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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *)	
UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-40
Plaintiff,)	
)	
vs.)	
)	
PATRICK EDWARD McCAUGHEY, III,)	Washington, DC
TRISTAN CHANDLER STEVENS,)	May 4, 2021
DAVID LEE JUDD and)	11:01 a.m.
CHRISTOPHER JOSEPH QUALGIN,)	
)	
Defendants.)	
)	
* * * * *)	

TRANSCRIPT OF ARRAIGNMENT/STATUS CONFERENCE
CONDUCTED VIA ZOOM
BEFORE THE HONORABLE TREVOR N. McFADDEN,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JOCELYN P. BOND, ESQ.
	MELISSA J. JACKSON, ESQ.
	UNITED STATES ATTORNEY'S OFFICE
	FOR THE DISTRICT OF COLUMBIA
	555 Fourth Street, NW
	Eleventh Floor
	Washington, DC 20530

FOR THE DEFENDANT	LINDY R. URSO, ESQ.
McCAUGHEY:	LINDY R. URSO, ATTORNEY AT LAW
	810 Bedford Street
	Suite 3
	Stamford, Connecticut 06901

1 THE COURTROOM DEPUTY: Your Honor, this is
2 Criminal Case 21-40, the United States of America versus
3 Patrick Edward McCaughey and Tristan Chandler Stevens.

4 Counsel, please introduce yourselves for the
5 record, starting with the Government.

6 MS. BOND: Good morning, your Honor. Jocelyn Bond
7 on behalf of the United States.

8 THE COURT: Good morning.

9 MS. JACKSON: And good morning, your Honor.
10 Melissa Jackson on behalf of the United States.

11 THE COURT: Good morning, Ms. Jackson.

12 MR. URSO: Good morning, your Honor. Lindy Urso
13 on behalf of Mr. McCaughey.

14 THE COURT: Good morning, Mr. Urso.

15 Good morning, Mr. McCaughey.

16 MS. JAHN: Good morning, your Honor. Dani Jahn on
17 behalf of Tristan Stevens as well as AFPD Lauren Cobb, who
18 is also present.

19 THE COURT: Good morning, ladies.

20 And do we have your client, Ms. Jahn?

21 MS. JAHN: Yes. Mr. Stevens is present. He's
22 appearing via video. And in light of the CARES Act and the
23 pandemic, Mr. Stevens agrees to appear in this fashion.

24 THE COURT: Good morning, Mr. Stevens. I see you
25 now.

1 MR. DIAZ-COBB: Good morning, your Honor. Carlos
2 Diaz-Cobo on behalf of Christopher Qualgin.

3 THE COURT: Good morning, Mr. Diaz-Cobo.

4 And your client is not present. Correct?

5 MR. DIAZ-COBB: That is correct, Judge.

6 THE COURT: Okay.

7 MS. MULLIN: Your Honor, this is Elizabeth Mullin
8 from the Office of the Public Defender in the Eastern
9 District of Virginia. I represent David Judd, who is also
10 not present.

11 THE COURT: Good morning, Ms. Mullin.

12 Ms. Mullin, we are having issues with Northern
13 Neck for Mr. Judd. Am I understanding that correctly?

14 MS. MULLIN: That's right. I was just told by the
15 courtroom deputy, your Honor. For purposes of this status
16 hearing, I'll waive his presence.

17 THE COURT: Okay. Were we going to arraign
18 Mr. Judd today or has that already occurred?

19 MS. MULLIN: He's been arraigned, your Honor.

20 THE COURT: Okay.

21 MS. MULLIN: His next court date is a detention
22 hearing before your Honor.

23 THE COURT: I've got a number of folks here and
24 various things we need to accomplish.

25 Mr. Diaz-Cobo, I understand you wanted to do a

1 breakout room with me?

2 MR. DIAZ-COBB: Yes, Judge; and, of course, with
3 the AUSA Melissa Jackson.

4 THE COURT: Okay. Now or at the end or does it
5 matter?

6 MR. DIAZ-COBB: Judge, whatever pleases the Court.
7 It probably makes more sense to go ahead and do that ahead
8 of time.

9 THE COURT: Okay. And maybe Mr. Judd will appear
10 in the meantime.

11 Ms. Chaclan, can you do that for us? I think
12 there are two AUSAs.

13 THE COURTROOM DEPUTY: So both AUSAs?

14 MR. DIAZ-COBB: Yes. Sorry.

15 THE COURTROOM DEPUTY: It'll just take me a moment
16 to find the names in the list.

17 THE COURT: That's fine.

18 Mr. Diaz-Cobo, this is off the record?

19 MR. DIAZ-COBB: Correct, your Honor.

20 THE COURT: So, Ms. Edwards, I think we won't need
21 you then. Thank you.

22 (Brief pause in the proceedings.)

23 THE COURT: All right. I'm back.

24 THE COURTROOM DEPUTY: Not yet, your Honor.

25 THE COURT: No word on Mr. Judd?

1 THE COURTROOM DEPUTY: Your Honor, I don't think
2 he'll be joining. I got a call -- I was in contact with
3 Chashawn, and they weren't able to confirm today's hearing.

4 THE COURT: Do we need to arraign anyone this
5 morning, Ms. Chaclan?

6 THE COURTROOM DEPUTY: We do on the second
7 superseding indictment for Mr. McCaughey and also
8 Mr. Stevens.

9 THE COURT: Okay. Mr. Urso, have you talked with
10 your client about proceeding virtually for purposes of
11 today's hearing?

12 MR. URSO: Yes, your Honor. He will consent to
13 proceeding virtually; and we waive a reading of the second
14 superseding indictment.

15 THE COURT: Okay. And, Ms. Jahn, I think you
16 already indicated your client is prepared to proceed
17 virtually for purposes of today's hearing?

18 MS. JAHN: That's right, your Honor.

19 THE COURT: I do think it's appropriate that we
20 proceed virtually in light of the pandemic and the fact that
21 we've got people spread around in jails all across the East
22 Coast. I think it would create complications for them and
23 potential COVID-related hazards. And so, given the
24 authorization under the CARES Act, I will proceed virtually.

25 Mr. McCaughey and Mr. Stevens, the courtroom

1 deputy is going to rearraign you at this point. This is
2 directed at you, but typically your attorneys respond on
3 your behalf.

4 Ms. Chaclan?

5 THE COURTROOM DEPUTY: We'll start with
6 Mr. Patrick McCaughey.

7 The record will reflect that the Defendant through
8 counsel has received a copy of the superseding indictment.

9 Patrick Edward McCaughey, III, in Criminal Case
10 No. 21-40, in which you are charged by indictment in Count
11 6, assaulting, resisting or impeding certain officers and
12 aiding and abetting; Counts 11 and 12, assaulting, resisting
13 or impeding certain officers using a dangerous weapon; Count
14 15, obstruction of an official proceeding and aiding and
15 abetting; Count 16, civil disorder; Count 18, disorderly and
16 disruptive conduct in a restricted building or grounds with
17 a deadly or dangerous weapon; Count 22, engaging in physical
18 violence in a restricted building or grounds with a deadly
19 or dangerous weapon; Count 25, disorderly conduct in a
20 Capitol Building; Count 26, act of physical violence in a
21 Capitol grounds or buildings, do you waive the formal
22 reading of the indictment and how do you wish to plead?

23 MR. URSO: We waive the formal reading and plead
24 not guilty.

25 THE COURTROOM DEPUTY: May the record reflect that

1 the Defendant through counsel has received a copy of the
2 superseding indictment.

3 Tristan Chandler Stevens, in Criminal Case 21-40,
4 in which you are charged by indictment in Counts 6 and 7
5 with assaulting, resisting or impeding certain officers and
6 aiding and abetting; Count 8, assaulting, resisting or
7 impeding certain officers using a dangerous weapon; Count
8 14, assaulting, resisting or impeding certain officers and
9 aiding and abetting; Count 15, obstruction of an official
10 proceeding and aiding and abetting; Count 16, civil
11 disorder; Count 17, disorderly and disruptive conduct in a
12 restricted building or grounds with a deadly or dangerous
13 weapon; Count 21, engaging in physical violence in a
14 restricted building or grounds with a deadly or dangerous
15 weapon; Count 25, disorderly conduct in a Capitol Building;
16 and Count 26, act of physical violence in a Capitol grounds
17 or building, do you waive the formal reading of the
18 indictment and how do you wish to plead?

19 MS. JAHN: On behalf of Mr. Stevens, we waive
20 formal reading of the indictment; we enter not guilty pleas
21 to each count in which he is named; we'd assert all of his
22 constitutional rights, including his right to a speedy jury
23 trial, and also continue to request discovery in the matter.

24 THE COURT: Thank you, Ms. Jahn.

25 And thank you, Mr. Urso.

1 The next thing I wanted to discuss, we obviously
2 are having an issue getting Mr. Qualgin before us.

3 I understand the Government is expecting to file a
4 motion on this. Is that still correct?

5 MS. JACKSON: Yes, your Honor. I'll confirm with
6 my supervisors whether that is the course we're going to be
7 taking in this. But we do plan on filing a motion to
8 release the stay on his transfer.

9 THE COURT: Obviously, it's not before me. I'm
10 not going to rule on this. But I'll tell you my instinct
11 here: I understand that the Government had previously
12 sought the Chief Judge's involvement in directing where the
13 Marshals Service has people, and Mr. Qualgin has consented
14 to him staying there.

15 It's not immediately clear to me why the District
16 Court should be involved in telling the Marshals Service
17 where to hold people. But I'll also tell you my instinct
18 is, once you invite us to get involved in this, you may be
19 stuck with us.

20 So obviously, I haven't seen what you're going to
21 say. I haven't seen Mr. Diaz-Cobo's response. But I think
22 if you want to continue to have him detained, you need to
23 figure out a way to have him appear. And I'm not sure why,
24 given that we have one person in DC Jail, one person at
25 Northern Neck who we have also not gotten here today, that

1 New Jersey would make much of a difference one way or the
2 other.

3 Ms. Jahn, I understand you wanted to raise a
4 conflict issue?

5 MS. JAHN: I did, your Honor.

6 As you know, now there's a second superseding
7 indictment. And upon receipt and review of that indictment,
8 it was determined that there was a personal conflict for me
9 with regard to another individual that I represent. That
10 was then fleshed out by administration of the Federal
11 Defender's Office; and ultimately, Ms. Cobb, who has
12 appeared from the Pensacola, Florida, Federal Defender's
13 Office, had agreed to replace me if the Court would grant my
14 request for moving to remove my representation due to the
15 conflict.

16 THE COURT: Any concerns from the Government?

17 MS. BOND: No, your Honor.

18 MS. JACKSON: No, your Honor.

19 THE COURT: Ms. Jahn, thank you for your service.

20 Ms. Cobb, I will appoint you to represent
21 Mr. Stevens going forward. Thank you for your willingness
22 to assist.

23 MS. COBB: Thank you, your Honor.

24 THE COURT: Where do things stand from the
25 Government? Ms. Bond, are you addressing that?

1 MS. BOND: Yes, your Honor. I can begin.

2 So at this point, we have made a good bit of
3 progress since our last status hearing, and particularly in
4 the area of general discovery.

5 With respect to Defendant McCaughey and Defendant
6 Stevens, we have turned over significant discovery at this
7 time. Mr. McCaughey has gotten almost all of the contents
8 of his FBI file as well as almost all of the contents of
9 Mr. Stevens's FBI file. He has also received over 100
10 individual body-worn camera video files from January 6th,
11 and our estimation is that that is already hundreds of hours
12 of body-worn camera.

13 Mr. Stevens has received similar discovery. He
14 has received almost all of the contents of his own FBI file
15 as well as almost all of the contents of Mr. McCaughey's
16 file, the same hundreds of hours of body-worn camera.
17 Discovery is ongoing. We are regularly giving them things
18 that we find.

19 As we have alluded to in the past in the basis for
20 our motion to exclude time prior to our last hearing, of
21 course there is the big, voluminous discovery that's sort of
22 overarching over all of these cases.

23 That, of course, is still outstanding, but our
24 office as a whole is marching forward on that. We have been
25 told that the office has a request for proposals to contract

1 with a vendor to establish a cloud-based discovery system.
2 They expect to be able to select a vendor in June. The
3 timeline is, once they select a vendor later in the summer,
4 they will begin uploading that voluminous discovery such as
5 body-worn camera, [indiscernible] footage and things of that
6 are nature.

7 So we've made significant strides both on
8 case-specific discovery as well as the voluminous discovery.

9 With respect to plea offers, we have not yet
10 extended a plea offer to any of the Defendants; but we were
11 recently given approval to do that. So Ms. Jackson and I
12 are developing a plea offer, which will require supervisory
13 approval. But we are hopeful to be able to extend those
14 plea offers in the very near future.

15 Going forward, our request is for 45 -- at least
16 45 additional days until the next status hearing, of course,
17 to begin, giving Mr. Judd and Mr. Qualgin their
18 case-specific discovery. I believe in that 45-day period,
19 our office will also make additional strides on providing
20 that big, voluminous, overarching discovery.

21 THE COURT: I'm not thrilled to hear about July.
22 That feels like a long time away, given some of these
23 Defendants were charged almost five months ago.

24 So you're requesting another status conference in
25 45 days, ma'am?

1 MS. BOND: Yes, your Honor. We're asking that
2 that time be excluded under the Speedy Trial Act.

3 THE COURT: And is -- you're expecting to provide
4 pleas for all four Defendants?

5 MS. BOND: Your Honor, I don't want to speak out
6 of turn. It is the expectation at this juncture.

7 THE COURT: Thank you.

8 Mr. Urso, your position?

9 MR. URSO: Your Honor, we strenuously object to
10 excluding any further time.

11 As I pointed out in the last -- I think our last
12 meeting, the Government chose the way this investigation has
13 gone. Typical -- as the Court knows, typical federal
14 criminal investigations happen in increments. The
15 Government does its full investigation, has all of its
16 discovery in place, and then it makes decisions to go to the
17 grand jury.

18 For political or whatever reasons, whatever their
19 reasons, it was for their reasons that they chose to arrest
20 my client in January and other people, and that was their
21 choice. And the reason there are speedy trial issues is
22 because of prosecutorial discretion or choice. There's no
23 way around it.

24 If they waited -- there was no pressing urge, no
25 pressing need, just like in RICO cases or any other federal

1 cases. They leave crime bosses out on the street for two
2 years while they're investigating and buttoning things up.
3 So there was no reason other than their own to proceed in
4 this fashion.

5 My client shouldn't have to sit and wait for his
6 trial while the Government gets its ducks in a row. It's
7 100 percent the result of the Government's decision to
8 proceed in this piecemeal, rushed fashion, which is
9 completely atypical of how they normally do things.

10 So I don't think my client should have to pay the
11 price from that choice. I strenuously, strenuously object
12 to any further exclusions.

13 THE COURT: Thank you, Mr. Urso.

14 Ms. Cobb?

15 MS. COBB: Your Honor, we're in a little bit of a
16 different position, given that Mr. Stevens is out of custody
17 and also given that I just signed on to this case in the
18 last 48 hours, approximately. So we don't have any
19 objection at this point.

20 THE COURT: Okay. Mr. Diaz-Cobo, let me ask, are
21 you waiving your client's appearance for purposes of today's
22 proceeding, sir?

23 MR. DIAZ-COBB: I am, Judge.

24 THE COURT: Thank you.

25 I'll hear from you on the Government's proposal.

1 MR. DIAZ-COBB: Judge, we also are somewhat
2 situated differently. At this point, Judge, we're not going
3 to object to 45 days.

4 THE COURT: And Ms. Mullin?

5 MS. MULLIN: Your Honor, at this time I would
6 object to the exclusion of the 45 days.

7 My client is detained. He's been indicted since
8 April. I recognize that I was just appointed to the case,
9 and Ms. Jackson has given me limited discovery at this
10 point. But given that he remains detained and, frankly, I
11 haven't had a chance to discuss this issue with him, as
12 obviously he's not here, we object.

13 THE COURT: Okay. I think it is appropriate for
14 us to come back in about 45 days and to toll the speedy
15 trial clock in the interim.

16 I understand the concerns, especially from the
17 detained Defendants. And frankly, we're not just going to
18 let this case meander. I would expect when we come back
19 that we're going to be picking a trial date unless -- well,
20 for any parties who have not pled guilty. And you can
21 certainly think then about appropriate discovery timelines
22 in light of the specific Defendants and trial at that point.

23 But frankly, we've got four Defendants here, a
24 couple of whom have just been added. It's going to be
25 facing difficulties getting a trial date for everybody. I

1 think there are unusual circumstances about the January 6th
2 cases that mean there's a lot more discovery than normally
3 would be the case.

4 So I do think the interests of justice outweigh
5 the interests of the public and the Defendants in a speedy
6 trial to the extent that we're going to toll the speedy
7 trial clock until mid-June on this. We're not just going to
8 keep doing this indefinitely, though. I understand the
9 detained Defendants' desire to move quickly.

10 I think I had previously given the Due Process
11 Protections Act language for some of the Defendants. But
12 since we have a couple of new Defendants, let me reiterate
13 that, pursuant to the Due Process Protections Act, the Court
14 orders that all Government counsel shall review their
15 disclosure obligations under *Brady versus Maryland* and its
16 progeny as set forth in Local Criminal Rule 5.1 and comply
17 with its provisions. The failure to comply could result in
18 dismissal of the indictment or information, dismissal of
19 individual charges, exclusion of Government evidence or
20 witnesses, continuances, Bar discipline and any other remedy
21 that is just under the circumstances.

22 We'll also reissue that as a minute order for all
23 of the Defendants.

24 I'm going to address the motion of Mr. McCaughey
25 to modify his conditions of release in a moment.

1 Anything else we should be discussing, Ms. Bond?

2 MS. BOND: The only remaining thing is this
3 morning we filed a request to extend the protective order to
4 Mr. Judd and Mr. Qualgin. Both of the attorneys have
5 consented to that. So we're asking your Honor to issue that
6 order in the near future.

7 THE COURT: I saw that. I've already signed it.
8 We should have it uploaded.

9 MS. BOND: Thank you, Judge.

10 THE COURT: Before the Court is the Defendant
11 McCaughey's motion to reopen and modify his conditions of --
12 well, his detention order pending trial. This raises a
13 number of reviews that I want to discuss briefly.

14 And for the following reasons, I do intend to
15 grant the motion to reopen and to modify the conditions of
16 release:

17 First, Defendant McCaughey points out that I
18 applied the wrong rebuttable presumption standard. That's
19 correct. There was no rebuttable presumption in this case
20 that would have argued for him being detained.

21 As the Government points out, I also indicated
22 that, given the evidence the defense had applied, that the
23 rebuttable presumption really did not carry any weight in
24 this case and so as a practical matter that made no
25 difference to my detention decision. And it certainly would

1 not in itself be a reason for me to release the Defendant
2 now. But for the record, there was no rebuttable
3 presumption for detention.

4 In fact, I should have and do now come with the
5 presumption that the Defendant -- that there are conditions
6 of release less than detention that could operate, and it's
7 only if the Government overcomes that presumption that the
8 Defendant must be held should I be holding him.

9 Among the various filings here -- and I've read
10 all of them, both from the Government and the defense -- is
11 the Government's supplement regarding 18 USC 111, one of the
12 most serious charges the Defendant is facing. And as the
13 Government points out, the Government must prove that either
14 the Defendant inflicted bodily injury on the officer or used
15 a deadly or dangerous weapon to assault the officer.

16 I hadn't focused on this sufficiently in the past,
17 and I appreciate the Government's candor on this issue. The
18 Government admits it's not relying on any infliction of
19 bodily injury here as to the officer. In fact, there's no
20 allegation that the officer was injured. Both the
21 Government and I had assumed that Officer Hodges had been
22 screaming out in pain in the videos where we saw him
23 screaming. However, Mr. McCaughey has introduced evidence
24 of an interview with Officer Hodges where he said that he
25 was essentially screaming to signal to other officers that

1 he was trapped. He doesn't say anything about being injured
2 himself.

3 Now, I think the Government is right: He could
4 have been both screaming for help and screaming in pain.
5 And I'm not making any finding that he wasn't injured or
6 wasn't in pain. But I think the record, the very limited
7 record that I have before me now, does not support a finding
8 that the Defendant injured or put Officer Hodges in pain.
9 To the contrary, we do have evidence that Mr. McCaughey
10 lowered Officer Hodges's mask to protect him from OC spray
11 being sprayed by other rioters and that he repeatedly
12 signaled to other rioters to help Officer Hodges.

13 And Officer Hodges does indicate in his interview
14 that he -- that someone made a way up for him. I don't know
15 if Officer Hodges was referring to the Defendant or another
16 officer. I'm not going to assume that it was the Defendant
17 there. But I think, having rewatched the videos and
18 considered this new evidence, it does put that incident into
19 a slightly different light.

20 So the Government is not relying on infliction of
21 bodily injury. Rather, they're relying on the use of a
22 deadly or dangerous weapon, which here they say is the
23 police shield that the Defendant apparently took from
24 officers.

25 I've got to say, based on what I've seen thus far,

1 I'm dubious that the shield was a dangerous or deadly weapon
2 as used by the Defendant. I certainly think a shield could
3 be used as a deadly or dangerous weapon, particularly if
4 you're using the straight edge of the shield as some sort of
5 blade or cutting device. But what I've seen in the tapes
6 that I've seen is the Defendant was primarily using a shield
7 as a shield, to protect himself from baton strikes from the
8 officers and also to push the officers back.

9 None of that is to say that that wasn't assaultive
10 conduct; but I'm not sure there was violent conduct. And
11 it's not immediately clear to me that he was using this
12 shield as a dangerous weapon or as a deadly weapon rather
13 than as a shield is typically used, which is primarily for
14 protection and a kind of pushing device, not as an
15 assaultive or striking device.

16 As I reviewed the tapes, it looks to me like the
17 Defendant was trying to push his way through the officers
18 with other rioters to enter the Capitol rather than that he
19 was trying to hurt or attack officers. I certainly think
20 there were other people who were hurting and attacking
21 officers, and perhaps there's evidence that I'm not aware of
22 that that's what the Defendant was doing. But based on my
23 review of the tapes, it seems to me that the Defendant was
24 primarily just trying to get into the Capitol, forcing his
25 way past the officers.

1 And that I think is relevant both to his
2 dangerousness, but also to a recent DC Circuit decision,
3 *United States versus Munchel*, 991 F.3d 1273, from earlier
4 this year.

5 Now, *Munchel* does have language that frankly
6 upholds the Defendant, where it says, "In our view, those
7 who actually assaulted police officers and broke through
8 windows, doors and barricades and those who aided, conspired
9 with, planned and coordinated such actions are in a
10 different category of dangerousness than those who cheered
11 on the violence or entered the Capitol after others cleared
12 the way." That's from Page 1284.

13 But it also chided one of my colleagues for
14 failing to demonstrate that it considered the specific
15 circumstances that made it possible on January 6th for
16 Munchel and Eisenhart to threaten the peaceful transfer of
17 power. "The Appellant had a unique opportunity to obstruct
18 democracy on January 6th because of the Electoral College
19 vote tally taking place that day and concurrently scheduled
20 rally and protest." That's also on Page 1284.

21 And I think I do need to consider the
22 circumstances of January 6th and the Defendant's actions
23 there and whether there's any evidence from that that the
24 Defendant poses an ongoing risk to the community.

25 As I said, he didn't seem to be primarily focused

1 on violence or assaultive conduct; rather, it seems like he
2 was probably trying to disrupt the election.

3 Now, obviously, this is troubling and likely
4 criminal. But I'm not sure that that poses the same type of
5 threat moving forward such that detention is the only
6 option.

7 So I want to just briefly reconsider how I would
8 tally the various factors I must consider under the Bail
9 Reform Act.

10 In light of all I said the last time and what I've
11 just said, I think in looking to the first factor, the
12 nature and circumstances of the offense, I'm going to assume
13 that weighs in favor of detention. But I don't think it
14 weighs very heavily in favor of detention.

15 The strength of the evidence: Now, unlike what I
16 said before, I think it actually weighs in favor of release.
17 I think there's obviously incredibly strong evidence that
18 the Defendant was at the Capitol on January 6th and quite
19 possibly committed various crimes. But as to a couple of
20 these really salient issues right now, whether he injured
21 anyone, whether he was using the shield as a dangerous or
22 deadly weapon, I think the strength of the evidence is
23 actually weak as to those points. And so I would not find
24 that the strength of the evidence weighs in favor of
25 detention.

1 The Defendant's history and characteristics have
2 always argued for release in light of his, as far as I
3 understand it, essentially spotless record, with no evidence
4 of criminal history whatsoever, which again makes his
5 actions on January 6th -- puts a certain light or context on
6 his actions on January 6th.

7 And finally, the Defendant's danger to the
8 community: I think that also favors release for the reasons
9 I said. And specifically, in light of *Munchel*, I think
10 whatever criminal activity the Defendant may have committed
11 on January 6th seems to have been a very -- it was a highly
12 unusual event in our country. It also seems to have been
13 out of character with the Defendant from everything else
14 I've seen of the Defendant. And in light of my current
15 finding that the evidence before me does not suggest he was
16 attacking or trying to act violently towards or hurt
17 officers, I just don't see him posing an ongoing danger to
18 the community.

19 Of course, the Government's burden is to show by
20 clear and convincing evidence that no condition or
21 combination of conditions of release will reasonably assure
22 the safety of any other person in the community. I don't
23 believe they've shown that now.

24 The Government apparently is no longer arguing
25 that the Defendant poses a flight risk. I agree that in

1 light of -- though it was always kind of a close case and in
2 light of the additional evidence the Defendant has provided
3 of his willingness to ensure his return, I don't think the
4 flight risk would justify detention either.

5 So for all those reasons, I'm going to order the
6 Defendant released.

7 What does the Government request in terms of
8 release conditions?

9 Well, actually, before I ask you, do we have
10 Pretrial Services on the phone?

11 THE PRETRIAL SERVICES OFFICER: Good morning, your
12 Honor. Christine Schuck, Pretrial Services.

13 THE COURT: Hi, Ms. Shuck.

14 Do you have any recommendations for release of
15 Mr. McCaughey?

16 THE PRETRIAL SERVICES OFFICER: Yes, your Honor.

17 I just need to put on the record our
18 recommendation as stated in the pretrial report remains the
19 same. But at the request of chambers, pretrial services did
20 submit a list of of possible conditions based on the report
21 that was submitted by the Southern District of New York.

22 So those conditions would include reporting to the
23 District of Connecticut, because he lives in the state of
24 Connecticut, so he would be under the supervision of the
25 District of Connecticut. So he'd report to them as

1 directed.

2 Additionally, to surrender all passports to the US
3 Probation Office for the District of Connecticut.

4 Travel would be restricted to the District of
5 Connecticut and Washington, DC, when in-person court
6 appearances are required. The Court would need to approve
7 any and all other travel.

8 He would need to stay away from and avoid all
9 contact with Co-Defendants and key witnesses; not to possess
10 firearms, a destructive device or other weapons; not to
11 unlawfully use or possess a narcotic drug or other
12 controlled substance unless prescribed by a licensed medical
13 practitioner; submit to drug testing as directed by the US
14 Probation Office for the District of Connecticut;
15 participate in inpatient or outpatient substance abuse
16 therapy or counseling as directed by that office; be placed
17 on home detention, which would be monitored through GPS
18 monitoring, and pay for any associated costs with that --
19 that come with the location monitoring program; and report
20 any contacts with law enforcement to the US Probation Office
21 for the District of Connecticut as soon as possible.

22 THE COURT: Thank you, Ms. Schuck.

23 Government?

24 MS. BOND: Thank you, your Honor.

25 The Government's position remains that

1 Mr. McCaughey should be detained.

2 But in light of your Honor's ruling, the most
3 significant release conditions are home detention, the GPS
4 monitoring, as well as surrendering his passports to the
5 probation office there in Connecticut.

6 THE COURT: Thank you, Ms. Bond.

7 Mr. Urso?

8 MR. URSO: That's all fine, your Honor.

9 I would just ask, if there's -- to the extent
10 there's paperwork, I'd ask the Court to release him subject
11 to giving us a chance to submit any paperwork that might be
12 necessary. I don't know if your Honor's -- is it going to
13 be a release without security? Then it'll probably be
14 simple. We probably won't have any paperwork.

15 THE COURT: No. I do want to take you up on your
16 offer of the bond on the Defendant's father's home in
17 New York; and his release will be subject to that taking
18 place.

19 I'm going to order the Defendant released on the
20 following conditions: one, that the Defendant offer as bond
21 the \$450,000 or so real estate in New York that was
22 mentioned in the Defendant's paperwork; two, that he
23 surrenders all travel documents and passports; three, that
24 he remains in the District of Connecticut except for any
25 in-person visits to US District Court here in DC; four, that

1 he not use illegal narcotics and participate in substance
2 abuse testing and treatment as determined by the US
3 Probation Office; five, that he submits to home detention
4 with GPS location monitoring; six, that he does not obtain
5 or possess any weapons; seven, that he has no contact with
6 any Defendants or likely witnesses in this case; and, eight,
7 that he reports any contacts with law enforcement within 24
8 hours to the US Probation Office.

9 The Defendant must also report in person to the
10 District of Connecticut US Probation Office upon his
11 release.

12 Thank you, Ms. Schuck.

13 MR. URSO: Judge, if I could, on the home
14 detention, would the Court put in exceptions for work, like
15 if he's going to work, if he's got to meet his lawyer and
16 perhaps medical appointments or church?

17 THE COURT: So my understanding was the Defendant
18 is not employed at this time. Was I wrong about that?

19 MR. URSO: Yes, your Honor. Well, he works with
20 his father. They have construction jobs pending now. So
21 they were not working during the COVID, but the business
22 picked up. And I put that in my papers. I even put a job
23 quote, I think, that is pending that his dad is working on
24 right now.

25 THE COURT: So --

1 THE PRETRIAL SERVICES OFFICER: Your Honor?

2 THE COURT: Yes, Ms. Schuck.

3 THE PRETRIAL SERVICES OFFICER: Home detention
4 allows for what defense counsel is asking for. Home
5 incarceration does not.

6 THE COURT: Okay. So it sounds like you're
7 covered, Mr. Urso. If you have any issues, I suggest you
8 talk with the US Probation Office there in Connecticut or
9 Ms. Schuck, who is very on-the-ball, here in DC. And if
10 there's still any issue, you can raise it.

11 MR. URSO: Thank you.

12 THE COURT: Anything further for us to discuss
13 today, Ms. Bond?

14 MS. BOND: Your Honor, would you be willing to put
15 on the record that Mr. McCaughey is to surrender both his US
16 and his German travel documents?

17 THE COURT: Yes. Thank you.

18 When I said "travel documents," I did mean any US
19 passports and other travel documents. Thank you.

20 Mr. Urso, anything further for Mr. McCaughey?

21 MR. URSO: Judge, just so I'm clear, he will be
22 released once we get the paperwork filed for the real estate
23 bond? Or is he --

24 THE COURT: And I think the passports also need to
25 be provided.

1 MR. URSO: Well, that's got to go to Connecticut.
2 Okay. So should I perhaps get Ms. Schuck's contact
3 information?

4 THE COURT: Yes. You can do that offline. Feel
5 free to contact Ms. Chaclan or my chambers if you don't have
6 it.

7 MR. URSO: Thank you, your Honor.

8 THE COURT: Ms. Cobb, anything further on behalf
9 of your client?

10 MS. COBB: No, your Honor. Thank you.

11 THE COURT: Mr. Diaz-Cobo?

12 MR. DIAZ-COBB: Nothing further, Judge.

13 THE COURT: And Ms. Mullin?

14 MS. MULLIN: No, your Honor. Thank you.

15 THE COURT: Ms. Chaclan, do you have a proposed
16 date for the next hearing?

17 THE COURTROOM DEPUTY: I do, your Honor. June
18 16th at 11:00 a.m.

19 THE COURT: Ms. Bond, does that work for the
20 Government?

21 MS. BOND: Yes, your Honor, it does.

22 THE COURT: Mr. Urso?

23 MR. URSO: Yes, your Honor.

24 THE COURT: Ms. Cobb?

25 MS. COBB: Yes, your Honor.

1 THE COURT: Mr. Diaz-Cobo?

2 MR. DIAZ-COBB: Yes, Judge. That works. Thank
3 you.

4 THE COURT: Ms. Mullin, don't mess it up for us.

5 MS. MULLIN: It works, your Honor.

6 I just have a question. Will the hearings be in
7 person? I don't know if your court is -- we started going
8 in person now, so I'm just inquiring.

9 THE COURT: This hearing will be virtual, I think.

10 MS. MULLIN: Okay.

11 THE COURT: I think we are going to be switching
12 to more in-person. But at this point, I think it makes
13 sense for it to be virtual.

14 I will say if there's going to be a plea,
15 obviously, if the Defendant wants to do that in person, I
16 would certainly accommodate that. But for now, let's assume
17 it's virtual.

18 MS. MULLIN: Thank you, your Honor. The 16th of
19 June works for me.

20 THE COURT: All right. Thanks, folks.

21 Mr. Stevens, it looks to me like you're
22 maintaining the conditions of your release. I just want you
23 to continue to maintain those conditions and report for the
24 virtual hearing that we've described. I don't think I
25 mentioned this to you before.

1 Mr. McCaughey, you should know as well that I do
2 take the Defendants' behavior while on pretrial status into
3 consideration when it comes time for sentencing. So make
4 sure you maintain all your release conditions and remain in
5 contact with Pretrial Services and with your attorney.

6 Thanks, folks.

7 MR. URSO: Thank you, Judge.

8 MS. BOND: Thank you, your Honor.

9 MR. DIAZ-COBB: Thank you.

10 (Proceedings concluded.)

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