

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 21-0222 (TFH)
	.	
v.	.	
	.	
01 JULIAN ELIE KHATER,	.	Washington, D.C.
02 GEORGE PIERRE TANIOS,	.	Tuesday, May 11, 2021
	.	9:00 a.m.
Defendants.	.	
.	

TRANSCRIPT OF BOND HEARING
VIA VIDEOCONFERENCE
BEFORE THE HONORABLE THOMAS F. HOGAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	GILEAD I. LIGHT, AUSA ANTHONY F. SCARPELLI, AUSA U.S. Attorney's Office 555 Fourth Street NW Washington, DC 20530 (202) 252-7566
For Defendant Khater:	JOSEPH TACOPINA, ESQ. CHAD SEIGEL, ESQ. 275 Madison Ave Suite Fl 35 New York, NY 10016 (212) 227-8877
For Defendant Tanios:	ELIZABETH GROSS, ESQ. L. RICHARD WALKER, ESQ. Federal Public Defender Office 230 West Pike Street Suite 360 Clarksburg, WV 26301 (304) 622-3823
Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001 (202) 354-3186

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P R O C E E D I N G S

THE DEPUTY CLERK: Your Honor, this morning this is the matter of United States versus Julian Khater and Codefendant George Tanios, Criminal Action 21-222. I'll ask the parties to identify yourselves for the record.

MR. LIGHT: Good morning, Your Honor. Gilead Light and Anthony Scarpelli for the United States.

THE COURT: Thank you.

MS. GROSS: Good morning, Your Honor. Beth Gross and Richard Walker representing Mr. Tanios.

THE COURT: All right. Thank you.

MR. TACOPINA: Good morning, Your Honor. For Mr. Khater, Joseph Tacopina and Chad Seigel along with -- is Alvin there? I'm not sure. Other counsel, Alvin Thomas.

THE COURT: Thank you, Mr. Tacopina.

All right. And we have the two charged individuals, Mr. Khater, Mr. Tanios. Can you hear us, right? All right. We're ready to proceed in this matter.

To go back a bit, I think it was on April 27th we held the bond hearing after briefing and subsequently had a reply brief on Mr. Tanios' behalf where we listened to the arguments of counsel and the presentations by the government by the video evidence and the other evidence seized from the backpack of Mr. Tanios. At the conclusion of that, because of the time frames, we said we would come back as soon as possible to

1 conclude the matter and for the Court to make rulings.

2 Mr. Tacopina had, hopefully, a successful experience
3 with the doctors, and so we put that off.

4 MR. TACOPINA: I'm here. I'm here, Your Honor.

5 THE COURT: So we put it off until today. That was
6 the alternate date that we had. So we're ready to proceed at
7 this time.

8 And I just for the record indicate, I reviewed again the
9 videos as shown previously. I reviewed the pleadings of the
10 parties, the most recent filings, all the materials submitted
11 on behalf of Mr. Khater, the 18, 19 letters on his behalf; and
12 the materials for Mr. Tanios, his family situation, his work
13 history, et cetera.

14 And so I'm ready to hear any additional arguments, and
15 then I'll issue a ruling today. A bench ruling is how we'll
16 go forward. I thought that Ms. Gross had wished to conclude --
17 her time got cut a little short because I spent a lot of time
18 on Mr. Khater's issues, so let me --

19 MS. GROSS: Yes, Judge. Thank you so much. I did
20 ask if I could possibly put on one short witness for the Court
21 today, who's in the waiting room. It should be maybe 10 minutes
22 tops. I don't think it'll take longer than that.

23 THE COURT: That's fine.

24 MS. GROSS: Okay. Thank you, Judge. His name is
25 Scott Biddle.

1 MR. TACOPINA: And, Your Honor, while we're waiting,
2 if possible, if I could have just five minutes at the end based
3 on some recent submissions since our last appearance?

4 THE COURT: Sure.

5 MR. TACOPINA: I will not reargue anything
6 I've already argued. About five minutes, if that's okay.

7 THE COURT: That's fine.

8 MR. TACOPINA: Thank you, Your Honor.

9 MS. GROSS: Mr. Biddle, is that you? Mr. Biddle,
10 can you hear me? This is Beth Gross. Mr. Biddle? Mr. Biddle.

11 THE COURT: Mr. Biddle, can you hear the Court?
12 We aren't hearing you. We can hear other people, but we
13 can't hear you.

14 MS. GROSS: Judge, I'm going to -- oh.

15 THE DEPUTY CLERK: Good morning, Mr. Biddle.

16 Can you hear loud and clear, sir?

17 THE WITNESS: Yes. Thank you.

18 THE COURT: Raise your hand, please.

19 WILLIAM SCOTT BIDDLE, WITNESS FOR DEFENDANT TANIOS, SWORN

20 DIRECT EXAMINATION

21 BY MS. GROSS:

22 Q. Mr. Biddle, if you could just tell the Court your name,
23 who you are, and where you work.

24 A. My name is William Scott Biddle. I work at ATR Performance
25 in Morgantown, West Virginia, and I am the manager/car care.

1 Q. Okay. And what is ATR? What kind of store is that?

2 A. It is a firearms and accessory store.

3 Q. Okay. And how long have you worked there?

4 A. Right around two years now.

5 Q. Okay. I'm just going to kind of quickly get to the point,
6 Mr. Biddle. Can you describe -- do you know Mr. Tanios?

7 A. I do.

8 Q. How do you know him?

9 A. He comes into the shop, has bought a few items from me
10 in the past. He also helped out with a cook that I did for
11 the homeless over Christmastime, donating some things.

12 Q. Okay. So it's fair to say you've known Mr. Tanios for a
13 period of time prior to January of this year?

14 A. Correct. Yes.

15 Q. And when I'm talking about January of this year, Mr. Tanios
16 came into your store at ATR Morgantown. Is that right?

17 A. That is correct.

18 Q. And can you just describe the events that day, when he
19 came into the store, the entire situation that day? Just
20 describe that for the Court.

21 A. Sure. So he came in. It was getting close to closing
22 time, I believe. He came in, and he chatted with me for a
23 second and then very quickly got a phone call, chatted with the
24 person on the phone for a second, let me know that he was going
25 to go down to the rally in D.C., the Trump rally, and he was

1 concerned about being protected while he was there.

2 So he asked me if he could take his firearm with him.
3 I told him that he could not have firearms in D.C. I happened
4 to have a -- like a little pepper-ball shooter sitting beside
5 the register. He asked if he could take that item with him. I
6 told him that he couldn't have anything that fired a projectile,
7 which those did, in D.C.

8 And he asked if there was anything that he could take, and
9 I said aerosols are okay. At that point he kind of turned and
10 looked -- we have an end cap that has some mace and some other
11 stuff like that on there, and he went over, said, so this stuff
12 I can have in D.C.? And I said, yes, you can have that stuff in
13 D.C. He picked out a few items; he come over; I rang him up.
14 I think maybe he got another phone call before he left; I'm not
15 a hundred percent sure. I rang him up, we said our goodbyes,
16 and he left.

17 Q. Okay. So there was nothing alarming to you about that
18 interaction in the store?

19 A. Not at all. He was concerned about his safety, about
20 the car being maybe stopped in traffic, those kind of things,
21 but there was nothing that led me to believe that the events
22 that transpired would have transpired.

23 Q. Sure. And if something was alarming about a purchase at
24 the store, what would you to?

25 A. I would definitely contact -- our contact would be the ATF.

1 We work closely with them in several different situations.

2 I actually spoke with them yesterday about a situation.

3 So, yeah, we'd contact the ATF, and then I would contact
4 my employer and let them know that I did such.

5 Q. Okay. And just to follow up on the phone calls, Mr. Tanios
6 was not on the phone the entire time he was in the store?

7 A. He was not. He was not. He was off and on.

8 Q. Okay. And that's about it, actually. Thank you so much,
9 Mr. Biddle. Appreciate your testimony.

10 THE COURT: The government can ask questions if they
11 wish.

12 MR. LIGHT: Very briefly.

13 CROSS-EXAMINATION

14 BY MR. LIGHT:

15 Q. Good morning, Mr. Biddle.

16 A. Good morning, sir.

17 Q. You didn't travel to Washington, D.C., with Mr. Tanios.
18 Is that correct?

19 A. No, sir. I did not.

20 Q. And you didn't attend the rally in Washington, D.C.
21 Is that correct?

22 A. No, sir. I did not.

23 Q. Mr. Tanios purchased not one but two cans of bear spray
24 sold by -- or manufactured by Frontiersman. Is that right?

25 A. I believe that's the manufacturer. He did purchase two

1 cans of bear spray.

2 Q. And that's a 7.9 ounce can of spray. Is that correct?

3 A. I don't know the weight or ounces.

4 Q. He also purchased not one but two canisters of mace,
5 or SABRE Red pepper gel, that was attached to a key ring.
6 Is that correct?

7 A. Correct.

8 Q. So four canisters in all. Is that correct?

9 A. That is correct, sir.

10 MR. LIGHT: Court's brief indulgence.

11 That's all. Thank you, Your Honor.

12 Thank you, sir.

13 THE COURT: Thank you. If there's nothing else,
14 sir, you can be excused. Thank you for appearing.

15 THE WITNESS: Thank you.

16 (Witness exits call.)

17 THE COURT: All right. Ms. Gross?

18 MS. GROSS: Thank you, Judge. I don't have any
19 further witnesses for the Court. It just depends on how the
20 Court would like to continue. If you want to do arguments,
21 I'm happy to start with that. Just let me know if you want
22 me to go and when you want me to go.

23 THE COURT: I think it's time to go.

24 MS. GROSS: Okay. I'm ready, Judge.

25 THE COURT: I've reviewed everything again, as I said,

1 and all the filings and pleadings. Go ahead and let me see
2 what you want me to consider.

3 MS. GROSS: Thank you, Judge.

4 As the Court noted, we did file a reply at the end of
5 the week that the Court has reviewed, but just to reiterate
6 some of the arguments that have been placed in the pleadings,
7 Mr. Tanios -- we've had many witnesses for this Court and for
8 our magistrate court to review that shows the Court that
9 Mr. Tanios is an ordinary gentleman that lives in Morgantown,
10 West Virginia, in a modest townhome with his fiancée and his
11 three children, who are four and two eight-month-old twins.

12 He graduated high school in New Jersey. He attended
13 college where he was enrolled until 2001. He has never been
14 convicted of a felony offense. Mr. Tanios has never been
15 charged with a crime of violence. And based on our
16 investigation, he's never had a reputation for violence, Judge.

17 Witnesses had advised he's a strong worker; he has a strong
18 work ethic. He's a long-standing person in the community in
19 Morgantown. He owns a restaurant and has owned many restaurants
20 over the last 15 years that people are very familiar with.
21 So his ties to the community here are so strong. He has a
22 supportive role as a father to his children.

23 And, Judge, his plans -- we proffer to the Court that
24 his only plans were to attend this rally. The only plan that
25 there's evidence of is to go and to attend the rally with his

1 friend. And he wanted to go with another friend that we had for
2 the Court last time we were here, Sean, tell the Court that he
3 was planning on going, too, with Mr. Khater and Mr. Tanios. It
4 didn't work out for him to attend, but there was no plan. The
5 only plan was to go, and Mr. Khater and Mr. Tanios did that.

6 They went to a rally. The intent wasn't to go to a riot.
7 The intent was to go to a rally to support their president,
8 and that happened last minute. They ended up going together,
9 ended up being those two.

10 And, yes, as we heard from Mr. Biddle, Mr. Tanios did go
11 to ATR in Morgantown, West Virginia, and purchased four sprays.
12 He did that. We don't say that he didn't. But the intent for
13 that, as Mr. Biddle told the Court today and we proffer that
14 Mr. Tanios would tell the Court, is that the purpose of
15 purchasing those was for self-protection, not against police
16 and not against bears, but to protect himself from violent
17 things that were happening at other Trump rallies.

18 And there's proof of that. If the Court were to just
19 Google "Trump rally turns violent," there are many rallies
20 that ended up turning violent against the Trump supporters,
21 and that's well known. So it's not, you know, some far-off or
22 outlandish fear that Mr. Tanios had. It was legitimate. It was
23 a legitimate fear. He purchased those sprays legitimately and
24 took them to Washington, D.C., for a legitimate purpose, to
25 protect himself, and not to spray police or to harm police or

1 to harm anyone, but to keep them until he needed them for his
2 own self-protection.

3 And we proffer to the Court that when the Court listened
4 to the video that we keep calling the "Convo Couch" video that
5 Mr. Light referred to repeatedly last time we were here, I hope
6 the Court heard some other language from Mr. Tanios.

7 There were other words being said prior to, you know,
8 basically, "we'll use it later." And I proffer to the Court
9 that "use it later" was for protection for himself: We gotta
10 get to the car later, man. We gotta make it home tonight. Not
11 we're going to use it later against the cops.

12 THE COURT: I don't know what that was for, but I do
13 know we spent an awful lot of time listening to the tapes again,
14 in every way possible you can listen to it, and I cannot hear
15 the language, nah, no, etc., as you have proffered, despite the
16 best attempts to do so.

17 If you had an expert that has gone through it and can
18 isolate that and we can hear it, maybe if that's available at
19 a later date, but right now I can't make a finding that he said
20 don't, in essence, take the bear spray out of the backpack or
21 the mace out of the backpack.

22 MS. GROSS: Okay. Well, I'm sorry that the Court
23 could not -- I mean, it's not clear. I will agree. It's
24 definitely not clear. I can hear a lot of words going on in
25 the background. But I hear, nah, don't do it, is what I've

1 heard. And I've listened to it probably a thousand times,
2 Judge, trying to get of course, you know, the whole context.
3 But I will proffer to the Court that that is what my staff has
4 heard every time we listened to the tapes after we put on noise-
5 canceling headphones. There's more language there than meets
6 the eye.

7 And even if the Court can't hear that, I think the context
8 of the video and the conversation of -- even the conversation
9 the Court can hear, the later aspect of it, it fits with
10 Mr. Biddle's testimony that Mr. Tanios specifically came into
11 the store asking what he could take for self-protection at
12 this rally. It fits.

13 The "nah," the later comment, fits with that testimony
14 of Mr. Biddle, that Mr. Tanios had no intent to use it for any
15 purpose other than to get himself home, to protect himself from
16 anything that might come his way between him and getting home
17 that day. And he never had to use it. He never did use it,
18 Judge. He never knew it was used.

19 That's the other very important aspect for the Court.
20 He did not know that day that Mr. Khater went up to that bike
21 rack and sprayed anybody. How would he know that? He was
22 30 feet back away. He had no way to see that or have any
23 knowledge of that.

24 THE COURT: Weren't they communicating on telephones
25 during this period?

1 MS. GROSS: Judge, they had one call I think that
2 never connected. I don't know if it was a few seconds long or
3 not. I'm sure Mr. Light has the exact seconds that they had
4 together. But my understanding was that we don't know if that
5 call even connected with each other.

6 So I don't believe that that's in evidence at all that
7 Mr. Khater and Mr. Tanios were communicating at all through
8 this event other than when he came back to find him back in
9 the crowd. And why else would he come back to find him in
10 the crowd if they were communicating the whole time by phone?
11 Why would he try to find him in the crowd?

12 And, Judge, I just want to say that it's also, you know,
13 in testimony that, you know, Mr. Tanios didn't do anything at
14 the rally other than attend. He did not personally cause harm
15 to any individual or property. He traveled there, you know,
16 to just attend. And the only coordination was him telling
17 Mr. Khater, you know, "not now," basically, with the bear
18 spray and that we're not going to use that.

19 That was a denial, Judge. That was a denial of the use of
20 the bear spray. The bear spray was not used that day. That's
21 what the evidence shows. The evidence shows the bear spray was
22 never used that day. The bear spray was found intact at
23 Mr. Tanios's home, and it was a denial of the use of the bear
24 spray. That conversation was actually an argument.

25 THE COURT: It was in his backpack that police

1 recovered in his home --

2 MS. GROSS: Yes.

3 THE COURT: -- that had the canisters in it. Right?

4 MS. GROSS: Yes.

5 THE COURT: He also had a pistol in it.

6 MS. GROSS: He had -- I don't believe it had a pistol
7 in the backpack, Judge.

8 THE COURT: I thought that's in the return of the
9 search warrant.

10 MS. GROSS: There was a pistol in his home that he
11 gave the police; but it was not in the backpack, and it was not
12 there that day. No.

13 THE COURT: All right. What about the allegations
14 he aided and abetted by allowing Mr. Khater to take that bear
15 spray out, but apparently got clocked at some point you don't
16 see anything on the video, Mr. Khater ends up with a mace can
17 that he uses to spray the police with?

18 MS. GROSS: You know, our argument on aiding and
19 abetting is that Mr. Tanios didn't aid and abet Mr. Khater in
20 doing anything. That conversation, as I was trying to tell the
21 Court, was a denial. It was a denial of the use of the spray.
22 That's what the conversation was. It was an argument. It was
23 not participatory. It was an argument between the two: No,
24 not now. No. We're not doing that.

25 THE COURT: Well, I thought he said more than that

1 according to the tape I listened to.

2 MS. GROSS: Later. And that aspect --

3 THE COURT: "It's too early."

4 MS. GROSS: "It's too early."

5 THE COURT: Yes.

6 MS. GROSS: And that aspect of the conversation, as
7 I proffered to the Court, goes along with Mr. Biddle's testimony
8 today that the "later" was to use it to protect himself.

9 And, Judge, I just want to go over, you know, this Court
10 has to -- this Court has to find that Mr. Tanios is a danger
11 based on these guideposts, and I'm not seeing how that's possible.

12 He's not a danger based on these guideposts in *Chrestman*.
13 I know that we went over that, kind of ad nauseam, at the last
14 hearing, but I didn't get to kind of weigh in on any of that;
15 and I would, you know, like to briefly. And it's also not --
16 it's not -- the finding of detention is also not consistent
17 with *Munchel*.

18 *Munchel* requires a finding of articulated, identifiable
19 threats. Here there is none. There's been none made. The
20 government has not articulated what they fear the defendant
21 will do. What will he do? And even if they did identify
22 one, it would have to be presented to this Court by clear and
23 convincing evidence that an actual threat actually existed,
24 and we haven't seen that.

25 THE COURT: Wait a second. Let's step back a second.

1 He did buy, for whatever reason you proffered, matters or
2 materials that could injure people -- and your position is
3 to protect himself -- but could injure people if he felt
4 threatened. He brought those to the rally, and he brought
5 those to Capitol Hill.

6 MS. GROSS: Yes.

7 THE COURT: There occurred on video a discussion that
8 can be interpreted that he allowed Mr. Khater to take out the
9 bear spray at some point -- you can't see take out the mace --
10 saying "not yet; it's too early." It could be interpreted
11 different ways. Looking at it from that point of view, why
12 does that not indicate his culpability in what Mr. Khater did
13 with the spray?

14 MS. GROSS: By allowing him to take it out? Judge,
15 my argument is he did not allow him to take it out. It's a
16 backpack on his body. What is he going to do? He takes it out.
17 He doesn't allow it to happen. They have a conversation that we
18 can't hear fully; and then, according to Mr. Tanios, he doesn't
19 have any -- it went back in the backpack. The bear spray went
20 back in the backpack. He thinks it's over.

21 How does Mr. Tanios control Mr. Khater's actions when
22 Mr. Khater's 30 feet ahead of him up at the bike gate? He
23 cannot control him, he did not control him, and had no ability
24 to control him. He wasn't a part of it.

25 THE COURT: What's the difference in that and a bank

1 robber who has a driver waiting in the car?

2 MS. GROSS: There's no plan in this case, Judge.
3 That's a plan.

4 THE COURT: He may not be aware of everything that
5 the proposed bank robber's going to do. It's like a felony
6 murder kind of situation.

7 All right. Let me move ahead with the government's
8 response to Ms. Gross's presentation concerning her evidence
9 that she has produced that he was taking this for self-
10 protection only, that the words can be read to indicate he was
11 not supporting Mr. Khater taking anything from his backpack and
12 using it against the police and that he was away -- far enough
13 away that he didn't know what Mr. Khater was doing.

14 MR. LIGHT: Yes, Your Honor. Thank you. Before I
15 get to that, let me just as a matter of housekeeping, to make
16 sure I don't forget at the end of the hearing, ensure that we
17 moved all the exhibits presented to the Court into evidence, and
18 that's Exhibits 1 through 17, just for a housekeeping matter.

19 THE COURT: All right. Thank you. I'll accept those
20 in evidence for the bond hearing only.

21 MR. LIGHT: Thank you. Now, with regard to the
22 argument about aiding and abetting, about what the words on
23 the video mean in regard to the aiding and abetting charge here,
24 if there was an argument, it was only about the timing.

25 Mr. Tanios cannot escape his words: "Not yet, not yet."

1 It's early." There's no other reasonable interpretation of what
2 that means. With all due respect to Ms. Gross's argument about
3 wanting to use it later in the case of some sort of an attack,
4 this has to be viewed in the context of what they just saw and
5 what happens minutes later.

6 What they just saw, as we reviewed on the video last time
7 we were before the Court, is that both Mr. Khater and Mr. Tanios
8 were witnessing the onset of violence. They were witnessing law
9 enforcement officers engaging with rioters in a violent fashion,
10 throwing things back and forth, tussling. It was happening
11 right in front of them, and you see that right on the video.

12 Now, the words that Mr. Tanios uses undercut any other
13 interpretation that he tries to give to the other words caught
14 on camera. Mr. Tanios does not want Mr. Khater to be a lone
15 wolf reacting in the heat of the moment. Remember the words
16 we hear: "He just f'ing sprayed me."

17 The idea that he's doing anything to halt the violence
18 or distance himself from it or to talk Mr. Khater out of it is
19 somewhat of a fantasy here because he's not trying to stop the
20 violence; he's filming it. And what I'd like to do, if Your
21 Honor would allow me, is bring up one clip from Exhibit 4.

22 THE COURT: If it's already in evidence, yes.

23 MR. LIGHT: So allow me a moment while I share my
24 screen. Court's indulgence.

25 Okay. Can everyone see my shared screen?

1 THE COURT: Yes.

2 MR. LIGHT: I apologize for the delay there. So
3 we've cued it up on Government's Exhibit 4 at the 2:21:59
4 timestamp. This is approximately a minute before the assault
5 on this line of officers that I'm highlighting over here to
6 the right on the lower west terrace begins. As you recall,
7 Mr. Tanios is delineated by this orange arrow here, and
8 Mr. Khater is delineated by this red arrow here.

9 Now I can -- rather than watch the entire video, I can
10 proffer to the Court for the evidence that is before it that
11 for the previous 10 minutes, Mr. Tanios and Mr. Khater are
12 standing in this area right here talking to each other. They're
13 talking. This is when the interchange that's caught on Exhibit
14 5, the Convo Couch, occurs.

15 They're talking with people standing around them.
16 They're engaged in conversation, and Mr. Tanios is sitting
17 there. We believe he's holding a phone in his hand from the
18 earlier video, but we don't see anything in his hand until --
19 and I'm going to play this for about 30 seconds until this
20 moment in the clip.

21 So I'm pressing play on Government's Exhibit 4.

22 Mr. Khater is moving closer to the front line, closer to
23 the officers. And keep an eye on Mr. Tanios here. There at
24 the 2:22:20 mark, you can see Mr. Tanios -- and hopefully the
25 Court can see it -- has just raised his hand. For the first

1 time in approximately 10 minutes, Mr. Tanios starts filming.
2 This is 40 seconds before the assault on the line begins.
3 And his hand stays up, filming the entire time, until the crowd
4 starts moving back because of the spray that is being pushed on
5 the people that are assaulting the line.

6 So the only point to make here, and I'll stop that share
7 for now, is that Mr. Tanios did not do anything after witnessing
8 the violence other than continue to observe and continue to
9 film. He raises his hand to film this because he knows what's
10 coming. Everyone knows what's coming on that line because it's
11 already happening.

12 The mob is trying to break through this line. They're
13 doing this -- hundreds and hundreds of them are doing this all
14 around the Capitol, but specifically in this area of the lower
15 west terrace, in concerted and synchronized action. That is as
16 much a part of this as the aiding and abetting.

17 There's a conspiracy charge here in terms of the conspiracy
18 to injure federal officers. And one can join a conspiracy in
19 a very short amount of time, and that's what's happening here.
20 He provided that bear spray. He told him to wait: "Not yet, not
21 yet. It's early." And then, as all the video evidence shows,
22 they waited together until the right moment, and that's when
23 Mr. Khater launched his attack.

24 And, Your Honor, after all this was done, in other
25 documents that are before the Court -- I direct the Court to

1 the statement of facts in support of the criminal complaint,
2 specifically page 7, figure 6 -- Mr. Tanios posts a picture
3 on social media of himself posing at the Capitol after the
4 violence has subsided and the breach has been under control.
5 I can show that to the Court right now, but that is in evidence.

6 So Mr. Tanios makes arguments about the lack of his own
7 direct violence. That's obvious. He doesn't actually spray
8 anybody with his own hands. He uses someone else's hands
9 because he's the supplier of the weapon in this case. He's
10 coaching Mr. Khater on the timing so that he's not some lone
11 wolf attacking the line.

12 And by this aiding and abetting on the assault, Mr. Tanios
13 is liable for the actions of the principal and can be held
14 responsible in the same fashion as the principal. Your Honor,
15 that's elementary criminal law, and the doctrine also applies to
16 this Court's determination of dangerousness.

17 By enabling these actions, he's just as dangerous as
18 the principal. And it shows the same lack of respect for law
19 enforcement, the lack of respect for the authority and the rule
20 of law, and establishes that he presents a clear danger to the
21 community.

22 THE COURT: All right. Thank you.

23 Let's turn to Mr. Khater at this time, if we can.

24 Mr. Tacopina.

25 MR. TACOPINA: Yes, Your Honor. Just very briefly,

1 I just wanted to -- listening to everything in the last 35 to
2 40 minutes or so, I just want remind everyone we're at a bail
3 hearing right now. We're not at the trial stage, and certainly
4 this is not to determine guilt or innocence.

5 There are a few things I didn't -- I'm not going to go
6 through everything I said last time, Your Honor. You heard
7 my argument at length regarding *Munchel* and how I think we
8 distinguish *Chrestman* and some of the factors that come into
9 play here including the --

10 THE COURT: There is a new case that's just come down.
11 Counsel may not have seen it yet. May 5th. So it's a recent.
12 *United States v. Worrell*. It was unfortunately an unpublished
13 opinion by the D.C. Circuit. It is case 21-3020, D.C. Circuit,
14 May 5, per curiam. Judge Wilkins was on the panel and was the
15 author. He's the one that wrote *Munchel*.

16 That case has affirmed Chief Judge Howell where the
17 defendant was found to fit in the category of offense carved out
18 by *Munchel* to pose a danger to the community primarily because
19 of the efforts he took to assault police officers with a pepper
20 gel spray and discharged the pepper gel spray at a thin line of
21 police officers at a location where the mob was ultimately able
22 to break into the Capitol. That's at pages 41 to 42.

23 So it looks more like a categorical type of approach, as
24 opposed to the approach that Judge Bates had taken in *Klein*.
25 In any event, let me get to your argument on Mr. Khater's

1 situation. As I've said, he has a lot of support from his
2 family and the bond support you've indicated for the monetary
3 bond.

4 MR. TACOPINA: And we're, again, in agreement to a
5 house-arrest, home-detention situation, Your Honor, which makes
6 this really -- it should make it a relatively elementary
7 decision for the Court. But with full respect, let me just go
8 through my points. And we haven't seen that case. Mr. Siegel,
9 my partner, I see is on the computer taking a look at it right
10 now, and I'll ask him to jump in if there's anything that, Chad,
11 that you think --

12 THE COURT: It just came out, so it's unpublished.

13 MR. TACOPINA: Yeah. The one thing I was remiss at,
14 I didn't mention last time, again because we were on the clock a
15 little bit and we were trying to get everyone in and Ms. Gross
16 needed some time as well, was that Mr. Khater is in this
17 predicament where he's in lockdown 23 hours a day.

18 It's incredibly difficult for him to communicate with
19 anyone, including counsel. We've not been able to speak to him.
20 You know, the conditions are horrible. There was actually --
21 in our brief on page 19, our initial submission, there was --
22 our memorandum in support of his pretrial release, we cited an
23 article from WaPo, from *The Washington Post*, where it talked
24 about -- the headline of the article was "End of Coronavirus
25 Lockdown in D.C. Jail."

1 And it talked about these incredibly draconian conditions
2 in the D.C. jail where it's been on lockdown, you know, 23 hours
3 a day. Inmates are in their cells for 23 hours a day. They're
4 not permitted to see family or friends. Contacts with attorneys
5 are very sparse. I could tell you we've not been able to reach
6 him since the last hearing. That's how difficult this has been.
7 We tried to get him before today's hearing in the last week and
8 couldn't do it.

9 You know, I mean, there's an article that talks about the
10 conditions there that have given rise to violence, to mental
11 health problems, and -- you know, there's a whole host of
12 issues, and there was an article again that we cited in our
13 papers. But I don't think any pretrial detention, let alone
14 under these onerous conditions for however long the pendency
15 of this case may last, is necessary to reasonably assure the
16 safety of the community and Mr. Khater's return to court.

17 You know, again, Ms. Gross argues the point regarding
18 Mr. Tanios's statement about buying the chemical spray for his
19 own defense, presented a witness that sort of supported that
20 theory. We obviously adopt that. There was a conversation that
21 we had with the government in the last hearing about this plume
22 of smoke on Government Exhibit 3 in the video at 2:11:05. That
23 was tear gas deployed by the police.

24 The government, at that last hearing, argued that it
25 was deployed by the crowd. In fact, that was deployed by the

1 police, that plume of smoke that we see at 2:11. And it's at
2 that point where Khater was subject to what he said out loud,
3 which is they just sprayed me, or they just f'ing sprayed me.
4 That's a truthful assertion made sort of contemporaneous at the
5 time when he had no reason to believe his statement was being
6 recorded or would ever be played in a courtroom setting later
7 down the road.

8 So, again, he clearly sounds upset when he's saying it.
9 There's the smoke. You see it. It supports the alleged conduct
10 being a reaction and not a coordinated conduct, and that's what
11 this was. Again, we saw the big spray gun where the mace was --

12 THE COURT: Wasn't there at least nine minutes between
13 the point that he obtained the spray and he then used it?

14 MR. TACOPINA: It was after he was sprayed, Your
15 Honor, that he used it. There was -- twice he was sprayed,
16 don't forget. There was that plume of smoke, and then we showed
17 the video where the officer in the direction where Mr. Khater is
18 used that soaker gun, or whatever they called it, to spray this
19 large amount of chemical spray into the crowd, I mean, just
20 haphazardly into the crowd.

21 The bottom line is he never coordinated an attack.
22 He never accessed the Capitol. He never intended to access
23 the Capitol. He never used the bear spray. He used a spray
24 that was not -- again, we talked about this -- the fact that
25 it was in *Munchel*, which at least up until 10 minutes ago was

1 the case we were sort of embracing, and *Chrestman*. And I think
2 they support release.

3 He doesn't pose a threat of danger in the future, which is
4 the relevant consideration. There's no real evidence of prior
5 planning. An unrecorded 39-second call, you know, two days
6 before, three days before, and a 21-second call during it with
7 no substance to that call at all, and the surrounding evidence
8 show that there was no plan executed, Your Honor. It was not a
9 plan. It was a reaction.

10 And, you know, again, there was no dangerous weapon
11 carried. This was mace. It was not bear spray. It was not
12 some illegal weapon. And, again, he didn't coordinate with
13 other protesters. I think that was said already; I don't want
14 to be repetitive. But he was not part of a violent group. He
15 was not part of the Proud Boys. He didn't breach the Capitol.
16 He didn't do any of the things that one would expect that this
17 was a coordinated, planned attack.

18 He didn't play a leadership role at all on the events of
19 January 6th. There's no question about that. The government's
20 not arguing that. Again, all of these arguments we made, he
21 just does not pose a risk of future danger sufficient enough
22 to warrant his remand during this case.

23 The guidelines in this case, Your Honor, are such that he
24 has zero incentive to flee. So, I mean, there's so many reasons
25 -- plus we are submitting what I think is an enormous bail

1 package, well in excess of what we need to present, but we want
2 to be sure. We have 16 people who are putting their financial
3 lives on the line if the Court thinks it's necessary. We're
4 guaranteeing a \$15 million bond secured by five properties.
5 You know, he's willing to submit to house arrest, the bracelet.
6 There's zero risk of flight here and zero danger to the
7 community at this point.

8 The last that I'll point out, and I said it last time and
9 -- I mean, Your Honor just mentioned a case, and I don't know if
10 Mr. Seigel is looking it up to read it or distinguish it at all
11 at this point, but in our brief starting at page -- I think it's
12 20 -- I'm not going to read them all again; there are a slew of
13 cases in this district where people who are charged with the
14 exact same crimes, except much more violent crimes, like hitting
15 an officer with a wooden plank, literally with a wooden plank,
16 were released on bail.

17 I listed them all. I'm not going to repeat them. It's
18 the things that I said last time. But there are acts here and
19 actors here who have done things way more violent than a
20 defensive spray of something that's legal in this instance and
21 were released on unsecured bond, let alone a bond worth 15 million
22 and house arrest and, you know, a dozen and a half signatories
23 and everything else.

24 So I just think, Your Honor, we presented a bail package
25 that's so overwhelming that I think the only thing that is

1 appropriate here would be some sort of conditions of bail and
2 not pretrial detention.

3 Can I ask just, Your Honor, Mr. Seigel, I don't know --
4 Chad, have you been able to take a look at that case?

5 MR. SEIGEL: I have, and I actually just sent you
6 a message on it.

7 Your Honor, it appears that in the *Worrell* case, the
8 defendant was, and I'm quoting here, "an unapologetic member
9 of the Proud Boys gang who actually assembled with a larger
10 group of Proud Boys members that day."

11 So, in that instance, there was clear and convincing
12 evidence of a coordinated attack, in contrast to what we have
13 here. The evidence here is by no means clear and convincing,
14 which is what the standard is, but I'll also add that in
15 contrast to Mr. Khater here, the defendant in the *Worrell* case
16 had a number of prior convictions. Mr. Khater clearly has an
17 unblemished history.

18 So all that factors in under the *Chrestman* factors in
19 favor of release, particularly under onerous conditions that
20 Mr. Tacopina outlines, which would be home detention. There's
21 no risk of any future danger and certainly not one that couldn't
22 be appropriately mitigated by the substantial bail package in
23 place.

24 MR. TACOPINA: So I think, Your Honor, we've
25 distinguished *Worrell* pretty substantially just now in about

1 a minute and a half.

2 THE COURT: I appreciate that. Thank you.

3 All right. Mr. Light?

4 MR. LIGHT: Yes, Your Honor. And I'll just briefly
5 make a couple of points. With regard -- I would point the
6 Court towards the *Fairlamb* decision which I think you referenced
7 for us at the last hearing, but Judge Lamberth wrote in that
8 opinion, which is at 2021 WL 1614821, and this is at page 5:

9 "If any crime establishes danger to the community and a
10 disregard for the rule of law, assaulting a riot-gear-clad
11 police officer does."

12 And, Your Honor, in this case this is even more dangerous
13 to a certain degree because these officers, these three officers
14 who are the victims of this crime, had no such protections.
15 They had no riot helmets. They had no protective eyewear.
16 Two of the three had some bicycle helmets on. They had no face
17 shields, protective vests, no heavy jackets. They were exposed
18 and defenseless when Mr. Khater sprayed them all directly in
19 the eyes. This establishes dangerousness on its own.

20 *Fairlamb* also cites to *Munchel*. And I'm not going to
21 rehash the *Chrestman* factors, we've gone over them, but the
22 analysis under *Chrestman* with regard to that dangerousness and
23 the disrespect for authority and the attack on law enforcement
24 officers, it overcomes the lack of a criminal history really
25 for both defendants here. And that is how the Court should be

1 evaluating the dangerousness of these two individuals. I just
2 take issue with one point that Mr. Tacopina stated earlier.

3 First of all, this is not a defensive spraying. You can
4 see on the video that Mr. Khater sprays one, then two, then
5 three officers. And after those three officers, he continues
6 spraying on for, you know, 10 to 15, maybe 20 seconds, until
7 Lieutenant Bagshaw sees him continuing to spray, well after
8 the assaults that we've specifically charged here, against those
9 three officers, and only then does he run backwards and gets
10 sprayed by Lieutenant Bagshaw with what we refer to as that
11 Super Soaker sprayer. So this is not a defensive action. This
12 is not a heat of passion. He had, as Your Honor noted, nine
13 minutes to cool down from what had happened before.

14 And the suggestion, secondly and finally, that Mr. Khater
15 was sprayed by Lieutenant Bagshaw or other police spray in the
16 moments before he attacked these officers is not borne out by
17 the video. If you look closely at the sequence starting at
18 2:23:00 on that video, Mr. Khater shows no reaction whatsoever
19 in the seconds before he is sprayed.

20 You don't see him flinching. You don't see a reaction.
21 You don't see any emotion. He's staring straight ahead with his
22 hand up in the air. He's not standing there peacefully and then
23 gets hit and then springs into action. His hand is already up
24 and it stays up. So the idea that he gets hit first is kind of
25 wishful thinking, because the video speaks for itself. It

1 shows, Your Honor, all you need to know about this crime and
2 supports detention for both defendants in this case.

3 And I can address anything else Your Honor would like me
4 to at this point, but at this point the government will rest on
5 its submission.

6 THE COURT: All right. Thank you.

7 All right. The Court has before it the applications for
8 the bond and has heard substantial evidence over the past two
9 hearings, the first one and this one, and has reviewed, as it
10 said earlier, all the records in the case that have been
11 presented to it.

12 Mr. Khater requests release conditions including a
13 \$15 million bond -- it's actually a \$1.5 million bond secured
14 by him to get the \$15 million -- home detention with electronic
15 monitoring conditions, and surrendering his passports.

16 He indicates he has no prior record and has over, as I
17 said, 19 letters apparently, 18 or 19, as I recall, letters
18 from family members indicating his reputation for nonviolence,
19 including most all the letters said he would never step on a
20 bug or squash a bug or hurt a fly.

21 Mr. Tanios requests release to his home in Morgantown,
22 West Virginia, under a combination of standard and additional
23 special conditions including home detention, electronic
24 monitoring, 24-hour video surveillance. He has a business
25 he needs to run. He has family responsibility, children to

1 support, all of which could be affected by his continued
2 incarceration.

3 The Court really has before it, as the other judges in
4 our court, to face a unique situation in these cases. We have
5 approximately 300 complaints, warrants, or informations and
6 indictments at this point, and we expect to get another hundred
7 or more. The judges have struggled with the bond requirements
8 because of the information that has been produced in court by
9 the government.

10 And I agree with Mr. Tacopina that not all has been
11 consistent in the government's positions. They have agreed to
12 have some released who could be considered violent offenders,
13 did not oppose their release. That's the government's rationale
14 for whatever it is, and I think each case has to stand on its
15 own.

16 It's an unusual situation that there have been two Court
17 of Appeals opinions on bond, which is very rare, out of this
18 group already, and I suspect there will be more. The Chief
19 Judge of our court, who has had the most activity in the bond
20 reviews because of her position, has written extensively, was
21 reversed in *Munchel* and has continued and now in the *Worrell*
22 case.

23 Other judges have issued extensive, long written opinions
24 discussing the issues, and it's hard to find consistency except
25 perhaps where there is violence concerned against the police

1 officers where the government has moved for detention.

2 There is some pattern of activity you can see from the
3 *Munchel* opinion on violence in a different category than
4 others. I have considered some individuals. I've released
5 most individuals, even one that was in the Capitol with a weapon
6 that he never unsheathed or used. He committed no violence.

7 So we have to consider what we've got before us here, and
8 I'm going to make a record so the parties can consider what
9 I've looked at as well as for either side to review as they
10 take necessary and further steps. I have worked out a detailed
11 timeline again, as we've been discussing, because I think the
12 timeline is important in the case. And I'll first just review
13 -- it's a factual determination by the Court. It's based upon
14 facts as well as the law.

15 We have a timeline that the defendants first appear around
16 2:09 p.m. on videos that I've been shown. And the police spray
17 the crowd. Whether this is the first smoke that appears is back
18 behind these individuals, the government and defense have a
19 different interpretation of what the smoke is, but in any event,
20 on 2:11:15, we're going to 10ths of a second on this, police
21 spray the crowd with a Super Soaker and again at 2:23:05, and
22 again at 2:23:26 when Detective Bagshaw sprays Mr. Khater
23 following his assault.

24 The first two, it does not appear Mr. Khater's in line to
25 get sprayed. They do not appear close to Mr. Khater when you

1 examine closely the videos and understand the positions where
2 they're taken from, as well as Mr. Khater doesn't have any
3 effects at all that you can see except he mentioned that he
4 was "f'ing sprayed."

5 The assaults that he committed were at 2:23:10 and 2:23:21,
6 some seconds apart from each other, that they continued on.
7 It was not just a snap thing where he sprayed once and then
8 ran. The time he said that he was sprayed, the "f'ing sprayed
9 me" was at 2:14:10, and that's nine minutes before he went up
10 and sprayed someone. It was not an immediate reaction beyond
11 his control.

12 It looks like he took the bear spray out and may have
13 gotten the other spray at some point around 2:14:30. We
14 see this large bear spray in his hands, which he never used.
15 There's little evidence exactly when he got the mace. He
16 obviously was going through Mr. Tanios's backpack so far away
17 you can't exactly tell what he did, but he could have gotten it
18 during that time frame of the conversation at 2:14 when he was
19 talking with him.

20 Then as to Mr. Khater, once he starts spraying the officers,
21 he sprays -- about 2:23:08, he sprays Officer Sicknick. That's
22 the officer that died the next day. There's no allegation in
23 these pleadings that he caused that death. But he didn't spray
24 Officer Edwards, the female officer, standing there with no gear
25 protecting her face, etc., standing right in front of him, until

1 2:23:12, some four seconds later. And when you review the
2 video, you'll see he stepped forward to the front of the line
3 again and extended his arm directly at her face and sprayed her
4 directly, which caused her injuries according to the proffer.

5 Mr. Tanios, as to the time frame, ties in with Mr. Khater
6 as the government just showed in the one where he was discussing
7 matters with Mr. Khater, and eventually Mr. Khater got whatever
8 he got from him to use as a spray and then apparently begins to
9 film what's going on as they attack the front line of the
10 police. "They," other people in the crowd.

11 Importantly, counsel for Mr. Tanios insists that he says
12 "nah," and "don't do it" at the point in the conversation after
13 the earlier things where he says it's too early, et cetera.
14 Substantial reviews by myself and many others have not been able
15 to hear that. So after the spray goes on, they join up and
16 apparently leave the area, although Mr. Khater does a second
17 spray in general of the police officers, and he's sprayed by
18 Officer Bagshaw.

19 I always start with a premise that bond should be allowed
20 in most cases, in almost all cases, under the Bail Reform Act.
21 And cash bonds are to be discouraged, because cash bonds operate
22 as a bar to poor people, to minorities, getting out of jail, and
23 I think they should not be used to hold people. As to wealthy
24 people who can afford large cash bonds, that again operates
25 against those who can't.

1 But let me go through the particulars here in this case.
2 I'm going to -- as I said, I reviewed the timeline in my
3 dictated opinion. I'll do the same a little bit more, and I'll
4 consider the defendants posing a danger to the community if
5 released and whether the government has shown that by clear and
6 convincing evidence. I'm going to deny the request of both
7 cases for bond to both defendants. I'm going to do it for the
8 following:

9 I'd already indicated when they arrived about 2 p.m.,
10 away from the police barricades at the lower west terrace of
11 the Capitol, Mr. Khater is seen rummaging through Mr. Tanios's
12 backpack. And at about 2:14, as I said, they are captured on
13 camera. Mr. Khater has strayed towards the police line, returns
14 back to Mr. Tanios, and Mr. Khater says, "Give me that bear
15 shit." That's clear. This is nine minutes before he goes up
16 and claims he's been sprayed again.

17 Mr. Khater tells Mr. Tanios that, inaudible, "f'ing sprayed
18 me." "They" or something sprayed me, or police. We aren't
19 sure. Mr. Tanios turns his head around to Mr. Khater and says,
20 "Hold on. Hold on. Not yet, not yet, not yet. It's still
21 early," before the conversation becomes inaudible, and
22 regretfully I cannot hear counsel's representations what is
23 said thereafter.

24 Mr. Khater I think at that point again repeats that "they
25 f'ing sprayed me." But you don't see, if you watch the video

1 closely and in slow motion if you go to it, him reacting in any
2 way to being sprayed. He's not rubbing his eyes. He's somehow
3 able to talk. He's not bent over as you see the officers who
4 he sprays are affected. And at that point, you see him holding
5 a spray canister.

6 About 2:20, Mr. Khater leaves Mr. Tanios and goes to the
7 bike-rack barriers. He's there for a bit. And then at 2:23 --
8 about nine minutes later, Officer Bagshaw sprayed the crowd
9 again with the Super Soaker. If you take a slow-motion review
10 of that, Mr. Khater is not close to being hit by that spray.

11 Seconds later, he approaches the front of the police
12 barricade and is waving his arm back and forth in an arc-like
13 swing of spray, small handheld canister apparently like mace,
14 he sprays Officers Sicknick, Chapman, and then a few seconds
15 pass and Officer Edwards directly in her face at a point-blank
16 range, not eight feet away.

17 At 2:23 he is seen spraying a different group of officers.
18 He keeps spraying, holding a barricade, and that is when you'll
19 see the assault, and the breakthrough of the crowd begins on the
20 bike racks.

21 As I reviewed the time frames, this happened crucially
22 around 2:23, probably starting in Exhibit 4, 2:23:05 to 2:23:12,
23 and then Exhibit 6, 2:23:05 to 2:23:08, and you slow down and
24 you can see 2:23:09, these are mere seconds apart. 2:23:10 you
25 can see Mr. Khater and his arm follow through and spraying

1 Sicknick and Chapman, and then at 2:23:12 he swings back again,
2 and Edwards is sprayed about that time. At 2:23:13, you see
3 Officer Edwards take cover. She's blinded by the attack.

4 At 2:23:21, it appears Mr. Khater sprays again a second
5 group of officers, and that's when he's sprayed by Bagshaw,
6 and you'll see at 2:42 there's a call to Tanios made.

7 All right. With those facts, what do I find? I also
8 find as a matter of fact that the government has shown that
9 Mr. Tanios purchased these various sprays at the gun type of
10 store after an apparent a conversation with Mr. Khater the
11 day before, and defense found the witness who testified that
12 he did so, he says, to protect himself from attack, but took
13 them with him.

14 The argument that everything they had was legal is a red
15 herring; that is, you can take a pocket knife that's legal,
16 but if you attack a police officer with it, unprovoked, it's
17 an illegal attack. It doesn't make any difference if whatever
18 he had was legal when you review it.

19 So where do we go with that, the conclusions that I made
20 of the facts that the facts show? Much of the argument to the
21 Court -- and I think, actually, Mr. Tacopina may have hit on
22 this a little bit -- was really closing argument to a jury as to
23 what the facts that they read and how they could be concluded.
24 And Ms. Gross may have a very good closing argument to the jury
25 that could sway the jury. That is not where we are at this

1 time. I have to look at the facts as I can best determine them
2 and as I give my conclusion.

3 What is the legal standard I apply with these standards?
4 Obviously, it's a *de novo* review of the magistrate judge's
5 ruling in Mr. Tanios's case. Mr. Khater waived a bond hearing
6 at that point, and so this is his first hearing.

7 Under the Bail Reform Act, a person is encouraged to be
8 released awaiting trial on federal offenses -- here we have
9 nine felonies, I believe, and one non-felony, 10 counts -- on
10 personal recognizance or bond conditions of release, or being
11 detained. That's 18 U.S.C., and these will all be at 3141 and
12 on.

13 Now, obviously, when this is the type of charges that are
14 enumerated, I have to hold a hearing on whether the defendant
15 poses a serious risk of flight, which I'm not finding at all in
16 either case, or attempting to obstruct justice or threat to
17 injure or intimidate a witness or juror or be a danger to the
18 public.

19 One of the cases we'll review is the *Chrestman* case by
20 Judge Howell. Here the defendant's charged with a crime of
21 violence, as the defendants are in this case in the various
22 counts. And in these type of counts, the courts have held the
23 defendant charged under these charges is a crime of violence.
24 I think every circuit that's considered it says that.

25 So that if the defendant should be held under 3142(f),

1 I have to -- shall detain him unless I determine there's no
2 condition or combination of conditions to reasonably assure
3 the appearance of the person as required and the safety of
4 any other person and the community. And the burden is on
5 the government by clear and convincing evidence as to the
6 latter part of that.

7 I'll obviously review the factors I have to review: the
8 nature and circumstances of the offenses, crime of violence or
9 not, the weight of the evidence, the history and characteristics
10 of the person -- which we have here. We have a lot of history
11 of these individuals. It's all good history. There are no
12 prior offenses. No felony offenses at all. They have ties to
13 the community. They have financial resources. They have family
14 and family ties. They have full employment. They're not on
15 probation or parole for any prior offenses -- and the nature
16 and seriousness of the danger to any person in the community
17 that would be posed by the person's release. 3142(g)(4).

18 One of the issues originally before the magistrate judge,
19 as to clear it up in this court and make sure the parties
20 understand it, in our circuit you can proceed by proffer, both
21 the government and defense. *United States v. Smith*. That's
22 about a 30-year-old case. 79 F.3d 1208, a 1996 case.

23 So first let's find whether or not defendants pose a danger
24 to the community or other persons and a particular threat posed
25 by these individuals to the community.

1 Now, our guideline, obviously, is the *Munchel* case,
2 991 F.3d. That was a case involving a riot-charged individual.
3 So look at *Munchel*. And there's been a big argument about that,
4 but the D.C. Circuit says, and it really instructs us, quote,
5 "Those who actually assaulted police officers and" -- they have
6 an "and" -- "broke through windows, doors, and barricades, and
7 those who also aided, conspired with, planned, or coordinated
8 such actions are in a different category of dangerousness than
9 those who cheered on the violence or entered the Capitol after
10 others cleared the way." That's 991 F.3d at 1284.

11 *Munchel* sets forth a categorical approach. It's
12 interesting. And he had been questioned by Judge Bates in his
13 earlier opinion somewhat as to how *Munchel* advises the Court
14 to proceed. But it seems to me now with *Worrell*, it pretty
15 well has -- and by the same judge who wrote the *Munchel* opinion
16 in the *Worrell* opinion -- pretty well approaches the issue by
17 splitting rioters into two buckets.

18 One, if you look at it actively, violently, and then the
19 others are merely complicit, take no active action except wander
20 through the Capitol once it's open and the police have been
21 defeated. The Court explicitly in *Munchel* delineates an
22 elevated category of dangerousness applied those that fall into
23 the category that necessarily impose a concrete prospective
24 threat.

25 Judge Lamberth, I think as the government said in *Fairlamb*,

1 laid that out fairly well. Quote: "*Munchel* drew categorical
2 distinctions to divide nonviolent January 6th dissidents,
3 explaining the former category are more dangerous." *United*
4 *States v. Fairlamb*. That's 221 WL 1614821 at 5, April 26th
5 of this year.

6 So if you take *Munchel* and *Worrell* and look at the addition
7 by *Fairlamb*, if a rioter in the elevated category presents a per
8 se concrete and prospective threat, I mean we have to decide
9 whether the defendant is too dangerous based upon that conduct
10 to be released or is not.

11 I think *Munchel* does not set a hard-line rule. I don't
12 think that the categories are solely determinative, but it
13 creates something like a guideline for the Court to follow
14 so that someone that's a violent defendant is presumed to pose
15 a concrete and prospective threat, and a nonviolent defendant's
16 presumed not to pose such a threat. But every circumstance
17 is different in every case, and you have to look at individual
18 cases.

19 And you have to find what the ultimate conclusion would
20 be, that the government may well not overcome the concrete and
21 clear and convincing evidence requirement, which I've found in
22 other cases. But I don't know how else to treat the D.C.
23 Circuit's explicit categorizations now in both these cases
24 they've decided: those individuals who pose a threat because
25 they attacked police officers without cause, while ensuring the

1 defendants have an individualized assessment of any future
2 threats.

3 So using that approach, courts have decided defendants
4 who should be detained pending trial, as I referred to *Worrell*,
5 is similar, although there are factual differences as according
6 to the distinctions by Mr. Khater's counsel that *Worrell*,
7 however, used a categorical approach, and they found someone
8 that's a danger to the community can't be released because of
9 efforts to threaten and injure police officers with the pepper
10 gel spray.

11 He discharged a pepper gel spray at a thin line of officers
12 where the mob was able to break through. He had other issues,
13 belonging to a radical right-wing violent group, apparently, as
14 well as having a record, but the essentials of what he did in
15 this case are those, which is similar to here.

16 I think you'll see an analysis in many of the cases by the
17 judges that I've looked at where the efforts by the defendants,
18 having them detained because not only did they assault the
19 police officer, they assisted in the breaching of the police
20 officer line, they assisted in the -- facilitated the ultimate
21 breach of the Capitol. And that's a concern.

22 Judge Lamberth did that in the *Fairlamb* case where he
23 said the officer was shoved, punched, and the defendant
24 employed violence, unlike others who obstructed Congress with
25 their presence. This one used violence to obstruct Congress.

1 He targeted police officers who were struggling to control
2 the Capitol, and it contributed to the chaos on Capitol Hill.

3 In *Padilla*, Judge Bates, he had written an earlier
4 opinion sort of distinguishing *Munchel* that thought there
5 were gradations and various levels you should consider, and
6 released the gentleman. In *Padilla* he found that the defendant
7 committed three separate assaults on police officers, including
8 throwing a pole, fits squarely into the category of dangerousness
9 articulated by *Munchel*, and that's at 221 Westlaw 1751054 at
10 page 9, May 4, 2021.

11 He still did not adopt a pure categorical approach
12 articulated by *Fairlamb* and *Worrell* but found that the
13 defendant's violent acts, coupled with his comments signalling
14 that there could be more violence, provide clear and convincing
15 evidence he posed a concrete prospective threat to public safety.

16 And finally, we do have to put this in context. We have
17 to realize what happened that day and what was going on. It
18 wasn't just Mr. Khater on his own, by himself, feeling the
19 police had mistreated him, pulling out a can of spray and
20 retaliating by himself and there was no crowd around, nothing
21 happening. That's just not what we have.

22 The D.C. Circuit observed: "It could not be gainsaid that
23 the violent breach of the Capitol on January 6th was a grave
24 danger to our democracy, and those who participated could
25 rightly be subject to detention to safeguard the community."

1 1284 to 1285 in *Munchel*.

2 So with those factors and background and the facts as
3 I found them reviewing the videos carefully, and considering
4 counsel's arguments as to Mr. -- and I'll get to Mr. Tanios
5 in a minute further as to his situation, but I'll go through
6 the Bail Reform Act factors for the record.

7 First, the nature and circumstances of the offense. I'm
8 going to use the *Chrestman* factors as suggested by Chief Judge
9 Howell to assess -- it's sort of a guidepost to assess the
10 comparative culpability of a given defendant in relation to
11 fellow rioters.

12 Other judges have done the same. Judge Sullivan, Judge
13 Bates, Judge Lamberth and others have used the *Chrestman* factors
14 in a case called *Whitton*, 221 Westlaw 1546931 at 7; *Sabol*, 221
15 Westlaw 145945 at 27; and *Klein*, that's Bates, at 2021 Westlaw
16 1377128 at 7; and *Padilla*, which I've given the cite to earlier,
17 I believe. So we have to look whether defendants have been
18 charged with felonies, which they have been.

19 Engaged in prior planning. We'll talk about that.

20 Carried or used a dangerous weapon. That's something that
21 could be considered to be a dangerous weapon.

22 Coordinated with anyone else before, during, or after the
23 riot.

24 Assumed a formal de facto leadership role and encouraging
25 other rioters in this conduct.

1 And the nature of defendant's words and movements during
2 the riot, whether he confronted federal officers or otherwise
3 similar efforts to disrupt the certification of the electoral
4 count.

5 So the offenses, it's undisputed we have multiple felonies
6 here, nine serious felonies. Those are the greatest number,
7 actually, and more serious charges I have seen in my various
8 riot cases. That weighs to relative culpability and detention.

9 The prior planning and coordination. The government has
10 two theories, somewhat challengeable, I think. First, Mr. Tanios
11 and Mr. Khater planned and coordinated with each other to
12 assault law enforcement officers, and secondly, timed their
13 assault to accompany the nearby breach of the bike racks,
14 assisting the rioters in their breach.

15 There was obviously some prior planning and coordination,
16 that is, the defendants talked on the phone and bought these
17 devices, legal devices, which Defendant Tanios has presented
18 evidence that they bought them to protect themselves from
19 attacks that may have occurred but obviously could be used
20 otherwise, that they brought them with them to the city.

21 Mr. Tanios, obviously, aided and coordinated with
22 Mr. Khater, first in bringing these materials down that could be
23 used, and then in the assault of the police officers despite his
24 counsel's ardent advocacy that their words could be interpreted
25 differently and there were other words that we could not hear

1 that occurred to show that he was saying "don't do it." The
2 words, the way I hear it, and the actions he took seem very
3 clear that he allowed Mr. Khater to take away the bear spray,
4 whatever happened to that, and to obtain the mace that he did
5 use and which Mr. Tanios is apparently trying to film when he
6 used it.

7 I think, under *Munchel*, working with one another is
8 sufficient where he coordinated -- Mr. Tanios coordinated with
9 Mr. Khater to assault the law enforcement officers, and I think
10 the evidence supports that allegation. There's arguments
11 against that; but at this point it's apparent to the Court that
12 Mr. Tanios did cooperate with him and did assist him in being
13 able to attack the police officers, and that puts him in the
14 elevated category of dangerousness.

15 There's no question that Mr. Tanios brought the weapons
16 along or the products to be used as weapons in direct contact
17 with Mr. Khater beforehand. And he brought, obviously, the
18 bear spray, which has a very long reach, which was not used.
19 They came together. He had to drive from New Jersey to
20 Morgantown, West Virginia, Mr. Khater there to pick up
21 Mr. Tanios, and they drove back and stayed together in D.C.

22 I think that obviously Mr. Tanios and his counsel submitted
23 evidence that he bought these devices to defend himself against
24 attacks, should there be attacks by other people if he felt
25 threatened. That is somewhat inconsistent with expecting a

1 peaceful political rally; but however he asserts that, other
2 rallies have been attacked.

3 I considered the testimony of Sean Ruth for Mr. Tanios,
4 a veteran. He testified at the hearing. There was no prior
5 planning. He was going to go with him. That doesn't mean he
6 didn't discuss with Mr. Khater what they wanted to do to protect
7 themselves if attacked or could -- would then make the equipment
8 available to use against the police.

9 But I think you can find, if you look at the evidence
10 closely the day that this happened of the riot, there's no
11 question they were talking with each other. They stood there
12 for several minutes and talked when they first got there. They
13 watched the crowd get more and more excited and begin to attack
14 the police and push against the fence.

15 They communicated on their cell phones as the riot began,
16 and then Mr. Khater took the materials that he used eventually,
17 the shared backpack carried by Mr. Tanios, got the pepper spray
18 which was used to assault the officers. Mr. Khater originally
19 asked for the bear spray, which was much more powerful, and it's
20 clear that Mr. Tanios said, "Hold on, hold on. Not yet. It's
21 still too early. It's still early."

22 So, obviously, that indicates the understanding they were
23 going to use this product. It wasn't just out of the blue.
24 They obviously had some intention to use the product that they
25 understood, either through their conversation earlier, that this

1 is what they were going to do. It seems that it was definitely
2 planned at that point. The only targets that they were worried
3 about attack by applying the bear spray or the mace were the
4 police. It wasn't going to attack the other rioters to stop
5 them.

6 Now, the timeline supports the inclusion of the defendants'
7 time the chemical -- the dispersal of this chemical substance
8 to coincide with the other rioters' efforts to forcibly move the
9 bike-rack barriers preventing the rioters from being closer to
10 the Capitol building and trying to breach the Capitol Building.
11 In other words, they played a role in the ultimate breach in the
12 attack of the Capitol.

13 Next to where the Defendant Khater sprayed, you can see the
14 rioters breach, at that very close time frame, the police line
15 there. The spray disabled at least three officers. It disabled
16 others who had to care for those officers and left holes for
17 their protection.

18 And as to the injuries to the officers, we have the
19 representation of the woman's injuries in the record as to
20 blisters, et cetera, in her eyes. And you could see right
21 afterwards in the video she was blinded.

22 If you look at Officer Sicknick, who is in the videos for
23 a while, he has about 10 or 15 minutes of video where he's back
24 up on another level of the Capitol, sort of dazed, wandering
25 around. He's ineffective. He can't do anything. He is injured.

1 Officer Chapman I don't know about, but it's clear to me
2 that he was violently assaulted and hurt, as well as Officer
3 Edwards, by Mr. Khater.

4 The timing of the attack really coincides with the other
5 rioters next to him, or very near him, pushing up against the
6 bike racks that prevented them from moving further on. I think
7 that is a direct connection that they have. I don't think
8 they're the direct proximate cause of the breach of the line
9 all up and down, but they certainly contributed to the crowd's
10 ability to breach the police line at that point.

11 So that assault -- and I think Mr. Tanios is engaged in it
12 as an aider and abettor -- committed an assault which helped
13 lead to the violent breach of the Capitol, and that indicates
14 a finding of dangerousness if you look at *Fairlamb's* analysis.
15 The conduct contributed to the chaos on Capitol Hill.

16 Chrestman says the defendant sought to succeed in causing
17 mayhem on Capitol grounds, interfering with the police, which
18 meant concerted, deliberate efforts to undermine law enforcement,
19 and that weighs heavily under detention.

20 Mr. Khater did the spraying. Mr. Tanios did not, but he
21 obviously worked with him on that despite counsel's arguments.
22 There's no question that the same charges pending against each,
23 and Tanios by having his backpack with the equipment he bought
24 and brought down, that Mr. Khater knew about and took advantage
25 of, so in that assault helped lead to the ultimate breach of the

1 Capitol. Mr. Tanios is liable as an aider and abettor.

2 So to me, the evidence, when you look at it, suggests that
3 the defendants had a plan. They talked over maybe at the foot
4 of the Capitol when they got there and saw what was going on,
5 but at some point they had a plan to use those devices as
6 weapons at the Capitol, which was executed, that they did that.
7 They purchased them, they brought them down, and they talked
8 about it while -- at least they talked while they were standing
9 there together, and then after that went ahead and used the
10 weapons.

11 I don't think there's any evidence whatsoever that they
12 belonged to any extremist group of rioters. I do not see
13 any indication of that.

14 But I think that Judge Howell's *Chrestman's* conclusions
15 are relevant in "a defendant's carrying or using during the riot
16 a dangerous weapon" -- that's the mace, referring to whatever it
17 may be -- "indicates at least some degree of preparation for the
18 attack and an expectation that the need to engage in violence
19 against law enforcement or, indeed, the Legislative branch,
20 might arise.

21 "These motives and steps taken in anticipation of an attack
22 on Congress speak volumes to both the gravity of the charged
23 offense, as a premeditated component of an attempt to halt the
24 operation of our democratic process, and the danger a defendant
25 poses not just to the community in which he resides, but to the

1 American public as a whole." That's *Chrestman* at 8.

2 So I think the factors weigh in relative culpability
3 and detention, although there is no proof of belonging to an
4 extremist group or broad coordination with many others prior
5 to the riot, and I took that into consideration.

6 Dangerous weapon. Well, there's no question that we had
7 here mace which may be legal, but it's used as a dangerous
8 weapon. As I said, you can have a pocket knife which is legal,
9 but when you use it, it becomes a dangerous weapon.

10 Mr. Khater knew that they had bear spray, because he asked
11 for it, and they obviously anticipated having it with them.
12 That constitutes under the law a dangerous weapon, 18 U.S.C.
13 111, and there are many cases finding that. I'm not going to
14 cite all the cases.

15 And I've said before, the distinction between carrying
16 something for your protection or as a weapon and using it is
17 vital. It's different if you've carried something and never
18 used it, but where you used it to attack the police, who are
19 standing there not attacking you directly, to me is a violent
20 act, which is among some of the more violent acts that took
21 place that day.

22 So the defendants both carried and used -- Mr. Khater,
23 and Mr. Tanios through Mr. Khater -- what was at that point
24 dangerous weapons to assault police officers. That indicates
25 to me a level of dangerousness. There's no rational reason to

1 use that when the police were under attack by a riotous mob
2 and then you used your weapons against the police to facilitate
3 that attack.

4 There's no evidence, as I said, of any leadership roles
5 or that they were engaged with anyone else, but the conduct does
6 seem to me that we have preparation and execution of a violent
7 assault on the officers during a riot intended to interfere
8 Congress's constitutional mandate.

9 The video evidence is clear. Mr. Khater deliberately
10 sprayed the officers trying to hold the line against the rioters
11 who broke through and breached the Capitol very near where he
12 sprayed. The officers sustained serious injuries.

13 Mr. Tanios aided in that. He coordinated the direct
14 assault. He had purchased the materials to be used. Mr. Khater
15 obviously has more flagrant conduct than Mr. Tanios; however,
16 finding they both acted together, they fall in the elevated
17 category of dangerousness under *Munchel*. I cannot find other
18 than the factors I've reviewed support detention at this time.

19 It concerns me because these two gentlemen are law-
20 abiding, respected individuals in their community, and it makes
21 it very difficult for the Court to make this conclusion. But
22 the government's evidence and what happened on the videos and
23 their phone calls that they did, and the backpack that had the
24 materials in it, and what happened seem to me that it's clear
25 that there's little doubt as to what transpired.

1 Mr. Khater raised this canister in his right arm. He
2 aimed it in the direction of the officers. He meant to spray
3 it in their faces. He did so. And then a few seconds later,
4 he sprayed it directly in Officer Edwards' as well as other
5 officers' face, who had no protection. You saw them all
6 affected by it, pour water in their faces, trying to recover.
7 You see a few seconds later Mr. Khater sprays another group
8 of officers. Sprays another group of officers.

9 The weight of the evidence strongly presented supports
10 the government's contention that the defendants are a threat to
11 the community. I recognize the excellent backgrounds of each
12 defendant. Mr. Tanios has no felony convictions. Mr. Khater
13 has 18 character letters or more. He has a \$15 million bond he
14 said he'll post. Both the history and characteristics of these
15 defendants do not weigh in favor of detention.

16 But they still committed this attack on uniformed police
17 officers. I don't find a way around that. I've already
18 discussed Mr. Tanios's situation, that he did not deny
19 Mr. Khater access to the backpack by his words and what he
20 did, and I will not go through that again. And he seems to
21 be elevated to the category of dangerousness under *Munchel* and
22 what Judge Sullivan said in an interesting case called *Whitton*.
23 I'll quote Judge Sullivan:

24 "[Defendant's] and his codefendant's conduct on January 6,
25 2021, was among some of the most violent conduct that took place

1 that day, and the Court cannot ignore that reality when
2 evaluating his character and the potential threat he continues
3 to pose to the community. Nor has the D.C. Circuit said the
4 Court must turn a blind eye to [Defendant's] violent conduct
5 when determining whether he poses a danger that warrants
6 pretrial detention to safeguard the community."

7 Seems to me the logic applies here both to Mr. Tanios and
8 Mr. Khater. Now, Mr. Khater, he's obviously elevated to the
9 higher category of dangerousness as contemplated by the Circuit,
10 violent conduct against a police officer directly, combined with
11 his planning, that is support. He knew where the materials
12 were, he went and got them from the backpack, and he delivered
13 I believe an unprovoked attack to assault two groups of law
14 enforcement officers.

15 Judge Lamberth says, "the defendant's alleged conduct
16 in this case - assaulting a police officer - shows a disregard
17 for law and order and for those sworn to uphold it." That's
18 *Fairlamb* at page 21. So at a point of violently assaulting
19 police officers, multiple officers, it seems to me that the
20 defendants are showing themselves to be a danger to the
21 community.

22 I have all the pretrial release conditions set forth,
23 including the one, the \$15 million bond secured by a 1.5 million
24 on the New Jersey property of the family. I will not find that
25 the proposed condition of release would adequately mitigate the

1 danger posed to the community given the seriousness of the
2 conduct and the disregard for law enforcement that this conduct
3 demonstrates.

4 As Judge Lamberth has said, those who show a complete
5 disregard for the law suggests that no conditions can reasonably
6 assure the safety of the community during a riot where law
7 enforcement's under attack. The defendant Khater coolly walked
8 up to officers and assaulted them, twice, with a chemical spray.

9 And you can compare *Sabol* at 18 where the Court is not
10 persuaded this proposed home confinement plan would mitigate
11 his proposed danger to the community based on his demonstrated
12 willingness to engage in violence in furtherance of his beliefs.

13 Or *Chrestman*: "His very actions on January 6 make apparent
14 that that this defendant will follow his beliefs and his fellow
15 gang members, even when the laws designed to protect our
16 democracy prohibit his conduct. Together, these factors
17 demonstrate that he cannot be trusted to abide by any conditions
18 of release that might be imposed instead of pretrial detention."

19 So here we have egregious actions of the defendant,
20 Mr. Khater, with the assistance of Mr. Tanios, on January 6
21 that demonstrate they pose a danger to the community regardless,
22 in Mr. Khater's case, of a substantial bond that he wishes the
23 Court to accept. I don't see how the bond guarantees anything
24 in the nature of protecting the community if this activity that
25 generated this occurs again.

1 It seems to me that we're at a position where the evidence
2 shows that they brought these materials with them that they
3 could use to attack individuals, whether it was originally to
4 attack others that disagreed with their position, or in this
5 case where they used it to attack the police and injure the
6 police who were standing still, doing their job, not doing
7 anything particularly to these individuals. And that video
8 speaks for itself. And when that happened, the line broke and
9 the Capitol was rushed.

10 So despite the excellent background and characters of these
11 individuals who normally would be entitled to be out on bond,
12 I just cannot find in this case the violence against the police
13 that occurred that I think without provocation directly to
14 Mr. Khater -- there's no evidence he was sprayed until after he
15 finished his spraying directly -- that I can overlook that and
16 find that these two individuals should be released on some type
17 of bond requirements to attempt to protect the public from those
18 who have used these as an offensive weapon and to assist the
19 violent mob in attacking the Capitol.

20 So, for those reasons, I'm going to deny the motions for
21 the review of the detention order and release of Mr. Tanios
22 filed to reverse the magistrate judge and for Mr. Khater's
23 memorandum to support his motion of pretrial release.

24 I will say that this type of case is unfortunate and
25 that I have tried to carefully review the evidence as possible,

1 having reviewed this probably now three times fully all the
2 materials that have been submitted, all the arguments and the
3 most recent ones today, as well as reviewing all the videos and
4 all of the recordings that have been produced for the Court to
5 consider in reaching this conclusion under the *Munchel*
6 opinion and the *Worrell* opinion, that these defendants cannot
7 be released on bond, finding the government has shown by clear
8 and convincing evidence they remain a danger to the community.

9 All right. What we need to do is to have the government
10 and each counsel meet and try to determine the evidence that
11 they have to have produced, the discovery, any motions the
12 defendants wish to file.

13 Defendants have raised a legitimate issue as to
14 communication with their clients and how they're being held.
15 I'm very cognizant of the article in *The Washington Post*. I
16 will indicate for the record, however, that that occasion has
17 come about because of the pandemic, that the jail originally
18 was overrun with the COVID virus. It was very serious among
19 the guards and a majority of the prisoners.

20 After litigation on behalf of the prisoners, controls
21 were put into effect by Judge Kotelly of our court, bringing
22 in experts, and the jails operated under their expert advice as
23 to how to contain the virus. It has been remarkably successful.

24 As of today we have data reports, and as of today there
25 is one positive case of a brand-new prisoner who just got

1 admitted to the prison, tested positive and immediately
2 isolated. The lockdown is severe, and I understand the
3 concerns about that, and hopefully this can be -- the
4 vaccinations can progress a change. But it has stopped
5 the virus from spreading in the jail.

6 But I recognize the concerns that the prisoners have, and
7 the Court is willing to facilitate any kind of communication
8 that could be made available for the prisoners. I don't know
9 the prisoners' status of their own vaccinations or not and
10 whether or not, if they get vaccinated, they have more freedoms
11 or not. But if there is a concern about communication and the
12 Court can effectuate some relief for that, I will try to do
13 that. You can bring it to my attention.

14 All right. So I want to set a status call in 30 days.
15 I don't want this case to linger. It's one of the more serious
16 cases, obviously, but the government has phenomenal quantities
17 of evidence of all the homemade videos the rioters used. But we
18 do have to try to move this along now that these gentlemen have
19 been detained, and I don't want this to be sitting around with
20 nothing happening for an undue amount of time.

21 Mr. Light, where are you on providing discovery, and what
22 has happened so far?

23 MR. LIGHT: Your Honor, we hope to begin rolling out
24 first batches within the coming days to both parties.

25 THE COURT: Do you have protective orders in place?

1 MR. LIGHT: Yes, Your Honor. Your Honor, as to those
2 protective orders, I will note that the order requires that the
3 defendants sign a copy of the protective order. There's a
4 waiver page or acceptance of understanding on the protective
5 order itself. And I understand the difficulties right now in
6 communicating with the clients, so I'll just point out that that
7 does need to be done prior to the production of discovery.

8 THE COURT: All right. Well, it is a problem.
9 With counsel both from out of state trying to communicate with
10 their clients, there should be a way to arrange at least a Zoom
11 conference with the clients. And my courtroom deputy, Harold
12 Smith, can help with that. You talk to Mr. Smith. He's very
13 good at doing all this and finding time for the defendants to
14 have a Zoom conference. A personal conference is more difficult.
15 It may require that counsel be vaccinated before they can get
16 into the jail, but I will help coordinate that if I possibly can.

17 June 10th is one possibility for me in the afternoon.
18 I have matters all morning already. A later date I can -- the
19 following week I can do a short hearing the morning of the 15th.
20 I can do a hearing the morning of the 16th. So it's up to you
21 all and your calendars, and Harold's got to find out when the
22 jail is available for the Zoom conference.

23 MR. TACOPINA: The 16th would be preferable for us,
24 I think.

25 THE COURT: The 16th would be a morning hearing.

1 I've got matters in the afternoon already.

2 MR. TACOPINA: That's fine, Your Honor.

3 THE COURT: Is the 16th available in the morning?

4 THE DEPUTY CLERK: Your Honor, Harold Smith, Courtroom
5 Deputy. The 16th is available.

6 THE COURT: What time is it?

7 THE DEPUTY CLERK: 10 a.m.

8 THE COURT: All right. Government's all right with
9 the 16th?

10 MR. LIGHT: Yes, Your Honor.

11 MS. GROSS: That works for us.

12 MR. TACOPINA: Your Honor, will we be getting a
13 written order? It may be required if we we're going to be
14 considering any appellate route.

15 THE COURT: Yes. I'll issue an order in conjunction
16 with my bench opinion. It'll be a simple order because it's
17 been an hour of entertaining a bench opinion. We'll take care
18 of it for you. And I anticipated a potential appeal, so that's
19 fine. The 16th at 10 a.m. we'll be back, unless other things
20 interfere with that from the Court of Appeals or otherwise.
21 So 16 June at 10 a.m.

22 MR. LIGHT: Your Honor, if I may? Your Honor, we just
23 ask that the Court toll the time under the Speedy Trial Act
24 pursuant to the Court's standing order in light of the pandemic.

25 THE COURT: The Court -- does either defendant through

1 counsel object to the excluding time from today for the month
2 until the date we have in June?

3 I hear no objections, so I'm going to grant the extension
4 of the speedy trial from today till our next conference date on
5 the grounds of public and the interest of the defendants to look
6 at all the evidence -- they haven't seen all the evidence yet --
7 and prepare for the case as they deem necessary. So I think
8 that's clear.

9 We also have an outstanding order from our Chief Judge,
10 stopping all trials, that has continued and been renewed many,
11 many times until August 31st of this year in any event, extending
12 the speedy trial time in general till that date. I think we
13 should have specific times for each case as well, but there's a
14 generic order that we can't do trials until August 31st unless
15 we change that because of the vaccinations that will allow us to
16 do trials quicker than that. We're beginning to do experimental
17 trials right now to see if it will all work.

18 All right. We'll be back in June as indicated at 10 a.m.,
19 and we'll issue an order later today. Thank you, counsel, for
20 all the work. I appreciate it.

21 MR. TACOPINA: Thank you, Your Honor.

22 MS. GROSS: Thank you.

23 MR. LIGHT: Thank you, Judge.

24 (Proceedings adjourned at 10:50 a.m.)
25

CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter. *

/s/ Bryan A. Wayne
Bryan A. Wayne

* PLEASE NOTE:

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