UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA CASE NO. 21-mj-08212-BER

UNITED STATES OF AMERICA,

Plaintiff,

JUNE 2, 2020

VS.

WEST PALM BEACH, FLORIDA

JASON DOLAN,

Defendant.

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TRANSCRIPT OF **DETENTION** HEARING BEFORE THE HONORABLE MATTHEWMAN UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MARK DISPOTO, AUSA

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FOR THE DEFENDANT: FREDERICK HUTCHINSON, ESQ.

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Official Court Reporter

U.S. District Court

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1
                         P-R-O-C-E-E-D-I-N-G-S
 2
              THE COURT: Are we ready to start?
              THE COURTROOM DEPUTY: The CSO is just bringing
 3
 4
    Mr. Hutchinson back.
 5
              THE COURT: I'll wait.
              THE COURTROOM DEPUTY: He is here.
 6
 7
              Calling United States of America against Jason Dolan,
    case number 21-8212-BER.
 8
 9
              THE COURT: All right. So this is United States
    District Court for the Southern District of Florida. This is
10
11
    Duty Court, I'm Judge Matthewman.
12
              Who is here today for the United States?
              MR. DISPOTO: Your Honor, Mark Dispoto appearing on
13
14
    behalf of the United States.
15
              THE COURT: All right. Good morning.
              Who is here on behalf of the defendant?
16
              MR. HUTCHINSON: Judge, in person, Rick Hutchison.
17
18
              MR. VAN DER VEEN: Good morning, Judge, Michael van
    der Veen on behalf of the defendant.
19
20
              THE COURT: All right. And I know that you have
21
    filed a pro hac vice motion which I believe I granted, is that
22
    correct?
23
              MR. VAN DER VEEN:
                                 That is correct, Judge.
24
                          Is Manny Vasquez here today or not?
              THE COURT:
25
              MR. HUTCHINSON: I don't believe he is, Judge.
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THE COURT: All right. I believe also there have
 1
 2
    been CJA lawyer, Mr. Hutchinson, is that right?
              MR. HUTCHINSON: I'm here, Judge.
 3
 4
              THE COURT: Mr. Hutchinson is in the courtroom.
 5
              We have Mr. Dolan at the moment appearing by Zoom
    video conference from the marshal cell block here, in the West
 6
 7
    Palm Beach Federal Courthouse. So the first thing we need to
    address is whether or not this matter should proceed by Zoom
 9
    video conference or we do it in the courtroom here, this
10
    morning.
11
              Obviously, the defendant has a constitutional right
    to be present here, in the courtroom. I'm here in the
12
13
    courthouse, and if the defendant wishes to have the hearing in
14
    the courtroom today, we will go ahead and do that. If the
15
    defendant wishes to waive his right to be personally present in
    the courtroom, we can go ahead and do it by Zoom.
16
17
              How does the defendant wish to proceed?
18
              MR. VAN DER VEEN: Judge, I don't know your setup.
19
    If it is not too cumbersome, we would prefer to be in person.
20
              THE COURT: Mr. van der Veen, where are you?
21
              MR. VAN DER VEEN: I'm in my office on Spruce Street,
22
    Philadelphia.
23
              THE COURT: You can't be here in five or ten minutes,
24
    I presume.
25
              MR. VAN DER VEEN: I won't be, but the CJA attorney
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has offered to be available in the courtroom not to conduct the
 1
 2
    argument but just to assist in any way, if in person is
    required.
 3
 4
              THE COURT: All right. And the defendant is
 5
    insisting on a courtroom hearing, that's fine, not a problem.
 6
    He has a right to do that.
 7
              Ken, how long do we need to set that up so that we
    can have an in-court hearing so I would allow.
 8
 9
              If there is any Department of Justice lawyers
10
    attending, Mr. Dispoto, they can attend by phone or Zoom; and
11
    Mr. van der Veen, I would allow to appear by phone or Zoom.
12
              How can we set up that in a short period of time,
13
   Ken?
14
              THE COURTROOM DEPUTY: I can probably do it in 10 to
15
    15 minutes.
16
              THE COURT: All right. Will Counsel be able to
    either be in the courtroom or appear by Zoom?
17
18
              THE COURTROOM DEPUTY: Yes.
              MR. DISPOTO: I will be available by Zoom as well, as
19
20
    will the Government witness, Agent Spence.
              THE COURT: All right. The alternate would be I can
21
22
    always be set up for tomorrow morning and everybody can be in
23
    the courtroom; but if the parties are willing to go ahead and
24
    proceed with myself and the defendant and Mr. Hutchinson in the
25
    courtroom and then proceed by Defense Counsel van der Veen by
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video conference, and Mr. Dispoto and the agent by video
 1
 2
    conference, we can probably set that up in about 15 minutes.
    If the defendant is insisting on the agent being in the
 3
 4
    courtroom, that's a different story.
 5
              Or, Mr. van der Veen, do you want to go ahead and set
    this up with the defendant in the courtroom and Mr. Hutchinson
 6
 7
    in the courtroom, and everybody else excluding myself and my
 8
    courtroom deputy appearing by Zoom, does that work on your end?
 9
              MR. VAN DER VEEN: Yes, Judge.
10
              THE COURT: All right. And let's just go ahead, Ken.
    Would you swear in Mr. Dolan.
11
12
              THE COURTROOM DEPUTY: Yes, Judge.
              Raise your right hand.
13
14
             JASON PATRICK DOLAN, DEFENDANT WITNESS, SWORN
              THE COURT: Just state your name for the record,
15
16
    please.
17
                             My name is Jason Patrick Dolan.
              THE DEFENDANT:
18
              THE COURT: All right. And I just want to confirm,
19
    you are in agreement with your Counsel, Mr. van der Veem having
20
    the hearing in the courtroom and him appearing by video
21
    conference; the prosecutor and agent by video conference, and
22
    I'll be in the courtroom; and we will be in the courtroom and
23
    my courtroom deputy; does that work for you?
              THE DEFENDANT: Yes, sir.
24
25
              THE COURT: All right. So why don't we do this.
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is now almost 11:00. Why don't we --
 2
              Do you think you can have it all set and ready to go
 3
    by 11:15, Ken?
 4
              THE COURTROOM DEPUTY: Yes.
 5
              THE COURT: Why don't we re-adjourn at 11:15.
 6
              If there is anybody listening or anybody present, you
 7
    are welcome in the courtroom. The courtroom will be open to
    the public. I'll be in the courtroom; Mr. Dolan will be in the
 9
    courtroom; my courtroom deputy will be in the courtroom;
    Mr. Dolan's family members will be in the courtroom.
10
                                                          If the
11
    agent testifies or he testifies will be by video conference.
12
    Mr. Dispoto, the prosecutor, will be appearing by video
13
    conference, if there are any DOJ lawyers from up in the DC U.S.
    Attorney's Office that wish to appear by phone or video
14
15
    conference; and I'll allow Mr. van der Veen to appear by video
    conference as well.
16
17
              All right. So we will come back let's say 11:15, and
18
    hopefully, we can get the show on the road at that point. All
19
    right.
20
              MR. DISPOTO: Your Honor, do we need to log out and
    log back in on the same Zoom link?
21
22
              THE COURTROOM DEPUTY: Yes.
23
              THE COURT: Mr. Dispoto, Mr. van der Veen, just go
24
    ahead and log out now. Just a few minutes before 11:15, log
25
    back in and we will be able to get everything going so we can
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1
    have the hearing today.
 2
              MR. DISPOTO: Thank you, Judge.
              THE COURT: All right, see you all in a little bit.
 3
 4
        (Recess was had at; and the proceedings resumed
 5
         at 11:15 A.M.)
              THE COURT: Let's call the case.
 6
 7
              THE COURTROOM DEPUTY: Yes, Judge.
 8
              Calling United States of America against Jason Dolan,
 9
    case number 2108212-BER.
10
              THE COURT: All right. So we are in court.
11
    started this hearing earlier. I will tell the parties since we
    are in this large -- in our large courtroom, when you are in
12
13
    the hallways here in the courthouse or entering the courthouse,
14
    you have to wear a mask. Here, in the courtroom, if you wish
15
    to wear a mask, you are welcome to do so. If you don't wish to
16
    wear a mask, and are socially distanced, you can certainly go
17
    ahead and do that. Any witness that testifies, I would want to
18
    be able to see their face, so I would ask that the witness take
    off their mask, if any witness testifies.
19
20
              So we are here in the courtroom, we have Mr. Dolan
    here. I know that Mr. Dolan was previously placed under oath
21
22
    by video conference; but, Ken, can you place him under oath,
23
    since we are here in the courtroom, and I'm personally here in
24
    the courtroom with him.
25
              THE COURTROOM DEPUTY: Yes, Judge.
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1
              Raise your right hand.
 2
                 JASON PATRICK DOLAN, DEFENDANT, SWORN
              THE COURT: Just state your name, for the record,
 3
 4
    again.
 5
              THE DEFENDANT: My name is Jason Dolan.
              THE COURT: All right; you can have a seat,
 6
 7
    Mr. Dolan.
 8
              THE DEFENDANT: Yes, Your Honor.
 9
              THE COURT: All right. So we have Mr. Hutchison here
10
    in court with Mr. Dolan, correct?
11
              MR. HUTCHINSON: Yes. Good morning, Your Honor; and
    I have also got his wife Maria and Donna Corrine here, as well.
12
13
              THE COURT: Could they stand up, please.
14
              Good morning to both of you.
15
              All right. And I know, Mr. Hutchinson, you were
    appointed pursuant to the Criminal Justice Act, correct?
16
17
              MR. HUTCHINSON: That is correct, sir.
18
              THE COURT: All right. And then after that, there
19
    was a pro hac vice appearance of counsel, a request by counsel
20
    to appear here pro hac vice by Mr. Michael T. van der Veen, and
21
    he is appearing by Zoom, is that correct?
22
              MR. HUTCHINSON: Yes, Your Honor, he is on now.
23
              THE COURT: Mr. van der Veen, can you hear and see me
24
    okay?
25
              MR. VAN DER VEEN: I can, Judge; thank you.
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1
              THE COURT: So now you are private counsel for
 2
    Mr. Dolan, is that correct?
              MR. van der VEEN:
                                 I am.
 3
 4
              THE COURT: All right. And is that for all
 5
    proceedings here, in this district removal matter?
 6
              MR. VAN DER VEEN: Yes, Judge.
 7
              THE COURT: All right. And detention, removal,
 8
    anything here in the Southern District of Florida, would that
 9
    be correct?
10
              MR. VAN DER VEEN: Correct, Judge.
11
              THE COURT: All right. And, Mr. Hutchinson, I know
    that you have been appointed under the Criminal Justice Act.
12
13
    It is a little unusual to have a CJA lawyer and a private
14
    lawyer come in, but in light of the circumstances, if it is
15
    okay with you, I would ask that you continue on through this
16
    hearing, since you are present in the courtroom with Mr. Dolan,
17
    and Mr. van der Veen is in Pennsylvania, is that agreeable to
18
    you, Mr. Hutchinson?
19
              MR. HUTCHINSON: It is, Your Honor. I'm happy to do
20
    it.
21
              THE COURT: All right.
22
              Mr. van der Veen, is that agreeable to you?
23
              MR. VAN DER VEEN: Yes, Judge.
24
              THE COURT: Mr. Dolan, is that agreeable to you that
25
    Mr. van der Veen will appear today by video conference and
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Mr. Hutchinson will be here in the courtroom with you?
 2
              THE DEFENDANT: Yes, Your Honor.
              THE COURT: All right. So it is a little unusual,
 3
 4
    but let's go ahead and proceed that way, in the interest of
 5
    judicial and attorney economy, so we can resolve this matter as
 6
    promptly as possible.
 7
              All right.
 8
              MR. HUTCHINSON: May I be seated, Judge?
 9
              THE COURT: Yes, of course.
10
              MR. HUTCHINSON: Thank you.
11
              THE COURT: So let's -- first of all, if we could
    deal with the removal issue. Mr. Dolan, you have been charged
12
    by way of a fourth superseding indictment in the United States
13
14
    District Court for the District of Columbia. Have you received
    a copy and reviewed a copy of that fourth superceding
15
    indictment?
16
17
              THE DEFENDANT: It was read to me, Your Honor; I
18
    don't have it.
19
              THE COURT: Mr. Hutchinson, do you have a copy of
20
    that indictment, the fourth superseding indictment with you?
21
              MR. HUTCHINSON: Briefly --
22
              THE DEFENDANT: I had it read to me, Your Honor.
23
    That's it, I don't have it.
24
              THE COURT: Mr. Hutchinson, do you have a copy of
25
    that indictment the fourth superseding indictment.
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1
              MR. HUTCHINSON:
                               I do.
 2
              THE COURT: You have it there with Mr. Dolan?
 3
              MR. HUTCHINSON: Yes, Judge.
 4
              THE COURT: So you and Mr. Dolan both have that.
 5
              It appears that you are charged in counts one, two,
 6
    three, and four of this fourth superseding indictment.
 7
              Count one is a conspiracy 234 violation of Title 18,
 8
    United States Code, Section 371. That is charged from at least
    as early of November 3, 2020, through January 6, 2021.
 9
              Count two charges you with obstruction of an official
10
    proceeding, and aiding and abetting in violation of Title 18,
11
    United States Code, Sections 1512(c)(2) and Section 2 of
12
13
    Title 18.
14
              MR. HUTCHINSON: What count was that, Judge?
              THE COURT: That was count two.
15
              MR. HUTCHINSON: Thank you.
16
              THE COURT: Violation of U.S. Code, Sections
17
18
    1512(c)(2) and 2, obstruction of an official proceeding and
    aiding and abetting which allegedly occurred on or about
19
20
    January 6, 2021 in the District of Columbia.
21
              Count three charges you with destruction of
22
    Government Property, and aiding and abetting in violation of
23
    Title 18, United States Code, Sections 1361 and 2, 18 U.S.C. 2.
24
              And then count four charges you with a violation of
    Title 18, United States Code, Section 1752(a)(1) remaining in a
25
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restricted building or grounds.

All right, so that's what you are charged with here; and you do have a copy of the fourth superceding indictment.

You and your counsel have that.

Now you are here for a removal hearing. The reason you are here is even because you were indicted in the United States District Court for the District of Columbia, you were arrested here, in this district, and brought before the court here; and I, as the judge here today, will be addressing your removal hearing and your detention hearing.

Now, as far as removal, you do have the right to identity hearing for the Government to prove that you are the person that the other district is seeking, that would be the District of Columbia. If you waive that hearing, if you waive the removal hearing, you are not admitting guilt, you are merely saying that they have not arrested the wrong person, that they have not arrested the wrong Jason Dolan.

Now you have a right to bond or detention hearing in this district or in the other district, but not in both. You also have the right to explore resolving this case in this district, pursuant to Federal Rule of Criminal Procedure 20. Under that rule, the case can be transferred to this district from the District of Columbia, but only if you wish to plead guilty and only if the prosecutor here and the prosecutor there agree; and if you wish to explore that possibility, you may ask

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to have more time to consider that possibility.
 2
              So the first issue here is whether we are going to
    have a contested removal hearing or if the defendant is going
 3
 4
    to agree to removal. Have you had a chance to address that
 5
    Mr. van der Veen?
              MR. VAN DER VEEN: Yes, Judge. We are going to agree
 6
 7
    to the removal. We do not contest identity.
 8
              THE COURT: All right, thank you.
 9
              Again, as I told you, Mr. Dolan, by agreeing to
10
    removal, you are not admitting guilt, you are merely saying
11
    that they have not arrested the wrong person; do you understand
12
    that?
13
              THE DEFENDANT: Yes, Your Honor.
14
              THE COURT: Ken, do we have a form that we can hand
15
    down to Mr. Dolan?
16
              THE COURTROOM DEPUTY: I'll have to one brought up.
              THE COURT: So we will have a form in a moment here.
17
18
              Let me ask you a few questions about your decision
19
    here, Mr. Dolan. Are you clear headed today?
20
              THE DEFENDANT: Yes, I am, Judge.
21
              THE COURT: Are you under the influence of any drugs,
22
    narcotics, alcoholic beverages?
23
              THE DEFENDANT: No, I'm not.
24
              THE COURT: Have you had enough time to talk with
25
    your counsel, Mr. Hutchinson and/or Mr. van der Veen regarding
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your decision to waive removal in this case and agree to
 1
 2
    identity and agree to removal to the District of Columbia?
              THE DEFENDANT: Yes, Your Honor.
 3
 4
              THE COURT: All right. Do you have any questions for
 5
    the Court or for your lawyers about that issue?
              THE DEFENDANT: No, Your Honor.
 6
 7
              THE COURT: All right. So I'm going to find that the
    defendant has knowingly and voluntarily waived his right to a
 8
 9
    contested removal hearing and has agreed with the advice of
10
    competent counsel to consent to removal to the District of
    Columbia.
11
             And Ken, once we get that form, we will go ahead and
12
13
    ask Mr. Hutchinson and his client to execute that.
14
              THE COURTROOM DEPUTY: Yes, Judge.
              THE COURT: All right. How long do you think that
15
16
    will be?
17
              We will have that form in just a minute. Let's deal
18
    with the removal hearing; then after that, we will go to the
    detention issue.
19
20
              MR. VAN DER VEEN: Judge, may I identify all lawyers
    that on the Zoom that are associated with the case either by in
21
22
    person or in Zoom or by telephone without Zoom.
23
              THE COURT: Yes. I know we have Mr. Hutchinson here,
24
    in the courtroom, along with Mr. Dolan. Mr. Dispoto is here on
25
    behalf of the United States.
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1
              Correct, Mr. Dispoto?
 2
              MR. DISPOTO: Yes, sir.
              THE COURT: Are there any other prosecutors that are
 3
 4
    online?
 5
              Doesn't appear; I don't see or hear any other
 6
    prosecutor, so it is just you today, Mr. Dispoto.
 7
              MR. DISPOTO: Yes, sir.
 8
              THE COURT: And who is the agent that you have today?
 9
              MR. DISPOTO: Special Agent Spence from the FBI, he
10
    is on.
11
              THE COURT: FBI Agent Spence, I do see him there.
              All right. Are there any other Counsel that are
12
    attending this hearing today?
13
14
              MR. VAN DER VEEN: Not for the Defense, Judge.
              THE COURT: So it appears that's all it is.
15
    Mr. Dispoto, it is you; Mr. van der Veen; Mr. Hutchinson here
16
17
    in the courtroom; we have Agent Spence. It doesn't appear that
18
    anybody else is responding.
19
              MR. VAN DER VEEN: Thank you, Judge.
20
              THE COURT: Just one moment, while we get that form.
              And while we are doing that, I was handed the
21
22
    defendant's motion in opposition to the Government's motion for
23
    Pretrial Detention. Has that been provided to you,
24
   Mr. Dispoto?
25
              MR. DISPOTO: Judge, I did receive an e-mail a few
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1
    moments ago from what appears to be Mr. van der Veen's law
 2
    clerk. It is a relatively short motion. It is, I think, about
    four pages. I did eyeball it; but quite honestly, being on the
 3
 4
    Zoom, I wasn't able to completely digest it. I don't need any
 5
    additional time to review it, so we are ready to proceed.
 6
              THE COURT: All right. It is as you stated, it is
 7
    short, three pages of text. The significant lines are on the
    fourth page. It was probably done in a hurry, because "motion"
 9
    is spelled wrong, it is spelled M-O-T-I-O-I-N. Unless that's a
10
    different spelling that I'm not aware of.
11
              But in any event, you do have a copy of it,
    Mr. Dispoto?
12
13
              MR. DISPOTO: Yes, Judge.
14
              THE COURT: All right. Don't need any more time?
15
              MR. DISPOTO: No, Your Honor.
              THE COURT: Okay, great.
16
17
                    And I do have that, Mr. van der Veen, so I
18
    will review that.
19
              MR. VAN DER VEEN: Judge, I only filed it because the
20
    Government in the other cases that I have seen around the
    country have been filing written motions for detention. I
21
22
    didn't know if I missed it in some way, so we tried to file
23
    something quickly, last night; had some difficulty and did it
24
    again this morning.
25
              THE COURT: It's not a problem. I have not seen a
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Government motion in this case, so there is nothing that's been
 1
 2
    filed and nothing presented to me, at this point, a written
 3
   motion.
 4
              MR. van der VEEN: Please excuse the typo, I abhor
 5
    and am disappointed there is one.
 6
              THE COURT: I understand, I understand.
 7
              MR. VAN DER VEEN: I wasn't speaking --
 8
              THE COURT: While we are waiting for my courtroom
 9
    deputy to come back with the form, I'm going to take a quick
    minute to review the motion and also the Pretrial Services
10
11
    report.
12
              You do, Mr. Hutchinson, have a copy of the Pretrial
13
    Services report.
14
              MR. HUTCHINSON: I do, Judge.
15
              THE COURT: Great.
16
              MR. HUTCHINSON: Thank you.
17
              THE COURT: Okay.
                                 So Mr. Hutchinson, my courtroom
18
    deputy is handing you and your client a waiver removal form.
    If you will just review that with him, if he is willing and he
19
20
    wishes to, if you could both sign that and pass it up to my
    courtroom deputy.
21
22
              MR. HUTCHINSON:
                              Yes, sir.
23
              THE COURT: So Mr. Dolan, I have been handed a form
24
    here. It is a waiver of Rule 5, and 5.1 hearings.
25
    entitled, "United States of America versus Jason Dolan, case
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number 21-8212-BER," that's our case here, in the Southern
 1
 2
    District of Florida.
              It says that "I understand that I have been charged
 3
 4
    in another district, the District of Columbia," that's United
    States district Court for the District of Columbia; and it
 5
    states here, "I agree to waive my right to an identity hearing
 6
 7
    and production of the warrant." It dated today's date,
    June 2nd, 2021; and above the defendant's signature line, there
 9
    is a signature. Is that your signature there, Mr. Dolan?
10
              THE DEFENDANT: Yes, Your Honor.
11
              THE COURT: Did you sign that knowingly and
12
    voluntarily?
1.3
              THE DEFENDANT: Yes, Your Honor.
14
              THE COURT: Is that what you want to do?
15
              THE DEFENDANT: Yes, Your Honor.
              THE COURT: I'm going to go ahead and approve the
16
17
    waiver and note that the defendant, Mr. Dolan, is not
18
    contesting removal, and therefore he will be removed to the
19
    District of Columbia whether it is by order or warrant remains
20
    to be seen because we need to hold a detention hearing.
21
              Both sides are ready for the detention hearing, at
22
    this point, is that correct, Mr. Dispoto?
23
              MR. DISPOTO: Yes, Your Honor.
24
              THE COURT: Mr. van der Veen?
25
              MR. VAN DER VEEN: Yes, Judge.
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THE COURT: Mr. Hutchinson.
 1
 2
              MR. HUTCHINSON: Yes, Your Honor.
              THE COURT: Okay.
 3
 4
              So, first of all, if you could just tell me, I will
 5
    take judicial notice of the fourth superseding indictment
 6
    issued in the District of Columbia. I'm also going to take
 7
    judicial notice of the Pretrial Services report regarding
    Mr. Dolan; and I will allow the Government to proceed by
 9
    proffer with the agent present. But first of all, if you could
10
    first tell me what is the basis that the Government is seeking
11
    Pretrial Detention of the defendant?
              MR. DISPOTO: We are seeking Pretrial Detention, Your
12
    Honor, based on risk of flight as well as danger to the
13
14
    community.
15
              THE COURT: All right. So you are arguing there is a
    serious risk of flight and a danger to the community, if
16
    Mr. Dolan were released?
17
18
              MR. DISPOTO: Yes, sir.
              THE COURT: That there are no conditions or
19
20
    combination of conditions of release that would reasonably
21
    assure his presence in court or his threat to the community.
22
              MR. DISPOTO: Yes, sir.
23
              THE COURT: Now is there a rebuttal presumption in
24
    this case? I know there is a destruction of evidence count.
25
    What is the Government's position on whether or not there is a
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rebuttal presumption in this case?
 1
 2
              MR. DISPOTO: Your Honor, there is a rebuttal
 3
    presumption pursuant to 3142(c)(3) which indicates that an
 4
    offense listed in 18 U.S.C. 2332b (g) (5(B) for which a maximum
 5
    term of imprisonment of ten years or more is prescribed. And
    in this case, as the Court correctly noted, Section 1361 of
 6
 7
    Title 18 is one of those enumerated offenses.
 8
              THE COURT: Okay, so let me just understand it.
 9
              Your position is that under 3142(e)(3)(C) Title 18, a
10
    presumption arises if the offense felony destruction of
11
    property under 1361 is listed in 2332b g) (5) (B), and carries a
    minimum term of imprisonment of ten years or more.
12
13
              MR. DISPOTO: Maximum.
14
              THE COURT: What did I say, minimum, I meant maximum,
15
    I meant maximum term.
16
              MR. DISPOTO: Yes.
17
              THE COURT: So your position is that under
18
    3142(e)(3(C), along with the 2332b(g)(5)(B), there is a
19
    presumption that as to danger, risk of flight, or both?
20
              MR. DISPOTO: I believe both, Your Honor.
21
              THE COURT: Okay. Now is the Government asserting
22
    this is a federal crime of terrorism?
23
              MR. DISPOTO: Yes -- hold on, let me just
2.4
    double-check.
25
              Yes.
```

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Cases involved -- cases that involve an offense
 1
 2
    listed in 2332b(g)(5)(B), that defines federal crime of
    terrorism does, in fact, qualify for 1361. So the answer to
 3
 4
    shower question is yes.
 5
              THE COURT: All right. So you are hanging the
 6
    presumption -- your argument on the presumption is based on the
 7
    destruction of evidence count primarily, is that correct?
 8
              MR. DISPOTO: Count three, 1361.
 9
              THE COURT: Right, okay.
10
              So let me hear from the Defense on whether or not you
11
    agree with that.
12
              MR. VAN DER VEEN: Judge, I have count three as
13
    destruction of government property, not destruction of
14
    evidence.
15
              THE COURT: Right. If I said that, I misspoke.
                                                               Ιt
    is destruction of government property.
16
17
              MR. VAN DER VEEN: Okay. Judge, I would disagree
18
    with the Government's argument there. My client is really, in
    count three, based on a conspiracy theory of which in the
19
20
    indictment there is no evidence that he conspired to destruct
    property, and there is absolutely zero evidence in the
21
22
    indictment -- or I think by what will be the FBI's testimony of
23
    my client destroying any property, hurting any property of any
24
    kind.
25
              THE COURT: All right. Well, we --
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1
              MR. VAN DER VEEN: And so my client, I don't think --
 2
              THE COURT: All right. So I think that in count
    three, it is a destruction of property count, and I believe
 3
 4
    that is under the aiding and abetting statute as well as the
 5
    substantive statue. So it is Title 18, United States Code,
    1361, and Title 18, United States Code, Section 2; is that
 6
 7
    correct, Mr. Dispoto?
 8
              MR. DISPOTO: Yes, Your Honor.
 9
              So the Government's position is that a rebuttable
10
    presumption applies as to risk of flight, serious risk of
11
    flight or danger, and that no condition or combination of
    conditions of release would protect the community or guarantee
12
13
    or assure the defendant's -- reasonably assure the defendant's
14
    presence in court, so I'll take that issue under advisement
    whether or not there is a rebuttable presumption.
15
16
              I understand the Defense position that they are
17
    disputing that, but I just wanted to have that clear.
18
              The second issue is: Can you tell me, Mr. Dispoto,
    what the maximum penalties are for counts one, two, three and
19
20
    four which Mr. Dolan is charged?
21
              MR. DISPOTO: Count one is five years in prison;
22
    Count II is 20, count three is 10 years, and count four is one
23
    year.
24
              THE COURT: All right. So five years --
25
              MR. DISPOTO: I'm sorry, did you want the fines as
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1
    well or just the prison term?
 2
              THE COURT: Just prison term for purposes of
 3
    detention.
 4
              So as to count one, the maximum prison term is five
 5
    years; count two, the maximum prison term is 20 years; count
    three, the maximum prison term is ten years; and count four,
 6
 7
    the maximum prison term is one year; is that correct?
 8
              MR. DISPOTO: That's correct.
 9
              THE COURT: All right. And you do have the FBI agent
10
    here, Agent Spence.
11
              All right, so if you want to go ahead and proceed by
12
    proffer.
13
              MR. DISPOTO: Thank you, Judge.
14
              And Your Honor, for what it is worth, the issue of
    the presumption was addressed relative to some similarly
15
    situated codefendants in the Middle District of Florida who
16
17
    were also arrested last week and had detention hearings, and it
18
    is my understanding, Judge, that the court relative to those
19
    codefendants all found the presumption applied. So whatever
20
    that is worth, I just present that to Your Honor.
21
              THE COURT: I will say that my initial analysis seems
22
    to be that the presumption does apply, but I'll hear more
23
    argument on that once we get through the detention hearing.
24
              MR. DISPOTO: Fine.
25
              Your Honor, with the Court's permission and
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indulgence, I would like my proffer this morning to include
 1
 2
    information that is contained within the fourth superseding
    indictment. I know Your Honor has already taken judicial
 3
 4
    notice of. That document contains many allegations against
 5
    various defendants; but for the sake of completeness, I would
 6
    like to pinpoint and highlight some information contained
 7
    therein as it specifically relates to Mr. Dolan.
 8
              THE COURT: All right.
 9
              MR. DISPOTO: Before I do that, Judge, if the Court
10
    would allow --
11
              THE COURT: Hold on one second.
              Mr. van der Veen.
12
              MR. VAN DER VEEN: Judge, I didn't want to interrupt,
13
14
    but I did want to be heard on the ability for the Assistant
15
    United States Attorney to proceed on a proffer rather than
16
    through the direct examination of the FBI agent.
17
              THE COURT: What we do in this --
18
              MR. VAN DER VEEN: I understand he would entertain
19
    it, but I did want to make a record about it, if I may.
20
              THE COURT: All right. I will tell you that in this
21
    district, we do allow the Government to proceed by proffer, as
22
    long as they have an agent with knowledge available for
    cross-examination. So what is your position on that?
23
24
              MR. VAN DER VEEN: Judge, my position on that is
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    although the rule does allow for it. It may be that common
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occurrence in Your Honor's jurisdiction, in this particular case and particularly, if there is a rebuttable presumption, I believe the proffer is going to be a proffer of testimony that one agent may have heard from another agent or may have heard from somebody else. So that the information by the agent himself, if he were to testify on direct, is far removed from any personal knowledge at all. And so that -- my client's constitutional right to confrontation of the witness will be severely restricted if he can't cross-examine the testimony of the agent but can only cross-examine something proffered by an agent of the Government. THE COURT: All right. Well, I will note your objection, and overrule it. Both the case law and the statute do allow the Government to proceed by proffer in this case. In this case, there is an indictment issued by the grand jury in the District of Columbia which is a finding of probable cause as to counts one through four against Mr. Dolan. And as I said, although we allow the Government to proceed by proffer, we do have an agent available who can testify as to any issues with the proffer. So I note your objection. I overrule it, and we will proceed as we normally do and as most courts do in this country which is the Government proceeding by proffer with an agent available to testify. Go ahead, Mr. Dispoto.

MR. DISPOTO: Thank you.

Your Honor, the fourth superseding indictment that has been entered in the District of Columbia alleges that Mr. Dolan along with a group of several other individuals, some of whom also reside in the State of Florida, traveled to Washington D.C. on January 6th of 2021 with the express purpose of intervening in a proceeding to be held within the United States Congress that was in session for the explicit of purpose of certifying the election of 2020.

Specifically on that date, January 6th of 2021, a joint session of the United States House of Representatives and the United States Senate convened in the United States Capitol building for the purpose of the joint session to open, count, and resolve any objections to the Electoral College vote to the 2020 presidential election and to certify those results.

At approximately 1:00 o'clock on that day, the joint session convened in the Capitol building for the certification of the Electoral College vote. A large crowd began to gather outside of the Capitol perimeter as the joint session got under way. Crowd members eventually forced their way through, up, and over the Capitol Police barricades and advanced to the building's exterior facade.

Capitol Police Officers attempted to maintain order and stop the crowd from entering the Capitol building to which the doors and the windows were locked or otherwise secured.

Nonetheless, shortly after 2:00 o'clock that afternoon, crowd
members forced entry into the Capitol building by breaking
windows, ramming open doors, and assaulting Capitol Police
Officers. Other crowd members encouraged and otherwise
assisted the forced entry.

The crowd was not lawfully authorized to enter or remain inside of the Capitol, and no crowd member submitted to security screenings or reference checks by Capitol Police or other security officials.

Shortly thereafter, members of the United States house and senate chamber including the vice-president were evacuated from their respective chambers. The joint session was halted while the Capitol Police and other law enforcement officers worked to restore order and to clear the Capitol of unlawful occupants.

Later that evening, law enforcement regained control of the Capitol. In the course of these events, over 100 members of law enforcement were assaulted. The Capitol suffered millions of dollars in damage including broken windows and doors, graffiti. And residue from pepper spray, tear gas, and fire extinguishers.

Deployed by both crowd members who stormed the Capitol and by Capitol Police Officers trying to restore order. Additionally, many media members were assaulted and had cameras and other news gathering equipment destroyed.

During the course of the investigation of this matter, the defendant, names Dolan, has been identified as one of the individuals who was in that crowd that day. He has also been identified as a member of the Oath Keepers

Members and affiliates of this organization were among the individuals in groups who forcibly entered the Capitol on January 6. The Oath Keepers are a large but loosely organized collection of individuals, some of whom are associated with militias. Some members of the Oath Keepers believe that the federal government has been coopted co opted by a cabal of elites trying to strip American citizens of theirs rights.

One moment, Judge.

At least as early as January 3rd of 2021, the defendant, James Dolan, and others including some of his charged codefendants including Kelly Meggs, Kenneth Harrelson, and Mr. Hackett joined an invitation only encrypted messaging service entitled "OK" -- and I'm quoting now, "OK FLDC Op January 6."

Kelly Meggs wrote in that encrypted service that Mr. Harrelson would serve as the ground team leader in Florida. On January 4th of 2021, Mr. Harrelson and Mr. Dolan departed the State of Florida together in a vehicle rented by Mr. Dolan, and the two of them proceeded to travel to Washington D.C. in the metropolitan area.

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Several other charged defendants who reside in Florida also drove up in separate vehicles in somewhat of a loose caravan formation. Those individuals include Graydon Young from Tampa; Kelly Meggs and Connie Meggs from Ocala, Florida; Kenneth Harrelson from Orlando; Joseph Hackett from Sarasota; and William Isaacs from Kissimmee, Florida. On January 4th, 2021, Mr. Harrelson and Mr. Dolan departed from Florida at -- together, traveled to Washington D.C. and ultimately stayed at a Hilton Garden Inn located in Washington D.C. Mr. Dolan booked and paid for the room that they stayed in from January 5th to January 7th of 2021. January 6th of 2021, Mr. Dolan and Mr. Harrelson unlawfully entered the restricted Capitol grounds. At 2:35 P.M. that afternoon, nine of the individuals charged in this indictment including Mr. Meggs, Mrs. Meggs, Mr. Hackett, Mr. Isaacs, and others joined together to form a column of stack individuals wearing Oath Keeper clothing, patches, insignia, and battle gear. Together, the stack maneuvered in an organized fashion up the steps on the east side of the Capitol. Each member keeping at least one hand on the shoulder of the other. Towards the top of the steps, Mr. Harrelson and Mr. Dolan joined with the stack. Surveillance video from the Capitol clearly depicts Mr. Dolan present at the scene wearing an Oath Keepers shirt, sweatshirt,

or jacket of some kind clearly displaying the Oath Keepers

insignia.

At the top of the steps, the stack joined and then pushed forward alongside a mob that advanced towards the Columbus Doors at the central east entrance to the Capitol assaulting the officers guarding the doors, through objects and sprayed chemicals towards the officers and the doors, and pulled violently on the doors.

At 2:39 P.M., Mr. Isaacs joined the crowd and forcibly pushed against one of the Columbus Doors and the law enforcement officers guarding the door. Shortly thereafter, the Capitol doors were breached by the mob and Mr. Isaacs entered the building.

Shortly after the mob breached the doors, Mr. Dolan along with several other alleged Oath Keeper members who participated in that stack formation, including Mr. Meggs, Mrs. Meggs, Mr. Harrelson, and Mr. Hackett forcibly entered the Capitol. As they entered the Capitol, the group including Mr. Dolan joined the larger mob in pushing past at least one law enforcement officer who was trying to stop them from breaching the Capitol building.

After they penetrated the Capitol building, Mr. Dolan and other members of the stack collectively moved into an area inside of the building known as the Capitol Rotunda.

As they navigated through the Capitol Rotunda,
Mr. Dolan and the others, members in the stack continued to

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communicate with one another by keeping their hands on each
 1
 2
    other's back. Much of their movement that day inside the
    Capitol building and the Capitol grounds was recorded on
 3
 4
    Capitol security video.
 5
              At 2:45 P.M., Mr. Dolan walked southbound out of the
    Rotunda and toward the House of Representatives.
 6
 7
              At 2:57 P.M., approximately 12 minutes later,
    Mr. Harrelson and Mr. Dolan exited the Capitol.
 8
 9
              Shortly thereafter, at approximately 4:00 o'clock
    P.M., on January 6th, of 2021, the individuals who breached the
10
11
    Capitol in the stack formation including Mr. Meggs, Mrs. Meggs,
    Mr. Harrelson, Mr. Hackett, Mr. Dolan and others, gathered
12
13
    together with an individuals identified in the fourth
    superseding indictment as PERSON ONE and PERSON TEN
14
15
    approximately 100 feet from the Capitol near the northeast
16
    corner of the building. PERSON ONE has been identified by law
17
    enforcement as being a leader of the Oath Keepers.
18
              In a January 4th post, PERSON ONE stated the
    following: "As we have done on all recent DC Ops, we will also
19
20
    have well armed and equipped QRF," which stands for "quick
    reaction force," teams on standby outside DC in the event of a
21
22
    worst case scenario where the President calls us up as part of
    the militia to assist him inside DC. We don't expect the need
23
24
    for him to call on us for that at this time, but we stand ready
25
    if he does, and we also stand ready to answer the call to serve
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as militia any time in the future and anywhere in our future if
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 2
    he does invoke the Insurrection Act."
              Furthermore, Judge, PERSON ONE has been identified as
 3
 4
    an individual who attended a GoToMeeting. A GoToMeeting is an
 5
    online meeting site that allows users to host conference calls
    and video conferences via the internet in realtime.
 6
 7
    January 9th of 2020, PERSON ONE attended a GoToMeeting shortly
 8
    after the presidential election.
 9
              THE COURT: You said January 9th, 2021.
10
              MR. DISPOTO: Sorry, 2020.
11
              THE COURT: You said 2020, correct?
              MR. DISPOTO: 2020, correct.
12
              THE COURT: Okay. All right, go ahead.
13
14
              MR. DISPOTO: Only days after the presidential
    election of 2020, PERSON ONE told those attending the meeting,
15
    "We are going to defend the President, the duly elected
16
17
    President, and we call on him to do what needs to be done to
18
    save our country because if you guys don't -- excuse me --
19
    "because if you don't, guys, you are going to be in a bloody,
20
    bloody civil war, and you can call it an insurrection or you
21
    can call it a war or fight."
22
              He also said the following: "I do not want -- excuse
23
    me -- "I do want some Oath Keepers to stay on the outside and
24
    to stay fully armed and prepare to go in armed, if they have
25
         So our posture is going to be that we are posted outside
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of DC awaiting the president's orders. We hope he will give us
 2
    the orders. We want him to declare an insurrection and to call
    us up as the militia."
 3
 4
              Among the attendees of that online meeting in
 5
    addition to PERSON ONE were codefendants Mr. Meggs,
    Mr. Harrelson, Mr. Hackett, Watkins, Kelly, and PERSON TEN.
 6
 7
    These are the individuals that Mr. Dolan met up shortly after
    leaving the Capitol Rotunda on January 6th of 2021.
 8
 9
              Pursuant to legal process, the Government had
10
    obtained Government surveillance footage from a hotel located
11
    in Arlington, Virginia. That hotel was called the "Comfort
    Inn," and it was used by members of the Oath Keepers on
12
13
    January 5th to January 7th of 2021. Mr. Dolan is not believed
14
    to have stayed in the Comfort Inn. Instead, he stayed at a
15
    different hotel nearby. However, closed circuit TV footage
16
    from January 7th, 2021, the day after the incident at the
17
    Capitol on the 6th at approximately 8:40 in the morning shows
18
    individuals who law enforcement believes to be Mr. Harrelson
    and Mr. Dolan departing in an elevator within that hotel.
19
20
    Approximately 15 minutes later, at 8:00 a.m., Mr. Dolan and
21
    Mr. Harrelson are seen pushing a luggage dolly through the
22
            That dolly appears to have on it rifle cases.
23
              THE COURT: What date is this -- Mr. Dispoto, what
24
    date is this that you are --
25
              MR. DISPOTO: January 7th, January 7th of 2020.
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1
              THE COURT: All right. Now, Mr. van der Veen, if you
 2
    need to cross-examine the agent on that, you can certainly do
    that, when your time comes, all right.
 3
 4
              MR. VAN DER VEEN:
                                 Thanks, Judge. I also would just
 5
    make an objection as to relevance as to this portion of the
 6
    proffer. It's after -- my client left I think he said at 2:57.
 7
    It is the next day and I don't think that evidence is relevant
 8
    to this hearing.
 9
              THE COURT: I think -- I'll overrule that.
10
    the relevance is the carrying of what appeared to be rifle
11
    cases on January 7th, 2020, and that's their proffer, at this
    point, so you can certainly test that later, if you would like.
12
              MR. VAN DER VEEN: Sure, Your Honor, just before the
13
14
    hearing, we did try to discuss this point with the Government,
15
    and they don't know whether it was a rifle case or not. They
    have no evidence of it. They have never seen it, and they
16
17
    never recovered anything. That would be my other objection.
18
    I'll get it on cross, I guess.
19
              THE COURT: All right. I understand, that will be
20
    overruled for now.
21
              All right, go ahead, Mr. Dispoto.
22
              MR. DISPOTO: Thank you, Judge.
23
              Your Honor, last week, Mr. Dolan was arrested at his
24
    home in Wellington, Florida; and at that time, law enforcement
25
    had a search warrant authorizing the search of his residence.
```

As a result of that search warrant, law enforcement did not recover any firearms or any indicia of either Oath Keeper clothing or memorabilia of any kind.

Law enforcement did a -- interviewed several neighbors of Mr. Dolan's many of whom told law enforcement that they have personally seen firearms in Mr. Dolan's residence, that at least one of those witnesses indicated Mr. Dolan frequently carries a firearm outside of his home. And a cursory search of Mr. Dolan's cellphone which was done pursuant to a search warrant shows Mrs. Dolan carrying or at least holding an assault style weapon.

Law enforcement believes, Judge, that in the five intervening months between the incident of January 6th and the execution of the search warrant last week, that Mr. Dolan removed any evidence of firearms or affiliation with the Oath Keepers from his home specifically to avoid its seizure or detection by law enforcement.

Your Honor, among the factors that the Court is to consider when deciding on whether to issue a bond in this case is the weight of the evidence. In this case, Your Honor, the weight of the evidence against Mr. Dolan is substantial as set forth in the -- in the indictment. The defendant is a known member of the Oath Keepers which is a right wing militia organization. He along with others planned to use violence to breach the Capitol and obstruct a congressional proceeding

which was designed to certify the vote of the Electoral College of the 2020 presidential election.

The conspirators planned to storm the Capitol and coordinated with a group of coconspirators who agree to serve as a quick reaction force to monitor the attack at the Capitol from a distance and be there to travel to the Capitol in the event that they were called upon possibly while armed.

Video and photographic evidence clearly shows

Mr. Dolan was present among that group of Oath Keepers in that

stack formation. Mr. Dolan and his coconspirators aggressively

moved through the crowd and towards the entrance of the Capitol

in a military stack formation with their hands on shoulders of

the individuals in front of them. Many, not Mr. Dolan, but

many within the group were dressed in paramilitary gear. They

were outfitted in clothing that had the Oath Keepers logo on it

and insignia on it, as Mr. Dolan did.

The Capitol doors that the Oath Keepers breached were significantly damaged. Multiple panes of glass were smashed and a door handle was missing or broken off.

The stack of the Oath Keepers then congregated inside of the north section of the Rotunda as seen from surveillant footage. Mr. Dolan is among that group.

In the course of these riots, Judge, 139 law enforcement officers were assaulted and the Capitol suffered millions of dollars in damage. The weight of the evidence

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against this defendant is strong. There is video evidence, as
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 2
    I indicated, as well as photographic evidence. That evidence
    shows that this defendant knowingly and intentionally
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 4
    participated in a conspiracy to obstruct Government or to
 5
    obstruct Congress.
 6
              With respect to the other bond factors regarding
 7
    first risk of flight, Mr. Dolan lacks any ties to the
    Washington D.C. area. He has been unemployed for the past year
 9
    and a half, and he has clearly displayed through his
    association with the Oath Keepers and participation in the
10
11
    events of the January 6th, 2021, mob. He has displayed a
    contempt for our system of Government including our democratic
12
13
    process; and based upon his actions, there is a substantial
14
    likelihood that he will not respect an important institution
15
    within that government, specifically our courts.
16
              Now we are not alleging, Judge, that Mr. Dolan is a
17
    flight risk to the extent that he is going to leave the
18
    country; however, there is a substantial probability that he
19
    will not show up in court as directed.
20
              With respect to his history and his characteristics,
21
    Judge, he has a history of violence and weapons use as
22
    reflected in his two prior arrests. He has known access to
23
    firearms, and he has a known and clear willingness to support
24
    an armed overthrow of our democratic institutions.
25
              Finally, Judge, turning to the nature and the
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seriousness of the danger to any person or the community that
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 2
    would be posed by his release, I would like, Judge, to share
    With You an Observation that was made by Judge Lammens. Judge
 3
 4
    Lammens was the judge who presided over the detention hearings
 5
    for Kelly Meggs and --
 6
              MR. VAN DER VEEN: Objection --
 7
              MR. DISPOTO: -- Meggs, and this took place the
 8
    last --
 9
              THE COURT: Hold on a second.
10
              What is the objection?
11
              MR. VAN DER VEEN: I object to any reference to any
    other detention hearing of any other defendant. It is not
12
13
    relevant to my client.
14
              THE COURT: All right. You know, I'll overrule that,
    and I'll decide what weight if any to give it regarding
15
16
    whatever Judge Lammens may have said, so you can go ahead,
    Mr. Dispoto.
17
18
              MR. DISPOTO: Thank you.
              Your Honor, this is what Judge Lammens said when
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20
    denying bond for the Meggs. "This case isn't just about
    breaking the law, we see those cases every day. This case is
21
22
    different, it is more. It is about challenging the very
23
    existence of the law. It is about a challenge to the very
24
    institution responsible for making a law while it was in the
25
    process of carrying out its lawful duty. They were carrying
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out a duty that their oath required them to fulfill. That very
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    Congress has established that one of the violations of the law
    that this defendant is charged with is so serious that the
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 4
    Court must presume you are a danger to the community when you
 5
    are charged with violating it. When the Court considers then
    the seriousness of the charge against you and the weight of the
 6
 7
    evidence, there is only one conclusion. You are a danger to
    the community and must be detained."
 9
              Likewise, Your Honor, in this case, this defendant
10
    participated in a concerted activity to obstruct congressional
11
    proceedings. As a result, members of Congress were evacuated
12
    from their respective chambers. The disruption resulted in
13
    assault of more than 100 law enforcement officers, millions of
    dollars in damage to the Capitol, and death to several
14
15
    individuals.
16
              For those reasons, Your Honor, we would ask the Court
    to detain this defendant as well.
17
18
              THE COURT: Let me ask you. When you were referring
    to Judge Lammens, was he speaking of Kelly Meggs, Connie Meggs,
19
20
    or both, do you know?
21
              MR. DISPOTO: I believe it was -- give me one moment,
22
    Judge.
23
              I believe it was Kelly Meggs. And by the way, Kelly
24
    Meggs is a male.
25
              THE COURT: No, I do understand that. The reason I
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bring it up because I know Connie Meggs has ultimately been
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    released by Judge Mehta up in the District of Columbia. Kelly
    Meggs, the husband, is detained, from my review of the -- of
 3
 4
    the docket.
 5
              And let me just ask you, Mr. Dispoto. I mean,
    obviously, the allegations in this case are extremely serious.
 6
 7
    What occurred was -- as alleged, is clearly terrorism.
                                                            It's
    clearly an unpatriotic attack on our country.
 9
              At this point, the defendant is presumed innocent
10
    under our Constitution and, you know, even if defendants or
11
    those accused in this case may not believe in our constitution
    or may not want to follow it or may want to attack the
12
13
    Government, this Court still has to follow the Constitution.
              I'm looking at the docket in the District of Columbia
14
    and in going through it, I know there were a lot of -- there
15
16
    has been a lot of litigation about detention and release. And
    in going through this fourth superseding indictment, the best I
17
18
    have been able to determine is that Thomas Caldwell was
    eventually released. Donovan Crowl was essentially released.
19
20
    Jessica Watkins is in custody on Pretrial Detention. Sandra
    Parker was eventually released. Bennie Parker was eventually
21
22
              Graydon Young was eventually released. Laura Steele
23
    was eventually released. Kelly Meggs is detained. Connie
24
    Meggs was eventually released. Kenneth Harrelson who you
25
    allege Mr. Dolan traveled with to DC, he is detained. Minuta,
```

Roberta Minuta is released. Joshua James is released. I'm not 2 sure what the status is on Joseph Hackett or William Isaacs. So my question is this. So far, it looks like out of this 3 4 group, aside from Hackett and Isaacs who I don't know what 5 their status is, it looks like three have been detained and, by 6 my count -- one, two, three, four, five, six, seven, eight --7 nine have been released albeit many with very, very strict conditions of release. 9 Before I go to the Defense, what puts Mr. Dolan in 10 the category of Jessica Watkins, Kelly Meggs, or Kenneth 11 Harrelson requiring detention as opposed to in the category of those others who have been released on very stringent 12 13 conditions? 14 MR. DISPOTO: I would submit to the Court that Mr. Dolan stands more similar to Mr. Meggs and Mr. Harrelson, 15 Mr. Hackett, by virtue of the fact that this was a group of 16 17 individuals that traveled together from Florida and were 18 identified as being among the group of individuals that were part of that stack formation. Now I'm not saying that these 19 20 other individuals weren't. Some of them were also part of that stack formation, but Mr. Dolan traveled from Florida with 21 22 Mr. Harrelson along with Mr. and Mrs. Meggs who I believe 23 traveled in a separate vehicle, that they were in close contact 24 during their time in Washington D.C., and they were all part of 25 that stack formation.

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Now Mr. Dolan -- and I don't -- I haven't reviewed the transcripts yet, if they are even available, with respect to those other individuals, but there is -- I'll use the word "compelling" evidence, maybe not proof beyond a reasonable doubt, but there is compelling evidence that Mr. Dolan has access to firearms and that he specifically is currently hiding those firearms from law enforcement. As I indicated and Agent Spence I believe conducted those interviews, and he is available for cross-examination. Neighbors who know Mr. and Mrs. Meggs [sic] have told law enforcement that they are very much aware and they have seen weapons in the home and Mr. Dolan carrying firearms. So to answer Your Honor's question, if that in conjunction with his actions and his participation in close concert --Mr. Van der Veen, I would appreciate it if you would stop shaking your head. You have been doing that throughout most of the proceedings, and I find that disrespectful. You will have your opportunity to argue. THE COURT: Hold on, hold on. I want both Counsel to control themselves. Mr. Van der Veen, I do see you shaking your head and I don't want you doing that here, in the hearing. You will have your chance to cross-examine the agent. You will have your chance to make your argument. When you make your

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argument, I don't expect Mr. Dispoto to act like that. When he
 2
    is making his argument, I don't expect you to act like that.
    Let's act as professionals and get to the essence of this case.
 3
 4
              MR. DISPOTO: So, Judge, that would be my proffer to
 5
                I believe his close association with those
    the Court.
 6
    individuals who were detained, the fact that he traveled with
 7
    them, the fact that he has access to firearms all makes
    Mr. Dolan closer to that camp than any of the other individuals
 9
    who were released albeit under strict conditions.
10
              THE COURT: All right, thank you.
              Okay. So how do you wish to proceed,
11
    Mr. Van der Veen?
12
13
              MR. VAN DER VEEN: Judge, I guess I have some
    questions for the FBI agent.
14
15
              THE COURT: All right, that's fine. Let's go ahead
    and start with that.
16
17
              Ken, if you will please swear in Agent Spence.
18
              THE COURTROOM DEPUTY: Yes, Judge.
19
              Raise your right hand.
20
               JUSTIN SPENCE, GOVERNMENT WITNESS, SWORN
              THE COURTROOM DEPUTY: State your full name for the
21
22
    record.
23
              THE WITNESS: Justin Spence, S-P-E-N-C-E.
24
              THE COURT: And you are a special agent with the FBI?
25
              THE DEFENDANT: Yes, Your Honor.
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THE COURT: How long have you been employed in that
 1
 2
    capacity?
 3
              THE WITNESS: A little over six years, Your Honor.
 4
              THE COURT: All right, thank you.
 5
              Go ahead, Counsel.
 6
              MR. VAN DER VEEN: Thanks.
 7
                           CROSS-EXAMINATION
    BY MR. VAN DER VEEN:
 9
    Q. Agent, I quess I want to start off where Mr. Dispoto left
10
    off, and that's my client's close association with the people
11
    that have been detained, Mr. Harrelson and Mr. Hackett and
    Kelly Meggs; and if I can, then first ask about the Oath
12
13
   Keepers.
14
              In your six years as a FBI agent, the Oath Keepers
   have been in existence, correct?
15
   A. Yes, sir.
16
17
        In fact, the Oath Keepers have been in existence for at
18
    least 12 years?
        I believe so.
19
   Α.
20
    Q. More than a decade?
21
   A. Yes.
22
        And the FBI -- and they are considered a right wing
23
    fanatical group, correct?
24
        Are you saying what the FBI has or --
25
        The FBI's position is and as written, I think in the
```

- 1 | indictment, they are a right wing group, correct?
- 2 A. Yeah. They are a paramilitary organization that as
- 3 extremist right wing views.
- 4 Q. And they have been under the scope and the eye and watch of
- 5 | the FBI almost since their inception, true?
- 6 A. I'm not going to comment on other FBI investigations or
- 7 activity.
- 8 Q. But I'm asking you what you know to be true, that the
- 9 | federal government has been surveilling and investigating the
- 10 Oath Keepers for years and years, true?
- 11 A. I'm not going to comment on any other FBI investigations
- 12 | not related to this investigation.
- 13 Q. Okay. Related to this investigation, from the day of the
- 14 election to January 6th, the federal government was keeping
- 15 very close eyes on the Oath Keepers, true?
- 16 A. They were, yes, sir.
- 17 | Q. Okay. And in all of their investigation up until
- 18 January 3rd, my client has no affiliation with the Oath
- 19 Keepers, correct?
- 20 A. I think that's a fair assumption. I think it has been
- 21 | pretty well shown that he was an active member of the Oath
- 22 | Keepers Florida Group.
- 23 Q. Then let me take you to the indictment, if I could. Can
- 24 | you tell us what is your first evidence that my client before
- 25 January 3rd is related to the Oath Keepers?

- 1 A. I believe he was active in several encrypted messaging
- 2 chats, conversations with other Oath Keepers members including
- 3 Meggs reference the January operation prior to the 3rd I think
- 4 all the way going back to November.
- 5 Q. Sure, as outlined in the indictment, correct?
- 6 A. Correct, but I would be --
- 7 | Q. Are you --
- 8 A. -- January 2021, as you just asked me.
- 9 Q. Are you aware that in the indictment, my client's name
- 10 doesn't come up as any activity, any meeting of any kind until
- 11 January 3rd?
- 12 A. Sure.
- 13 Q. Okay. And nothing in your investigation shows any contact
- 14 | with my client before January 3rd and the Oath Keepers,
- 15 correct?
- 16 A. I mean, not as of -- yeah, not that I know of personally,
- 17 no.
- 18 Q. In fact, Agent, the FBI is aware of, was watching,
- 19 listening to, and is well aware of, as outlined in the
- 20 | indictment, that there were a number of encrypted meetings
- 21 | early on in -- in December, correct?
- 22 A. Yes.
- 23 Q. In fact, on December -- as recently as December 31st, on
- 24 page 14 in the indictment, there was a get invited leader's
- 25 only meeting, true?

- 1 A. If that's what's written in the indictment, I'll --
- 2 Q. I can -- we can go by the indictment, right?
- 3 A. Sure.
- 4 Q. Okay. And beyond this indictment, you don't know anything
- 5 of the intricacies or specifics of the investigation?
- 6 A. I do related to Dolan. I don't have access to all of the
- 7 other coconspirators' information or their specific
- 8 investigations.
- 9 Q. And so with respect to Dolan, the first evidence in your
- 10 | investigation or anybody's investigation is that he has no
- 11 prior affiliation, contact, communication or either by
- 12 | telephone, e-mail or smokescreen [sic] with the Oath Keepers,
- 13 | correct?
- 14 A. I think you meant --
- 15 Q. Yeah, I meant smoke signal, correct?
- 16 A. Yeah, not that I know of, sir.
- 17 Q. Okay. And so what you do know, though, is days before,
- 18 | there was a leaders' only conference of people in the Oath
- 19 | Keepers, correct?
- 20 A. Yes.
- 21 Q. And then there was, as mentioned in the proffer, a
- 22 GoToMeeting, correct?
- 23 A. Correct.
- 24 Q. On January 4th, true?
- 25 A. Correct.

- 1 Q. And my client did not participate in that either, did he?
- 2 A. Well, actually, I mean, with regard to the GoToMeetings,
- 3 there is evidence that indicates that he participated in those
- 4 either in encrypted chats or other group meetings all the way
- 5 back to November 17 of 2020. So I'm not sure what your
- 6 question is. Are you asking me if he is in some type of leader
- 7 | meetings because I don't think the -- Mr. Dispoto is alleging
- 8 | that he is a leader of Oath Keepers. It is just that he is a
- 9 participant, if that's what your question is.
- 10 Q. Mr. Dispoto co-offered that PERSON ONE had a go too meeting
- 11 on January 4th, where he said insightful things. Did you hear
- 12 | him proffer that?
- 13 A. I did.
- 14 Q. In the indictment, it lists which defendants were a part of
- 15 | that GoToMeeting, correct?
- 16 A. Correct.
- 17 | Q. And my client's name is not there because he did not attend
- 18 | a GoToMeeting, correct?
- 19 A. All right, I'll point you back to the indictment. If you
- 20 want to read specific information about your client which
- 21 states that your client actually participated in several
- 22 GoToMeetings dating all the way from November 17th, 2020,
- 23 including Oath Keeper channels such as Okay Florida which would
- 24 | be Oath Keeper Florida, OK National Call which would be Oath
- 25 | Keeper National Call, DC Plan and Call which I believe is the

- District of Columbia Plan and Call, and Florida DC Op Planning 2 Call which I would take it as the Florida cell of Oath Keepers planning the District of Columbia operation as written in the 3 4 indictment. 5 I'm going to give you an opportunity to answer my question directly, please. 6 7 A. Sure. 8 MR. DISPOTO: Objection. 9 BY MR. VAN DER VEEN: 10 Q. On the GoToMeeting that was proffered by Mr. Dispoto --THE COURT: Hold on a second, hold on a second. 11 12 What is the objection, Mr. Dispoto? 13 MR. DISPOTO: Counsel has asked a question and the 14 witness just answered the question, and I'm objecting to 15 Mr. Van der Veen editorializing in his next question. 16 THE COURT: All right, I will --17 MR. DISPOTO: Let the witness answer the question. 18 THE COURT: All right, I will sustain that. I did 19 hear the agent answer the question. 20 If you have another question, go ahead, Counsel. 21 MR. VAN DER VEEN: Sure. 22 BY MR. VAN DER VEEN:
- 23 The January 4th GoToMeeting which was an organization
- 24 meeting not for leaders but to inspire people, my client was
- 25 not on it, correct?

```
I don't believe -- I don't believe he was on the
 1
    Α.
 2
    January 4th meeting that I know about, no, sir.
    Q. Identify what evidence you have that my client was
 3
 4
    communicating with the oath leaders before January 3rd in any
 5
    way, please identify that evidence.
 6
              MR. DISPOTO: Your Honor, once again, I'm going to
 7
    object. The witness already answered that question. He
    already went through all of the encrypted chats that Mr. Dolan
 8
 9
    participated in.
10
              THE COURT: All right. So let's see if we can get
11
    this proceeding a little bit more expeditiously.
12
              Agent, I know you testified just a moment ago,
13
    according to you, Mr. Dolan participated in OK Florida chats,
    OK National calls, DC planning calls, is that correct?
14
15
              THE WITNESS: Yes, Your Honor.
              THE COURT: And that's going back to November 17th,
16
17
    of what year?
18
              THE WITNESS: 2020, sir.
              THE COURT: All right. Do you have a follow-up
19
20
    question on that, Mr. Van der Veen?
              MR. VAN DER VEEN: Judge, I would like to know where
21
22
    the evidence of that is. That is not in the indictment as
23
    relates to my client. The first mention of my client is
24
    January 3rd.
25
              THE COURT:
                          Okay. Well, I mean we, do know that an
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indictment is to establish probable cause. Not every fact is
 1
 2
    contained in an indictment in a typical criminal case.
              But, Agent, I think the question from
 3
 4
    Mr. Van der Veen is: What do you base that testimony on that
 5
    Mr. Dolan participated in OK Florida, OK National Call, DC
    Planning Call going back to as far as 11/17 of '20?
 6
              THE WITNESS: Yes, Your Honor. So the information
 7
    that he was provided by Washington field office agents included
 8
 9
    was not limited to several encrypted commercial messaging apps,
10
    encrypted chats, and other review of monikers, cell phone
    numbers, e-mail addresses that were related to and used by
11
    Mr. Dolan with -- specifically with regard to
12
13
    Mr. Van der Veen's question, the moniker e-mail address and
14
    cellphone used by Mr. Dolan was known to be used to access a --
    much like we are doing now, Zoom, an app called "GoToMeeting"
15
16
    where those monikers, names, cellphone numbers associated to
17
    Mr. Dolan accessed those meetings from actually November 17th,
18
    2020, up until January 2nd, 2021, where it is believed that
    they switched over to more encrypted chats, like Signal or
19
20
    other commercial messaging applications.
21
              The meetings -- as I testified, the meetings were, as
22
    far as the servers or channels, were labeled as such, you know,
23
    the OK Florida, OK National Call, DC planning Call, and Florida
24
    DC Op Planning Chat, that was information that was provided by
25
    the investigating agent in Washington field office to me prior
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to Mr. Dolan's arrest for my investigation.
 1
 2
              THE COURT: All right, thank you.
              So your testimony is your investigation developed
 3
 4
    that Mr. Dolan engaged in encrypted chats or calls?
 5
              THE WITNESS: Yes, sir.
 6
              THE COURT: All right, thank you.
 7
              Go ahead, Mr. Van der Veen.
 8
              MR. VAN DER VEEN: Okay, if I may.
 9
    BY MR. VAN DER VEEN:
10
        You seized his cellphone phone, correct?
        I did, yes, sir.
11
    Q. You found no evidence of any encrypted messages there,
12
13
    correct?
14
        That's not true.
        Can you tell the Judge of any date or time location or
15
    meetings before January 3rd that my client attended --
16
17
    A. From --
18
    Q. -- or otherwise interacted with?
19
    A. All right, well --
20
              MR. DISPOTO: Same objection, this is the third time
    this question has been asked.
21
22
              THE COURT: Hold on. Everybody is talking over
23
    everybody else; and the problem is, there are questions being
24
    asked by -- while the witness is talking. The witness is
25
    talking while the question is being asked, and there is
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objections. So we need to have a clear record here, and we are
 1
 2
    not going to have that if we have people talking over each
 3
    other.
 4
              So I think your question, Mr. Van der Veen, was about
 5
    the seized phone. Was it limited to what was on the seized
    phone or something else?
 7
              MR. VAN DER VEEN: I had asked another question,
 8
    Judge, which was can the agent tell us one involvement that my
 9
    client had with the Oath Keepers, date, time, and location,
    method communication of his involvement other than January 3rd
10
11
    with any specificity at all.
12
              MR. DISPOTO: Your Honor, I'm objecting to that
13
    question as being asked and answered.
14
              THE COURT: All right. Mr. Van der Veen, didn't the
    agent testify that Mr. Dolan was involved with OK Florida, OK
15
16
    National Calls, DC Planning Calls, encrypted chats or calls
17
    going back as far as November 17th, 2020?
18
              MR. VAN DER VEEN: He said -- what he did, Judge, is
19
    he did allege that. It is contrary to what is alleged in the
20
    indictment, so I'm trying to find out exactly when he was, what
    method of, when and where.
21
22
              THE COURT: All right.
23
              MR. VAN DER VEEN: I don't believe it is true, Judge.
24
    I would like a fact to prove it is true.
25
              THE COURT:
                          I understand, he indicated encrypted
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chats and that material was provided to him.
 1
 2
              Do you have any more specifics on that, Agent?
              THE WITNESS: Yes, Your Honor. I can only go back to
 3
 4
    what I just testified to, the last couple questions -- or last
 5
    couple answers I gave to Mr. Van der Veen. The information
    that was supplied, it might not be in the indictment, but it is
 6
 7
    definitely criminal investigation information, law enforcement
    investigation information and that was provided to me with
 8
 9
    regard to Mr. Dolan, and that's going to be the same exact
10
    information I just testified to with regard to the
11
    GoToMeetings.
              If Mr. Van der Veen has a specific question about
12
13
    what was on the cellphone, I can also answer that.
14
              THE COURT: I was going to follow up on that. I know
    the cellphone was just recently seized, is that right?
15
16
              THE WITNESS: Yes, Your Honor.
17
              THE COURT: Was it forensically analyzed yet or is
18
    that still in the process?
19
              THE WITNESS: It is still in process, Your Honor.
20
    was deposited down at our main evidence facility on Friday, so
    it would be the date following the warrant; and of course
21
22
    because of long weekend, I'm sure it is just now getting worked
23
    on.
24
              I did do -- like Mr. Dispoto said, I did do a cursory
25
    review of it. I didn't do a deep dive into it or a forensic
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review.
 1
 2
              THE COURT: Did the cursory review show anything
    related to the Oath Keepers or anything relevant to this
 3
 4
    detention hearing?
 5
              THE WITNESS: The cellphone did -- like Mr. Dispoto
    said, the cellphone did indicate at least tangentially access
 6
 7
    to AR style platforms, or AR weapon family platforms with
 8
    regard to being in possession of Mr. Dolan's wife as far as the
 9
   photograph. And on the cellphone, there were a presence of
10
    encrypted commercial messaging apps like Signal and things of
    that nature on the phone. I didn't go through those. I didn't
11
   want to take away from any of the forensic review.
12
              THE COURT: All right. And that was seized pursuant
13
14
    to a federal search warrant.
15
              THE WITNESS: Yes, Your Honor.
              THE COURT: Okay. Mr. Van der Veen, go ahead.
16
   BY MR. VAN DER VEEN:
17
18
   Q. So believe that the conjecture of the proffer was that when
   you executed the search warrant at my client's house, he had
19
20
    cleaned his house of all of his weapons?
21
       That's my belief, yes, sir.
   Α.
22
       Cleaned his house of any and all evidence of Oath Keepers
    0.
    and their insignia and all of that?
23
24
        That's my belief, yes, sir.
   Α.
25
       But just forgot to handle his phone and cleaning that?
```

- 1 A. Again, I don't know what is present on the applications. I
- 2 didn't open the applications, so I wouldn't know if there are
- 3 | conversations on that phone. I'm not a forensic examiner so I
- 4 | wasn't going to do something like that on scene.
- 5 Q. All right.
- 6 THE COURT: Any other questions, you have,
- 7 Mr. Van der Veen?
- 8 MR. VAN DER VEEN: I do, Judge.
- 9 BY MR. VAN DER VEEN:
- 10 Q. I want to ask if you indicated that he was not any of the
- 11 | certainly Oath Keepers leaders meetings, correct?
- 12 A. I don't have that information, sir.
- 13 Q. He went a involved in any recruiting any Oath Keepers,
- 14 | correct?
- 15 A. I don't have any of that information, sir; not to my
- 16 knowledge.
- 17 Q. He wasn't involved in any training of Oath Keepers or
- 18 | taking training from Oath Keepers -- I'm going to break that
- 19 up.
- He wasn't involved in any of the training of Oath
- 21 Keepers, as mentioned in the indictment.
- 22 A. Not to my knowledge.
- 23 Q. And he does not have nor did he get trained by the Oath
- 24 Keepers, as mentioned -- as referenced to in the indictment,
- 25 correct?

- 1 A. Not to my knowledge.
- 2 Q. When you saw him then at the capital building, on the
- 3 | video, and wasted on your investigation, he didn't have any
- 4 | weapons with him that day, correct?
- 5 A. Are you talking about on January 6th?
- 6 0. Yes.
- 7 A. I didn't observe any weapons, no, sir.
- 8 | Q. He didn't have any -- I'm sorry, go ahead.
- 9 A. I said but that's commonplace for what we know about how
- 10 | they operated on January 6th. That's what the hotel was for,
- 11 for the storage of the weaponry.
- 12 Q. Okay. But he has checked in into a hotel in another state,
- 13 | correct?
- 14 A. Yes, but he visited.
- 15 | Q. He visited a hotel where there was luggage taken out, true?
- 16 A. Correct.
- 17 | Q. And he had no idea what was in the luggage, true?
- 18 A. I don't know.
- 19 Q. Okay. With respect to my client staying at the Hilton, you
- 20 guys certainly forensically examined where he stayed, true?
- 21 A. I'm not sure. I didn't.
- 22 Q. But certainly you can represent to the Judge that nothing
- 23 was found in any way in the room that he stayed that would
- 24 indicate that he was either connected to the Oath Keepers or
- 25 | had anything to do with weapons, true?

- $1 \mid A$. Within the room, no, sir.
- 2 | Q. Okay. Now, regarding the day, my client -- and the
- 3 | allegations in the indictment, my client did not in any way
- 4 damage anything in the Capitol, correct?
- 5 There is no evidence that he broke a window or broke
- 6 a door or anything of that nature, correct?
- 7 A. I haven't had a chance to review all of the CCT footage or
- 8 other video phone footage, so I can't answer that, if he did or
- 9 did not.
- 10 Q. Well, nobody has told you that, nobody that you
- 11 | interviewed, no other agents, no U.S. Attorney told you that my
- 12 client did anything of that nature, true?
- 13 A. Correct.
- 14 Q. And he didn't use fire extinguishers or tear gas or pepper
- 15 spray or anything of that nature, correct?
- 16 A. No, sir.
- 17 | Q. In fact, my client didn't even arrive or ascend the Capitol
- 18 stairs with the Oath Keepers, correct, he was already there, on
- 19 the video?
- 20 A. Inside or outside?
- 21 Q. Outside.
- 22 A. He was outside with other Oath Keepers and ascended the
- 23 stairs with the Oath Keepers.
- 24 | Q. If the indictment reads and the video shows that my client
- 25 was at the top of the stairs long before the people went up,

- 1 and the indictment reads that at the end, he got on to the line
- 2 of people, is that incorrect?
- 3 A. No. He was up the stairs, but he was with Mr. Harrelson,
- 4 | which is clearly shown on the video, so that's other Oath
- 5 | Keepers. I mean, you have to be more specific with your
- 6 question.
- 7 Q. Sure. And with respect to what you see of him on the top,
- 8 he is not in any military gear, right?
- 9 A. As far as like body armor?
- 10 Q. Yes.
- 11 A. I mean, he is wearing Oath Keepers --
- 12 Q. Well, I'm looking at the picture of him now. Where is the
- 13 Oath Keepers insignia, emblem?
- 14 A. On his chest.
- 15 Q. Okay. On his chest?
- 16 A. Yes.
- 17 Q. What color was the garment he was wearing?
- 18 A. Black.
- 19 Q. And do you know whether that was his or given to him?
- 20 A. I have no idea.
- 21 Q. Okay. And with -- so you don't know whether he got that
- 22 that day leaving the protest to the Capitol?
- 23 A. Well, he was seen on the same shirt or sweatshirt or
- 24 whatever the case may be on January 5th, as well.
- 25 Q. Okay. And as far as the military equipment, helmets, gas

- 1 masks, he didn't have any of that.
- 2 A. No, he didn't have a plate barrier or helmet or gas mask.
- 3 Q. The amount of time that he was in the Capitol Rotunda from
- 4 | the time he went in to the time he went out was less than ten
- 5 minutes, correct?
- 6 A. I have to review the [inaudible] analysis, as far as, you
- 7 know, where his phone was; but according to the video before he
- 8 | left towards the House of Representatives, yes, sir, I believe
- 9 | that's about right.
- 10 Q. Okay. No, no. From the time he entered the Capitol
- 11 Rotunda to the time he existed the Capitol is inside of ten
- 12 | minutes, is that true?
- 13 A. The Capitol building or the Capitol itself?
- 14 Q. Yes, the Capitol building. He left the Capitol building at
- 15 2:57, according to the indictment.
- 16 A. Yes, sir.
- 17 | Q. And if you do the math, his total time in there is less
- 18 | than ten minutes, correct?
- 19 A. Yes, sir.
- 20 Q. With respect to the statements that PERSON ONE said
- 21 | apparently on January 4th, I think we determined that my client
- 22 didn't hear those statements; but those types of statements,
- 23 you have never heard my client say either, correct?
- 24 A. I haven't heard your client say anything, no, sir.
- 25 Q. You have never seen anything written by my client, spoken

- 1 by my client, or even thought by my client that is in any way
- 2 related to the words that Mr. Dispoto co-offered to the Court.
- 3 A. Can you say that again, as far as what you are asking me to
- 4 answer what your client said or wrote.
- 5 Q. Yeah, sure yeah.
- 6 Mr. Dispoto took some time to read out of the
- 7 | indictment what PERSON ONE said on January 4th, "it is critical
- 8 | that all patriots who can be in DC get to DC to stand tall, to
- 9 | support President Trump's fight to defeat the enemies, foreign
- 10 and domestic," he also quoted the --
- 11 A. Yeah, I believe PERSON ONE was kind of doing a kind of call
- 12 to arms to the Oath Keepers.
- 13 If you are asking me if Dolan --
- 14 Q. Correct.
- 15 A. -- PERSON ONE, but clearly Dolan took heed to that call of
- 16 arms [inaudible] other co-conspirators.
- 17 THE COURT: I'm sorry, I didn't hear that, you were
- 18 | breaking up, Agent. As far as the call to arms by PERSON ONE.
- 19 What did you just say?
- 20 THE WITNESS: I said if it's -- if Mr. Van der Veen
- 21 is asking me if PERSON ONE wrote that or Dolan wrote that,
- 22 | clearly PERSON ONE wrote that. And it's my believe that's a
- 23 | call to arms for the Oath Keepers to travel to the Capitol
- 24 which clearly Dolan heeded along with other coconspirators. So
- 25 Mr. Van der Veen is asking if Mr. Dolan wrote that, no he

- 1 didn't, but he clearly acted on it.
- 2 BY MR. VAN DER VEEN:
- 3 Q. If I may, Agent, my question -- we have already established
- 4 | my client didn't hear the words, true? He wasn't on the
- 5 | meeting.
- 6 A. Okay. So you are asking me if his moniker was on the
- 7 | meeting when those words were stated, is that your question?
- 8 Q. Sure, sure.
- 9 A. Okay, I don't believe the moniker was on that meeting or
- 10 | that server channel, no, sir.
- 11 Q. And to be clear, that means that you have no evidence that
- 12 he heard the words.
- 13 A. No, I don't.
- 14 Q. And you have no evidence that he has ever spoken words that
- 15 like?
- 16 A. No, I don't.
- 17 Q. Now with respect to my client --
- 18 MR. VAN DER VEEN: I may have one or two more
- 19 questions, Judge, if I may.
- 20 THE COURT: All right.
- 21 BY MR. VAN DER VEEN:
- 22 Q. With respect to the guns of my client or lack of guns of my
- 23 client, when your search his place, there was no advance
- 24 | warning, correct?
- 25 A. I mean, despite his knowledge --

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1
              MR. DISPOTO: Your Honor, I'm going to object to the
 2
    form of the question.
    BY MR. VAN DER VEEN:
 3
 4
    Q. He didn't know you were coming that morning to serve a
 5
    warrant, did he?
              MR. DISPOTO: Objection, lack of foundation.
 6
 7
              THE COURT: All right.
 8
              Well, let me just ask you. Agent, when you served
 9
    the warrant, did you have any information to believe that
    Mr. Dolan knew you were coming to serve the warrant?
10
11
              THE WITNESS: Specifically, no, Your Honor. But I
    mean, he clearly saw his coconspirators getting wrapped up in
12
13
    different investigations, including Mr. Harrelson which
14
    occurred, you know, not too -- in the distant past of when
    Mr. Dolan got arrested. So it would be my belief that yeah, he
15
    for sure knew that law enforcement intervention was coming.
16
17
              THE COURT: At some point, not necessarily that day,
18
    is that your testimony?
19
              THE WITNESS: Yes, Your Honor. I have no indication
20
    that he knew we were coming on that specific day, but just in
21
    general, that was a generalization.
22
              THE COURT: All right. Go ahead, Counsel.
23
              MR. VAN DER VEEN:
                                 Thanks judge.
24
    BY MR. VAN DER VEEN:
25
        So it is your testimony that he probably knew you were
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- 1 coming for him?
- 2 A. Yes, sir.
- 3 Q. And I didn't flee?
- 4 A. Correct.
- 5 Q. But there was no flight?
- 6 A. No.
- 7 Q. There was no flight. And when you showed up that morning,
- 8 he was cooperative, correct?
- 9 A. Yes.
- 10 Q. He didn't struggle.
- 11 A. No, sir.
- 12 Q. He didn't attempt to flee.
- 13 A. No, sir.
- 14 Q. And you saw no -- when you searched his home, you found no
- 15 evidence of plane tickets.
- 16 A. No, sir.
- 17 Q. Bus tickets.
- 18 A. No, sir.
- 19 Q. Dummy license plates.
- 20 A. No, sir.
- 21 Q. Or any indicia that he was planning on fleeing.
- 22 A. Correct.
- 23 Q. In fact, he lived in his home with his wife and 18-year-old
- 24 daughter.
- 25 A. Correct.

- 1 Q. Was there every day basically around the clock unless he
- 2 was looking for a job, right?
- MR. DISPOTO: Objection, how would he know that?
- 4 THE COURT: Sustained.
- 5 MR. VAN DER VEEN: He was under surveillance, I
- 6 assuming.
- 7 MR. DISPOTO: You are assuming correctly, Counsel.
- 8 BY MR. VAN DER VEEN:
- 9 Q. Did you have my client under surveillance at any time?
- 10 A. Yes, sir.
- 11 Q. And that's common practice before you execute a warrant on
- 12 | a home, you surveil the home to understand what the dangers
- 13 risks, and varies are correct?
- 14 A. That's correct.
- 15 Q. Now when you did search his home, you found no guns.
- 16 A. Is that a question or statement?
- 17 Q. Question.
- 18 A. Yes, that is correct, I didn't find any.
- 19 Q. No ammunition.
- 20 A. Correct.
- 21 Q. No gun safe.
- 22 A. Correct.
- 23 Q. No storage key locker where he may have moved guns to.
- 24 A. That, I don't know.
- 25 Q. Well, I'm asking you, did you find -- do you have any

- information that a storage key of any kind was found by my 2 client, was found in my client's home, when searched? A. No. 3 4 Okay. And you have indicated that neighbors were talked to 5 and at some point in the past, he had a gun or guns? That's correct. 6 Α. 7 Q. What color? A. What color guns? 9 Q. Yes. 10 MR. DISPOTO: Your Honor, I'm going to object to the 11 relevance of this. 12 THE COURT: What's the relevance, Counselor? MR. VAN DER VEEN: I would like -- I don't -- I would 13 14 like to test what the information is about what types of guns 15 he had, what types of guns were they, when were they, where were they, who were the people that reported this other than 16 17 I mean, there has to be some indicia of reliability 18 to the statement, and so I was going to explore that area, 19 Judge. 20 THE COURT: All right. Agent, what evidence do you have that Mr. Dolan had 21 22 possessed guns in his yard, in his home, or elsewhere prior to 23 his arrest?
 - Wednesday, June 2, 2021.

explained, the photograph with Ms. Dolan holding the AR family

THE WITNESS: Sure, Your Honor. So like I previously

24

25

- 67 style weapon platform in her photograph that was Mr. Dolan's 1 2 picture of her for her contact in addition to interviews and neighborly canvass of neighbors around his neighborhood which 3 4 indicated that he did have AR style family weaponry including 5 either long-range optics or like mil-dot reticle optics and was always known to carry a semi-automatic handqun on his person. 6 7 THE COURT: All right. And this came from interviews with neighbors, is that correct? 8 9 THE WITNESS: That's correct; yes, Your Honor. 10 THE COURT: All right. Mr. Van der Veen, anything 11 else you need to follow up on? 12 MR. VAN DER VEEN: If I may. BY MR. VAN DER VEEN: 13 14 Do you know whether it was -- did they tell you that it was in the days before you arrested him that they saw it? 15 Yeah. It was in the not so distant past prior to our arrival, as far as any -- that date or time, I would have to go
- 16
- 17
- 18 back and review witness statements and talk to the other agents
- that assisted with the neighborhood canvass, but it was within 19
- 20 the not so distant past of -- prior to our search and arrest
- warrant being executed. 21
- 22 BY MR. VAN DER VEEN:
- 23 Q. I'm not sure what that means. Can I ask you this:
- 24 before or after January 6th?
- 25 I don't know. Α.

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THE COURT: All right, any other questions, Counsel?
 1
 2
              MR. VAN DER VEEN: Let me just -- I don't think so,
 3
    Judge, but may I check my notes.
 4
              THE COURT: Yes.
 5
    BY MR. VAN DER VEEN:
 6
    Q. With respect to your -- the proffered testimony of
 7
    January 3rd, the Court can be clear that specifically my client
    was not a team leader from Florida, correct, that was
 9
    Mr. Harrelson?
10
    A. Is that question for me, sir?
11
    O. Yes.
    A. Yes. I believe Mr. Harrelson was -- or named as the leader
12
1.3
    for that evolution.
14
              THE COURT: So, Agent, Harrelson was allegedly the
    team leader and Mr. Dolan drove up with Harrelson in a car that
15
16
    Dolan rented, is that right?
17
              THE WITNESS: Yes, Your Honor.
18
              THE COURT: All right.
   BY MR. VAN DER VEEN:
19
20
    Q. And you have no information that Mr. Dolan knowing
    Mr. Harrelson but for a short period of time?
21
22
        I don't know how long they have known each other.
    Α.
23
    Q. Okay.
24
              MR. VAN DER VEEN: Nothing further.
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THE COURT: All right. Thank you, Mr. Van der Veen.

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1
              Any redirect from the Government, Mr. Dispoto?
 2
              MR. DISPOTO: No, Your Honor, thank you.
              THE COURT: All right.
 3
 4
              Thank you, Agent, you are excused or you are welcome
 5
    to stay but no more testimony is needed.
 6
              All right. So let me just ask Counsel, is there any
 7
    other witness or evidence that either side wishes to present
    because I have hearings all this afternoon, and I want to make
 9
    sure there is enough time for me to hear everything, whether
    there is any Defense witnesses or proffers or anything of that
10
11
    nature, any argument, and I do want to go through the Pretrial
    Services report. So I'm likely going to have to reset this to
12
13
    tomorrow morning to conclude this hearing. I have hearings all
14
    afternoon today.
15
              How much more time does the Defense need?
              MR. VAN DER VEEN: Judge, the Defense, other than
16
17
    myself proffering in argument really, and it would basically be
18
    relying heavily on the Pretrial Services report, I don't have
    witnesses.
19
20
              THE COURT: All right.
              So Mr. Hutchinson, no witnesses? Mr. Dolan doesn't
21
22
    wish to testify, his family doesn't wish to testify, is that
23
    your position?
24
              MR. HUTCHINSON: That's our position.
25
              MR. VAN DER VEEN: I would --
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THE COURT: Correct.
 1
 2
              MR. VAN DER VEEN: I would simply proffering what
    they would say.
 3
 4
              THE COURT: All right. So here is the problem that I
 5
    have is that I start -- I have another hearing at 1:30, and I
    have hearings all afternoon today, and I want to make sure I
 6
 7
    give this sufficient time. Obviously, any detention matter is
    a serious matter, especially when a defendant is being removed
    to another district.
 9
10
              I can set this tomorrow morning at for continuation
11
    and finalization and a decision at 10:00 A.M., if that works
12
    for everybody. I want to make sure that everybody is
13
    available.
14
              Does that work for you, Mr. Dispoto?
              MR. DISPOTO: Yes, Your Honor.
15
16
              THE COURT: Mr. Hutchinson, does that work for you?
17
              MR. HUTCHINSON: Judge, I have an in-person plea
18
    tomorrow morning in state court. I know you outrank them, but
19
    this was specifically set and the client traveling to be there
20
    tomorrow morning.
              THE COURT: What time?
21
22
              MR. HUTCHINSON: 8:30, 9:00 A.M. I might be finished
23
    in time.
24
              THE COURT: What about you, Mr. Van der Veen, are you
25
    available tomorrow morning?
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MR. VAN DER VEEN: I'll make myself available with
 1
 2
    the Court.
              THE COURT: All right. Why don't we do this.
 3
 4
    don't we put it on tomorrow morning at 11:00 A.M. Will that
 5
    give you enough time, Mr. Hutchinson?
 6
              MR. HUTCHINSON: More than enough time.
 7
              THE COURT: All right. Let's do it at 10:30, we will
    put it on the calendar tomorrow morning. The calendar starts
 8
 9
    at 10:00, but we will set this matter at 10:30 and we will go
10
    ahead, and I'll hear any argument, any proffer from the
11
    Defense, any argument from the -- from the Government.
              And again, I am particularly interested -- and I will
12
13
    go through the Pretrial Services report on the record tomorrow,
14
    but I am particularly interested -- you know, I know that Judge
    Mehta, who is a fine district judge up in DC, has this case up
15
16
    in DC; and as I said, although Mr. Dolan is to be treated
17
    individually, it always is of interest to me as to what other
18
    defendants charged similarly, what has happened to them on
    Pretrial Detention.
19
20
              As I said, so far, I know Jessica Watkins was
    detained; Kelly Meggs was detained; Kenneth Harrelson was
21
22
              I think I heard today that Mr. Hackett was detained.
23
    I don't know, but I would be curious to find out about
24
    Mr. Isaacs and Mr. Hackett. Everybody else seems to have been
25
    released either at the first instance or on reconsideration
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before Judge Mehta. And I know that on reconsideration, Judge 1 2 Mehta affirmed and upheld the detention of Mr. Harrelson and also, I believe, Kelly Meggs. Mr. Harrelson is detained so I'm 3 4 curious what to know what the differences are as to where Mr. Dolan fits because, obviously, the Court will apply the 5 Bail Reform Act, and the Pretrial Detention statute, as I'm 6 7 required to do. But I would like to hear from Counsel as to especially Government Counsel as to what in Mr. Dolan's 9 Pretrial Services report or any other factors. 10 I know you argued some today, Mr. Dispoto, makes his a serious risk of flight or a danger to the community, and I'm 11 frankly more focused on the danger to the community aspect 12 13 because obviously what happened on January 6th was just a clearly a terroristic act based on the allegations in the 14 15 indictment and just a horrendous attack on our country and our

Nonetheless, Mr. Dolan is presumed innocent and the issue here is whether he has to be detained as a serious risk of flight or a danger to the community or whether there are lesser restrictions, conditions of release that would assure his appearance and that would protect the community.

Constitution.

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I do note in many of the other release orders that I quickly looked at, there was the high intensity supervision program, home confinement, home incarceration, GPS monitoring, et cetera, that were applied. And we can certainly address

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these issues tomorrow, but I just want to let Counsel know some
 1
2
   of the things that are of importance to the Court.
              MR. DISPOTO: Judge, I'll get some additional
 3
 4
    information for Your Honor.
 5
              THE COURT: All right. So we will adjourn. We will
   back in court at 10:30 on this matter. Everybody have a good
 6
 7
    afternoon.
 8
              MR. DISPOTO: Thank you, Judge.
 9
              MR. VAN DER VEEN:
                                 Thank you, Judge.
10
        (PROCEEDINGS ADJOURNED)
11
                         C-E-R-T-I-F-I-C-A-T-E
                 I hereby certify that the foregoing is
12
1.3
          an accurate transcription of digitally recorded
14
          proceedings in the above-entitled matter to the
15
          best of my abilities.
                 This hearing occurred during the COVID-19
16
17
          pandemic and is therefore subject to the technological
18
          limitations of reporting remotely.
19
20
    6/6/2021
                               /s/DIANE MILLER
     DATE
                            DIANE MILLER, RMR, CRR
21
                            Official Court Reporter
                            United States District Court
22
                            101 South U.S. Highway 1
                            Fort Pierce, FL
23
                            772-467-2337
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		1	31st [1] 46/23	43/7 47/6 51/14 55/6	13/6 14/1 14/2 18/6
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	BY MR. VAN DER	10 [2] 4/14 22/22	34950 [1] 73/22	according [3] 50/13	agreeable [3] 9/17 9/22
	VEEN: [15] 44/7 49/8	100 [2] 27/17 39/13	371 [1] 11/8	60/7 60/15	9/24
	49/21 52/8 55/16 56/8	100 feet [1] 31/15	3rd [11] 28/14 45/18	accurate [1] 73/13	agreed [1] 14/9
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	68/18	10:30 [3] 71/7 71/9 73/6	50/4 50/24 52/16 53/10	act [8] 8/16 9/12 32/2	agreement [1] 5/19
	MR. DISPOTO: [52]	11/17 [1] 51/6	68/7	43/1 43/2 43/3 72/6	ahead [23] 3/14 3/16
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	20/1 20/12 20/15 20/19	12 [2] 31/7 44/18	4:00 o'clock [1] 31/9	activity [3] 39/10 45/7	55/16 57/8 63/22 71/10
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				addition [2] 33/5 67/2	alcoholic [1] 13/22
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	71/5	19 [1] 73/16	3//10 0//24 /2/13	admitting [2] 12/15	allow [9] 4/8 4/11 6/15
	MR. VAN DER	19107 [1] 1/21	7	13/10	19/8 24/10 24/21 24/25
	VEEN: [50] 2/17 2/22	1:00 o'clock [1] 26/16		advance [1] 62/23	25/14 25/18
		1:30 [1] 70/5	772 [1] 1/24	advanced [2] 26/21	allows [1] 32/5
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		51/18 53/17	8:30 [1] 70/22	after [11] 8/18 14/18	also [17] 3/1 8/12 12/20
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	70/25 73/8	28/22 29/7 29/11 29/12	9:00 [1] 70/22		61/10 72/3
	THE COURT: [149]	31/10 32/9 33/8 33/13	9th [2] 32/7 32/9	afternoon [6] 27/1	
	THE COURTROOM	33/16 37/11 46/8 51/18	7th [2] 32// 32//	29/14 69/8 69/14 70/6	alternate [1] 4/21
	DEPUTY: [12] 2/2 2/5	73/20	$ \mathbf{A} $	73/7	although [3] 24/25
	4/13 4/17 5/11 6/3 6/21	21-8212-BER [2] 2/8	ļ	again [7] 8/4 13/9 16/24	25/18 71/16
			a.m [5] 7/5 33/20 70/11	50/6 56/1 61/3 71/12	always [3] 4/22 67/6
	7/6 7/24 13/15 43/17	18/1	70/22 71/4	against [8] 2/7 7/8 24/4	71/17
	43/20	21-mj-08212-BER [1]	abetting [4] 11/11	25/17 30/9 35/21 37/1	am [5] 9/3 13/20 17/5
	THE DEFENDANT:	1/2	11/19 11/22 22/4	39/6	71/12 71/14
- [[16] 5/16 5/23 8/4 8/7	2108212-BER [1] 7/9	abhor [1] 17/4	agent [43] 4/20 5/1 5/3	AMERICA [4] 1/3 2/7
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	THE WITNESS: [17]	234 [1] 11/7		23/10 24/16 24/22 25/4	ammunition [1] 65/19
		2:00 o'clock [1] 27/1	16/4 40/18	25/4 25/5 25/10 25/11	among [6] 28/6 33/4
			about [21] 5/2 11/19	25/19 25/23 34/2 42/7	35/18 36/9 36/22 41/18
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