planning to do.

9 And I think -- unfortunately, we could not provide
10 this video to the Court, but Mr. Nestler referred to it
11 during his remarks. There is a video on Mr. Harrelson's
12 phone that was taken outside the Capitol, where you can --
13 they're standing, I believe, on the terrace, and you can see
14 the crowd beginning to move up toward the Capitol and
15 someone screams -- sort of screams out -- it sounded to me
16 like they were surprised to see it, but someone screams,
17 "They're going to storm the f'ing Capitol." Not in
18 anticipation of it happening, but look what's happening,
19 they're going to storm the Capitol.

20 And someone who --

21 THE COURT: Okay.

22 MS. GINSBERG: -- is close by to Mr. Harrelson,
23 I can't tell from the voices, but there's someone who's
24 close enough to be recorded in a quiet voice, says, "I think
25 we should go" -- "I think we should go in." To me, that

1 does not sound like someone who has a plan, and that's
2 repeated, someone says, "huh," and this voice says, again,
3 "I think we should go in," in exactly that tone of voice.

4 That suggests to me that the notion -- that there
5 was no pre-planned agreement to overtake the Capitol, to
6 storm the building, to force entry into the building, but
7 that this was something that evolved as it was occurring, as
8 was, I think, the perception of large numbers of people who
9 were present there. And once it started happening,
10 Mr. Harrelson, like hundreds of other people, joined this
11 crowd.

12 There's absolutely no evidence that he met with
13 any of the people who were in the camouflaged uniforms prior
14 to their ascending the Capitol steps.

15 There's virtually -- I don't think there's any
16 evidence that he communicated with any of those people. And
17 those people certainly played a much larger part.

18 THE COURT: Yeah.

19 I mean, doesn't it, at a minimum, look like he
20 encourages them to come up the steps?

21 MS. GINSBERG: Yes.

22 THE COURT: I mean, they all sort of head in his
23 direction. I mean, you agree he does that?

24 MS. GINSBERG: Yes. Absolutely.

25 I believe they are heading forward on the steps;

1 they are headed straight for the doors. He is separated by
2 at least two other people. There is no question that he is
3 encouraging that.

4 But he is also -- so are several of the other
5 people surrounding that stack. There were a lot of people
6 there that were also cheering them on. That -- I think
7 Your Honor is correct, he was encouraging -- he was cheering
8 them, he was encouraging them to enter -- or he was
9 encouraging the activities, he was applauding the activities
10 that were occurring --

11 THE COURT: Right.

12 MS. GINSBERG: -- on the steps. I think there's
13 no question about that.

14 THE COURT: At a minimum, it seems like he was
15 encouraging other members of this group, that the government
16 refers to as the stack, to come up the steps, to sort of
17 take the position that he is, which is not far from the
18 door. And once those doors enter, they all go in as a
19 group. And the government has represented that at least one
20 of them was a little bit more forward than the others. That
21 person wasn't Mr. Harrelson. But once inside, the
22 government has described what it believes to be
23 Mr. Harrelson's movements within the Capitol building. Now,
24 whether he's a leader, et cetera, I think there's -- that is
25 a point of some evidentiary contention, it seems to me,

1 right now.

2 MS. GINSBERG: And, Your Honor, I just would say
3 that the place that Mr. Harrelson was on the steps -- and
4 I don't really dispute what Your Honor is saying, but I
5 would add that it's not clear to me from the image of
6 Mr. Harrelson cheering them on that where this stack is on
7 the stairs or whether there are other people in front of the
8 stack -- as I understood what I've seen in the videos, the
9 stack is moving forward.

10 But there were people in front of the stack and
11 people on their sides. And it's not clear to me that --
12 from where Mr. Harrelson was standing, that it would be the
13 stack as opposed to the rest of the crowd moving forward
14 through the doors of the Capitol. As it happened, at least
15 based on Mr. Nestler's representations, it was someone
16 either in front of the -- directly in front of the stack who
17 broke through the doors.

18 But Mr. Harrelson is in a location on the stairs.
19 It's not clear to me that it's obvious that at that point
20 that the stack was actually going to be the people that
21 breached the doors, although it's clear that that was their
22 intention.

23 It is tempting, in light of all of the events, to
24 attribute the worst motives to Mr. Harrelson. But I think
25 that so much of what the government has alleged is based on

1 the actions and significantly the rhetoric of other
2 individuals, many of whom Mr. Harrelson does not even know,
3 and there is no reason to believe that he ever communicated
4 with those individuals.

5 As far as I know, there is no evidence that
6 Mr. Harrelson knows Jessica Watkins or that he ever shared
7 in any -- or agreed with any of her postings.

8 In fact, I think the government knows from its
9 search warrants and search of Mr. Harrelson's phone that he
10 did not -- he was not communicating on social media. He
11 didn't have a Facebook account. He didn't have a Twitter
12 account. He didn't have any social media accounts that --
13 where the locations of a lot of these inflammatory,
14 rhetorical comments made by various members of the Oath
15 Keepers and also members of the public, many of whom were
16 not ever charged.

17 While there's a large number of people who do not
18 agree with the outcome of the election and were pleased to
19 see a disruption of government operations, a large number of
20 them have not been charged and they're the ones who have
21 expressed those views can't fairly be attributed to
22 Mr. Harrelson. His own individual comments certainly can.

23 But I would say to the Court that he made
24 relatively few statements after the events of September --
25 January 6th.

1 There was, apparently, instruction -- I believe
2 there was instruction sent out by someone other than
3 Mr. Harrelson to disavow their membership in the Oath
4 Keepers. And Mr. Harrelson -- there are images of
5 Mr. Harrelson making, I guess they were, messages on
6 ProtonMail indicating that he was withdrawing from the Oath
7 Keepers. But he didn't encourage other people to do that.
8 And there's actually no indication that I've seen in the
9 discovery as to why that occurred.

10 THE COURT: I guess, Ms. Ginsberg, I mean, what
11 inference can be drawn from that other than some effort to
12 deceive?

13 I mean, it's a very odd thing that your client
14 writes this disavow message that seems to suggest he's
15 disassociating himself, I think he does it not once but
16 twice, but it's quite clear he hasn't and doesn't do that.
17 I mean, he's continuing to chat with people, including
18 Person One, who's been identified in this case as the leader
19 of the Oath Keepers.

20 So, you know, it's not as if he's just an ordinary
21 card-carrying member. This is somebody who's
22 communicating -- in active communications with the leader
23 about not just what happened on January the 6th but sort of
24 future, forward-looking planning about the Oath Keepers and
25 its direction. And so I mean, there's, at a minimum, a

1 degree of deceit involved here that's really hard to
2 explain.

3 MS. GINSBERG: Well, Judge, I think you could look
4 at that message withdrawing from several different -- as
5 having several different meanings.

6 The first time I read it without any context,
7 I thought, oh, Mr. Harrelson has withdrawn from the Oath
8 Keepers. And then I saw that he was communicating with
9 Stewart Rhodes. And I thought, oh -- what I assumed was he
10 changed his mind and got back in touch with the Oath
11 Keepers.

12 But not that the initial message withdrawing from
13 the Oath Keepers was an attempt to deceive anyone, but,
14 rather, that he was -- he didn't approve of what occurred.
15 After the events of the 6th were made more fully public and
16 the impact of them was much better known, that he didn't
17 agree with what happened, and so he attempted to withdraw.
18 And then having thought about it some more and having some
19 additional contact with Mr. Rhodes, he changed his mind and
20 decided that he would reinvolve himself with the Oath
21 Keepers but in a different way.

22 And I think it's fair to interpret the exchange
23 between him and Mr. Rhodes about Mr. Meggs, it's fair to say
24 that he could have actually believed Mr. Meggs' conduct was
25 out of control, that he should not have gone to the lengths

1 that he went, and that he was disapproving of that conduct
2 and saying, look, I should have stepped up. And Mr. Meggs
3 is really the only other person that there's any evidence
4 Mr. Harrelson knows outside of these events.

5 And it's not -- I wouldn't say it would be
6 surprising for someone who was there who didn't expect to go
7 into the Capitol but who sees it happening and joins in the
8 group and supports -- once it starts, is cheering them on,
9 but who in retrospect and in light of all the media that has
10 resulted since that time and the allegations that have
11 been -- appear on every news broadcast around the world for
12 weeks, that Mr. Harrelson could have been saying, you know,
13 this just went too far and I should have -- I know Kelly
14 Meggs and we've been in security details before and we're
15 friends and we've gone to training classes together and it
16 got too far and I should have stopped it. And I don't know
17 that that's any less a reasonable interpretation than the
18 one that -- the more inculpatory one that Mr. Nestler would
19 have the Court accept.

20 THE COURT: Okay.

21 MS. GINSBERG: However, the other -- I think it's
22 also the absence of anything, any additional messages of the
23 absence of any additional conduct by Mr. Harrelson, that
24 indicates an intent to take future action.

25 One inflammatory statement, even if indicative of

1 supporting an effort to continue the fight, does not mean
2 that he intended to engage in additional acts of violence.
3 And, in fact, the government has not offered any evidence
4 that even while in the Capitol, Mr. Harrelson did anything
5 that was violent.

6 There could have been -- the image with the police
7 officer and the shield, there were a lot of people there,
8 there could have been an argument where people were
9 screaming, he could have said something that made the
10 officer angry, and he put up his shield.

11 THE COURT: Right.

12 All right. Ms. Ginsberg, did you want to add
13 anything else? We've been sort of at this close to two
14 hours and I want to see if we can get this wrapped up.

15 MS. GINSBERG: I don't think there's much more
16 I can say in response to the government's arguments.

17 I would say that, as compared to the other
18 defendants in this case who have been released,
19 Mr. Harrelson's conduct is no great -- no worse, no more
20 indicative of a risk of future danger than any of the other,
21 I believe, seven, at least seven individuals who've been
22 released in this case.

23 The Court is obviously familiar with the different
24 types of behaviors that were argued by the government as
25 grounds to detain other individuals, such as leadership or

1 references to violence. There were several defendants who
2 were argued to be leaders without more substantiation than
3 what's been offered in Mr. Harrelson's case.

4 All of the people, I think with the exception of
5 Mr. Meggs and Ms. Watkins, who were in that stack, have been
6 released, and those were the individuals in the stack.
7 There were, at least, I believe, seven of those individuals
8 have been released.

9 Mr. Caldwell, I think, accepted a leadership role
10 on some of the Zello exchanges, and said things like, "Next
11 time, and there will be a next time, we'll have learned and
12 we will be stronger. I think there will be real violence
13 next time."

14 Mr. Cowl was communicating with Mr. Caldwell on
15 Zello, and he elaborated about the patriots who were being
16 dragged off as maggots and made similar inflammatory
17 comments.

18 And Mr. James, whose hearing Your Honor held last
19 week, was also argued to have been a leader in storming the
20 Capitol. When he arrived at the Capitol, he actually was --
21 I think was seen pushing past law enforcement officers who
22 were attempting to stop him from entering the building. He
23 also discussed operational details with others of the
24 charged and uncharged individuals in the week beforehand.

25 I believe that there's nothing that the government

1 has argued that is concrete evidence that Mr. Harrelson
2 engaged in any act that is any more an indication of future
3 dangerousness than any of these individuals.

4 As far as the guns that were found in the
5 Harrelsons' home during the search, none of them were
6 removed by the FBI, they were not considered to have
7 evidentiary value. But they have all been removed from the
8 home and will remain outside the home, if Mr. Harrelson is
9 released.

10 Mr. Harrelson is in need of medical care that he
11 is not getting at the jail. We have current blood pressure
12 readings from April the 10th through today which indicate he
13 is still -- his blood pressure is still at a high stage 1 or
14 stage 2, readings that he is -- there's no expectation that
15 the jail is going to do any better.

16 So we would argue that there are certainly
17 conditions that this Court can fashion that would assure
18 that he does not present a risk of dangerousness to any
19 individual or to the community and that it's in his interest
20 to be released.

21 THE COURT: Okay.

22 All right. Thank you, Ms. Ginsberg.

23 Mr. Nestler, I did want to ask you one question
24 and then I'm going to take a couple minutes here.

25 What's your latest information on Mr. Harrelson's

1 health status based on your communications with your
2 contacts?

3 MR. NESTLER: Yes, Your Honor.

4 When Your Honor issued the order on Monday
5 evening, I immediately sent it to the supervisory U.S.
6 Marshal in Orlando, and I also reached out to defense
7 counsel to get Mr. Harrelson's medical information for his
8 doctor. I provided that information Monday evening to
9 Orlando marshals. They provided it Tuesday morning to the
10 medical doctor at the jail. And the medical director at the
11 jail, as far as I'm aware, Your Honor, has told the marshals
12 that they are monitoring Mr. Harrelson's health and that
13 they know what they're doing.

14 I was able to get his blood pressure readings,
15 which I gave to defense counsel, who filed it with the
16 Court. The medical director at the jail indicates to the
17 marshals that they are aware of his diagnosis, they're aware
18 of his medications, they are monitoring his situation, and
19 that they are on top of the situation.

20 MS. GINSBERG: Your Honor, I assumed -- I think
21 we're essentially receiving false assurances, because
22 Mr. Harrelson's blood pressure reading today was 142 over
23 87. So that is a stage 2 reading. So whatever it is that
24 the jail believes it's doing is clearly not addressing his
25 health needs.

1 THE COURT: Okay.

2 All right, everyone. Let's take a few minutes.

3 I want to just collect my thoughts, and I'll be back with
4 everybody in just a minute or so.

5 MR. ZIMMERMAN: Your Honor, may I comment briefly?
6 Oh, I missed him.

7 THE COURT: I'm sorry. Who was that?

8 Was that you, Mr. Zimmerman?

9 MR. ZIMMERMAN: Jeff Zimmerman, counsel for
10 Mr. Harrelson.

11 THE COURT: Quickly, Mr. Zimmerman.

12 MR. ZIMMERMAN: I apologize, Judge.

13 Just to reiterate, what we're getting is
14 assurances that they're monitoring the situation, doing
15 something about it. But what we've seen in, I guess, now 18
16 or more past readings is that they have not brought his
17 blood pressure down at all; it's a dangerous stage 2.
18 They're giving him some blood pressure medications, but
19 they're not having any effect. They're not treating the
20 blood pressure.

21 And I would also very briefly, I apologize,
22 Your Honor, submit that all the evidence we have regarding
23 the dispute between Kelly Meggs and Ken Harrelson is that
24 Ken Harrelson was not happy with what happened at the
25 Capitol. The only comments he has at the end of that Signal

1 chat is that he refers to everybody else as, I'm sorry,
2 "shitbags and blue falcons," which I understand is a
3 military term for troublemakers.

4 Others, including those who have been released,
5 celebrate what happened. Mr. Harrelson never does that.
6 And his dispute with Kelly Meggs can only be interpreted
7 as -- that he is not happy. First of all, he's not a
8 leader, and that he says that Meggs was the leader and he's
9 not happy with it. And that he's not happy with what
10 happened. He's certainly not expressing displeasure with
11 the rallies. And I would suggest to the Court that that's
12 the only fair inference from the evidence that we have.

13 THE COURT: All right. Thank you, Mr. Zimmerman.

14 All right. Hang on, everybody, for a few minutes,
15 I'll be right back.

16 (Recess from 11:59 a.m. to 12:11 a.m.)

17 COURTROOM DEPUTY: Okay.

18 THE COURT: Okay.

19 All right. Do we have everybody back on?

20 And do we have Mr. Harrelson back on?

21 THE DEFENDANT: Yes, I'm here, Your Honor.

22 THE COURT: Okay.

23 All right. So let me just recap where we were at
24 the very beginning, which is that the government has met its
25 burden under 3142(f) with respect to eligibility for

1 detention, because Mr. Harrelson has been indicted on -- for
2 destruction of federal government property as a felony.
3 That is an offense under 3142(f)(1)(A). It is a listed
4 offense under Section 2332b(g)(5)(B) for which a term of
5 imprisonment of ten years or more is prescribed. And so
6 because that is met, the government has satisfied the
7 initial threshold showing it's required to make that this
8 case involves a listed offense for which a maximum term of
9 imprisonment of ten years or more is prescribed.

10 The fact of Mr. Harrelson also being indicted and
11 found probable cause for that same offense gives rise to the
12 rebuttable presumption as we've discussed under Subsection
13 (e), and the Grand Jury's finding is the only finding that I
14 need to make with respect to the rebuttable presumption
15 applying.

16 That presumption, of course, is rebuttable, and
17 Mr. Harrelson has brought forward evidence to rebut the
18 presumption, and so the government's burden remains
19 consistent with or in consideration of the rebuttable
20 presumption, to establish that there are no combination of
21 conditions that would ensure the safety of the community and
22 do so by clear and convincing evidence.

23 In making that determination, there are four
24 factors I must consider: The nature and circumstances of
25 the offense, the weight of the evidence against the

1 defendant, the history and characteristics of the defendant,
2 as well as the dangerousness that the defendant presents to
3 any person or to the community.

4 Let me start with the history and characteristics
5 of the defendant.

6 And Mr. Harrelson's history and characteristics,
7 I think, weigh against detention, although perhaps not to
8 the same extent as they have with respect to other
9 defendants. Mr. Harrelson doesn't have an extensive
10 criminal history. I believe he has one prior misdemeanor
11 assault conviction. Unlike others who had no prior criminal
12 history, Mr. Harrelson does have some.

13 He is in a stable relationship, married, has
14 children, is a stable member of his community.

15 His employment history is a little more uncertain
16 than perhaps it has been with others. There is some
17 inconsistency in the presentation between Mr. Harrelson's
18 testimony at his initial bail detention hearing that he was
19 unemployed and recent representations by a former employer.
20 I won't necessarily hold that against Mr. Harrelson, but it
21 does point out some inconsistency at least in the record in
22 terms of his past employment.

23 But also at least one act of dangerousness
24 involving firing a weapon at a neighbor's pet, that also
25 weighs against Mr. Harrelson and indicates some

1 dangerousness in his past. At a minimum, it does suggest an
2 impetuousness with firearms that are of some concern to the
3 Court. But that said, I think on balance, his history and
4 characteristics do cut against pretrial detention, although,
5 as I said, not to the same degree as has been the case for
6 other defendants who I've released.

7 Let's start with the nature and circumstances of
8 the offense. These are serious charges. I don't believe
9 that just because the lead charge or any of the charges
10 doesn't carry a particular felony classification, that this
11 is not a serious offense. Congress certainly thought it
12 was, thought it was sufficient enough to create a rebuttable
13 presumption of dangerousness, at least with respect to the
14 destruction of government property. And so the nature and
15 circumstances of the offense here certainly do, I think,
16 weigh in favor of detention.

17 But just stepping back and considering the nature
18 and circumstances of these offenses in general and what
19 happened on January the 6th, Mr. Harrelson was part of a
20 large crowd of people that, in fact, was part of a smaller
21 crowd of Oath Keepers that entered the Capitol building
22 without consent.

23 He, if not he directly, then, as part of a larger
24 group of people, forced their way into the Capitol building
25 that did result in the destruction of property. And then

1 once inside the Capitol building, certainly the Grand Jury
2 has found that his intention in there was both to disrupt
3 the counting of the Electoral College votes and that he
4 conspired with others to -- conspired with others with
5 respect to that purpose.

6 Again, that is what the Grand Jury has found based
7 on the evidence presented to it. Those charges and the
8 nature and circumstances of those charges, I do think
9 present a danger and weigh in favor of a determination of
10 dangerousness.

11 The weight of the evidence against Mr. Harrelson,
12 I think is an interesting question depending upon what
13 charge we're talking about.

14 And I've tried to be careful throughout these
15 proceedings involving these defendants in terms of weighing
16 the evidence with respect to the legal conduct of attending
17 a rally and attending a political protest on the 6th and
18 providing a security detail to people who were speaking on
19 the 6th. Nothing about that conduct was unlawful. And one
20 can be a leader in connection with that conduct but not
21 necessarily be a leader in connection with the actual
22 charged behavior, and it's the charged behavior that is the
23 focus of the inquiry here today.

24 And insofar as whether he's a leader with respect
25 to the charged behavior, I think the evidence is somewhat

1 ambiguous. There's no doubt that I think he had a
2 leadership role in the Oath Keepers and with respect to the
3 conduct at issue that day in terms of providing security.

4 But in terms of actually once he enters into the
5 Capitol building, at a minimum, it seems like the
6 government's evidence is that he was with Mr. Meggs that day
7 and that he traveled to the Capitol building on that day
8 with Mr. Meggs.

9 But insofar as whether he was providing directions
10 to others once he entered the Capitol building, that's
11 unclear. His conspiring with others, certainly, I think,
12 has been established at a minimum with Mr. Meggs. I think
13 there's some evidence of conspiracy with respect to other
14 Oath Keepers who are coming up the stairs at his
15 encouragement. And so I do think that there is some
16 evidence that favors those charges.

17 Insofar as the destruction of property, as I've
18 said in the past, I think it's an interesting government
19 theory. There's no direct evidence of destruction of
20 property by Mr. Harrelson, although he does certainly
21 contribute to a large group of people who do contribute to
22 the destruction of property, and I think that's where the
23 aiding and abetting comes from.

24 In terms of the various charges, I think the
25 strongest evidence against Mr. Meggs -- excuse me, against

1 Mr. Harrelson is on the individual charge of obstruction of
2 the government proceeding, the counting of the Electoral
3 College vote.

4 I think you can see from his conduct from the
5 moment he's on the stairs of the Capitol building and
6 encouraging others to come forward, and even before, the
7 interest is to enter the Capitol building.

8 And again, this is not somebody, unlike in
9 *Munchel*, for example, who enters the Capitol building some
10 number of minutes later; rather, Mr. Meggs -- I keep saying
11 Mr. Meggs -- Mr. Harrelson sees the opportunity is going to
12 present itself to enter the building, we can hear somebody
13 else suggest that on one of the videos that the government
14 has provided, and that Mr. Harrelson, then, quickly makes
15 his way to the front of the building -- to the front of the
16 crowd near the door.

17 The video and the photographic evidence show that
18 he's encouraging fellow Oath Keepers to join him at the top
19 of the steps. And that then he and the other Oath Keepers
20 then enter the building as a result of efforts by a larger
21 group of people to both come through that door and also
22 overcome the resistance of the at least one or two police
23 officers that we see standing at the threshold of the door.

24 Once they are inside the Capitol -- and I think,
25 again, this goes to the weight of the evidence against

1 Mr. Harrelson with respect to the individual charge of
2 obstruction -- for the first time, I would say, since
3 Ms. Watkins' hearing, we have concrete representations from
4 the government based upon video footage about what
5 Mr. Harrelson's actual movements were.

6 I asked that question repeatedly about others, and
7 the government has not been in a position to provide the
8 kind of concrete representation that it's done today; and
9 that is, Mr. Harrelson moves toward the Senate side of the
10 chamber, the Senate side of the Capitol complex, believed to
11 be with Mr. Meggs in that process, Mr. Kelly Meggs. He then
12 turns around at some point and then comes back into the
13 Rotunda and then moves toward the House side. And, again,
14 it's believed that he does so with Mr. Meggs.

15 What was in Mr. Harrelson's mind only he, I think,
16 knows. But the evidence certainly suggests that given who
17 he was with, Mr. Meggs, that it was something more than just
18 being sort of an accidental tourist, if you will, in the
19 Capitol complex, or somebody who, as the Circuit describes
20 in *Munchel*, was somebody there who was cheering on others;
21 rather, Mr. Harrelson here seems to be actively in the
22 Capitol complex looking for lawmakers.

23 And I don't think we need to look more further
24 than Mr. Meggs's chats or his communications that are
25 presented on page 19 of the government's submission, showing

1 that Mr. Meggs at least admits that he was looking for Nancy
2 Pelosi, the Speaker of the House. And the fact that
3 Mr. Harrelson is with Mr. Meggs, I think, is strong evidence
4 that Mr. Harrelson shared a similar intent.

5 He certainly did not disassociate himself with
6 Mr. Meggs. He didn't stand back from Mr. Meggs and simply
7 loiter, if you will, or hang out in the Rotunda; rather,
8 he's actively walking through the Capitol complex with
9 Mr. Meggs. And we have an admission from Mr. Meggs that he,
10 in fact, was looking for Congresswoman/Speaker of the House
11 Pelosi during those ten to 15 minutes that he is in the
12 building.

13 That, I will tell you, is some of the strongest
14 evidence of obstruction that I think I've seen in this case.
15 It certainly speaks to an intent that is greater than simply
16 entering the building and just hanging out inside the
17 Rotunda; the actual walking through the Capitol complex and
18 Mr. Meggs's communications about what his intentions were
19 and doing so, I think, is some of the strongest evidence
20 I've seen thus far about what Mr. -- this particular
21 defendant's intent was, and it was more than and greater
22 than simply being in that building and loitering around the
23 building because the opportunity presented itself, and
24 actually, I think, is the strongest evidence I've seen thus
25 far of actual destruction.

1 As I said in the past, it will ultimately be up
2 for a jury to determine whether that, in fact, was
3 Mr. Harrelson's intent. But as I've said, the evidence that
4 is presented right now by the government, I think, certainly
5 favors that inference and it provides a strong inference
6 that weighs in favor of pretrial detention. At least with
7 respect to that count, I think the evidence that the
8 government has presented, that is, the individual count of
9 obstruction as it relates to Mr. Harrelson, and arguably
10 also with respect to the conspiracy counts since he's
11 joining in these efforts with Mr. Meggs on that day, favors
12 detention.

13 I think the dangerousness inquiry here is one that
14 does favor detention and does favor detention in a way that
15 it does not and has not with respect to all others except
16 for Mr. Meggs and Ms. Watkins.

17 One, we have evidence of deletion of property --
18 excuse me, deletion of evidence. The government has
19 represented and has reflected in its memo that
20 communications on Mr. Harrelson's phone were deleted in an
21 effort to destroy evidence.

22 But if that were not enough, what we have here is
23 somebody who, in my view, does have a leadership role in the
24 Oath Keepers organization. That's reflected by the fact
25 that he's communicating directly with Person One, not just

1 in the immediate aftermath of January the 6th, but in the
2 weeks and months thereafter.

3 There are text messages following his purported
4 disavowal of the Oath Keepers, which strikes me as deceptive
5 and perhaps being left there as a marker of evidence in the
6 event that he's arrested in the future.

7 But his text messages show that he continues to
8 communicate with Person One, who's the leader of the Oath
9 Keepers, and is, in fact, sort of talking about future
10 planning of the Oath Keepers and the direction of the Oath
11 Keepers. And, in fact, in one of his messages in which he
12 is sort of lamenting Kelly Meggs's actions, he says that it
13 won't happen again and apologizing and I'm truly sorry for
14 those events, suggesting that, at a minimum, there's some
15 forward-looking thinking about his association with the Oath
16 Keepers and how he intends to act with respect to the Oath
17 Keepers.

18 And let me be clear, and I should have said this
19 at the beginning before I began going through these four
20 factors, and that is: What is the danger that he presents?
21 And the danger that Mr. Harrelson presents is that of
22 continued organization and conspiring with others to engage
23 in disruptive behavior or disruptive conduct that includes
24 violence as part of the political process and political
25 system in this country.

1 And it's not limited just to the events of January
2 the 6th. We know that there have been communications
3 involving this group thinking about engaging in conduct in
4 other state capitols.

5 The bottom line is, civil unrest is not limited to
6 specific government proceedings; it can include peaceful
7 protests and demonstrations in which groups like the Oath
8 Keepers have presented counterprotests and can create
9 circumstances in which violence can occur.

10 And what we've seen here with respect to
11 Mr. Harrelson is that he is somebody who clearly is prepared
12 to have weapons at the ready for violent conduct. And that,
13 perhaps, if anything -- perhaps more than anything, the
14 evidence here is the most troubling and most disconcerting
15 about Mr. Harrelson.

16 You know, he is somebody who, although lawfully
17 owns firearms, the government's evidence seems to be, and
18 I think it's more -- not just simply a fair inference, it's
19 a strong inference that Mr. Harrelson traveled from his home
20 with weapons and brought those weapons to the quick reaction
21 force location at the Ballston hotel.

22 The government's evidence is, based upon his cell
23 phone tracking information, that Mr. Harrelson was actually
24 in the District of Columbia after leaving the Ballston
25 Metro -- excuse me, the Ballston hotel area on January the

1 5th. He was in D.C. on the evening of the 5th through the
2 6th, and doesn't return to the Ballston area to that hotel
3 area until the 7th.

4 There are text messages about his -- which he
5 refers to as "shit," which I think is a reasonable inference
6 as to the items and property that he brought from the
7 Ballston hotel on the 5th.

8 And then he returns to the hotel on the morning of
9 the 7th. And he's seen in this photograph, which is shown
10 on the bottom of page 11, and the government has represented
11 at least appears to have at least one rifle case down the
12 hallway.

13 Look, I've had the benefit of being the judge at
14 these hearings for the last four weeks and this is the
15 strongest evidence the government has presented that there,
16 in fact, was a quick reaction force set up outside the
17 District of Columbia, the location of the quick reaction
18 force, and that members of this conspiracy actually
19 contributed weapons to this quick reaction force.

20 That is a sign and evidence, strong evidence of
21 future dangerousness. It indicates a willingness to join
22 with others, to bring weapons into the mix in the event that
23 they become necessary for reasons that are unclear.

24 Thankfully, they did not -- they were not used on January
25 the 6th, but, nevertheless, shows a degree of planning and

1 preparation and sophistication in having these quick
2 reaction forces available in the event that there is
3 violence.

4 And it's something that projects into the future.
5 It presents the prospect that there will be future public
6 demonstrations or government proceedings either in the
7 Capitol or in Statehouses where these types of
8 confrontations may occur, and certainly seems that
9 Mr. Harrelson is prepared to and has in the past --
10 certainly did on January the 6th and the days leading up to
11 it -- was prepared to bring weapons into the mix in the
12 event that actual violence broke out and that he was
13 prepared to engage in that violence or contribute weapons to
14 that kind of violent conduct.

15 And so I do think Mr. Harrelson does present a
16 danger to the community for the reasons that I've discussed.

17 The question, then, becomes whether there are any
18 combination of conditions that will ensure the safety of the
19 community. And ultimately, I just cannot that there are a
20 combination of conditions, even the strict conditions that I
21 have placed on others.

22 Let's talk about the items that were recovered in
23 Mr. Harrelson's home. Again, the weapons that he had were
24 not illegal; however, the fact that he had a go bag which
25 contained a handgun, a burner cell phone, or at least what

1 the government has described as a burner cell phone, an
2 iPad, a holster, and then three books, all of which are
3 identified in the bottom of page 18 -- excuse me, bottom of
4 page 21, footnote 18 of the government's submission.

5 The books that are shown on page 20 suggest that
6 Mr. Harrelson has the capacity and knowledge and
7 understanding essentially to go off the grid, and so I have
8 to take that into account.

9 And our ability, even if I were to, for example,
10 order him to be on home detention, Mr. Harrelson clearly
11 seems to have the ability, the knowledge, I should say, to
12 go off the grid, if he were to get rid of that GPS
13 monitoring, and he has the ability, it seems, to engage in
14 survivalist behavior that would allow him to avoid
15 monitoring by the Court.

16 I'm also concerned about Mr. Harrelson's
17 statements that he made during his initial detention hearing
18 under oath when he was asked point-blank whether he took any
19 videos while he was in the Capitol, and he unequivocally
20 responded no. Mr. Harrelson clearly took at least one video
21 inside the Capitol that lasted three minutes long. He
22 shared that video with Mr. Meggs.

23 And so while there may be defenses to -- there may
24 be explanations for why his statement was not truthful,
25 including forgetfulness, it's certainly a factor. And

1 I'm not suggesting he committed perjury, but, nevertheless,
2 I think he did provide an untrue -- or a statement that was
3 not factually accurate at his detention hearing. And
4 I think that factor also weighs against the belief that
5 there are any combination of conditions that would ensure
6 safety to the community and that it raises doubts in my mind
7 about his preparedness to follow the Court's directions and
8 the Court's instructions.

9 It's also concerning to me that his wife testified
10 that he only had airsoft-style rifles in the home, when, in
11 fact, he had an AR-15 rifle and firearms in the house. Now,
12 whether she just wasn't aware of those weapons or whether
13 she actually was being -- her answer was misleading,
14 that's -- that isn't clear to me. But, nevertheless, the
15 fact that she was not aware of her own husband's possession
16 of serious weapons like an AR-style-15 -- AR-15-style rifle
17 and a handgun in the home and told the Court that the only
18 thing that was in the home was an airsoft-style rifle causes
19 me greater concern about releasing him into that environment
20 and his ability and willingness to abide by the Court's
21 directions. So for those reasons, I will deny the defense
22 motion to release Mr. Harrelson.

23 Let me just add a couple of things; one, I did
24 consider, obviously, as I have throughout these proceedings,
25 what I've done with respect to other defendants. And

1 Ms. Ginsberg mentioned Mr. Caldwell and Mr. Cowl, for
2 example, and Mr. James. I do think Mr. Harrelson's slightly
3 different positioned than Mr. Caldwell, for example.

4 Mr. Caldwell didn't actually enter the Capitol
5 building; and I think in terms of the evidence and the
6 concerns I have about the weight of the evidence against
7 this defendant and what his intentions were that day,
8 I think they weigh in favor of detention far stronger than
9 they do for Mr. Caldwell.

10 In terms of Mr. Cowl, again, Mr. Cowl, in terms
11 of his status within the Oath Keepers, in terms of his
12 dangerousness, Mr. Cowl was certainly more of a foot
13 soldier, where I do think Mr. Harrelson -- and the evidence
14 suggests that he is higher up the chain, if you will -- the
15 fact that Mr. Harrelson is in active communication with
16 Person One in the weeks and months following the events of
17 January the 6th put him in a different position than
18 Mr. Cowl.

19 And the same thing is true for Mr. James. Again,
20 I thought Mr. James's case was a very close one. But
21 I think the evidence against Mr. Harrelson is stronger than
22 it is with respect to Mr. James; in particular, his intent
23 once he was inside the Capitol building and the evidence
24 with respect to Mr. Harrelson's danger insofar as his
25 awareness of the QRF, the quick reaction force, where that

1 quick reaction force was located, and his likely
2 contribution of weapons to the quick reaction force all make
3 him a greater danger than Mr. James. And so I think he's
4 differently situated than those three defendants that
5 Ms. Ginsberg identified.

6 Finally, in terms of his medical situation, I'm
7 sympathetic to where things stand, and we will do everything
8 we can to make sure that his health is monitored and that
9 he's taken care of, certainly once he arrives in the
10 District of Columbia.

11 But, you know, the current representations are
12 from the government that the medical staff at the Florida
13 facility is aware of his conditions, he's receiving
14 medication for it. Those folks now have his contact
15 information with his treating physician.

16 If circumstances change and his health
17 deteriorates, then certainly counsel can come back to me and
18 ask for reconsideration based upon that. But based upon the
19 present circumstances, I don't think that's a justification
20 for releasing Mr. Harrelson.

21 Okay. So those will be the Court's findings and
22 determination as part of pretrial detention.

23 With that, is there anything else we ought to
24 discuss this afternoon before we adjourn?

25 MR. NESTLER: Not from the government, Your Honor.

1 I believe the Speedy Trial Act deadlines are
2 tolled already based on our prior status hearing from last
3 week and through June 1st, so I don't believe there's any
4 further findings that the government needs to have made.

5 THE COURT: Okay.

6 Ms. Ginsberg, anything further from you?

7 MS. GINSBERG: No, not for the defendant, no,
8 Your Honor.

9 THE COURT: All right.

10 Thank you, all, very much. We'll see you all in a
11 few weeks.

12 (Proceedings concluded at 12:38 p.m.)
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C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

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

Date: April 17, 2021 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR

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