

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>Case No. 21-CR-6 (TJK)</b>
	:	
<b>DOUGLAS AUSTIN JENSEN,</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNMENT’S MOTION TO REVOKE DEFENDANT’S PRETRIAL RELEASE**

A mere thirty days after his release from the D.C. Jail, defendant Douglas Jensen was found alone, in his garage, using a WiFi-connected iPhone to stream news from Rumble.<sup>1</sup> When confronted about this obvious violation of his release conditions, defendant provided his Pretrial Services Officer with one excuse after another. First, he claimed that the phone belonged to his daughter. Jensen’s daughter, however, later told Pretrial Services that she had gotten a new phone almost three weeks ago. Then, Jensen claimed that his wife – the same individual who swore, under oath, to notify the Court immediately if Jensen violates a condition of release – facilitated his violation by leaving the news on for him when she left for work in the morning. Finally, Jensen claimed not to know the password to the iPhone, only to later enter the password for his Pretrial Services Officer.

Jensen eventually admitted to his Pretrial Services Officer that in the previous week, he had spent two days watching Mike Lindell’s Cyber Symposium regarding the recount of the presidential election.<sup>2</sup>

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<sup>1</sup> See Drew Harwell, “Rumble, a YouTube Rival Popular with Conservatives, Will Pay Creators Who ‘Challenge the Status Quo,’” Washington Post (Aug. 12, 2021), *available at* <https://www.washingtonpost.com/technology/2021/08/12/rumble-video-gabbard-greenwald/> (“Rumble has emerged over the last year as one of the most prominent video sites for right-wing viewers and provocateurs, and it is seeking to bolster its image as a new online home for those who claim they’ve been censored by Big Tech. The site bans racism and hate speech but has contrasted itself with the Google-owned YouTube by refusing to remove ‘medical misinformation,’ including those casting doubt on vaccines during a pandemic that is surging in many states and has killed more than 4 million people around the world.”).

<sup>2</sup> See Joseph Marks, “The Cybersecurity 202: My Pillow Cyber Symposium is Yet Another Font of Election Fraud Lies,” Washington Post (Aug. 11, 2021), *available at* <https://www.washingtonpost.com/politics/2021/08/11/cybersecurity-202-my-pillow-cyber-symposium-is-yet-another-font-election-fraud-lies/>.

Jensen's conditions of release are unambiguous: he is prohibited from accessing the Internet, "*directly or indirectly (through devices belonging to others, or in public spaces).*" Dkt. 30, at 3 (emphasis added). He is prohibited from accessing or utilizing internet-capable devices, "including a cell phone." *Id.* And he is prohibited from learning the password to any family members' internet-capable devices. *Id.* And yet, despite swearing, under oath, to comply with all these conditions, Jensen wasted no time in violating this Court's orders.

In his bond motion, Jensen claimed that he had come "full circle" – that he felt "deceived" by QAnon's conspiracy theories, and that he "recogniz[ed] that he bought into a pack of lies." Dkt. 21 at 7. But Jensen's swift violation confirms what the Government and this Court suspected all along: that Jensen's alleged disavowal of QAnon was just an act; that his alleged epiphany inside the D.C. Jail was merely self-advocacy; and that, at the end of the day, Jensen will not abandon the misguided theories and beliefs that led him to menacingly chase U.S. Capitol Police Officer Eugene Goodman up the Senate staircase on January 6, 2021.

Jensen's claims of reform cannot be credited, nor can he be trusted to abide by this Court's orders. Jensen is already subject to the highest degree of supervision, which means there are no additional conditions of release that this Court can impose to protect the public from Jensen or to ensure compliance with the Court's release conditions. To allow Jensen to remain on pretrial release would be to repose trust in an undeserving individual who has already proven himself unwilling to modify, much less rethink, his behavior after January 6. Jensen remains a danger to the community and cannot be trusted by this Court to abide by any conditions of release.

### **BACKGROUND**

Jensen was arrested in Iowa on January 8, 2021 pursuant to an arrest warrant issued in connection with a Criminal Complaint charging Jensen with, among other crimes, Obstructing a Law Enforcement Officer During a Civil Disorder, in violation of 18 U.S.C. § 231(a)(3). Dkt. 1.

On January 11, 2021, a federal grand jury in the District of Columbia returned a six-count Indictment charging defendant with violations of 18 U.S.C. § 231(a)(3) (Obstruction of a Law Enforcement

Officer During a Civil Disorder); 18 U.S.C. § 111(a)(1) (Assaulting, Resisting, or Impeding Certain Officers); 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted Building); 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building); 40 U.S.C. § 5104(e)(2)(A) (Violent Entry and Disorderly Conduct in a Capitol Building); and 40 U.S.C. § 5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building). Dkt. 3.

Jensen had his initial appearance in the Southern District of Iowa on January 12, 2021. *See* Dkt. 14, at 5. The Government filed a motion to detain Jensen without bond pending trial, and a detention hearing was held on January 19. *Id.* at 6. On January 21, the court ordered Jensen released pending trial and imposed special release conditions. *Id.* at 10-17. The court stayed its ruling until January 27 to allow the Government an opportunity to appeal to this Court pursuant to 18 U.S.C. § 3145(a). *Id.* at 13.

On January 22, the Government filed a Motion for Emergency Stay and For Review of Release Order (hereinafter, the “Emergency Motion”). Dkt. 5. On February 10, the grand jury returned a seven-count superseding indictment, charging Jensen with five felonies and two misdemeanors. Dkt. 12. Specifically, the grand jury charged Jensen with violations of 18 U.S.C. § 231(a)(3) (Obstruction of a Law Enforcement Officer During a Civil Disorder); 18 U.S.C. §§ 1512(c)(2), 2 (Obstruction of an Official Proceeding); 18 U.S.C. § 111(a)(1) (Assaulting, Resisting, or Impeding Certain Officers); 18 U.S.C. § 1752(a)(1) and (b)(1)(A) (Unlawfully Entering and Remaining in a Restricted Building While Carrying a Deadly and Dangerous Weapon); 18 U.S.C. § 1752(a)(2) and (b)(1)(A) (Disorderly and Disruptive Conduct in a Restricted Building While Carrying a Deadly and Dangerous Weapon); 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building); 40 U.S.C. § 5104(e)(2)(G) (Parading, Demonstrating, and Picketing in a Capitol Building).

An arraignment and detention hearing were held before the Court on February 23. The Court ordered Jensen detained, finding that no condition or combination of conditions could reasonably assure the safety of any person and the community. The Court’s detention order detailed the “gravely serious” nature and circumstances of the offense, including the fact that Jensen “allegedly travelled halfway across

the country . . . attended a rally in support of former President Trump, joined rioters by climbing through a broken window to enter the Capitol while armed with a knife, led a mob chasing Capitol Police Officer Eugene Goodman up a flight of stairs in a menacing fashion, threatened to take the officer's baton, and refused to obey the officer's lawful orders to stop and leave." Dkt. 15, at 3. The Court also highlighted certain troubling aspects of Jensen's history and characteristics, including the fact that his actions on January 6 were "motivated by conspiracy theories that, in Mr. Jensen's words, let him to be 'all about a revolution' against the lawful government of the United States." *Id.* at 4.

On April 9, a federal grand jury returned a second superseding indictment charging Jensen with aggravated assault rather than simple assault. Dkt. 17. Whereas simple assault is punishable by up to one year of imprisonment, aggravated assault is punishable by up to eight years' imprisonment. *See* 18 U.S.C. § 111(a)(1).

On June 7, Jensen filed a motion to revoke the Court's detention order. Dkt. 21. In his motion, Jensen claimed to have fallen "victim" to a "barrage of internet sourced info" and to "numerous conspiracy theories," including a theory, propounded by the "bizarre" QAnon, that the election had been stolen. *Id.* at 4, 6-7. Jensen lied to this Court by claiming to have distanced himself from those theories. Indeed, he even went so far as to claim that he felt "deceived, recognizing that he bought into a pack of lies." *Id.* at 7.

In its opposition to defendant's bond motion and at a June 24 bond hearing, the Government repeatedly highlighted Jensen's concerning relationship to QAnon and to other conspiracy theories. The Government described Jensen as a devout QAnon adherent whose unwavering devotion to "Q" led him to commit criminal acts on January 6, 2021. As the Government argued, "not only was defendant willing to harm a law enforcement officer for QAnon, but he was also willing to sacrifice his family, friends, job, and health for an unknown entity with whom he had only ever interacted via social media." Dkt. 24, at 7. The Government also highlighted various warnings that Jensen's family and friends had provided to FBI

about Jensen's QAnon addiction. *See id.* at 7-8. Overall, the Government argued that Jensen lacked good judgment, and that he could not be trusted to abide by any release conditions.

The Court ultimately granted Jensen's release on July 13, finding that certain strict conditions of release could be imposed in order to mitigate Jensen's future danger to the community. In so doing, the Court relied in part on Jensen's representations that he felt deceived by QAnon, that he recognized that he had "bought into a pack of lies," and that he had experienced a "wake-up call." *Id.* at 19. As the Court explained, "While I don't put too much weight on these representations, given how late they've come, and they are less persuasive given that they're through counsel, they do distinguish Mr. Jensen from many other detained January 6<sup>th</sup> rioters, and they do suggest that Mr. Jensen has come to understand that acting on conspiracy theories like QAnon can have terrible real-life consequences both for others and for him." Exh. 1, at 6. Recognizing the corrupting and dangerous influence that conspiracy theories hold over Jensen, the Court specifically prohibited Jensen from accessing the Internet "directly or indirectly" through any devices belonging to himself or others. *Id.* at 26; Dkt. 30, at 3. The Court further prohibited defendant from utilizing any internet-capable devices, and required that all internet-capable devices in Jensen's household be password-protected from Jensen. *Id.* The Court pronounced these special conditions orally at the July 13 bond hearing, and personally warned Jensen that his release "could be revoked and you would be detained at that point very likely until the case is completely resolved." Exh. 1, at 30.

Jensen swore, under oath, to obey these conditions. *Id.* at 40. Additionally, Jensen's wife, April Jensen, swore under oath that she would agree to supervise Jensen, and that she would notify the Court immediately if Jensen violated a condition of release. *Id.* at 27-28. Indeed, the Court specifically confirmed that Ms. Jensen understood that the "typical outcome if someone violates their conditions of release in a material way is that they're just jailed again pending trial." *Id.* Jensen was ultimately released from the D.C. Jail on July 14, 2021. Dkt. 31.

Less than one month later, Pretrial Services Officer Brandon Brown discovered Jensen, inside his garage, listening to the news on Rumble via a WiFi-connected iPhone. Dkt. 32 at 3. Jensen admitted to Officer Brown that he had possessed the iPhone for the past two weeks. *Id.* Jensen further admitted that he had spent two days during the past week watching a cyber symposium on the recount of the presidential election. *Id.*

On August 16, 2021, the Pretrial Services Agency for the District of Columbia (“PSA”) filed a violation report seeking “[p]rogram [r]emoval” for Jensen. Based on conversations with PSA, the Government understands PSA to be seeking the revocation of defendant’s pretrial release.

### **ARGUMENT**

#### **I. Applicable Authority**

Under 18 U.S.C. § 3148(a), “[a] person who has been released under section 3142 of this title, and who has violated a condition of his release, is subject to a revocation of release.” Specifically, “[t]he judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer finds that there is . . . clear and convincing evidence that the person has violated any other condition of release . . . [and that] the person is unlikely to abide by any condition or combination of conditions of release.” 18 U.S.C. § 3148(b).

#### **II. Jensen is Unlikely to Abide by Any Condition or Combination of Conditions of Release**

Jensen managed to violate one of the most difficult-to-enforce conditions in the most egregious way imaginable. He has proven that not even six months in jail will deter him from returning to the conspiracy theories that led him to commit an assault against a federal officer on January 6, 2021. Contrary to what Jensen claimed at his bond hearing, he is still very much bought into QAnon’s “pack of lies.” *See* Dkt. 21 at 7. Indeed, the Court need look no further than Jensen’s virtual attendance at a symposium dedicated to challenging the legitimacy of the 2020 electoral election to know that Jensen will continue to let his loyalties to certain conspiracy theories prevail over his obligations to this Court and his family.

Jensen's violation is doubly concerning because it exposes Ms. Jensen as an unsuitable and untrustworthy custodian. Indeed, by the defendant's own account, Ms. Jensen left the iPhone on for the defendant when she went to work on August 13, thereby facilitating his violation. Thus, even if the Court were inclined to keep defendant on pretrial release, there are no suitable third-party custodians to supervise Jensen.

Jensen was given an extraordinary second chance when he was released from pretrial detention. He squandered that chance by swiftly violating this Court's orders in order to return to the same pattern of conduct that led him to commit an aggravated assault on January 6, 2021. He does not appreciate the gravity of the situation he is in, and he does not respect this Court's authority. For these reasons, the Government respectfully requests that this Court revoke Jensen's pretrial release.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA

CR No. 1:21-cr-00006-TJK-1

v.

Washington, D.C.

Tuesday, July 13, 2021

DOUGLAS AUSTIN JENSEN,

10:00 a.m.

Defendant.

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TRANSCRIPT OF BOND HEARING  
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE

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**P R O C E E D I N G S**

THE DEPUTY CLERK: We are on the record in criminal matter 21-6, United States of America v. Douglas Austin Jensen.

Present for the Government is Hava Mirell; present for the defendant is Christopher Davis; present from Pretrial Services is Shay Holman; present from the United States Probation Office in the Southern District of Iowa is Branden Brown; also present is the defendant, Mr. Jensen.

THE COURT: All right. Good morning to everyone, and especially those of you not in the Eastern time zone who have had to get up a little bit earlier today.

We are here for a ruling on the -- Mr. Jensen's detention -- or motion to -- for release -- his bond motion.

Let me go through a few, first, of -- the procedural path that got us to this point.

On January -- back in January -- on January 21, a magistrate judge in the Southern District of Iowa ordered Mr. Jensen released pending trial. She stayed his release to allow the Government to appeal her ruling which it did. And the next day, the Government filed, and this Court granted, emergency motions to stay Mr. Jensen's release pending review and to transport him to the District of Columbia.

About a month later on February 23rd, Mr. Jensen

1 appeared before me for the first time for arraignment and a  
2 detention hearing. And at that hearing, defense counsel  
3 explained that, Discussions were ongoing -- quote,  
4 Discussions are ongoing. We're in the process of receiving  
5 discovery, and until we complete that process we're going to  
6 agree to detention and reserve our right to bring it back if  
7 we deem it's appropriate, closed quote. I then proceeded to  
8 consider the BRA factors and I detained Mr. Jensen. And I  
9 did so without the benefit of briefing from defense counsel  
10 or any argument from the parties. And I'll note that at the  
11 time, the Government did not suggest that proceeding -- that  
12 in proceeding that way, Mr. Jensen was waiving his right to  
13 litigate his detention, nor did the Government otherwise  
14 object to or further comment on proceeding that way.

15 In the intervening time, Mr. Jensen was indicted  
16 on a second superseding indictment and the parties began to  
17 exchange discovery. And on June 7th, he filed a motion for  
18 bond, specifically noting the fact that he had previously  
19 consented to detention and reserved the right to contest  
20 those issues at a later time.

21 So I think I first need to address this procedural  
22 issue of reconsidering -- or the procedural posture that  
23 we're in here.

24 Although the Federal Rules -- quote, Although the  
25 Federal Rules do not specifically provide for motions for

1 reconsideration in criminal cases, the Supreme Court has  
2 recognized, in dicta, the utility of such motions, closed  
3 quote. That's United States v. Ferguson, F. 74 [sic] F.  
4 Supp. 2d 111 at 113, a D.D.C. case from 2008. When  
5 considering a motion for reconsideration of an interlocutory  
6 order in a criminal case, judges in this District have  
7 applied the, quote, As justice requires, closed quote,  
8 standard from Rule 54(b) of the Federal Rules of Civil  
9 Procedure. And see, for example, United States v. Bloch,  
10 794 F. Supp. 2d 15 at 19, a D.D.C. case from 2011; United  
11 States v. Sunia, 643 F. Supp. 2d at -- 51 at 61, a D.D.C.  
12 case from 2009. And as a pretrial detention order is,  
13 obviously, an interlocutory order, judges in this District  
14 have applied the as-justice-requires standard to review  
15 detention orders. And see, for example, United States v.  
16 Worrell. It -- that is 2021 WL 2366934 at 9; and United  
17 States v. Hong Vo, 978 F. Supp. 2d 41 at 48, a D.D.C. case  
18 from 2013.

19 So, Asking what -- quote, Asking what justice  
20 requires amounts to determining, within the court's  
21 discretion, whether reconsideration is necessary under the  
22 relevant circumstances. That's Hong Vo, 978 F. Supp. 2d at  
23 48. Those circumstances include when a court has, quote,  
24 Patently misunderstood the parties, made a decision beyond  
25 the adversarial issues presented, or made an error in

1 failing to consider controlling decisions or data, or where  
2 a controlling or significant change in the law has occurred.  
3 That's *Arias v. DynCorp*, 856 F. Supp. 2d 46 at 52, a D.D.C.  
4 case from 2012. For justice to require reconsideration,  
5 logically, it must be the case that some sort of injustice  
6 will result if reconsideration is refused. That is, the  
7 movant must demonstrate that some harm would flow from a  
8 denial of reconsideration, closed quote. That's *Cobell v.*  
9 *Norton*, 355 F. Supp. 2d 531 at 540, a D.D.C. case from 2005.

10 So in this case, I'm being asked to reconsider a  
11 detention decision that was made without the benefit of  
12 adversarial presentation. Mr. Jensen previously consented  
13 to detention, explicitly reserving the right to contest  
14 detention later. The Government did not suggest that in  
15 doing so, Mr. Jensen had waived his right to challenge his  
16 detention, and the Government did not otherwise raise an  
17 issue with detention -- with Jensen reserving such a right.  
18 Now, with the benefit of some discovery and more time,  
19 Mr. Jensen has chosen to contest his detention. At this  
20 point, declining to reconsider Mr. Jensen's detention would  
21 effectively deprive him of an opportunity to litigate his  
22 release pending trial because -- at least at this point.  
23 And I do find that just -- injustice would result if I  
24 declined to give him that opportunity, especially because,  
25 as I -- as I'll explain in a moment, after considering the

1 parties' presentations, I think his release with very strict  
2 conditions that amount to home incarceration is appropriate.  
3 I find that this is consistent with the law of  
4 reconsideration that warns that, quote, Where litigants have  
5 once battled for the court's decision, they should neither  
6 be required, nor with good reason permitted, to battle for  
7 it again, closed quote. That's Lemmons v. Georgetown  
8 University Hospital, 241 F.R.D. 15 at 22, a D.D.C. case from  
9 2007. That is not the situation here. The parties did not  
10 battle for a decision before, and so the considerations that  
11 weigh against reconsideration in almost all circumstances  
12 are not present here. I do find that reconsideration is  
13 proper under these circumstances and, as I mentioned, I will  
14 grant Mr. Jensen's motion, albeit with conditions that are  
15 stricter than were ordered in the District of Iowa.

16 So moving on to the substance of the detention  
17 decision before me, then.

18 Quote, In our society, liberty is the norm and  
19 detention prior to trial or without trial is the carefully  
20 limited exception. That's United States v. Salerno, 481  
21 U.S. 739 at 755 from 1987 -- a Supreme Court case from 1987.  
22 Under the Bail Reform Act, or BRA, Congress -- quote,  
23 Congress limited pretrial detention of persons who are  
24 presumed innocent to a subset of defendants charged with  
25 crimes that are most -- that are the most serious compared

1 with other federal offenses. That's *United States v.*  
2 *Singleton*, 182 F.3d 7 at 13, a D.C. Circuit case from 1999  
3 quoting *Salerno* at 747. Thus, a detention hearing must be  
4 held at the government's request only in a case that  
5 involves a charged offense failing -- falling in -- into one  
6 of five enumerated categories or if the defendant poses a  
7 serious risk of flight or of attempt -- trying to obstruct  
8 justice or threaten, injure, or intimidate a witness or  
9 juror.

10 The BRA requires that a judicial officer, quote,  
11 Shall order, closed quote, the detention of the defendant  
12 before trial if, after a hearing held under 18 United States  
13 Code 3142(f), and upon consideration of the available  
14 information concerning the factors enumerated in Section  
15 3142(g), the judicial officer finds that no condition or  
16 combination of conditions will reasonably assure the  
17 appearance of the person as required and the safety of any  
18 other person and the community. In common parlance, the  
19 relevant inquiry is whether the defendant is a flight risk  
20 or a danger to the community. That's *United States v.*  
21 *Vasquez-Benitez*, 919 F.3d 546 at 550, a D.C. Circuit case  
22 from 2019. The BRA requires that detention be supported by  
23 clear and convincing evidence when the justification is the  
24 safety of the community. And even if the detention -- the  
25 defendant does not pose a flight risk, danger to the

1 community alone is sufficient to warrant pretrial detention.  
2 In assessing whether pretrial detention or release is  
3 warranted, then, the judicial officer must take into account  
4 the available information concerning these four factors: the  
5 -- first, the nature and circumstances of the offense  
6 charged, including whether the offense is a crime of  
7 violence; two, the weight of the evidence against the  
8 person; three, the history and characteristics of the  
9 person, including the person's character, physical and  
10 mental condition, family ties, employment, financial  
11 resources, length of residence in the community, community  
12 ties, past conduct, history relating to drug or alcohol  
13 abuse, criminal history, and record concerning appearance at  
14 court proceedings; and, four, the nature and circumstance  
15 [sic] of the danger to any person or the community that  
16 would be posed by the person's release. That's 18 United  
17 States Code 3142(g). And at the detention hearing, both the  
18 government and the defendant may offer evidence or proceed  
19 by proffer. That's United States v. Smith, 79 F.3d 1208 at  
20 1210, a D.C. Circuit case from 1996.

21 Here, the Government is seeking detention pending  
22 trial pursuant to 18 United States Code 3142(f)(1)(E) which  
23 provides for the possibility of detention where the  
24 defendant possessed a dangerous weapon during the course of  
25 a charged felony.

1           So let me walk through the factors that I have to  
2     consider.

3           The first statutory factor requires me to  
4     consider, quote, The nature and circumstances of the offense  
5     charged. Again, that's 18 United States Code 3142(g)(1).  
6     And considered as a whole, as I'll explain further, I do  
7     conclude that the nature and circumstances of the offense  
8     weigh in favor of detaining Mr. Jensen.

9           Chief Judge Howell has set forth a number of  
10    considerations, which I find helpful, to differentiate the  
11    severity of the conduct of the many defendants connected to  
12    January 6th for purposes of detention. She laid those out  
13    in United States v. Chrestman. That's 2021 WL 765662 at  
14    Page 7. Her opinion is dated February 26, 2021. Those  
15    considerations include whether a defendant, one, has been  
16    charged with felony or misdemeanor offenses; two, engaged in  
17    prior planning before arriving at the Capitol; three,  
18    carried or used a dangerous weapon during the riot; four,  
19    coordinated with other participants before, during, or after  
20    the riot; or, five, assumed -- five, assumed either a formal  
21    or a de facto leadership role in the assault by encouraging  
22    others' misconduct; and, six, the nature of the defendant's  
23    words and movements during the riot, including whether the  
24    defendant damaged federal property, threatened or confronted  
25    federal officials or law enforcement, or otherwise promoted



1 or celebrated efforts to disrupt the certification of the  
2 electoral count during the riot.

3 Examining these considerations, Mr. Jensen's  
4 conduct falls somewhere in the middle of the spectrum of the  
5 conduct that January 6th defendants are charged with.

6 On the first, Mr. Jensen is charged with seven  
7 offenses, including several felonies. The offenses include  
8 obstruction of law enforcement during a civil disorder, in  
9 violation of 18 United States Code Section 231(a)(3);  
10 assaulting, resisting, or impeding a federal law enforcement  
11 officer, in violation of 18 United States Code Section  
12 111(a)(1); entering and remaining and disorderly and  
13 disruptive conduct in a restricted building with a deadly  
14 and [sic] dangerous weapon, in violation of 18 United States  
15 Code Sections 1752(a)(1)-(2) and (b)(1)(A); and disorderly  
16 conduct, parading, demonstrating, and picketing in a Capitol  
17 building, in violation of 40 United States Code Sections  
18 5104(e)(2)(D) and (G); and obstruction of an official  
19 proceeding, in violation of 18 United States Code  
20 1512(c)(2).

21 The 1512(c)(2) offense is one for which the  
22 maximum term of imprisonment is 20 years. So it is plainly  
23 a very serious offense, at least from that perspective. But  
24 in addition to the maximum sentence that Congress has  
25 established, it is the broader circumstances of the alleged

1       conduct that underscore the seriousness of the charges  
2       against Mr. Jensen. The grand jury has charged that  
3       Mr. Jensen acted to stop, delay, or hinder Congress's  
4       certification of the Electoral College vote, in violation of  
5       18 United States Code 1512(c)(2); and, two, to obstruct or  
6       interfere with law enforcement officers engaged in their  
7       official duties to protect the Capitol and its occupants  
8       while that was happening, in violation of 18 United States  
9       Code Section 231(a)(3). In other words, Mr. Jensen stands  
10      charged with interfering with the nation's peaceful transfer  
11      of power, which is quite a grave matter to say the very  
12      least.

13               So this consideration weighs in favor of  
14      detention.

15               On the second, fourth, and fifth considerations  
16      outlined by Chief Judge Howell in Chrestman, there are no  
17      allegations or evidence that Mr. Jensen engaged in any sort  
18      of meaningful planning -- prior planning for January 6th or  
19      that he coordinated with other participants really before,  
20      during, or even after the riot. I find all of that quite  
21      significant in weighing against detention as to this factor  
22      and more broadly weighing against detention. In fact, the  
23      evidence the Government brings to my attention here in some  
24      ways cuts against the idea that Mr. Jensen planned much of  
25      anything that day. The Government -- one of the

1 Government's exhibits was a series of videos in which  
2 Mr. Jensen states, while at the Capitol building, that, in  
3 fact, he was at the White House. It's hard to imagine that  
4 Mr. Jensen planned or coordinated the events of January 6th  
5 when he had no basic understanding of where he even was that  
6 day. And as to the fifth factor about leadership,  
7 Mr. Jensen apparently was one of the first to enter the  
8 Capitol and did intentionally position himself, the evidence  
9 shows, toward the front of the crowd wearing a QAnon  
10 conspiracy theory T-shirt because he, quote, Wanted Q to get  
11 the credit, closed quote. That's ECF No. 5 at 5. But this  
12 is a thin reed on which to argue that Mr. Jensen was a  
13 meaningful leader in the events of that day, and it alone  
14 does not say much about the threaten -- threat he might pose  
15 going forward or whether pretrial detention is appropriate.

16 As to -- considerations three and six are a mixed  
17 bag but waiver slight -- weigh slightly in favor of  
18 detention.

19 As for consideration six, Mr. Jensen's words and  
20 deeds during the riot, the key video and evidence proffered  
21 by the Government show him scaling some of the outside walls  
22 of the Capitol, celebrating storming it, although he does  
23 refer to it as the White House, and entering through an  
24 already -- a window that was already broken. He proceeded  
25 up a flight of stairs with other rioters behind him, moving

1 deeper into the Capitol building and ignoring Officer Eugene  
2 Goodman's instructions to stop as Officer Goodman retreated.  
3 Officer Goodman, at one point, raised his baton at  
4 Mr. Jensen. And in response, Mr. Jensen did not stop, but  
5 at the same time he did not raise his arms or physically  
6 confront Officer Goodman either. The parties disagree about  
7 words spoken by Mr. Jensen to Officer Goodman. The defense  
8 claims that he said, I -- I'll take it for my country,  
9 indicating a willingness to be beaten. That's ECF 21 at 5.  
10 The Government instead argues that Mr. Jensen said, I'll  
11 take it. I'll take it. ECF No. 24 at 13. To the extent  
12 that the Government argues that Mr. Jensen was threatening  
13 to take Officer Goodman's baton, I looked at the video very  
14 closely and it doesn't appear to me that Mr. Jensen made any  
15 effort to do that or even to use his arms or his hands to  
16 confront Officer Goodman or even, frankly, to defend  
17 himself. So there really is no reason I can see to believe  
18 that that is what Mr. Jensen meant. In any event, after  
19 being at the top of the stairway, after being redirected  
20 away from the Senate chamber by Officer Goodman, in a nearby  
21 atrium, Mr. Jensen was then confronted by a group of  
22 officers, who he had and other rioters continued to shout  
23 at, with Mr. Jensen asking why they were not arresting  
24 corrupt members of the government instead of protecting  
25 them. One officer who was threatened -- who was present

1 characterized Mr. Jensen as encouraging other rioters to  
2 advance, although it is unclear how. I've watched that  
3 video very closely and it never captures Mr. Jensen  
4 addressing other rioters or appearing to intentionally egg  
5 them on except insofar as they might have been egged on  
6 simply by Mr. Jensen continuing to advance into the building  
7 and verbally sparring with the officers. In fact, the video  
8 in the atrium, though, captures another rioter yelling at  
9 police officers far more loudly and aggressively than  
10 Mr. Jensen, and the Government has never asked for that  
11 defendant to be detained which I know because that defendant  
12 -- that case happens to be assigned to me.

13 In any event, after another rioter -- not  
14 Mr. Jensen -- slammed a -- apparently, slammed a fire  
15 extinguisher against the ground causing it to rupture and  
16 many who were there in the atrium were stunned, according to  
17 the Government, Mr. Jensen was unfazed and kept, quote,  
18 Calmly approaching, closed quote, officers. But the  
19 situation was eventually deescalated and there's no evidence  
20 that Mr. Jensen proceeded any further, for example, into the  
21 chamber of either the House or the Senate.

22 So broadly speaking, in summary, there is no  
23 evidence before me that Mr. Jensen toppled any barricades,  
24 broke any windows, or damaged any federal property, nor is  
25 there any evidence that he fought with or raised his hands

1       against anyone, including any law enforcement officer. That  
2       said, he clearly disobeyed Officer Goodman and other  
3       officers, and he did position himself near the front of a  
4       mob as he ran up the stairs toward Officer Goodman and  
5       ultimately into this atrium. That may be some leadership,  
6       but only in the narrowest sense. I would also characterize  
7       Mr. Jensen's actions and words as confronting law  
8       enforcement in the sense, again, that he failed to obey  
9       their commands and in the sense that he continued to  
10      proceed. He did also celebrate what -- that happened --  
11      what was happening that day, no doubt, as some of the other  
12      evidence depicts, but on the other hand he did not confront  
13      officers with a weapon, he did not fight with any officers,  
14      or as far as I can tell he did not utter any threats to harm  
15      them.

16               In any event, none of my comments about  
17      Mr. Jensen's individual conduct, considered on its own  
18      somewhat separately from the entirety of the day's events  
19      and viewed six months later, should not [sic] be taken to  
20      minimize how serious the conduct was, nor should it be taken  
21      in any way to diminish the bravery and quick thinking of  
22      Officer Goodman that he showed as he confronted the mob and  
23      did his duty that day to protect the Capitol and its  
24      occupants.

25               The Government also proffers that Mr. Jensen

1 carried a small pocketknife with him that day, which is the  
2 key fact that even makes him eligible for detention. The  
3 Government does argue at one point that Mr. Jensen reached  
4 for that pocket, but even so I don't think there's any  
5 persuasive evidence that Mr. Jensen ever really tried to  
6 take the knife out of his pocket or even that he threatened  
7 those present that he was about to do so. And the defense  
8 proffers that Mr. Jensen carried his -- that knife with him  
9 for protection and that he carried with -- it with him  
10 regularly, including to work and, the parties agree, even to  
11 his FBI interview that he eventually voluntarily subjected  
12 himself to. So in my view, the knife really does not move  
13 the needle that much in terms of the issue of detention.

14           Given all the above, I think all of these factors  
15 are a mixed bag and, no doubt, the conduct undertaken by  
16 Mr. Jensen that day was serious both in terms of how he  
17 acted and in terms of the potential effect on the republic  
18 that it could have had, but I do -- and I do find that the  
19 nature and circumstances of the offense weigh in favor of  
20 detention, but I think that they do so not overwhelmingly.

21           The second factor I have to consider is the weight  
22 of the evidence against the person. And the Government's  
23 evidence here is extremely strong, given that the -- it has  
24 proffered photos and video of the incident. So this factor,  
25 too, weighs in favor of detention.

1 But next, I have to consider the history and  
2 characteristics of the person, including the person's  
3 character, physical and mental condition, family ties,  
4 employment, financial resources, length of residence in the  
5 community, community ties, past conduct, history relating to  
6 drug or alcohol abuse, criminal history, and record  
7 regarding -- record concerning appearance at court  
8 proceedings.

9 And I do find that this factor favors release.  
10 Prior to January 6th and his subsequent detention,  
11 Mr. Jensen appears to have lived a relatively stable life in  
12 Des Moines, Iowa. He resides with his wife of almost 20  
13 years with whom he has 3 children. His wife has a job. She  
14 has been approved by Pretrial Services as an appropriate  
15 third-party custodian as someone who -- ensure that  
16 Mr. Jensen does comply with his conditions of release. He  
17 himself -- Mr. Jensen himself had stable employment before  
18 he was arrested. And I'll also note that the Government  
19 proffers that, to complete the picture, Mr. Jensen did admit  
20 to consuming marijuana on a daily basis and having  
21 previously experimented with cocaine and methamphetamine.  
22 And there is also evidence in record that -- evidence in the  
23 record that, at the time of his arrest, Mr. Jensen was  
24 receiving mental health treatment in the community.

25 Mr. Jensen also does have some prior contact with



1 the criminal justice system, but his criminal history is not  
2 too serious, nor does it demonstrate a pattern of violence.  
3 He has no felony convictions. Three of the four incidents  
4 I've been made aware of -- a driving while under the  
5 influence of alcohol, fifth degree theft, and a conspiracy  
6 to deliver a controlled substance -- all include [sic] more  
7 than 14 years ago and apparently resulted in deferred  
8 judgment with no term of imprisonment for Mr. Jensen. The  
9 last incident is more recent, a, quote, Domestic assault,  
10 disorderly conduct conviction from 2015. Mr. Jensen  
11 proffers, and there doesn't appear to be any reason to  
12 doubt, that the victim of the assault was not his wife. And  
13 Mr. Jensen served about three days of imprisonment and one  
14 year of probation for this misdemeanor. This isn't a clean  
15 record, but on the other hand most of it is in the past and,  
16 as I said, again, does not demonstrate a pattern of  
17 violence. Defense counsel represents that Mr. Jensen also  
18 did not violate the terms of his supervision at any point  
19 during these cases. And, further, aside from his criminal  
20 history, after the events of January 6th, Mr. Jensen  
21 contacted law enforcement on his own initiative and  
22 submitted to an FBI -- to an interview about his conduct.  
23 So -- and there's no suggestion that he lied about his  
24 conduct on January 6th to the FBI or destroyed evidence of  
25 that conduct.

1           The Government also proffers that Mr. Jensen's  
2       actions were motivated by conspiracy theories, including the  
3       QAnon conspiracy theory. And indeed, Mr. Jensen allegedly  
4       told law enforcement that he believed in preventing the  
5       election of now-President Biden from being certified and  
6       that he was present in the Capitol to participate in an  
7       event that he thought would result in the arrest of members  
8       of Congress and Vice President Pence. But at this point,  
9       defense counsel now represents that Mr. Jensen, quote, Feels  
10      deceived, closed quote, and, quote, Recognizes that he  
11      bought into a pack of lies, closed quote. That's ECF No. 21  
12      at 7. He describes Mr. Jensen as having experienced a  
13      wake-up call. That's ECF No. 21 at 8. While I don't put  
14      too much weight on these representations, given how late  
15      they've come, and they are less persuasive given that  
16      they're through counsel, they do distinguish Mr. Jensen from  
17      many other detained January 6th rioters, and they do suggest  
18      that Mr. Jensen has come to understand that acting on  
19      conspiracy theories like QAnon can have terrible real-life  
20      consequences both for others and for him.

21           So in summary, again, this factor, the history and  
22      characteristics of Mr. Jensen, I do think favors release.  
23      Again, it's somewhat of a mixed bag, but on the whole I do  
24      think it favors release.

25           And the final factor I have to look at is the

1 nature and seriousness of the danger to any person or the  
2 community that would be posed by the person's release.  
3 That's, again, the last 3142(g) factor.

4 And then, as the Circuit found in the recent  
5 Munchel decision, to justify detention on the basis of  
6 dangerousness, I must find by clear and convincing evidence  
7 that no condition or combination of conditions will  
8 reasonably assure the safety or [sic] any other person and  
9 the community. As the Circuit held in that case, a  
10 defendant's detention based on dangerousness accords with  
11 due process only insofar as the District Court determines  
12 that the defendant's history, characteristics, and alleged  
13 criminal conduct make clear that he or she poses a concrete,  
14 prospective threat to public safety -- that's the Munchel  
15 case at 1280 -- or as the Supreme Court articulated in  
16 Salerno, to the extent that the defendant presents an  
17 identified and reasonable [sic] threat to an individual or  
18 the community, not necessarily dangerous -- danger, but some  
19 sort of threat.

20 Although this is a close case, I do believe that  
21 this factor weighs against detention and that this ultimate  
22 standard is not met when I have to consider all the factors  
23 at issue here.

24 And, again, I want to emphasize by -- before I  
25 continue that nothing what [sic] I'm about to say should be

1 understood as suggesting that I don't think Mr. Jensen's  
2 conduct that day was very serious; that I don't think what  
3 happened on January 6th was very serious; and that should  
4 give anyone any -- and for -- much of -- any -- as -- give  
5 anyone a hint about what sentence I might think might be  
6 appropriate if Mr. Jensen is either convicted at trial or  
7 pleads guilty to one of the charges that he is -- to one of  
8 the offenses that he is charged with. I think I've said  
9 many times in connection with these cases that I do consider  
10 what happened that day to be the equivalent of an attempt to  
11 steal one of the crown jewels of our country, the peaceful  
12 transfer of power.

13 But that said, detention requires a determination,  
14 as I said, that Mr. Jensen poses an articulable and  
15 prospective threat to the community that cannot be  
16 reasonably mitigated by conditions of release. And I don't  
17 think that standard is met here. I'll just quickly walk  
18 through why.

19 Again, there is no evidence that Mr. Jensen  
20 toppled barricades that day, broke anything, fought with  
21 anyone, whether that be law enforcement or other rioters.  
22 There is no evidence he planned or coordinated with others  
23 about the events of the day. Quite the opposite, in my  
24 view, given that he didn't even really know where he was.  
25 He wore no protective gear, suggested [sic] he anticipated a

1 physical conflict. He did possess a small knife, but he  
2 never took it out of his pocket, and it's a knife that is so  
3 commonly with him he brought it to his FBI interview that he  
4 showed up for voluntarily. And when confronted by, sort of,  
5 I would call it, defensive tactical force by Officer  
6 Goodman, a push keeping him away from the Senate, he  
7 declined to physically respond except insofar as he  
8 continued to advance into the Capitol.

9 Although Mr. Jensen told the FBI vaguely that he  
10 was, All about revolution, closed quote, there is no  
11 evidence that he has the capability to help plan another  
12 January 6-type event. He is not alleged to have lied to law  
13 enforcement about his conduct. And, further, his criminal  
14 history is not serious insofar as he has had -- he has no  
15 felony convictions, and it does not reflect any occasion  
16 where he violated his conditions of release and it does not  
17 reflect a pattern of violence.

18 The Government's argument ultimately turns on the  
19 video that depicts -- and it's a powerful video -- that  
20 depicts Mr. Jensen at the front of a crowd, proceeding deep  
21 into a Capitol -- into the Capitol up the stairs as Officer  
22 Goodman retreats, and disobeying Officer Goodman's  
23 instructions to stop. And, as I said, especially in the  
24 context of the larger mob and what was happening that day,  
25 Mr. Jensen's behavior is deeply concerning and quite

1       serious. And but for the heroic actions of Officer Goodman,  
2       the reality is we don't know where that entire mob would  
3       have ended up.

4               But I don't think this conduct alone provides  
5       sufficient reason to determine that Mr. Jensen poses an  
6       articulable threat moving forward that cannot be reasonably  
7       mitigated by very strict conditions of release. The Munchel  
8       decision is helpful here insofar it explains that, quote,  
9       Those who actually assaulted police officers and broke  
10      through windows, doors, and barricades, and those who aided,  
11      conspired with, planned, or coordinated such actions, are in  
12      a different category of dangerousness than those who cheered  
13      on the violence, entered the Capitol after others cleared  
14      the way. That's Munchel at 1284. Mr. Jensen's conduct that  
15      day more closely fits into this second category of rioters,  
16      even if he did place himself at the front of that group  
17      moving up the stairs and even if his actions ultimately do  
18      meet the definition of assaulting, resisting, or impeding a  
19      federal law enforcement officer.

20             Finally, Mr. Jensen has suggested strict  
21      conditions, including GPS monitoring, a -- restrictions on  
22      his Internet access, and release to a third-party custodian  
23      that has been approved at least by Pretrial Services at this  
24      point, that I'll discuss in a moment that I have to weigh in  
25      making this decision and that, again, those conditions are

1 critical in why I think release is -- there -- is warranted  
2 here.

3 So for all of those reasons, I do find that there  
4 is a combination of conditions that will reasonably assure  
5 the safety of any other person and the community and I will  
6 grant the motion.

7 We will go through -- I believe we've provided the  
8 Pretrial Services representatives on here -- on the line  
9 here with the order I intend to sign laying out those  
10 conditions. We'll get to Ms. Jensen in a moment here. But  
11 the motion requests that I release Mr. Jensen to the  
12 conditions that were previously ordered in the Southern  
13 District of Iowa, but I am going to shore up those  
14 conditions and make them even tighter to some degree. The  
15 previous conditions were to release Mr. Jensen to home  
16 detention, but I am going to find here that home  
17 incarceration is appropriate. That condition restricts  
18 Mr. Jensen to his home at all times except for medical  
19 necessities, court appearances, and other activities  
20 specifically approved by me. He'll be monitored by  
21 location-monitoring technology to ensure his compliance.  
22 Some of the other conditions I impose, which we'll walk  
23 through momentarily, may require Mr. Jensen to leave his  
24 home for medical -- for drug testing or treatment, for other  
25 medical issues, and for mental health screenings. So I'll

1 approve Mr. Jensen, of course, to leave his home for any one  
2 of those purposes that my order reflects but for no other  
3 purposes than the order will reflect. And to the extent  
4 there are other things that pop up that the parties think I  
5 should release Mr. Jensen for, of course, you all know how  
6 to reach me if you think -- I'd encourage the parties to  
7 talk to each other about whether they can come to an  
8 agreement on those, but either way you can -- you know where  
9 to find me, Mr. Davis, if you want to pursue that. But as  
10 for now, I'm not going to order him to pursue employment or  
11 education; simply to be at home on home incarceration and to  
12 follow these other conditions.

13 As for the other conditions, I will order  
14 Mr. Jensen, again, released to the custody of his wife,  
15 April Jensen. She will be responsible for supervising him  
16 in accordance with the conditions of release, to make every  
17 effort to ensure that he appears at all scheduled court  
18 proceedings, and to notify the Court immediately if he  
19 violates any condition of his release. Mr. Jensen will have  
20 to surrender his passport to the Probation Office. He will  
21 have to not travel outside the Southern District of Iowa,  
22 except to the District of Columbia for court appearances if  
23 that becomes -- when, and if, that becomes warranted. He  
24 should [sic] avoid contact with anyone who participated in  
25 the riot at the U.S. Capitol on January 6th. He shall



1       undergo medical or psychiatric treatment as directed by the  
2       Probation Office. He shall refrain from possessing a  
3       firearm, ammunition, destructive device, or other dangerous  
4       weapon. He shall refrain from using any alcohol or narcotic  
5       drugs or any other controlled substances. He shall submit  
6       to drug testing and to participate in substance abuse  
7       treatment as advised by the Pretrial Services Office. As I  
8       mentioned earlier, he must submit to location-monitoring  
9       technology; to substance abuse and mental health screening  
10      as directed by Pretrial Services; and to take any medication  
11      that might be prescribed by any health care provider.

12               Further, Mr. Jensen shall not access or --  
13      Internet -- or utilize Internet-capable devices, including a  
14      cell phone, and any access to the Internet by Mr. Jensen,  
15      directly or indirectly, is prohibited. All Internet-capable  
16      devices in Mr. Jensen's home, included [sic] them -- those  
17      belonging to his family members, must be password protected  
18      with passwords unknown to Mr. Jensen. And any computers or  
19      electronic communication and storage devices or media in  
20      Mr. Jensen's home shall be subject to a search if there is  
21      reasonable suspicion that Mr. Jensen has violated conditions  
22      of his supervision and that the computer or storage device  
23      contains evidence of that violation.

24               Let me address Ms. Jensen before we swear you in.

25               Ms. Jensen, you understand the responsibility that

1       you're undertaking here?

2               (Brief pause.)

3               You can -- you're muted right now, Ms. Jensen.

4               (Brief pause.)

5               MS. JENSEN: Sorry. Yes, I do.

6               THE COURT: All right. You understand that I'm  
7 going to -- I -- we'll have the -- Pretrial Services is  
8 going to explain these conditions again and, of course,  
9 they'll be available to explain them further if you need  
10 further explanation, but I just -- and I'm going to instruct  
11 your husband about this in a moment, but broadly speaking he  
12 is -- if he violates his conditions of release, he can be  
13 re-incarcerated or prosecuted for additional offenses, but  
14 the most obvious thing is -- the most obvious -- or the most  
15 typical -- or a typical outcome if someone violates their  
16 conditions of release in a material way is that they're just  
17 jailed again pending trial. Do you understand that,  
18 Ms. Jensen?

19              MS. JENSEN: Yes, sir.

20              THE COURT: All right. Katrina, why don't you  
21 swear in Ms. Jensen.

22              THE PRETRIAL SERVICES OFFICER: Your Honor -- oh,  
23 I'm sorry. Go ahead, Katrina.

24              THE COURT: Ms. --

25              THE DEPUTY CLERK: Your Honor, do you want me to

1 swear her in for additional questions or swear her to the --  
2 to her --

3 THE COURT: To the --

4 THE DEPUTY CLERK: -- duties?

5 THE COURT: For her duties.

6 THE DEPUTY CLERK: Thank you.

7 Ms. Jensen, will you please raise your right hand.

8 Do you solemnly swear or affirm to well and truly  
9 discharge your responsibility as a third-party custodian and  
10 advise the Court if the defendant fails to follow the  
11 conditions of release?

12 MS. JENSEN: I do.

13 THE DEPUTY CLERK: Thank you.

14 MS. JENSEN: Thank you.

15 THE COURT: All right. Mr. --

16 THE PRETRIAL SERVICES OFFICER: Your Honor, this  
17 is Ms. Holman with Pretrial Services. If I could just  
18 recommend that the Court add one additional condition?

19 THE COURT: Please.

20 THE PRETRIAL SERVICES OFFICER: For the -- these  
21 cases, we've been adding the standard condition to stay away  
22 from Washington, D.C., except for court, meetings with  
23 attorney, or Pretrial.

24 THE COURT: That, I think, is eminently  
25 appropriate. I thank you for that. And we'll go ahead and

1 we will include that in the order that I do enter.

2 So Mr. Jensen, in addition to what I mentioned  
3 before, obviously, you may -- depending upon how we proceed  
4 in terms of proceeding remotely or not, you may have to come  
5 to Washington, D.C., at some point for court. The point is  
6 that, other than that, you do have a stay-away from  
7 Washington, D.C., which means you're not allowed to -- part  
8 of your conditions of release would be you would not allow  
9 -- be allowed to come here. Of course, that's even a little  
10 more specific. I'm actually ordering you to stay within the  
11 Southern District of Iowa except for court appearances,  
12 again, unless prior approval is obtained by the Probation  
13 Office. But this is, sort of, a double prohibition, if you  
14 will, a more specific prohibition to make sure you stay away  
15 from Washington, D.C. And if you end up -- if you were to  
16 violate that, it would be an additional violation of your  
17 conditions.

18 Mr. Jensen, just before you -- our probation  
19 officer walks through those -- these conditions with you, I  
20 want to make sure you understand, again, you're going to be  
21 required to appear, whether it be on -- whether it be  
22 remotely like we're doing today or perhaps at some point in  
23 person. And failure to appear as required, as you will be  
24 informed, is a separate criminal offense for which you could  
25 be sentenced to imprisonment. And in addition, if -- once

1     you're released, you will be under supervision, and that  
2     means there will be reporting requirements that will be  
3     explained to you and other conditions. The penalties for  
4     violating those conditions can be very severe. For example,  
5     if you would -- if, eventually, you are either convicted or  
6     plead guilty and a sentencing proceeding is scheduled, you  
7     could be -- or any other proceeding -- you can be subject to  
8     a fine or imprisonment for failure -- for failing to appear  
9     for a subsequent proceeding in this case. Do you understand  
10    that, sir -- Mr. Jensen?

11           THE DEFENDANT: Yes, Your Honor.

12           THE COURT: And if you violate any of your  
13     conditions of release, your release could be revoked and you  
14     would be detained at that point very likely until the case  
15     is completely resolved. You could also be subject to a  
16     separate prosecution, depending upon the circumstances, for  
17     contempt of Court. Do you understand that, Mr. Jensen?

18           THE DEFENDANT: Yes, Your Honor.

19           THE COURT: And the worst possible scenario  
20     perhaps, if you were convicted of an offense while on  
21     release, then in addition to the sentence imposed for that  
22     offense, you could be subject to -- sentenced up to 10  
23     years' imprisonment. And any term of imprisonment for an  
24     offense committed while on release would be consecutive --  
25     would be added to any sentence you would -- might receive

1 for any other offense. Do you understand that, Mr. Jensen?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Why don't I have, then,  
4 Pretrial Services -- why don't you go ahead and walk through  
5 with Mr. Jensen the conditions I just mentioned and that are  
6 reflected on that order.

7 THE PRETRIAL SERVICES OFFICER: I'm sorry, Your  
8 Honor. You said you wanted Pretrial to go through the  
9 conditions again?

10 THE COURT: Well, with Mr. Jensen just to make  
11 sure he understands them.

12 THE PRETRIAL SERVICES OFFICER: All right.

13 Mr. Jensen, you have been ordered -- you are --  
14 have been -- you will be released by the Court. And you are  
15 to report as directed to the Southern District of Iowa. You  
16 are to surrender your passport, if you have one; not obtain  
17 a new passport or any other international travel documents;  
18 stay away from the District of Columbia as -- except for  
19 court, meetings with the attorney; and your travel is  
20 restricted to the Southern District of Iowa and to the  
21 District of Columbia for court, but you need to get prior  
22 approval from your assigned probation officer in the  
23 Southern District of Iowa. You are to get any medical or  
24 psychiatric assessments as directed by the Southern District  
25 of Iowa. Do not possess any firearms, destructive devices.

1 If you have any weapons in your home, you need to transfer  
2 them to a third party and provide Iowa with a notice. Do  
3 not drink alcohol; do not -- or do not use or unlawfully  
4 possess any narcotics or other controlled substance unless  
5 they're prescribed by a licensed doctor; submit to drug  
6 testing.

7 Your Honor, with that, I don't know if Iowa is  
8 testing. I believe Mr. Brown is on the line. Some  
9 jurisdictions still remain closed due to COVID, but if we  
10 could leave that to the discretion of Southern District of  
11 Iowa.

12 Participate in any in-patient or out-patient  
13 program as ordered by the supervising jurisdiction. You  
14 will be on home incarceration with location monitoring, and  
15 that will be at the discretion of the Southern District of  
16 Iowa. It could be what we refer to as radio frequency or  
17 GPS monitoring. There might be a cost associated with the  
18 location monitoring. That will be your responsibility to  
19 pay. Report as soon as possible any contact with law  
20 enforcement; permit the Probation Office in the Southern  
21 District of Iowa to visit your home at any time or any  
22 residence where you live; submit to substance abuse and  
23 mental health screening as directed by the Southern District  
24 of Iowa. You shall not take any medication -- I'm sorry,  
25 you shall take medication as prescribed by the physician,

1 psychiatrist, or health provider. You shall not take any  
2 medication not prescribed to you. Defendant shall not  
3 access or utilize Internet-capable devices, including a cell  
4 phone. All Internet-capable devices, including those of the  
5 family members residing with the defendant, shall be  
6 password protected and the defendant shall not have access  
7 to the devices or the password -- I'm sorry, to the  
8 password. All -- any access to the Internet, directly or  
9 indirectly, through devices belonging to others or in public  
10 spaces is prohibited. So that means you cannot go to a  
11 library or any such place and use any type of the Internet.  
12 And you must submit your computer, or computers, or other  
13 electronic communications or data storage devices, media to  
14 a search. You must warn any other people who use these  
15 computers or devices that they're subject to a search by the  
16 Southern District of Iowa.

17 Your Honor, in reference to incarceration, I just  
18 want to verify that Mr. Jensen does not work. If we could  
19 address that now with defense counsel so we won't have to  
20 re-approach the Court in that aspect.

21 THE COURT: There's no -- at this point --  
22 correct. At this point, he is not authorized to work.

23 THE PRETRIAL SERVICES OFFICER: Okay.

24 THE COURT: As I've mentioned, if, at some point  
25 in the future, the parties want to approach me about that,



1       they may, but at this point he is not authorized -- work is  
2       not one of the authorized reasons for him to leave or else I  
3       wouldn't have made it home incarceration.

4               THE PRETRIAL SERVICES OFFICER: Okay. And I'm  
5       just going to put that on the order so it's perfectly clear,  
6       Your Honor, not authorized to work at this time.

7               THE COURT: All right. Very well.

8               All right. And is there anything -- Mr. -- as I  
9       recall, Mr. Davis, you had made the point that you wanted --  
10      I don't know if I need to reflect this on the order one way  
11      or the other at all, but you had mentioned Ms. Jensen would  
12      come and actually pick him up from D.C. Is that correct?

13              MR. DAVIS: That's correct, Your Honor. And, you  
14      know, actually, I could resubmit an order, but I think  
15      that's probably a good idea. I'm -- as far as I can  
16      determine, Mr. Jensen is on a no-fly list. I haven't been  
17      able to confirm that other than by trying to book him a  
18      ticket and it doesn't work. So I assume he's on a no-fly  
19      list. So his wife is going to have to drive from Iowa.  
20      She'll leave today and pick him up tomorrow morning. I --  
21      what I would suggest we do is put in the order that he be  
22      released from CTF on July 14th to his wife's custody and  
23      identify her by name and she'll present identification when  
24      she goes to pick him up, and I'll make certain this goes  
25      smoothly.

1 THE COURT: All right. We'll work with Pretrial  
2 Services to try to come up with language that is specific in  
3 that regard and that only releases him to her custody, as  
4 you -- as you've indicated.

5 MR. DAVIS: Thank you.

6 THE PRETRIAL SERVICES OFFICER: Your Honor, I  
7 don't know if that needs to be on the release order. It  
8 needs to be on the paperwork that the Court will submit to  
9 the marshals that we'll send to the D.C. Jail.

10 THE COURT: All right. We will work this out.

11 Ms. Mirell, I saw you --

12 I -- so I -- what -- wherever that language goes,  
13 I think we can work on that without taking up any more time  
14 in today's hearing.

15 Ms. Mirell, did -- were -- I saw your arm moving,  
16 maybe, toward unmuting yourself. Did you want to be heard  
17 on something?

18 MS. MIRELL: Yes, Your Honor. You addressed one  
19 of my concerns about having the defendant released directly  
20 into the custody of his wife --

21 THE COURT: Yes.

22 MS. MIRELL: -- however, is there a reporting date  
23 by which he must be outfitted with a location-monitoring  
24 bracelet in Iowa?

25 THE COURT: We can -- and actually, the -- well,

1       you raise a sub-issue that I did -- since we do have Mr.  
2       Brown -- Officer Brown here, Officer Brown, can I just ask  
3       this one question. Do you know the answer? I had assumed  
4       it would be a -- for lack of a better way to put it, a GPS  
5       monitoring system. We -- I can do it as, sort of,  
6       technology as directed by you. But if I did that, do you  
7       know what technology you would -- Iowa would be using at  
8       this point for this?

9               THE PROBATION OFFICER: Unfortunately, Your Honor,  
10       I'd have to staff that with our location monitoring team.  
11       Typically, what I've seen with the home incarceration cases,  
12       since they're primarily at home, we typically put those  
13       people on RS units.

14              THE COURT: What -- and RS is the, like -- the  
15       radio frequency?

16              THE PROBATION OFFICER: Correct.

17              THE COURT: All right. And that -- remind me.  
18       That would -- tells you if they leave the home. But if they  
19       left the home, it would not necessarily tell you where they  
20       would be once they leave a certain perimeter from the home;  
21       is that true?

22              THE PROBATION OFFICER: That's correct.

23              THE COURT: Yeah. I mean, I may -- this may be  
24       one where, I think -- and, maybe, Ms. Mirell, if this -- I'm  
25       not sure if this is what you're requesting, but I see you

1        nodding. My thought is, actually, I'm going to -- rather  
2        than leave it up to Iowa, I will probably require GPS in  
3        this particular case. It's, sort of, a belt-and-suspenders  
4        thing, but I think knowing -- there will be, maybe, in more  
5        cases than usual -- at least for the kind of medical visits  
6        that the order will reflect, Mr. Jensen may well be leaving  
7        his house a little more -- a little bit more than the  
8        average person who's subject to home incarceration. So I  
9        think probably GPS technology is appropriate here just so we  
10       know exactly where he is. And so I'll probably check that  
11       box.

12                    And then, Officer Brown, how quickly do you think  
13       he can be fitted with that if he is released to Ms. Jensen  
14       on the -- let's say, tomorrow on the 14th?

15                    THE PROBATION OFFICER: If he's released tomorrow,  
16       I imagine he probably wouldn't be back in -- what -- until  
17       the 15th. So we would put it on that day.

18                    THE COURT: All right. I'm going to just say no  
19       later than the 16th and build in -- we'll put that that  
20       should be -- that he should be fitted with that by at least  
21       -- by the -- no later than the 16th just to build in a  
22       potential administrative delay of a day. Does that address  
23       your concern, Ms. Mirell?

24                    MS. MIRELL: Yes, it does, Your Honor.

25                    THE COURT: Okay. Anything further from you?

1 MS. MIRELL: Well, obviously, the ship has sailed,  
2 Your Honor, but just for purposes of the record, the  
3 Government would also rely on the recently issued opinion by  
4 the D.C. Circuit in Hale-Cusanelli of which this Court was  
5 most certainly aware, but that's just for purposes of the  
6 record.

7 But I also did want to inquire, as one more  
8 thought came to me, if Ms. Jensen is driving alone -- and we  
9 are now aware that it's a 16-hour drive straight -- if there  
10 will be a stop along the way or whether she will be bringing  
11 someone else to drive, just -- the Government still harbors  
12 concerns about the danger to community and making any stops  
13 longer than just a pickup in D.C.

14 THE COURT: Ms. Jensen, what can you tell us about  
15 your plans?

16 MS. JENSEN: Either my son will be coming with us  
17 or I have a -- one of my good friends will be riding with  
18 me.

19 THE COURT: All right.

20 MS. JENSEN: So --

21 THE COURT: So that means you plan on driving --  
22 getting -- not stopping overnight, for example?

23 MS. JENSEN: Probably not.

24 THE COURT: All right. Well, if you bring another  
25 person, you won't have that ability. And, again, he's --

1 I'm going to order that the GPS monitoring start no later  
2 than the 16th. So you know, if you don't hook up with  
3 Officer Brown here and get that done by the 16th, then he  
4 will be in violation and we will, you know, at that point --  
5 the outcomes at that point won't be good for your husband.

6 Mr. Davis, do you have anything else you want to  
7 raise?

8 MR. DAVIS: I have nothing else to raise, Your  
9 Honor.

10 THE COURT: All right. I believe we're already  
11 set in this case for a status. Am I correct in that?

12 MR. DAVIS: I believe we are towards the latter --

13 THE DEPUTY CLERK: July 27th.

14 THE COURT: July 27th? All right. And I believe  
15 we've even tolled speedy trial until that day; is that  
16 correct?

17 MR. DAVIS: We have.

18 THE COURT: All right.

19 THE PRETRIAL SERVICES OFFICER: What's the time on  
20 July 27th? So I can place it on the order.

21 MR. DAVIS: That will be 3:00 p.m.

22 THE PRETRIAL SERVICES OFFICER: All right. Thank  
23 you.

24 THE COURT: 3:00 p.m., although, obviously, by  
25 video.

1 All right. If there's nothing further from either  
2 party --

3 THE DEPUTY CLERK: Judge Kelly --

4 THE COURT: Yes?

5 THE DEPUTY CLERK: -- I need to swear Mr. Jensen  
6 to his conditions of release --

7 THE COURT: Oh, yes, you absolutely do. Please go  
8 ahead and do that.

9 THE DEPUTY CLERK: Mr. Jensen, will you please  
10 raise your right hand.

11 Do you solemnly swear or affirm that you will  
12 abide by the conditions of release as imposed by the Court?

13 THE DEFENDANT: I do.

14 THE DEPUTY CLERK: Thank you.

15 THE DEFENDANT: Thank you.

16 THE COURT: I should have checked with you,  
17 Ms. Harris. Anything further from you, Ms. Harris?

18 THE DEPUTY CLERK: That's all, Your Honor. Thank  
19 you.

20 THE COURT: All right. Very well.

21 THE PRETRIAL SERVICES OFFICER: Your Honor, if I  
22 could just speak to Mr. Brown once the proceeding is  
23 concluded just for some administrative questions?

24 THE COURT: We might be able to -- I don't  
25 honestly know.

1 Ms. Harris, do you know whether someone else has  
2 this line for a proceeding?

3 THE DEPUTY CLERK: I just need to take the public  
4 line off once we end.

5 THE COURT: Okay. All right.

6 THE PRETRIAL SERVICES OFFICER: It will be --

7 THE COURT: So --

8 THE PRETRIAL SERVICES OFFICER: -- quick. Two  
9 minutes, Your Honor.

10 THE COURT: All right. Very well.

11 With that, the parties are dismissed.

12 MR. DAVIS: Have a good day, Your Honor.

13 (Proceedings concluded at 11:10 a.m.)

14 \* \* \* \* \*

15 CERTIFICATE OF OFFICIAL COURT REPORTER

16 I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby  
17 certify that the above and foregoing constitutes a true and  
18 accurate transcript of my stenographic notes and is a full,  
19 true and complete transcript of the proceedings to the best  
20 of my ability, dated this 19th day of August 2021.

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

24 /s/Timothy R. Miller, RPR, CRR, NJ-CCR  
25 Official Court Reporter  
United States Courthouse  
Room 6722



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