

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-28
)	Washington, D.C.
vs.)	March 12, 2021
)	3:00 p.m.
THOMAS E. CALDWELL, ET AL.,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF STATUS CONFERENCE/ARRAIGNMENT
VIA VIDEOCONFERENCE PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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

2 THE COURT: All right. Good afternoon.

3 Can everybody hear me?

4 COURTROOM DEPUTY: Good afternoon, Your Honor.

5 This is Criminal Case No. 21 --

6 THE COURT: Do we have the Courtroom Deputy here?

7 COURTROOM DEPUTY: Your Honor, can you hear me?

8 THE COURT: I think you're on mute, JC. I can't
9 hear you now.

10 I can hear you now. I had to put these headsets
11 on.

12 COURTROOM DEPUTY: Sorry about that, Your Honor.

13 Your Honor, this is Criminal Case No. 21-28,
14 United States of America versus Defendant No. 1, Thomas
15 Edward Caldwell; Defendant No. 3, Jessica Marie Watkins;
16 Defendant No. 4, Sandra Ruth Parker; Defendant No. 5,
17 Bennie Alvin Parker; and Defendant No. 8, Kelly Meggs.

18 Kathryn Rakoczy speaking on behalf of the
19 government.

20 David Fischer for Defendant Caldwell.

21 Michelle Peterson for Defendant Watkins.

22 John Machado for Defendant Sandra Parker.

23 Steven Brennwald for Defendant Bennie Parker.

24 David Wilson appearing on behalf of Defendant
25 Kelly Meggs.

1 All five defendants are appearing via
2 videoconference.

3 I'm sorry, Defendants Caldwell, Watkins,
4 Sandra Parker, and Bennie Parker are appearing via
5 videoconference.

6 Kelly Meggs is appearing via teleconference for
7 this hearing.

8 THE COURT: All right, Counsel. Good afternoon to
9 all of you.

10 Mr. Caldwell, Ms. Watkins, Ms. Parker, Mr. Parker,
11 and Ms. Meggs, good afternoon to you.

12 Ms. Meggs, can you hear me?

13 Mr. Meggs, can you hear me, sir?

14 COURTROOM DEPUTY: Could everyone please mute
15 their -- could everyone please mute their lines when not
16 speaking on the record.

17 Mr. Wilson, is it, are you on your -- is someone
18 on their audio -- on their phone and their video?

19 MR. WILSON: I'm on video, but my video -- my
20 audio is turned off. I'm only using the audio on my phone.

21 COURTROOM DEPUTY: Could you please turn the
22 speakers off of your computer. I think it's coming from
23 that.

24 MR. WILSON: My speakers are all off, except for
25 my phone.

1 Is the microphone on your computer also off?
2 Because it's highlighting.

3 MR. WILSON: It is all off.

4 THE COURT: Is it possible that Mr. Meggs is -- if
5 he mutes his line --

6 COURTROOM DEPUTY: Mr. Meggs, could you please
7 mute your line?

8 Sorry about the technical issues.

9 Okay. Now the echoing is gone.

10 THE COURT: Okay.

11 Okay. Sorry for the technological challenges,
12 everyone.

13 Let me just make sure all of the defendants can
14 hear me so we can go through each of the defendants and I'll
15 ask you to confirm that you can hear what I'm saying.

16 Mr. Caldwell, can you hear me, sir?

17 DEFENDANT CALDWELL: Yes, Your Honor.

18 THE COURT: Okay.

19 Ms. Parker?

20 DEFENDANT SANDRA PARKER: Yes, Your Honor.

21 DEFENDANT BENNIE PARKER: Yes, Your Honor.

22 THE COURT: Ms. Watkins?

23 DEFENDANT WATKINS: Yes, sir. I can hear you,
24 Your Honor.

25 THE COURT: And Mr. Meggs?

1 DEFENDANT MEGGS: Yes, Your Honor.

2 THE COURT: Okay.

3 All right. So we're here this afternoon for a
4 status hearing -- or this afternoon, I should say, for some
5 of the defendants; other defendants have -- still need to be
6 arraigned. So let's start there.

7 And I believe both the Parkers and -- no, just
8 Mr. Meggs needs to be arraigned; is that right?

9 COURTROOM DEPUTY: That's correct.

10 THE COURT: Okay.

11 Why don't we start with Mr. Meggs' arraignment.

12 Mr. Meggs, I'll just ask you-- the Courtroom
13 Deputy is going to read the charges to you, so I'll just ask
14 you say to please pay attention, sir.

15 COURTROOM DEPUTY: May the record reflect the
16 defense has received a copy of the superseding indictment.

17 Does the defense wish to waive a formal reading of
18 the superseding indictment?

19 MR. WILSON: Yes, we do.

20 COURTROOM DEPUTY: Mr. Meggs, in Criminal Case No.
21 21-28-8, you've been charged with the following counts:

22 Count 1, conspiracy, in violation of Title 18
23 United States Code Section 371;

24 Count 2, obstruction of an official proceeding and
25 aiding and abetting, in violation of Title 18 United States

1 Code Sections 1512(c)(2) and Section 2;

2 Count 3, destruction of government property and
3 aiding and abetting, in violation of Title 18 United States
4 Code Sections 1361 and Section 2;

5 And Count 4, restricted building or grounds, in
6 violation of Title 18 United States Code Section 1752(a)(1).

7 How do you wish to plead?

8 MR. WILSON: He would plead not guilty.

9 DEFENDANT MEGGS: Not guilty.

10 COURTROOM DEPUTY: Your Honor, a plea of not
11 guilty will be entered for the defendant.

12 THE COURT: All right.

13 So we'll have the record reflect pleas of not
14 guilty entered as to each count of which Mr. Meggs has been
15 charged.

16 All right. Let's turn, then, to where things
17 stand in these various cases. Some of the defendants have
18 been before me already, have been before me for 30 days or
19 so. Others are -- have just -- this is the first appearance
20 in Mr. Meggs' case; the Parkers we saw fairly recently.

21 So why don't we start with the government in terms
22 of where things stand in the production of discovery and
23 proposed next steps.

24 MS. RAKOCZY: Yes, Your Honor.

25 With respect to all of the defendants who are

1 appearing today, some level of preliminary discovery
2 materials have been provided to all of their counsel.

3 We are working at the parameters of a protective
4 order to govern the remaining discovery materials. And so
5 we're hopeful that within the next several weeks, we will
6 continue providing voluminous discovery in this matter.

7 THE COURT: Okay.

8 MS. RAKOCZY: And I apologize. I hope there's not
9 a terrible feedback. I'm hearing a little bit of a
10 feedback. I don't think it's the device, but I'm not sure.

11 COURT REPORTER: JC, is the courtroom muted?

12 COURTROOM DEPUTY: The courtroom was muted, yes.

13 COURT REPORTER: Okay.

14 Mr. Wilson, is there a way for you to mute your
15 video when you're not talking to the Court?

16 MR. WILSON: If there is a button to press mute, I
17 can certainly hit it.

18 COURT REPORTER: There is a button above "end
19 call."

20 THE COURT: Okay.

21 Ms. Rakoczy, I know the government has filed a
22 complex-case motion. I haven't had a chance to look at it
23 yet, but does the government have an estimate in terms of
24 the length of time it will take to produce all the discovery
25 in this case?

1 MS. RAKOCZY: Your Honor, I don't think that we
2 have an estimate for producing all the discovery. Our
3 motion requests 60 days to toll the time and to assess where
4 we are at that point.

5 And the reason -- we understand that we have a
6 case that the seven prosecutors assigned to this case, we
7 obviously have control over the materials that we're
8 gathering and obtaining in this investigation. But there is
9 a larger investigation, and as an office, the
10 U.S. Attorney's Office and the Department of Justice are
11 both mindful of the fact that there could be materials that
12 have been uncovered in other cases that could be relevant to
13 the defenses of the defendants in this matter. And for that
14 reason, we are making efforts to make a broader array of
15 discovery materials for all the cases available to counsel,
16 and that is why there is sort of a longer term project afoot
17 that will certainly take more time.

18 In addition to that, this is an investigation
19 where we have added defendants, and, as Mr. Nestler noted
20 yesterday, we may continue to add defendants, and as the
21 investigation progresses, more evidence is gathered. And so
22 we are trying to and aim to produce those materials on a
23 rolling basis going forward. But as a result of that, it's
24 a little bit difficult to anticipate precisely when all the
25 materials will be turned over. Certainly we think 60 days

1 from now, there will be quite a bit of discovery in the
2 hands of defense counsel.

3 As I said, we've provided some significant
4 discovery already. We have additional discovery that I hope
5 we'll be able to put out as soon as we get that protective
6 order in place. And so we are trying to get the materials
7 out as quickly as possible.

8 But our motion did seek 60 days, to see where
9 we're at that point.

10 THE COURT: Okay.

11 And for the counsel, you know, we had a call
12 yesterday with, I think it was two other defendants, maybe
13 it was three, and at least -- I think both defense counsel
14 had indicated that they were going to likely object to the
15 government's complex-case motion.

16 Have you all had an opportunity to think about it
17 and whether you all intend to oppose the motion or not?

18 MR. MACHADO: On behalf of Ms. Sandra Parker,
19 we've talked about it.

20 Since Ms. Parker is not being held, I think we're
21 going to be deferring to the Court on that decision.

22 I'm sure that other people have a more pressing position
23 than we do, so I'll take no position on that.

24 MR. BRENNWALD: On behalf of Bennie Parker, we are
25 deferring to the Court as well, we're not taking a position

1 on it.

2 MR. WILSON: And, Judge, this is David Wilson on
3 behalf of Kelly Meggs and Connie Meggs.

4 They would object to the designation, absolutely
5 because of the fact that they're both detained and it opens
6 up a process, the length of which we have no idea how long
7 it's going to take. So they would object to that
8 designation.

9 THE COURT: Okay.

10 MR. FISCHER: And, Your Honor, David Fischer on
11 behalf of Mr. Caldwell.

12 We would object as well on the same grounds as
13 counsel just stated.

14 THE COURT: Okay.

15 Well, let's do the following: I do want to set a
16 date for responses, if you all want to file a written
17 response to the government's motion.

18 The government filed its motion yesterday. So can
19 you all get your responses in to me by the 17th?

20 MR. FISCHER: That's acceptable for Mr. Caldwell.

21 MR. WILSON: On behalf of Mr. and Ms. Meggs, yes.

22 THE COURT: Okay.

23 So we'll enter a Minute Order.

24 And then if the government wants to file a reply,
25 I'll ask the government to file that reply by the 19th just

1 so I can have all those papers in hand by the weekend and
2 I can get a decision out quickly early the next week.

3 Okay. So with that, we currently have a next date
4 of, what did we put down, April the -- JC, what did we set
5 yesterday?

6 COURTROOM DEPUTY: Sorry, I was muted, Your Honor.

7 The date is April 6th at 3:30 p.m.

8 THE COURT: Okay.

9 So we had put down April 6th as another control
10 date, it's not quite 30 days off, but it's about 30 days
11 off, in order to see where things stand with the production
12 of discovery and other matters.

13 Is everybody available -- we may need to -- right
14 now, it's set at 3:30 on April the 6th. Are all counsel
15 available on that date and time?

16 MR. FISCHER: For Mr. Caldwell, we're available,
17 Your Honor.

18 MS. PETERSON: For Ms. Watkins, we are as well,
19 Your Honor.

20 MR. BRENNWALD: Your Honor, for Mr. Bennie Parker,
21 I will be picking a jury on that day and time with
22 Judge Cooper.

23 THE COURT: Okay.

24 Can you have somebody stand in for you
25 potentially?

1 MR. BRENNWALD: Yeah. I'm sure Mr. Machado will
2 stand in.

3 THE COURT: Okay.

4 MR. MACHADO: And on behalf of Sandra Parker, we
5 are available.

6 THE COURT: All right.

7 MR. MACHADO: And I can assist Mr. Brennwald, if
8 necessary.

9 THE COURT: All right.

10 So 3:30 on April the 6th will be our next court
11 date.

12 Okay. So with respect to Mr. Meggs, let me ask --
13 Mr. Fischer -- I'm sorry, Mr. Wilson. I don't know why I
14 said Mr. Fischer.

15 Mr. Wilson, I think there's been a motion filed on
16 behalf of Kelly Meggs. The government has indicated --
17 I ordered yesterday, during the hearing yesterday, I asked
18 the government to file a response to that motion and they
19 intend to do that by -- I think I asked them to do it by
20 next Tuesday or Wednesday.

21 Does government counsel recall what the date I set
22 was?

23 MS. RAKOCZY: I think it was Tuesday, Your Honor.

24 I do think that was a motion with respect to
25 Ms. Connie Meggs, though.

1 MR. WILSON: Correct, it was Connie Meggs.

2 THE COURT: It was Connie Meggs. Okay. I'll have
3 to -- I'm sorry if I'm confusing these names.

4 All right. So there's that.

5 And then are there any other motions that I ought
6 to be expecting from any of the lawyers in terms of
7 detention status from any of these defendants?

8 MR. WILSON: Judge, with respect to Mr. Meggs,
9 I expect that we may be revisiting his custody at some point
10 in the near future.

11 We're going through the discovery to see if
12 information is derived that we can use that we didn't have
13 at the initial detention hearing that may serve as a basis
14 upon which we could move him for release.

15 THE COURT: All right.

16 MS. PETERSON: And, Your Honor, we're in the same
17 posture with respect to Ms. Watkins.

18 THE COURT: Okay.

19 All right. Well, we'll wait and see if --
20 obviously, if you all want to renew your bond motions, you
21 certainly are free to do so once you've got additional
22 information at your disposal.

23 Okay. Is there anything else that we need to
24 discuss as it pertains to all of the defendants?

25 I still have Mr. Caldwell's motion, and we'll turn

1 to that last. But as far as all the other defendants who
2 are present here, does anybody else want to raise any other
3 issues before we adjourn?

4 MR. MACHADO: No, Your Honor.

5 But for Ms. Sandra Parker, we will waive the time
6 between now and the next court date.

7 THE COURT: Yeah, I should have -- thank you for
8 that.

9 Let me ask all defense counsel whether their
10 clients are prepared to waive speedy trial through the next
11 date of April the 6th?

12 MR. WILSON: Your Honor, on behalf of Ms. Meggs,
13 we would waive that time period.

14 MS. PETERSON: And, Your Honor, Ms. Watkins has no
15 objection to excluding the time from now until our next
16 court date from the speedy trial clock.

17 MR. FISCHER: And, Your Honor, the same for
18 Mr. Caldwell, no objection.

19 THE COURT: Okay.

20 Mr. Brennwald.

21 MR. BRENNWALD: Same for Bennie Parker.

22 THE COURT: Okay.

23 So then based upon the representations of defense
24 counsel, I'll exclude time through April the 6th for each of
25 the defendants under the Speedy Trial Act. I do think the

1 interests of justice outweigh the interests of the public
2 and the defendants in a speedy trial. And specifically, the
3 exclusion of time is warranted in order to facilitate the
4 disclosure of discovery to the defendants and their counsel
5 and to give them the opportunity to review that discovery
6 and prepare a defense.

7 In addition, the current standing order that was
8 recently issued by the Chief Judge excludes time through
9 April the 15th due to the circumstances and difficulties
10 associated with holding trial as a result of COVID. And so
11 for those additional reasons, I'll exclude time through the
12 6th as well.

13 All right. Is there anything else anybody else
14 wants to raise that pertains to all defendants in this case?

15 You know, Counsel, we'll have to just figure
16 out -- I mean, my goal is to try and get everybody on the
17 same schedule. There are a couple of defendants who are
18 still outstanding: Ms. Steel and then Ms. Meggs are
19 still -- have still not made their first appearances. So
20 certainly by the 6th, I'm hopeful that we'll have them in
21 front of me.

22 And then insofar as how we'll convene next time,
23 you'll just have to be patient with us so we can figure out
24 how we'll be able to do this, because we've got people in
25 different places and I'm not sure we'll be able to actually

1 get everybody on the same platform to meet at the same time.
2 So we'll have to figure that out and we'll let everybody
3 know. If we've got to break this up into smaller groups,
4 we'll let you know that, okay?

5 MS. RAKOCZY: Your Honor, with respect to
6 Ms. Connie Meggs, we did get an update today that the
7 marshals were moving forward with transporting her to this
8 jurisdiction.

9 THE COURT: Okay.
10 Any sense of by when she'll be presented here?

11 MS. RAKOCZY: No. Unfortunately, we did not get
12 precise timing. I know the marshals keep some of that
13 information close to the vest for security reasons.

14 THE COURT: Okay.
15 All right, everyone. So with that, is there
16 anything else we ought to discuss this afternoon?

17 MS. RAKOCZY: Your Honor, with respect to
18 Mr. Kelly Meggs and Ms. Connie Meggs, I know that my
19 colleague, Mr. Nestler, has raised this issue with
20 Mr. Wilson: But at some point, we would ask the Court to
21 address any potential conflicts with representation of both
22 defendants by one counsel.

23 THE COURT: Yeah, I tend to do that.

24 And I had thought we would wait until they were
25 both before me, but I suppose I ought to sort of do that

1 now.

2 Mr. Meggs, can you hear me?

3 Mr. Meggs?

4 I don't know if we've lost Mr. Meggs or not.

5 JC, do we still have that line open?

6 DEFENDANT MEGGS: Yes, Your Honor, I can hear you.

7 THE COURT: All right.

8 So, Mr. Meggs, what the government and I have just
9 raised is the following:

10 At present, you are represented, along with your
11 wife, by the same lawyer. And I want you to know that you
12 should be advised that this kind of situation which there is
13 representation of two defendants by a single lawyer can
14 present the possibility of a conflict of interest for the
15 lawyer; in other words, lawyers are hired to zealously
16 represent their clients and it is possible that the fact
17 that your lawyer is representing not only you but your wife
18 could create a conflict of interest for him. And you have
19 the right, Mr. Meggs, to have your individual counsel, your
20 own lawyer, if you wish, but you also would have the right
21 to waive that individual counsel and proceed with a single
22 lawyer representing both you and your wife, if you wish to
23 proceed that in that fashion.

24 So, Mr. Meggs, have you thought about that
25 issue -- or let me put it differently, which is that: At

1 this moment, are you prepared to have Mr. Wilson represent
2 both you and your wife, sir?

3 DEFENDANT MEGGS: Yes, Your Honor.

4 THE COURT: All right.

5 And do you wish to have separate counsel from your
6 wife?

7 DEFENDANT MEGGS: No, Your Honor.

8 THE COURT: Okay.

9 Any other inquiry you think I ought to make of
10 Mr. Meggs, government counsel, Ms. Rakoczy?

11 MS. RAKOCZY: Your Honor, we do think it might be
12 prudent at some point, not necessarily for today's purposes,
13 but at some point to appoint conflicts counsel for both of
14 the Meggs to advise them of just the potential for conflict.
15 We're not saying there is one but there is the potential,
16 and we think at some point that might be advisable.

17 THE COURT: Okay.

18 Well, let me look into that and maybe I can have
19 the Federal Defender appoint someone, although I can ask the
20 Federal Defender to appoint somebody as conflicts counsel to
21 advise them both before our next hearing.

22 And, Mr. Wilson, what that'll mean is that I'll
23 see if we can get an appointed lawyer to speak with your
24 clients individually to make sure they understand the
25 conflict and that they're prepared to waive the conflict.

1 MR. WILSON: Yes, Judge.

2 This issue has been thoroughly explored with both
3 Mr. and Ms. Meggs. They have signed a waiver of the
4 conflict. But if the court wishes to proceed in this way,
5 absolutely, that's fine.

6 THE COURT: Okay.

7 All right. With that, is there anything else we
8 ought to talk about?

9 MR. WILSON: Not on behalf of the Meggs.

10 MS. RAKOCZY: Not for the government. Thank you,
11 Your Honor.

12 THE COURT: All right.

13 I think everybody can log off other than
14 Mr. Caldwell and his counsel and government counsel so we
15 can address Mr. Caldwell's bond hearing.

16 Thank you.

17 All right.

18 Do we still have government counsel? I don't see
19 them here.

20 COURTROOM DEPUTY: Ms. Rakoczy, are you still on
21 the line?

22 MS. RAKOCZY: I am. Did my video go away?

23 COURTROOM DEPUTY: Yes, your video went away.

24 Now it's back.

25 THE COURT: There you are.

1 MS. RAKOCZY: Okay.

2 THE COURT: Okay.

3 Mr. Caldwell, are you still with us?

4 DEFENDANT CALDWELL: Yes, sir, Your Honor.

5 THE COURT: Okay.

6 All right. So, Mr. Caldwell, through his new
7 counsel, has filed a bond-review motion. Essentially it's
8 labeled a request to reconsider my detention decision.

9 So I've read the papers, and so I'm happy to hear
10 from both sides any further if you want to add to your
11 arguments.

12 I guess I do have some questions to ask. So why
13 don't we turn first to Mr. Caldwell's counsel, and we'll go
14 in that fashion.

15 MR. FISCHER: Thank you, Your Honor.

16 May it please the Court.

17 First of all, I want to point out, and this is no
18 exaggeration, Mr. Caldwell is suffering in this detention
19 center.

20 As I pointed out in my papers, his back issues --
21 it's a situation where, unincarcerated, he routinely sees
22 pain-management doctors to have things like pain blockers
23 or, like, epidural shots in his lower back and his neck. He
24 doesn't have access to that type of treatment in jail.

25 And I can assure the Court that based on my

1 interactions with him, this man is suffering at a jail
2 that's simply unable to provide him adequate medical care.
3 Not their fault, he just is a very unusual person who has
4 significant injuries and is 100 percent disabled, obviously,
5 as indicated.

6 Your Honor, in this case, the ground has shifted
7 significantly. The government's concession that Signal
8 evidence -- this is a Signal chat group, which basically is
9 secret meetings of the Oath Keepers as it pertained to the
10 January 6th events.

11 I've had a chance to basically skim over them. It
12 looks like there are at least a couple hundred messages that
13 span back into December and they go past January where there
14 are discussions about the events of January 6th. As the
15 government conceded, there is no evidence in these
16 interactions between Oath Keepers, the national leaders, the
17 state leaders, the membership of any indication of a plan to
18 stop the election or to invade the Capitol.

19 I'd also point out, Your Honor, the exhibit that
20 the government attached to its memorandum. If you actually
21 unpack the exhibit, Mr. Caldwell -- there's a claim that
22 essentially -- it's essentially an alibi in this case,
23 because in the exhibit, he explains that he and his wife
24 were sitting by the peace fountain, which is out in the
25 front of the Capitol building. And I'm not -- I haven't

1 been down to that area in a while, but I looked at pictures
2 and it looks like it's at least a couple hundred yards or
3 more from that fountain to the front doors of the Capitol.

4 And he indicates in that exhibit that he was there
5 at the time there was a citizen that was shot by an officer
6 in the Capitol, there was a lot of commotion going on. And
7 he was down there when all of a sudden the police were using
8 tear gas and flash bang grenades, et cetera.

9 And so, Your Honor, at the time there were people
10 breaking into the Capitol and all this commotion started and
11 they were going in, the government's own exhibit shows that
12 Mr. Caldwell was sitting on a fountain that's in a circle,
13 like a traffic circle, that's at least a couple hundred
14 yards away, if I remember correctly, or possibly more, from
15 the front steps of the Capitol.

16 Your Honor, the government presented you back a
17 month ago with a picture of Mr. Caldwell as someone who was
18 plotting day after day in November, into December, and up to
19 the 6th with a conspiracy to invade the Capitol and to stop
20 an election. They have produced absolutely no evidence that
21 he -- there was any pre-plan among anybody.

22 And, Your Honor, I understand the government's
23 point that there could be technically a conspiracy that
24 happened on January 6th. But a couple issues with that is,
25 number -- or, number one, is that it's totally different

1 than what the Court was presented with.

2 And the Court, as I quoted from the transcript, a
3 major concern of the Court was the nature and circumstances
4 of the offenses, and, at that time, the mistaken belief of
5 the Court that Mr. Caldwell was plotting something for many,
6 many weeks, when, in fact, his own text messages, the
7 government's own exhibit that they attached show that it was
8 a pre -- it was a spontaneous situation that he observed and
9 that's how he recorded it on his social media. So,
10 Your Honor, there is a significant change.

11 I would also point out, Your Honor -- and
12 I know -- I don't want to quibble -- Mr. Caldwell is not a
13 member of the Oath Keepers. I understand there are contacts
14 and there are some associations, I fully get that. But,
15 Your Honor, as to the issue of conspiracy and the other
16 charges, on January 6th, these Oath Keepers that went in and
17 went in on the opposite side of the Capitol, my client was
18 not on Zello with them, he was not having an instant
19 communication with them, he was not on their Signal channel,
20 how they were communicating, as the government concedes.

21 So obviously, my client indicates, I don't -- he
22 didn't know of any plan to go in. If these Oath Keepers had
23 a plan, which I have my doubts about, I think it was
24 spontaneous. But even if they hatched a plan two minutes
25 before they went in, my client didn't know anything about

1 it.

2 THE COURT: So, Mr. Fischer, if I can interrupt
3 you.

4 I mean, let me just sort of cut to the bottom
5 line, in my view, with respect to your client.

6 I think, you know, we certainly recognized at the
7 last hearing that he didn't enter the Capitol building. But
8 what concerned me about his conduct was that he appeared to
9 be planning, and intricately sort of engaged in the
10 planning, of the events that led to January the 6th.

11 And specifically, I had real concerns about him
12 recommending or suggesting and planning for a quick reaction
13 force, not in one location but in two. And, you know, your
14 papers sort of want to diminish the significance of that and
15 what that quick reaction force entailed. But it doesn't
16 deny that he was involved in the planning of having somebody
17 outside the District of Columbia potentially with guns ready
18 to enter the District of Columbia if things got heavy. And
19 those are his words, not mine. So I mean, that danger
20 hasn't diminished, it seems to me.

21 MR. FISCHER: Well, respectfully, a few points on
22 that, Your Honor.

23 Mr. Caldwell is a former lieutenant commander in
24 the Navy and retired. He's got a lot of time on his hands.
25 And so when people are talking about the fear, the real fear

1 of Antifa attacking Trump supporters -- which, Your Honor,
2 look, I went to Obama rallies back in the day. We never had
3 the fear of being attacked by troops. And the reality is
4 that Trump supporters around the country have been attacked
5 by Antifa. It's just a fact. It's on the news. It's
6 happened dozens of times. And so what they're talking about
7 is a contingency in case Antifa were to all of a sudden pull
8 out guns or weapons, try to run a car through people to
9 basically protect their people.

10 An important point, Your Honor, to the Court's
11 concern further is, he was not a part of a quick reaction
12 force. He basically was told, can you kind of recommend
13 something? And, Your Honor, he told everybody, obey the
14 law, obey the law, you can't come into the District. That
15 wreaks throughout all these social-media platforms. These
16 folks were all saying, obey the law, obey the law, obey the
17 law.

18 Your Honor, he was not -- he has the body of an
19 85-year-old man. He basically -- he gave an idea, this is
20 what could happen and --

21 THE COURT: So, Mr. Fischer, let me -- here's my
22 other concern.

23 And actually, if you're not -- and, Mr. Caldwell,
24 I don't know if you're able to do this, but mute your line
25 if you're not speaking directly to the Court just because

1 there's a little bit of feedback.

2 I mean, the other concern I have about
3 Mr. Caldwell is that -- and I acknowledged this freely last
4 time -- which, again, he didn't enter the Capitol, he
5 didn't -- he's not accused of having destroyed any property
6 or assaulted anybody. But he also, as I said, seems to have
7 certainly been involved in planning and preparation.

8 I guess what concerns me, and I said this at the
9 other -- at the last hearing is, how are we supposed to have
10 any degree of confidence that if he's released, he won't
11 continue to engage in the kind of communications that he was
12 with other people who are making plans on the 6th, talking
13 about quick reaction forces, whatever the reason may be.
14 You know, we're talking about stationing folks outside the
15 District of Columbia with weapons. You know, I don't know
16 how we can monitor that and whether -- how we can monitor
17 him and prevent him from continuing to engage in that kind
18 of behavior.

19 MR. FISCHER: Thank you for your questions,
20 Your Honor.

21 First of all, I would respectfully, the first part
22 of your comment, keep in mind that it says and the
23 government argues planning and preparation. It was planning
24 and preparation for legal activity, attending protests and
25 having a contingency in case legal protesters were attacked.

1 They were not planning and preparing to go into the Capitol.
2 So I think that's a huge, huge difference, number one.

3 Number two is the Court's concern. I spoke with
4 Mrs. Caldwell today. She has confirmed that guns and ammo
5 are out of the house.

6 The computers were all seized by the government.
7 She only has a cell phone. She is willing to basically give
8 up her cell phone; they can use a cell phone that doesn't
9 have Internet connection.

10 They live out in the country. Keep in mind,
11 Your Honor, they live, basically, in the foothills of the
12 Appalachian Mountains, so they're not near the District.

13 And, Your Honor, the reality is, in any type of
14 case, he could be held on -- he could be held on home
15 detention, and he could -- with an order not to have any
16 computer devices, and he absolutely is willing to do that.

17 Your Honor, I have to just be very frank with the
18 Court: This man has -- is suffering. He has been, perhaps,
19 the most honest, straightforward client I've had in
20 25 years, and I truly believe this man is innocent.

21 The trespassing, I haven't researched the law on
22 that, Your Honor, that's a fair question.

23 But, Your Honor, I know the aiding and abetting
24 charges, I believe, require proof that he actually went into
25 the Capitol, because that's in the charges themselves.

1 It is alleged as part of the charge that he went into the
2 Capitol, and he never did.

3 And I would also point out, as far as the
4 conspiracy, obviously, our belief is that there obviously
5 was no conspiracy before January 6th, and Mr. Caldwell
6 adamantly denies he ever planned or intended for any of this
7 to happen.

8 I understand sometimes if you hang around with --
9 well, I'm not going to say it because people -- the public's
10 listening, but the bottom line is, if sometimes -- there's
11 an old saying that if you -- sometimes you pick up other
12 people's -- being around other people, some of it can rub
13 off on Mr. Caldwell.

14 The reality, Your Honor, is, this man was on
15 Facebook, Facebook friending -- with friends far away from
16 the District and taking selfies while this is all going on.

17 And to the Court's concern, Your Honor, the
18 government can't point to one instance where this man lied.
19 He gave a two-hour FBI interview. They can't point to one
20 instance where this man lied. And, number two, they can't
21 point to one instance where this man has ever committed an
22 act of violence or has actually threatened violence.

23 So, Your Honor, I understand the Court's concerns.
24 This is a beaten-down man who is suffering. He will abide
25 by the conditions. And this man can take an order. He was

1 in the Navy for 20 years, Your Honor. He will take the
2 Court's orders.

3 THE COURT: Okay.

4 All right. Let me hear from Ms. Rakoczy and then
5 we'll figure out what we're going to do here.

6 MS. RAKOCZY: Your Honor, the government shares
7 the Court's concerns that were raised earlier with respect
8 to the fact that it is just difficult to say at this point
9 that Mr. Caldwell would not resort to violence if he were
10 released by the Court and that there are conditions that
11 could assure the safety of the community.

12 This is not a matter where Mr. Caldwell and his
13 alleged co-conspirators planned solely to come into the
14 District on January 6th to engage in First Amendment
15 protected activity.

16 The discussion, which is supported by the evidence
17 that's alleged in the indictment and evidence cited in the
18 pleadings that have been filed by the government in this
19 case, the plan was to unlawfully stop the certification of
20 the Electoral College vote that was going on at the
21 Congress, at the Capitol, on January 6th, and the plan was
22 to be prepared to use violence, if necessary.

23 The group discussed --

24 THE COURT: So, Ms. Rakoczy, let me ask you to
25 expound on that.

1 I mean, what Mr. Caldwell has essentially posited
2 is as follows, which is: Yes, I was engaged in planning and
3 preparation to come to Washington, D.C. on January the 6th.
4 Even he seems to concede that some of what he did was at
5 least -- at least took into account the potential to
6 confront violence. But the violence was not aimed at the
7 Capitol building, at least in terms of the planning and
8 preparation.

9 And his theory of the case is essentially that on
10 January 6th, as a consequence of encouragement from people,
11 encouragement to march on the Capitol, an opportunity
12 presented itself and people other than himself entered the
13 building. And so -- but he didn't enter the building. So
14 what's the government's evidence that that is not correct,
15 that that's not, in fact, what happened?

16 I mean, the government has charged, in
17 paragraph -- I went back to the indictment. Paragraph 22
18 reads that, "All nine co-defendants planned with each other
19 and others known and unknown to forcibly enter the Capitol
20 on January the 6th and stop, delay, and hinder the
21 congressional proceedings occurring that day."

22 So what evidence is there that Mr. Caldwell,
23 again, was prepared to -- was involved in the conspiracy and
24 a plan to actually enter the Capitol before January the 6th?

25 MS. RAKOCZY: Your Honor, as the conspiracy

1 alleges, the conspiracy was -- the goal of the conspiracy
2 was to stop the certification process, and there's evidence
3 cited in -- or allegations in the indictment and evidence
4 cited in the government's pleadings that that was the
5 intent.

6 Mr. Caldwell's own words to that effect are taken
7 most directly from a Facebook post in which he said words to
8 the effect of "Let them try to certify some crud. It all
9 begins on January 5th. Let them try to certify some crud on
10 Capitol Hill" -- and the Court's indulgence -- "Let them try
11 to certify some crud on Capitol Hill with a million or more
12 patriots in the street. This kettle is set to boil." Those
13 are words that show that, in Mr. Caldwell's own mind, that
14 this was focused -- this was a plan that was focused on
15 stopping the certification. There are words that are cited
16 in the indictment by the co-defendants, be the leader of the
17 Oath Keepers, and others that also show that that was the
18 goal of the conspiracy.

19 And the group -- I think the government has been
20 candid in saying that the group itself, as they were making
21 these plans, did not know precisely the way in which force
22 and violence might be needed to support this plan --

23 THE COURT: I mean --

24 MS. RAKOCZY: -- but that they did --

25 THE COURT: Let me ask the question differently,

1 which is: Is it the government's position that on
2 January -- is it the government's position that as of
3 January the 5th, the plan among these nine people, and maybe
4 others, was to storm the Capitol?

5 MS. RAKOCZY: I think the evidence, as it exists
6 now, and this investigation is obviously ongoing, but the
7 evidence as it exists now is that they were prepared to do
8 whatever was necessary to stop that certification.

9 There was a thought that the Vice President might
10 step in and unlawfully stop the process, and that if that
11 happened, groups like Antifa might rise up, and that the
12 group of co-conspirators might need to use violence in order
13 to put that revolt down. That was one thought of how things
14 might have transpired. But I think the bottom line, from
15 the government's perspective, is that they were prepared to
16 do violence in whatever ways they needed to.

17 There is also evidence, though, Your Honor, that
18 there may well have been talk amongst co-conspirators to
19 storm the Capitol. We do not have at this point someone
20 explicitly saying, our plan it is to force entry into the
21 Capitol in order to stop the certification.

22 But you do certainly have messages, like the
23 Co-defendant Kelly Meggs posting at some point and
24 describing their plans to come to Washington, D.C., and
25 saying something to the effect of, this is not just a rally,

1 and that there were indications that the group was prepared
2 to do more than just be passive and wait and see what
3 happened.

4 And so from the government's perspective, there's
5 evidence of an intent to unlawfully and corruptly obstruct a
6 congressional proceeding. There is evidence of plans to be
7 prepared to use force and violence to effectuate this plan.

8 For Mr. Caldwell's part, he is actively
9 participating in making sure that those arms to assist the
10 use of force and violence are at the ready.

11 And, yes, the group discusses that weapons should
12 not be brought, at the first instance, into Washington, D.C.
13 because of the gun laws here, but that is not necessarily a
14 sign that they are trying to follow the letter of the law,
15 so much as they're trying not to become arrested for merely
16 having weapons and have their plan obfuscated, when they can
17 very easily have the weapons available across the river and
18 have folks like Mr. Caldwell, who'd make that quick reaction
19 force available, to either use vehicles or boats to get the
20 weapons into the city.

21 Having that ability to carry out force and
22 violence is, I think, what the government presented in the
23 first instance as its main concern of the dangerousness of
24 Mr. Caldwell and some of the co-defendants.

25 And we think that that situation has not changed

1 just because there is -- there are messages that
2 Mr. Caldwell is sending that indicate that a possibility,
3 certainly not a certainty, but a possibility that his
4 precise intent to break through barricades and go up to the
5 parts of the Capitol that he went to, he's talking about how
6 there is an impetus for that that's caused by the actions of
7 the police or perceived anticipated actions of the media.
8 Certainly also, that doesn't belie that he had conversations
9 with co-defendants about more practically doing what they
10 do.

11 We also did want to note, Mr. Fischer discussed
12 that Mr. Caldwell is not present -- or we don't have
13 evidence at that time that he's present in, say, the Zello
14 chat. But he himself says in the messages that we attached,
15 the long messages that we attached as an exhibit to our
16 pleading, he himself says that he's getting live streams of
17 what the individuals on the east side of the Capitol are
18 doing through, I think he said, GoPro, the video
19 application, the video-camera application.

20 And so he is very much in connection and
21 communication with his co-defendants. And we think that
22 that shows very much that while this is a group that has
23 many players and many participants, not every member of the
24 conspiracy has to commit every act or be in on every aspect
25 of the planning.

1 We think the central, most important aspects are
2 that he clearly joined in the plan to unlawfully and
3 corruptly obstruct the congressional proceeding. He knew
4 that part of the plan was to be prepared to use force and
5 violence to effectuate it, and he actively assisted in the
6 plan, and, in particular, he actively assisted in the part
7 that involved making sure that force and violence was at the
8 ready if it was necessary.

9 THE DEFENDANT: Screenplay, David.

10 MR. FISCHER: Your Honor, respectfully, could I
11 comment on that, please --

12 THE COURT: Sure. Go ahead.

13 MR. FISCHER: -- if I may.

14 Your Honor, Ms. Rakoczy, who I've never had a case
15 with, strikes me as an excellent litigator and she did a
16 great job of holding up the government's end, but the
17 Court's specific question was: Do you have any evidence
18 that, prior to the January 6th, there was a pre-planned --
19 basically, a plot to invade the Capitol?

20 And I don't think I heard evidence. I heard one
21 reference to a quote, which just sounds like any -- first of
22 all, I believe it's taken out of -- somewhat taken out of
23 context, because I believe he was commenting on a post at
24 that time. So, Your Honor, I think the government, in --
25 Ms. Rakoczy, she went on for about five minutes, but I

1 really didn't hear any concrete, specific evidence of a plan
2 to invade the Capitol.

3 And, Your Honor, again, I think the Court's
4 decision back a month ago for both Mr. Caldwell and I think
5 for Ms. Watkins, I listened to that hearing as well, was
6 based, to a large part, of there was a plan and they were
7 working on a plan.

8 So, Your Honor, they --

9 THE COURT: Well, to be clear, there was some
10 plan. You know, so a group of eight people don't line up
11 spontaneously and enter the Capitol building.

12 Now, your client wasn't among those people, so it
13 may be that he's in a different place than they are. But
14 there's no dispute here that some number of these folks got
15 into what the government's described as a stack and entered
16 the Capitol building together.

17 DEFENDANT CALDWELL: Not me.

18 THE COURT: That involved some -- that involved
19 some planning and preparation.

20 DEFENDANT CALDWELL: Not me.

21 THE COURT: And the question in my mind, and it's
22 the one that you've raised in your motion, Counsel, is, you
23 know, sort of -- as I put it, which is: Was there a plan as
24 of January the 6th to enter the Capitol building? And if
25 there was such a plan, was your client part of it? Or, as

1 you've suggested, was essentially an opportunity presented
2 by virtue of incitement. The crowds that gathered at the
3 Capitol, and, frankly, the rioting that occurred there, for
4 these people to enter together in the way that they did.
5 And that's what I was trying to get at when I was asking
6 Ms. Rakoczy what I was asking her.

7 MR. FISCHER: And thank you, Your Honor, I
8 appreciate the Court's comments.

9 I would start by respectfully somewhat disagreeing
10 that the fact that these Oath Keepers people went into a
11 stack, which I think everybody agrees they did, was part of
12 a plan for January 6th.

13 The social-media messages, and I researched the
14 background of the Oath Keepers and I looked through all
15 their social-media messages, these individuals were going --
16 were training and they were actually going around the
17 country. There was a reference they went to Louisville,
18 Kentucky because there were riots and disorder going down to
19 help the police. They went to Chicago, Illinois. They
20 would travel around the country to help the police and do
21 different events. So I think their training when they went
22 into a stack was probably training that was not specific.

23 THE COURT: I guess I just don't understand --
24 this is what I don't get, which is: Who deputized the Oath
25 Keepers to come in and help local police? What are they

1 training for and who invited them to train for any of this?
2 I mean, I just don't understand how that is part of the
3 defense.

4 I mean, it's a defense to what's specifically
5 charged here. But this notion that they are a roving band,
6 ready and waiting and willing to step in just in case Antifa
7 shows up, seems to me to just be fanciful and, frankly,
8 fantastic.

9 MR. FISCHER: Respectfully, Your Honor,
10 I understand it's not my thing to do on weekends and during
11 the week, but what I would say -- what I would explain to
12 the Court is, these folks, they style themselves as they
13 love their country, they love the police, and they want to
14 go around and help law enforcement.

15 And they actually have -- my understanding is,
16 they've gone out to help law enforcement in different areas.
17 Not -- I understand the Court's issue, but I think the Court
18 has to kind of put in perspective -- from the perspective of
19 Mr. Caldwell and those who were on the right side of the
20 political spectrum or Trump supporters, Your Honor, they
21 don't get the same level of protection in a lot of these
22 cities.

23 And when they go -- again --

24 THE COURT: I don't -- that's not a road I think
25 we want to go down here. I just -- I'm not sure I buy that,

1 but let's not go down that road.

2 I mean, look, let's focus on Mr. Caldwell and what
3 the evidence shows against him.

4 And, you know, look, there's no doubt that your
5 client was involved in planning and preparation of
6 something, and the question is what that is.

7 And last time we were here 30 days ago, I was
8 convinced that it was a plan to execute an incursion on the
9 Capitol building. You've raised some evidence that,
10 I think, rebuts that notion.

11 THE DEFENDANT: Screenplay.

12 THE COURT: It doesn't --

13 THE DEFENDANT: Screenplay didn't --

14 THE COURT: It doesn't necessarily diminish my
15 concerns about him.

16 But I do need to, of course, as one of the factors
17 here, consider the weight of the actual evidence with
18 respect to the offenses that are charged.

19 MS. RAKOCZY: Your Honor, may I add one factual
20 consideration that I neglected to mention earlier when the
21 Court was inquiring about the state of the evidence as to
22 the actual plan prior to the 6th?

23 THE COURT: Sure.

24 MS. RAKOCZY: There is much -- as I mentioned, one
25 of the possibilities that was discussed with the group for

1 how they might to resort to force or violence in order to
2 stop the certification of the Electoral College vote is a
3 discussion that perhaps Antifa or Black Lives Matter or
4 other groups might resort to violence if someone like the
5 Vice President were to step in and stop the certification.

6 However, another avenue that they're exploring is
7 the notion that the President might invoke what's referred
8 to as the Insurrection Act; and that under that plan, they
9 believed that the President would call up militia and groups
10 like the Oath Keepers to come in and to essentially
11 institute some level of Martial law so that the President
12 could stay in power.

13 That was a very real possibility that was
14 discussed and advocated for by the leader of the Oath
15 Keepers; it's one that was discussed and taken up by
16 individuals who are charged in this case, such as
17 Ms. Watkins and Mr. Meggs both discussed that this is a
18 possibility and this is something that they're preparing
19 for.

20 I bring this up just to say --

21 THE COURT: So is that -- go ahead, Ms. Rakoczy.

22 MS. RAKOCZY: I'm sorry.

23 I bring this up to say that -- and the
24 government's trying to be as upfront as possible about the
25 state of the evidence, while also hoping the Court is

1 mindful that this is an ongoing investigation and that we
2 don't know all the evidence.

3 But I think what we are learning is that this is a
4 group that, Mr. Fischer is right, is made up of a lot of
5 members of the military and law enforcement. They do have
6 some sense of rank and following authority, and they were in
7 some ways watching and waiting to see what their leadership
8 did. They had a point of view with respect to the goal that
9 they were trying to accomplish, which the government submits
10 was unlawful and corrupt, and that was stopping the unlawful
11 certification of the Electoral College vote.

12 They were prepared to use force and violence to
13 effectuate this unlawful goal. But part of the reason that
14 there wasn't necessarily as concrete a plan that one might
15 expect is that they were waiting and watching to see what
16 leadership did.

17 And ultimately what we know from the Signal chats
18 is that when leadership did what they referred to as
19 nothing, when the leader of the Oath Keepers said that the
20 President was not really doing anything, as they expected,
21 they did ultimately take matters into their own hands, and
22 the government would submit that they were prepared to do
23 that, but they were, to some respect, waiting and watching
24 to see what would happen.

25 THE COURT: So I guess the question, Ms. Rakoczy,

1 is -- to you -- is sort of a fantastic a notion as these
2 folks may have had about the events of January the 6th and
3 what role they might have played in them, depending upon the
4 circumstances that played out.

5 All of that is sort of backwards looking right
6 now, and that goes to the strength of the evidence. The
7 question before me now also involves sort of a
8 forward-looking determination and that's continued threat.

9 So why if those events are new in the rear-view
10 mirror, do we think -- does the government think that
11 Mr. Caldwell continues to pose the kind of risk that might
12 lead to more violence and potential recurrence of events of
13 the 6th or something similar elsewhere?

14 MS. RAKOCZY: I don't know that those events are
15 necessarily in the rear-view mirror. There obviously has
16 been a peaceful transition of power. But I think a lot of
17 the reasons why the members of this group, this conspiracy
18 were seeking to stop the certification, I think those
19 factors still exist for them in why they believe -- why they
20 believed and would continue to believe that the current
21 political order is something that is problematic and should
22 not be followed.

23 But with respect to Mr. Caldwell particularly, we
24 would note that we cited in our pleading a text-message
25 exchange that he had with Co-Defendant Watkins shortly after

1 this, where the co-defendant is expressing some concern
2 about the way the media is covering these events, and it's,
3 I think, a few days after the attack on the Capitol.

4 But Mr. Caldwell is certainly persisting in
5 saying -- well, he first offers to lie and to say that he
6 would say that Ms. Watkins was with him, if it came down to
7 it, meeting with him not inside the Capitol at the time of
8 the storming. But when Ms. Watkins turns down that offer,
9 he goes on to say, not to worry, because what we did was
10 righteous.

11 And from the government's perspective, the fact
12 that Mr. Caldwell, at least several days after the events,
13 was still believing in the righteousness of what this group
14 did, is a concern for the government that he would continue
15 to persist in believing that this is the right course of
16 conduct.

17 MR. FISCHER: Your Honor, if I may on that point,
18 I would, first -- of all, number one, the comment
19 Ms. Rakoczy said about lying for Ms. Watkins. I read that.
20 It's significantly taken out of context. I read the full
21 context. I disagree with that totally.

22 But, Your Honor, the proof is in the pudding.
23 Mr. Caldwell gave a two-hour interview with the FBI where he
24 told them truthful information. The FBI asked him -- and I
25 watched the video on this. They asked him if Ms. Watkins

1 and Mr. Crowl had ever been to his place, because -- just
2 sort of you could tell they were testing him.

3 And he told them truthfully that he knew them,
4 that he had been to their farm. And then that, you know, he
5 explained the whole situation, how the media was hounding
6 them and how they had come up to his farm. And he also told
7 them that they were at the Capitol. So, Your Honor, when he
8 gave a statement to the FBI, he gave a 100 percent truthful
9 statement. And, again, the government in its papers has not
10 set forth one iota the man has lied.

11 The bottom line here, Your Honor, and I'll end
12 with this, Your Honor, I believe -- obviously, I've put
13 forth my opinion: I believe this man is innocent. The
14 government disagrees.

15 But I could tell you this, Your Honor. If there
16 was some criminal liability, the suffering this man has gone
17 through since he's been incarcerated in January, if that
18 doesn't teach him enough of a lesson that he's going to be
19 on the straight and narrow, that he will not do anything to
20 violate the Court's order, nothing will. He will abide by
21 the Court's order, Your Honor. He doesn't want to -- if the
22 Court releases him, he doesn't want to go back. That's
23 100 percent. Thank you, Your Honor.

24 THE COURT: Ms. Rakoczy, can I ask one question?
25 Because I don't -- I did not go back and look at last

1 hearing's transcript and I may not have known these facts,
2 and, Counsel, you all can tell me whether I did or not, but
3 I don't think I was aware that Mr. Caldwell had given an
4 interview to the FBI; I don't think I was aware that he had
5 consented to search of his computers and, presumably,
6 consented to a search of his home.

7 I guess two questions: When did I know of that?
8 Was that on the record? Were those facts on the record last
9 time?

10 MS. RAKOCZY: I don't believe they were,
11 Your Honor.

12 Mr. Caldwell did give an interview. I think the
13 government would take issue with whether he was 100 percent
14 truthful in everything that he said, but I don't think I'm
15 prepared to sort of go line by line. And I'm not saying --
16 I'm not saying he lied, I'm just saying that we might take
17 issue -- we might see the facts differently and might not
18 agree that his version of facts was 100 percent fulsome or
19 forthcoming.

20 But it was also my understanding -- and, again,
21 the agents out of Virginia executed the warrant and I have
22 not spoken individually to all of them, so I don't want to
23 say that Mr. Caldwell did not give his passwords to his
24 computer or did not consent, but I have not been able to
25 confirm that yet.

1 I know his wife consented to the search of certain
2 aspects of the property; his wife consented to a search of
3 her phone. But I have not been able to confirm -- and,
4 again, I'm not saying that it didn't happen, because I did
5 not speak to every single agent involved, but I just haven't
6 confirmed yet that he gave his password to his computers or
7 that he's particularly consented to searches of particular
8 places. So I just want the Court to know those facts.
9 I'm not saying they didn't happen because I cannot say that.

10 THE COURT: No. I appreciate that.

11 And you did infer the next question I was going to
12 ask, which is: The government's view on his statements.

13 I think one more area of inquiry. Last time I
14 asked this question of whether the government was aware of
15 whether Mr. Caldwell owns any weapons, because, as
16 I understand it when the search was conducted, none were
17 found.

18 Do you have any further information about that?

19 MS. RAKOCZY: I don't, Your Honor.

20 I wish that I did, but I don't off the top of my
21 head. I wouldn't want to say anything that's not accurate.

22 THE COURT: Okay.

23 All right. Everybody, just give me a second, if
24 you would, please, I'll be right back.

25 (Pause)

1 THE COURT: Okay. Is everybody still with us?

2 MR. FISCHER: Yes, Your Honor.

3 THE COURT: All right.

4 Let me say this: I don't for a moment condone the
5 actions of Mr. Caldwell. You know, even as described by his
6 counsel, Mr. Caldwell participated in planning and
7 preparation of potential acts of violence in the District of
8 Columbia, whether that was in anticipation of an Antifa
9 attack or a Black Lives Matter attack, you know, all of this
10 is right out of a fantastic sense of their own sense of
11 being wronged and their role in trying to right what they
12 perceived was a wrong.

13 And, you know, that is inescapable. That is
14 inescapable. And no amount of rationalization and
15 explanation can change those facts that Mr. Caldwell was a
16 participant, along with others, in military-style training
17 and exercises and preparation for what, an Armageddon-type
18 situation to defend the President of the United States who
19 claimed the election had been stolen from him. It's
20 unfortunate that that's -- they fell victim to those ideas.

21 That said, Mr. Caldwell is charged very
22 specifically with conspiring to disrupt the Electoral
23 College vote. That's the lead count. That lead count
24 charges, in paragraph 22, that Mr. Caldwell and others
25 planned with each other and others known and unknown to

1 forcibly enter the Capitol on January the 6th and to stop,
2 delay, and hinder the congressional proceedings occurring
3 that day. He's further charged that that conspiracy started
4 as early as November 3rd and lasted through January the 6th.

5 I think the evidence that has been brought before
6 me certainly supports that charge, there's probable cause
7 been found by the grand jury for that charge, and that's not
8 something I'm questioning today.

9 Nevertheless, I am required, under the Bail Reform
10 Act, to consider the strength of the evidence with respect
11 to these charges. And there is an absence of evidence of --
12 direct evidence at least of planning violence by
13 Mr. Caldwell to enter the Capitol building. There are no
14 text messages, communications by him that speak to actually
15 entering the building or trying to enter the building. And
16 ultimately, he did not enter the building.

17 And so I think -- let's put it this way: At least
18 with respect to Mr. Caldwell, there's certainly probable
19 cause for the charges, but probable cause is not the
20 ultimate determination I'm required to make here in terms of
21 release.

22 The question involves not only the strength of the
23 evidence, but also a prospect for community safety and
24 potential for more violence by Mr. Caldwell. And at the end
25 of the day, I do think the evidence is -- there's evidence

1 here that I think is favorable to Mr. Caldwell, let's just
2 put it that way.

3 The other thing I am concerned about is
4 Mr. Caldwell's health. He is 65 years old. I've seen him
5 now two or three times. And I can't tell whether he's just
6 emotionally overcome by the events or whether it's the back
7 problems that are really causing him a great deal of pain.
8 But I take his counsel at his word that is the back issues;
9 they seem to be documented.

10 So I am going to agree to release Mr. Caldwell,
11 but it's going to be on very strict conditions:

12 He will be subject to 24-hour home confinement
13 based -- with GPS and electronic monitoring, whatever is
14 available in the Western District of Virginia.

15 He shall have access to no computers, smartphones,
16 tablets, any kind of electronic-communication device that
17 would allow him to access online apps that would allow him
18 to communicate through either encrypted or non-encrypted
19 applications.

20 He also is going to be required to stay away from
21 the District of Columbia.

22 And he also is going to be ordered to have no
23 contact with anyone who's associated, affiliated with the
24 Oath Keepers, and that includes, as I said, online
25 communications, telephonic communications, not even passing

1 a note in the mail.

2 Now, you know, I recognize that there are limits
3 on what we can do and what we cannot do to monitor
4 Mr. Caldwell's communications with people.

5 But believe me, Mr. Caldwell, if there is any hint
6 of a violation of these conditions, you'll be right back
7 where you are right now, okay?

8 DEFENDANT CALDWELL: Yes, Your Honor.
9 I understand.

10 THE COURT: All right.

11 Mr. Douyon, what do I need to do here in terms of
12 a release order? And do we have standard text for these
13 kind of conditions that can be included in the release
14 order?

15 COURTROOM DEPUTY: Your Honor, I have a standard
16 form that I could fill out. I'll reach out to Pretrial
17 Services in regards to the conditions that you set and I'll
18 coordinate the order -- form with them.

19 THE COURT: Okay.

20 Just so the record's clear, you know, I ultimately
21 am now concluding, in light of the additional evidence
22 that's been brought before me, that there are conditions
23 that would ensure the safety of the community, one.

24 I do think the evidence against Mr. Caldwell, that
25 there is favorable evidence for him with respect to the

1 charges, in particular, because he did not enter the Capitol
2 building, and there's no evidence that, at least no direct
3 evidence, that he had planned to do so or was planning with
4 other people to do so on that day.

5 You know, I said last time and I'll incorporate
6 what I said last time into the record here, that his
7 personal circumstances, his personal characteristics favor
8 release. He's 65 years old, no prior convictions, military
9 veteran, has held top secret clearances before. I've also
10 taken his health conditions into account.

11 And I do think some of my concerns about the
12 destruction of evidence have been put in a slightly
13 different light. The obstruction conduct that was alleged
14 has been put in a different light, given that I now know
15 Mr. Caldwell did voluntarily interview with the FBI, he did
16 provide passwords to computers to allow the FBI to search
17 those computers, and, therefore, I think some of the
18 concerns that I had raised or was concerned about previously
19 have been put in a different light.

20 And so ultimately for all of those reasons, given
21 that liberty is the presumption, although -- anyway, liberty
22 is the norm when it comes to pretrial status. And given the
23 lack of prior criminal convictions for Mr. Caldwell, I think
24 the evidence, as I said, has come to light that is,
25 arguably, in some sense, favorable to him, I will release

1 him pursuant to very restrictive conditions that I've set
2 out.

3 So, Mr. Douyon, you'll get me a copy of that
4 release order and I can get that signed and hopefully we can
5 get Mr. Caldwell on his way relatively soon.

6 MS. RAKOCZY: Your Honor, may the government make
7 three small requests?

8 THE COURT: Of course.

9 MS. RAKOCZY: I shouldn't say they're small
10 requests, they're not small requests, but I will make them
11 quickly, because I understand this has been a long hearing.

12 THE COURT: Ms. Rakoczy, they all have been.

13 But go ahead.

14 There are a couple of other things that I actually
15 should have added and maybe you're going to do that.

16 So, Ms. Rakoczy, go ahead.

17 Ms. Rakoczy, I can't hear you.

18 Did we lose her?

19 COURTROOM DEPUTY: Ms. Rakoczy, are you still on
20 the line? You may be muted.

21 And I'll send her an email, Your Honor.

22 THE COURT: I'll tell you, I'm looking forward to
23 getting back to the day where we don't have to use this
24 technology anymore. It's driving me nuts.

25 COURTROOM DEPUTY: Your Honor, could you also

1 please also turn your camera on and off? It's not showing
2 you on the screen. Thank you.

3 THE COURT: Am I back on?

4 COURTROOM DEPUTY: Yep.

5 And I'll follow up and give Ms. Rakoczy a call.

6 Your Honor, she'll be dialing in via the
7 conference line shortly.

8 THE COURT: Okay.

9 COURTROOM DEPUTY: And I will note that because
10 it's through the conference line, you may hear echoing,
11 because I can't mute the court system and have you hear the
12 conference line at the same time.

13 THE COURT: Okay.

14 MS. RAKOCZY: I apologize, Your Honor. This is
15 Kate Rakoczy dialing in.

16 THE COURT: No problem, Ms. Rakoczy.

17 You were saying that you had three additional
18 requests and then we lost you.

19 MS. RAKOCZY: I apologize, Your Honor.

20 The government understands the Court's ruling, but
21 we did just want to point out since other defendants will
22 come before the Court on this issue, that the paragraph that
23 the Court cited in its ruling with respect to the government
24 alleging that the co-defendants conspired to forcibly storm
25 the Capitol and obstruct the congressional proceedings, that

1 that paragraph is contained within the background section of
2 the indictment and the charging language is the
3 conspiracy -- alleges solely a conspiracy to obstruct the
4 congressional proceeding. Forcibly storming the Capitol is
5 mentioned in the charging language of that count as a manner
6 and means and as an overt act that some members of the
7 conspiracy took. We just wanted to highlight that as a
8 technical point in terms of how this case is charged.

9 THE COURT: Yeah, that's -- and that's -- I think
10 that's fair, Ms. Rakoczy.

11 And let me also be equally clear that -- and that
12 I put Mr. Caldwell in a different -- at a minimum, he's in a
13 different -- he does -- he's differently situated from
14 others because he did not actually enter the Capitol
15 building.

16 And so, you know, to the extent the charging
17 document actually refers to a plan to enter the Capitol,
18 others actually did carry out the plan. So what I say here
19 ought not necessarily be taken to -- how -- hold a view as
20 to anyone else.

21 MS. RAKOCZY: Thanks, Your Honor.

22 Second, as part of the release order, we would ask
23 that the Court consider ordering Mr. Caldwell to surrender
24 his passport as part of his conditions of release.

25 THE COURT: Okay. I certainly will do that. And,

1 of course, that's included in the release order.

2 Anything else?

3 MS. RAKOCZY: Our third request -- and we would
4 just ask that -- we're not saying we would, but the
5 government would consider whether it may avail itself of the
6 options of appealing the Court's ruling, and, as such, we
7 would ask if the Court would consider staying the release
8 order until Monday.

9 THE COURT: I'm not going to do that.

10 I think if the government wants to file a Notice
11 of Appeal -- well, let me ask, Ms. Rakoczy: How seriously
12 are you considering filing -- noticing an appeal on that?

13 MS. RAKOCZY: I candidly am not 100 percent
14 certain about the standard that we would have to meet.

15 And I feel compelled to raise it, given the
16 government's position on Mr. Caldwell's dangerousness. But
17 certainly we will discuss it. I don't know. I can't
18 promise the Court that we would appeal.

19 THE COURT: Okay.

20 Well, look, I'm not going to stay it at this
21 point.

22 And obviously if that's something the government
23 does and the Court of Appeals considers it, then -- and if
24 they think I've balanced the factors incorrectly, then
25 they'll let me know that.

1 But I think the conditions that I've put him under
2 are fairly strict in the circumstances. And so the
3 government is free to file a Notice of Appeal; and if it
4 does so, then the Court of Appeals will let me know if I've
5 balanced the factors incorrectly.

6 The one thing I will add and I forgot to add is
7 that Mr. Caldwell must not possess any firearms. Either
8 sort of directly or indirectly, he can't constructively
9 possess any firearms. So whatever firearms restriction we
10 have as a condition of release, that's to apply to
11 Mr. Caldwell as well, okay?

12 MR. FISCHER: Your Honor, can I just briefly, just
13 a couple housekeeping matters.

14 I couldn't hear because there was some feedback,
15 but if he's ordered not to leave the state, he does have
16 doctors -- I know he has one doctor in Bethesda. So if he
17 could have permission to be out of the house for the
18 purposes of medical appointments, I think that's --

19 THE COURT: Well, I guess -- let me do the
20 following, because I don't think I was probably specific
21 enough about this:

22 First of all, he's got to stay away from the
23 District of Columbia.

24 He also needs to remain in the Western District of
25 Virginia.

1 He is permitted to be out of the house for medical
2 appointments and for visits with counsel; however, those
3 reasons for leaving his home have to be approved by
4 Probation before he does that, and that would include any
5 interstate travel if he has doctors outside of the Western
6 District of Virginia.

7 MR. FISCHER: Thank you, Your Honor.

8 THE COURT: All right.

9 Anything else, Counsel?

10 MS. RAKOCZY: Not for the government, Your Honor.
11 Thank you.

12 MR. FISCHER: Not for the defense, Your Honor.

13 THE COURT: Mr. Caldwell, if I could just address
14 you.

15 Don't take this, Mr. Caldwell, as a reflection of
16 my view of the seriousness of this, of what you've been
17 charged with --

18 DEFENDANT CALDWELL: Yes, Your Honor.

19 THE COURT: -- or of your conduct. But I've got
20 standards I'm supposed to apply under the law, and I think
21 they justify your release.

22 But make no mistake, Mr. Caldwell, if you violate
23 my conditions, you will be back in jail very quickly, okay?

24 THE DEFENDANT: I understand, Your Honor.

25 Thank you.

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THE COURT: All right.
Thank you, all, very much. Have a good weekend.
(Proceedings concluded at 4:24 p.m.)

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C E R T I F I C A T E

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

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

Date: March 12, 2021 /S/ William P. Zaremba
William P. Zaremba, RMR, CRR

<p>COURT REPORTER: [3] 9/11 9/13 9/18</p> <p>COURTROOM</p> <p>DEPUTY: [19] 4/4 4/7 4/12 5/14 5/21 6/6 7/9 7/15 7/20 8/10 9/12 13/6 21/20 21/23 52/15 54/19 54/25 55/4 55/9</p> <p>DEFENDANT BENNIE PARKER: [1] 6/21</p> <p>DEFENDANT CALDWELL: [6] 6/17 22/4 38/17 38/20 52/8 59/18</p> <p>DEFENDANT MEGGS: [5] 7/1 8/9 19/6 20/3 20/7</p> <p>DEFENDANT SANDRA PARKER: [1] 6/20</p> <p>DEFENDANT WATKINS: [1] 6/23</p> <p>MR. BRENNWALD: [4] 11/24 13/20 14/1 16/21</p> <p>MR. FISCHER: [16] 12/10 12/20 13/16 16/17 22/15 26/21 28/19 37/10 37/13 39/7 40/9 45/17 49/2 58/12 59/7 59/12</p> <p>MR. MACHADO: [4] 11/18 14/4 14/7 16/4</p> <p>MR. WILSON: [13] 5/19 5/24 6/3 7/19 8/8 9/16 12/2 12/21 15/1 15/8 16/12 21/1 21/9</p> <p>MS. PETERSON: [3] 13/18 15/16 16/14</p> <p>MS. RAKOCZY: [29] 8/24 9/8 10/1 14/23 18/5 18/11 18/17 20/11 21/10 21/22 22/1 31/6 32/25 33/24 34/5 41/19 41/24 42/22 44/14 47/10 48/19 54/6 54/9 55/14 55/19 56/21 57/3 57/13 59/10</p> <p>THE COURT: [81]</p> <p>THE DEFENDANT: [4] 37/9 41/11 41/13 59/24</p> <p>/</p> <p>/S [1] 61/10</p>	<p>18 [4] 7/22 7/25 8/3 8/6</p> <p>19 [1] 61/6</p> <p>19th [1] 12/25</p> <hr/> <p>2</p> <p>20 [1] 31/1</p> <p>20001 [2] 2/18 3/5</p> <p>20003 [1] 2/14</p> <p>20004 [1] 2/10</p> <p>201 [1] 2/22</p> <p>202 [3] 1/15 2/10 3/5</p> <p>2021 [2] 1/5 61/10</p> <p>20530 [1] 1/15</p> <p>208-7500 [1] 2/10</p> <p>21 [1] 4/5</p> <p>21-28 [2] 1/4 4/13</p> <p>21-28-8 [1] 7/21</p> <p>21061-3065 [1] 2/4</p> <p>22 [2] 32/17 49/24</p> <p>24-hour [1] 51/12</p> <p>25 years [1] 29/20</p> <p>252-6928 [1] 1/15</p> <p>28 [2] 1/4 4/13</p> <p>2nd [1] 2/22</p> <hr/> <p>3</p> <p>30 [4] 8/18 13/10 13/10 41/7</p> <p>300 [1] 2/4</p> <p>301 [1] 2/14</p> <p>3065 [1] 2/4</p> <p>310 [1] 2/18</p> <p>3249 [1] 3/5</p> <p>333 [1] 3/4</p> <p>34471 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<p>array [1] 10/14</p> <p>arrested [1] 35/15</p>
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<p>A</p> <p>as [79]</p> <p>ask [17] 6/15 7/12 7/13 12/25 14/12 16/9 18/20 20/19 22/12 31/24 33/25 46/24 48/12 56/22 57/4 57/7 57/11</p> <p>asked [5] 14/17 14/19 45/24 45/25 48/14</p> <p>asking [2] 39/5 39/6</p> <p>aspect [1] 36/24</p> <p>aspects [2] 37/1 48/2</p> <p>assaulted [1] 28/6</p> <p>assess [1] 10/3</p> <p>assigned [1] 10/6</p> <p>assist [2] 14/7 35/9</p> <p>assisted [2] 37/5 37/6</p> <p>associated [2] 17/10 51/23</p> <p>associations [1] 25/14</p> <p>assure [2] 22/25 31/11</p> <p>attached [4] 23/20 25/7 36/14 36/15</p> <p>attack [3] 45/3 49/9 49/9</p> <p>attacked [3] 27/3 27/4 28/25</p> <p>attacking [1] 27/1</p> <p>attending [1] 28/24</p> <p>attention [1] 7/14</p> <p>ATTORNEY'S [2] 1/13 10/10</p> <p>audio [3] 5/18 5/20 5/20</p> <p>authority [1] 43/6</p> <p>avail [1] 57/5</p> <p>available [8] 10/15 13/13 13/15 13/16 14/5 35/17 35/19 51/14</p> <p>avenue [4] 2/9 2/13 3/4 42/6</p> <p>aware [3] 47/3 47/4 48/14</p> <p>away [6] 21/22 21/23 24/14 30/15 51/20 58/22</p>	<p>basis [2] 10/21 15/8</p> <p>be [56] 7/5 7/8 8/11 10/11 10/12 10/25 11/1 11/5 11/21 13/21 14/10 15/6 15/9 17/23 17/24 17/25 18/10 19/12 20/11 20/16 24/23 26/9 28/13 29/14 29/14 29/17 31/22 33/16 33/22 35/2 35/6 35/12 36/24 37/4 38/9 38/13 40/7 42/24 44/22 46/18 48/24 51/9 51/11 51/12 51/20 51/22 52/6 52/13 54/20 55/6 56/11 56/19 58/17 59/1 59/3 59/23</p> <p>beaten [1] 30/24</p> <p>beaten-down [1] 30/24</p> <p>because [24] 6/2 12/5 17/24 23/23 27/25 29/25 30/9 35/13 36/1 37/23 39/18 45/9 46/1 46/25 48/4 48/9 48/15 53/1 54/11 55/9 55/11 56/14 58/14 58/20</p> <p>become [1] 35/15</p> <p>been [31] 7/21 8/14 8/18 8/18 9/2 10/12 14/15 21/2 24/1 27/4 28/7 29/18 31/18 33/19 34/18 44/16 46/1 46/4 46/17 47/24 48/3 49/19 50/5 50/7 52/22 53/12 53/14 53/19 54/11 54/12 59/16</p> <p>before [15] 1/10 8/18 8/18 16/3 18/25 20/21 25/25 30/5 32/24 44/7 50/5 52/22 53/9 55/22 59/4</p> <p>begins [1] 33/9</p> <p>behalf [11] 4/18 4/24 11/18 11/24 12/3 12/11 12/21 14/4 14/16 16/12 21/9</p> <p>behavior [1] 28/18</p> <p>being [4] 11/20 27/3 30/12 49/11</p> <p>belie [1] 36/8</p> <p>belief [2] 25/4 30/4</p> <p>believe [11] 7/7 29/20 29/24 37/22 37/23 44/19 44/20 46/12 46/13 47/10 52/5</p> <p>believed [2] 42/9 44/20</p> <p>believing [2] 45/13 45/15</p> <p>Bennie [7] 2/12 4/17 4/23 5/4 11/24 13/20 16/21</p> <p>Bennie Alvin [1] 4/17</p> <p>Bethesda [1] 58/16</p> <p>between [2] 16/6 23/16</p> <p>bit [4] 9/9 10/24 11/1 28/1</p> <p>Black [2] 42/3 49/9</p> <p>blockers [1] 22/22</p> <p>boats [1] 35/19</p>	<p>body [1] 27/8</p> <p>boil [1] 33/12</p> <p>bond [3] 15/20 21/15 22/7</p> <p>bond-review [1] 22/7</p> <p>both [14] 7/7 10/11 11/13 12/5 18/21 18/25 19/22 20/2 20/13 20/21 21/2 22/10 38/4 42/17</p> <p>bottom [4] 26/4 30/10 34/14 46/11</p> <p>break [2] 18/3 36/4</p> <p>breaking [1] 24/10</p> <p>Brennwald [5] 2/12 2/13 4/23 14/7 16/20</p> <p>briefly [1] 58/12</p> <p>bring [2] 42/20 42/23</p> <p>broader [1] 10/14</p> <p>brought [3] 35/12 50/5 52/22</p> <p>building [16] 8/5 23/25 26/7 32/7 32/13 32/13 38/11 38/16 38/24 41/9 50/13 50/15 50/15 50/16 53/2 56/15</p> <p>Burnie [1] 2/4</p> <p>button [2] 9/16 9/18</p> <p>buy [1] 40/25</p> <p>C</p> <p>CALDWELL [68]</p> <p>Caldwell's [9] 15/25 21/15 22/13 33/6 33/13 35/8 51/4 52/4 57/16</p> <p>call [4] 9/19 11/11 42/9 55/5</p> <p>came [1] 45/6</p> <p>camera [2] 36/19 55/1</p> <p>can [43] 4/3 4/7 4/10 5/12 5/13 6/13 6/14 6/15 6/16 6/23 9/17 12/18 13/1 13/2 13/24 14/7 15/12 17/23 19/2 19/6 19/13 20/18 20/19 20/23 21/13 21/15 22/25 26/2 27/12 28/16 28/16 29/8 30/12 30/25 35/16 46/24 47/2 49/15 52/3 52/13 54/4 54/4 58/12</p> <p>can't [10] 4/8 27/14 30/18 30/19 30/20 51/5 54/17 55/11 57/17 58/8</p> <p>candid [1] 33/20</p> <p>candidly [1] 57/13</p> <p>cannot [2] 48/9 52/3</p> <p>Capitol [42] 23/18 23/25 24/3 24/6 24/10 24/15 24/19 25/17 26/7 28/4 29/1 29/25 30/2 31/21 32/7 32/11 32/19 32/24 33/10 33/11 34/4 34/19 34/21 36/5 36/17 37/19 38/2 38/11 38/16 38/24 39/3 41/9 45/3 45/7 46/7 50/1 50/13 53/1 55/25 56/4 56/14 56/17</p>	<p>care [1] 23/2</p> <p>carry [2] 35/21 56/18</p> <p>case [21] 4/5 4/13 7/20 8/20 9/22 9/25 10/6 10/6 11/15 17/14 23/6 23/22 27/7 28/25 29/14 31/19 32/9 37/14 40/6 42/16 56/8</p> <p>cases [3] 8/17 10/12 10/15</p> <p>cause [3] 50/6 50/19 50/19</p> <p>caused [1] 36/6</p> <p>causing [1] 51/7</p> <p>cell [3] 29/7 29/8 29/8</p> <p>center [1] 22/19</p> <p>central [1] 37/1</p> <p>certain [2] 48/1 57/14</p> <p>certainly [15] 9/17 10/17 10/25 15/21 17/20 26/6 28/7 34/22 36/3 36/8 45/4 50/6 50/18 56/25 57/17</p> <p>certainty [1] 36/3</p> <p>certification [9] 31/19 33/2 33/15 34/8 34/21 42/2 42/5 43/11 44/18</p> <p>Certified [1] 3/3</p> <p>certify [4] 33/8 33/9 33/11 61/2</p> <p>cetera [1] 24/8</p> <p>CH [1] 3/4</p> <p>challenges [1] 6/11</p> <p>chance [2] 9/22 23/11</p> <p>change [2] 25/10 49/15</p> <p>changed [1] 35/25</p> <p>channel [1] 25/19</p> <p>characteristics [1] 53/7</p> <p>charge [3] 30/1 50/6 50/7</p> <p>charged [10] 7/21 8/15 32/16 40/5 41/18 42/16 49/21 50/3 56/8 59/17</p> <p>charges [8] 7/13 25/16 29/24 29/25 49/24 50/11 50/19 53/1</p> <p>charging [3] 56/2 56/5 56/16</p> <p>chat [2] 23/8 36/14</p> <p>chats [1] 43/17</p> <p>Chicago [1] 39/19</p> <p>Chief [1] 17/8</p> <p>circle [2] 24/12 24/13</p> <p>circumstances [5] 17/9 25/3 44/4 53/7 58/2</p> <p>cited [6] 31/17 33/3 33/4 33/15 44/24 55/23</p> <p>cities [1] 40/22</p> <p>citizen [1] 24/5</p> <p>city [1] 35/20</p> <p>claim [1] 23/21</p> <p>claimed [1] 49/19</p> <p>clear [3] 38/9 52/20 56/11</p> <p>clearances [1] 53/9</p>	<p>clearly [1] 37/2</p> <p>client [8] 25/17 25/21 25/25 26/5 29/19 38/12 38/25 41/5</p> <p>clients [3] 16/10 19/16 20/24</p> <p>clock [1] 16/16</p> <p>close [1] 18/13</p> <p>co [12] 31/13 32/18 33/16 34/12 34/18 34/23 35/24 36/9 36/21 44/25 45/1 55/24</p> <p>co-conspirators [3] 31/13 34/12 34/18</p> <p>co-defendant [3] 34/23 44/25 45/1</p> <p>co-defendants [6] 32/18 33/16 35/24 36/9 36/21 55/24</p> <p>Code [4] 7/23 8/1 8/4 8/6</p> <p>colleague [1] 18/19</p> <p>College [4] 31/20 42/2 43/11 49/23</p> <p>COLUMBIA [9] 1/1 1/14 2/8 26/17 26/18 28/15 49/8 51/21 58/23</p> <p>come [9] 27/14 31/13 32/3 34/24 39/25 42/10 46/6 53/24 55/22</p> <p>comes [1] 53/22</p> <p>coming [1] 5/22</p> <p>commander [1] 26/23</p> <p>comment [3] 28/22 37/11 45/18</p> <p>commenting [1] 37/23</p> <p>comments [1] 39/8</p> <p>commit [1] 36/24</p> <p>committed [1] 30/21</p> <p>commotion [2] 24/6 24/10</p> <p>communicate [1] 51/18</p> <p>communicating [1] 25/20</p> <p>communication [3] 25/19 36/21 51/16</p> <p>communications [5] 28/11 50/14 51/25 51/25 52/4</p> <p>community [3] 31/11 50/23 52/23</p> <p>compelled [1] 57/15</p> <p>complex [2] 9/22 11/15</p> <p>complex-case [2] 9/22 11/15</p> <p>computer [5] 3/7 5/22 6/1 29/16 47/24</p> <p>computer-aided [1] 3/7</p> <p>computers [6] 29/6 47/5 48/6 51/15 53/16 53/17</p> <p>concede [1] 32/4</p> <p>conceded [1] 23/15</p> <p>concedes [1] 25/20</p> <p>concern [9] 25/3 27/11 27/22 28/2 29/3 30/17</p>
---	--	--	--	---

B

back [17] 21/24 22/20 22/23 23/13 24/16 27/2 32/17 38/4 46/22 46/25 48/24 51/6 51/8 52/6 54/23 55/3 59/23

background [2] 39/14 56/1

backwards [1] 44/5

Bail [1] 50/9

balanced [2] 57/24 58/5

band [1] 40/5

bang [1] 24/8

Barrett [1] 3/4

barricades [1] 36/4

based [4] 16/23 22/25 38/6 51/13

basically [8] 23/8 23/11 27/9 27/12 27/19 29/7 29/11 37/19

base [2] 10/21 15/8

basically [8] 23/8 23/11 27/9 27/12 27/19 29/7 29/11 37/19

base [2] 10/21 15/8

basically [8] 23/8 23/11 27/9 27/12 27/19 29/7 29/11 37/19

base [2] 10/21 15/8

basically [8] 23/8 23/11 27/9 27/12 27/19 29/7 29/11 37/19

base [2] 10/21 15/8

basically [8] 23/8 23/11 27/9 27/12 27/19 29/7 29/11 37/19

C	Case 1:21-cr-00028-ABM Document 79 Filed 03/15/21 Page 64 of 72	Case 1:21-cr-00028-ABM Document 79 Filed 03/15/21 Page 64 of 72	Case 1:21-cr-00028-ABM Document 79 Filed 03/15/21 Page 64 of 72	Case 1:21-cr-00028-ABM Document 79 Filed 03/15/21 Page 64 of 72
<p>concern... [3] 35/23 45/1 45/14</p> <p>concerned [3] 26/8 51/3 53/18</p> <p>concerns [7] 26/11 28/8 30/23 31/7 41/15 53/11 53/18</p> <p>concession [1] 23/7</p> <p>concluded [1] 60/3</p> <p>concluding [1] 52/21</p> <p>concrete [2] 38/1 43/14</p> <p>condition [1] 58/10</p> <p>conditions [12] 30/25 31/10 51/11 52/6 52/13 52/17 52/22 53/10 54/1 56/24 58/1 59/23</p> <p>condone [1] 49/4</p> <p>conduct [4] 26/8 45/16 53/13 59/19</p> <p>conducted [1] 48/16</p> <p>conference [4] 1/9 55/7 55/10 55/12</p> <p>CONFERENCE/ARRAI GNMENT [1] 1/9</p> <p>confidence [1] 28/10</p> <p>confinement [1] 51/12</p> <p>confirm [3] 6/15 47/25 48/3</p> <p>confirmed [2] 29/4 48/6</p> <p>conflict [6] 19/14 19/18 20/14 20/25 20/25 21/4</p> <p>conflicts [3] 18/21 20/13 20/20</p> <p>confront [1] 32/6</p> <p>confusing [1] 15/3</p> <p>Congress [1] 31/21</p> <p>congressional [6] 32/21 35/6 37/3 50/2 55/25 56/4</p> <p>connection [2] 29/9 36/20</p> <p>Connie [6] 12/3 14/25 15/1 15/2 18/6 18/18</p> <p>consent [1] 47/24</p> <p>consented [5] 47/5 47/6 48/1 48/2 48/7</p> <p>consequence [1] 32/10</p> <p>consider [5] 41/17 50/10 56/23 57/5 57/7</p> <p>consideration [1] 41/20</p> <p>considering [1] 57/12</p> <p>consider [1] 57/23</p> <p>conspiracy [17] 7/22 24/19 24/23 25/15 30/4 30/5 32/23 32/25 33/1 33/1 33/18 36/24 44/17 50/3 56/3 56/3 56/7</p> <p>conspirators [3] 31/13 34/12 34/18</p> <p>conspired [1] 55/24</p> <p>conspiring [1] 49/22</p> <p>Constitution [1] 3/4</p> <p>constructively [1] 58/8</p>	<p>contacts [1] 25/13</p> <p>contained [1] 56/1</p> <p>context [3] 37/23 45/20 45/21</p> <p>contingency [2] 27/7 28/25</p> <p>continue [5] 9/6 10/20 28/11 44/20 45/14</p> <p>continued [3] 2/1 3/1 44/8</p> <p>continues [1] 44/11</p> <p>continuing [1] 28/17</p> <p>control [2] 10/7 13/9</p> <p>convene [1] 17/22</p> <p>conversations [1] 36/8</p> <p>convictions [2] 53/8 53/23</p> <p>convinced [1] 41/8</p> <p>Cooper [1] 13/22</p> <p>coordinate [1] 52/18</p> <p>copy [2] 7/16 54/3</p> <p>correct [4] 7/9 15/1 32/14 61/3</p> <p>correctly [1] 24/14</p> <p>corrupt [1] 43/10</p> <p>corruptly [2] 35/5 37/3</p> <p>could [22] 5/14 5/15 5/21 6/6 10/11 10/12 15/14 19/18 24/23 27/20 29/14 29/14 29/15 31/11 37/10 42/12 46/2 46/15 52/16 54/25 58/17 59/13</p> <p>couldn't [1] 58/14</p> <p>counsel [31] 5/8 9/2 10/15 11/2 11/11 11/13 12/13 13/14 14/21 16/9 16/24 17/4 17/15 18/22 19/19 19/21 20/5 20/10 20/13 20/20 21/14 21/14 21/18 22/7 22/13 38/22 47/2 49/6 51/8 59/2 59/9</p> <p>count [8] 7/22 7/24 8/2 8/5 8/14 49/23 49/23 56/5</p> <p>Count 1 [1] 7/22</p> <p>Count 2 [1] 7/24</p> <p>Count 3 [1] 8/2</p> <p>Count 4 [1] 8/5</p> <p>country [5] 27/4 29/10 39/17 39/20 40/13</p> <p>counts [1] 7/21</p> <p>couple [7] 17/17 23/12 24/2 24/13 24/24 54/14 58/13</p> <p>course [4] 41/16 45/15 54/8 57/1</p> <p>court [35] 1/1 3/2 3/3 9/15 11/21 11/25 14/10 16/6 16/16 18/20 21/4 22/16 22/25 25/1 25/2 25/3 25/5 27/25 29/18 31/10 40/12 40/17 41/21 42/25 46/22 48/8 55/11 55/22 55/23 56/23 57/7 57/18 57/23</p>	<p>Court's [15] 27/10 29/3 30/17 30/23 31/2 31/7 33/10 37/17 38/3 39/8 40/17 46/20 46/21 55/20 57/6</p> <p>courtroom [4] 4/6 7/12 9/11 9/12</p> <p>covering [1] 45/2</p> <p>COVID [2] 17/10 61/6</p> <p>COVID-19 [1] 61/6</p> <p>CR [1] 1/4</p> <p>create [1] 19/18</p> <p>criminal [5] 4/5 4/13 7/20 46/16 53/23</p> <p>crowds [1] 39/2</p> <p>Crowl [1] 46/1</p> <p>CRR [2] 61/2 61/11</p> <p>crud [3] 33/8 33/9 33/11</p> <p>cs.com [1] 2/15</p> <p>current [2] 17/7 44/20</p> <p>currently [1] 13/3</p> <p>custody [1] 15/9</p> <p>cut [1] 26/4</p> <hr/> <p>D</p> <p>D.C [9] 1/5 1/15 2/10 2/14 2/18 3/5 32/3 34/24 35/12</p> <p>danger [1] 26/19</p> <p>dangerousness [2] 35/23 57/16</p> <p>date [11] 12/16 13/3 13/7 13/10 13/15 14/11 14/21 16/6 16/11 16/16 61/10</p> <p>david [9] 2/2 2/21 2/22 2/24 4/20 4/24 12/2 12/10 37/9</p> <p>day [9] 13/21 24/18 24/18 27/2 32/21 50/3 50/25 53/4 54/23</p> <p>days [9] 8/18 10/3 10/25 11/8 13/10 13/10 41/7 45/3 45/12</p> <p>deal [1] 51/7</p> <p>December [2] 23/13 24/18</p> <p>decision [4] 11/21 13/2 22/8 38/4</p> <p>defend [1] 49/18</p> <p>defendant [19] 2/2 2/7 2/12 2/16 2/21 4/14 4/15 4/16 4/16 4/17 4/20 4/21 4/22 4/23 4/24 8/11 34/23 44/25 45/1</p> <p>defendants [30] 1/7 5/1 5/3 6/13 6/14 7/5 7/5 8/17 8/25 10/13 10/19 10/20 11/12 15/7 15/24 16/1 16/25 17/2 17/4 17/14 17/17 18/22 19/13 32/18 33/16 35/24 36/9 36/21 55/21 55/24</p> <p>DEFENDER [3] 2/8</p>	<p>defense [10] 7/16 7/17 11/2 11/13 16/9 16/23 17/6 40/3 40/4 59/12</p> <p>defenses [1] 10/13</p> <p>deferring [2] 11/21 11/25</p> <p>degree [1] 28/10</p> <p>delay [2] 32/20 50/2</p> <p>denies [1] 30/6</p> <p>deny [1] 26/16</p> <p>Department [1] 10/10</p> <p>depending [1] 44/3</p> <p>deputized [1] 39/24</p> <p>Deputy [2] 4/6 7/13</p> <p>derived [1] 15/12</p> <p>described [2] 38/15 49/5</p> <p>describing [1] 34/24</p> <p>designation [2] 12/4 12/8</p> <p>destroyed [1] 28/5</p> <p>destruction [2] 8/2 53/12</p> <p>detained [1] 12/5</p> <p>detention [5] 15/7 15/13 22/8 22/18 29/15</p> <p>determination [2] 44/8 50/20</p> <p>device [2] 9/10 51/16</p> <p>devices [1] 29/16</p> <p>dialing [2] 55/6 55/15</p> <p>did [37] 11/8 13/4 13/4 18/6 18/11 21/22 30/2 32/4 33/21 33/24 36/11 37/15 39/4 39/11 43/8 43/16 43/18 43/21 45/9 45/14 46/25 47/2 47/7 47/12 47/23 47/24 48/4 48/11 48/20 50/16 53/1 53/15 53/15 54/18 55/21 56/14 56/18</p> <p>didn't [11] 15/12 25/22 25/25 26/7 28/4 28/5 32/13 38/1 41/13 48/4 48/9</p> <p>difference [1] 29/2</p> <p>different [10] 17/25 24/25 38/13 39/21 40/16 53/13 53/14 53/19 56/12 56/13</p> <p>differently [4] 19/25 33/25 47/17 56/13</p> <p>difficult [2] 10/24 31/8</p> <p>difficulties [1] 17/9</p> <p>diminish [2] 26/14 41/14</p> <p>diminished [1] 26/20</p> <p>direct [2] 50/12 53/2</p> <p>direct evidence [1] 50/12</p> <p>directly [3] 27/25 33/7 58/8</p> <p>disabled [1] 23/4</p> <p>disagree [1] 45/21</p> <p>disagreeing [1] 39/9</p> <p>disagrees [1] 46/14</p> <p>disclosure [1] 17/4</p>	<p>discovery [14] 8/22 9/1 9/4 9/6 9/24 10/2 10/15 11/1 11/4 11/4 13/12 15/11 17/4 17/5</p> <p>discuss [3] 15/24 18/16 57/17</p> <p>discussed [6] 31/23 36/11 41/25 42/14 42/15 42/17</p> <p>discusses [1] 35/11</p> <p>discussion [2] 31/16 42/3</p> <p>discussions [1] 23/14</p> <p>disorder [1] 39/18</p> <p>disposal [1] 15/22</p> <p>dispute [1] 38/14</p> <p>disrupt [1] 49/22</p> <p>DISTRICT [18] 1/1 1/1 1/11 1/14 2/8 26/17 26/18 27/14 28/15 29/12 30/16 31/14 49/7 51/14 51/21 58/23 58/24 59/6</p> <p>do [51] 4/6 7/19 8/7 11/23 12/15 12/15 14/19 14/19 14/24 15/21 16/25 17/24 18/23 18/25 19/5 20/5 20/11 21/18 22/12 27/24 29/16 31/5 34/7 34/16 34/19 34/22 35/2 36/10 37/17 39/20 40/10 41/16 43/5 43/22 44/10 46/19 48/18 50/25 52/3 52/3 52/11 52/11 52/12 52/24 53/3 53/4 53/11 54/15 56/25 57/9 58/19</p> <p>do you [2] 8/7 20/5</p> <p>Do you have [1] 37/17</p> <p>doctor [1] 58/16</p> <p>doctors [3] 22/22 58/16 59/5</p> <p>document [1] 56/17</p> <p>documented [1] 51/9</p> <p>does [10] 7/17 9/23 14/21 16/2 44/10 56/13 57/23 58/4 58/15 59/4</p> <p>doesn't [9] 22/24 26/15 29/8 36/8 41/12 41/14 46/18 46/21 46/22</p> <p>doing [3] 36/9 36/18 43/20</p> <p>don't [35] 7/11 8/21 9/10 10/1 14/13 19/4 21/18 22/13 25/12 25/21 27/24 28/15 36/12 37/20 38/10 39/23 39/24 40/2 40/21 40/24 43/2 44/14 46/25 47/3 47/4 47/10 47/14 47/22 48/19 48/20 49/4 54/23 57/17 58/20 59/15</p> <p>doors [1] 24/3</p> <p>doubt [1] 41/4</p> <p>doubts [1] 25/23</p> <p>Douyon [2] 52/11 54/3</p>

<p>D</p> <p>down [11] 13/4 13/9 24/1 24/7 30/24 34/13 39/18 40/25 41/1 45/6 45/8</p> <p>dozens [1] 27/6</p> <p>driving [1] 54/24</p> <p>due [1] 17/9</p> <p>during [3] 14/17 40/10 61/5</p> <p>dwilsonlaw.com [1] 2/24</p>	<p>entry [1] 34/20</p> <p>epidural [1] 22/23</p> <p>equally [1] 56/11</p> <p>essentially [7] 22/7 23/22 23/22 32/1 32/9 39/1 42/10</p> <p>estimate [2] 9/23 10/2</p> <p>et [2] 1/6 24/8</p> <p>et cetera [1] 24/8</p> <p>even [4] 25/24 32/4 49/5 51/25</p> <p>events [11] 23/10 23/14 26/10 39/21 44/2 44/9 44/12 44/14 45/2 45/12 51/6</p> <p>ever [3] 30/6 30/21 46/1</p> <p>every [4] 36/23 36/24 36/24 48/5</p> <p>everybody [10] 4/3 13/13 17/16 18/1 18/2 21/13 27/13 39/11 48/23 49/1</p> <p>everyone [4] 5/14 5/15 6/12 18/15</p> <p>everything [1] 47/14</p> <p>evidence [40] 10/21 23/8 23/15 24/20 31/16 31/17 32/14 32/22 33/2 33/3 34/5 34/7 34/17 35/5 35/6 36/13 37/17 37/20 38/1 41/3 41/9 41/17 41/21 42/25 43/2 44/6 50/5 50/10 50/11 50/12 50/23 50/25 50/25 52/21 52/24 52/25 53/2 53/3 53/12 53/24</p> <p>exaggeration [1] 22/18</p> <p>excellent [1] 37/15</p> <p>except [1] 5/24</p> <p>exchange [1] 44/25</p> <p>exclude [2] 16/24 17/11</p> <p>excludes [1] 17/8</p> <p>excluding [1] 16/15</p> <p>exclusion [1] 17/3</p> <p>execute [1] 41/8</p> <p>executed [1] 47/21</p> <p>exercises [1] 49/17</p> <p>exhibit [7] 23/19 23/21 23/23 24/4 24/11 25/7 36/15</p> <p>exist [1] 44/19</p> <p>exists [2] 34/5 34/7</p> <p>expect [2] 15/9 43/15</p> <p>expected [1] 43/20</p> <p>expecting [1] 15/6</p> <p>explain [1] 40/11</p> <p>explained [1] 46/5</p> <p>explains [1] 23/23</p> <p>explanation [1] 49/15</p> <p>explicitly [1] 34/20</p> <p>explored [1] 21/2</p> <p>exploring [1] 42/6</p> <p>expound [1] 31/25</p> <p>expressing [1] 45/1</p>	<p>F</p> <p>Facebook [3] 30/15 30/15 33/7</p> <p>facilitate [1] 17/3</p> <p>fact [9] 10/11 12/5 19/16 25/6 27/5 31/8 32/15 39/10 45/11</p> <p>factors [4] 41/16 44/19 57/24 58/5</p> <p>facts [6] 47/1 47/8 47/17 47/18 48/8 49/15</p> <p>factual [1] 41/19</p> <p>fair [2] 29/22 56/10</p> <p>fairly [2] 8/20 58/2</p> <p>fanciful [1] 40/7</p> <p>fantastic [3] 40/8 44/1 49/10</p> <p>far [3] 16/1 30/3 30/15</p> <p>farm [2] 46/4 46/6</p> <p>fashion [2] 19/23 22/14</p> <p>fault [1] 23/3</p> <p>favor [1] 53/7</p> <p>favorable [3] 51/1 52/25 53/25</p> <p>FBI [7] 30/19 45/23 45/24 46/8 47/4 53/15 53/16</p> <p>fd.org [1] 2/11</p> <p>fear [3] 26/25 26/25 27/3</p> <p>FEDERAL [3] 2/8 20/19 20/20</p> <p>feedback [4] 9/9 9/10 28/1 58/14</p> <p>feel [1] 57/15</p> <p>fell [1] 49/20</p> <p>few [2] 26/21 45/3</p> <p>figure [4] 17/15 17/23 18/2 31/5</p> <p>file [6] 12/16 12/24 12/25 14/18 57/10 58/3</p> <p>filed [5] 9/21 12/18 14/15 22/7 31/18</p> <p>filing [1] 57/12</p> <p>fill [1] 52/16</p> <p>fine [1] 21/5</p> <p>firearms [3] 58/7 58/9 58/9</p> <p>first [13] 8/19 17/19 22/13 22/17 28/21 28/21 31/14 35/12 35/23 37/21 45/5 45/18 58/22</p> <p>First Amendment [1] 31/14</p> <p>Fischer [10] 2/2 2/3 4/20 12/10 14/13 14/14 26/2 27/21 36/11 43/4</p> <p>fischerandputzi [1] 2/6</p> <p>five [2] 5/1 37/25</p> <p>FL [1] 2/23</p> <p>flash [1] 24/8</p> <p>focus [1] 41/2</p> <p>focused [2] 33/14 33/14</p> <p>folks [6] 27/16 28/14</p>	<p>follow [2] 35/14 55/5</p> <p>followed [1] 44/22</p> <p>following [5] 7/21 12/15 19/9 43/6 58/20</p> <p>follows [1] 32/2</p> <p>foothills [1] 29/11</p> <p>force [13] 26/13 26/15 27/12 33/21 34/20 35/7 35/10 35/19 35/21 37/4 37/7 42/1 43/12</p> <p>forces [1] 28/13</p> <p>forcibly [4] 32/19 50/1 55/24 56/4</p> <p>foregoing [1] 61/3</p> <p>forgot [1] 58/6</p> <p>form [2] 52/16 52/18</p> <p>formal [1] 7/17</p> <p>former [1] 26/23</p> <p>forth [2] 46/10 46/13</p> <p>forthcoming [1] 47/19</p> <p>forward [4] 10/23 18/7 44/8 54/22</p> <p>forward-looking [1] 44/8</p> <p>found [2] 48/17 50/7</p> <p>fountain [3] 23/24 24/3 24/12</p> <p>Fourth [1] 1/14</p> <p>frank [1] 29/17</p> <p>frankly [2] 39/3 40/7</p> <p>free [2] 15/21 58/3</p> <p>freely [1] 28/3</p> <p>friending [1] 30/15</p> <p>friends [1] 30/15</p> <p>front [4] 17/21 23/25 24/3 24/15</p> <p>full [1] 45/20</p> <p>fully [1] 25/14</p> <p>fulsome [1] 47/18</p> <p>further [4] 22/10 27/11 48/18 50/3</p> <p>future [1] 15/10</p>	<p>go ahead [4] 37/12 42/21 54/13 54/16</p> <p>goal [5] 17/16 33/1 33/18 43/8 43/13</p> <p>goes [2] 44/6 45/9</p> <p>going [24] 7/13 10/23 11/14 11/21 12/7 15/11 24/6 24/11 30/9 30/16 31/5 31/20 39/15 39/16 39/18 46/18 48/11 51/10 51/11 51/20 51/22 54/15 57/9 57/20</p> <p>gone [3] 6/9 40/16 46/16</p> <p>good [5] 4/2 4/4 5/8 5/11 60/2</p> <p>GoPro [1] 36/18</p> <p>got [8] 15/21 17/24 18/3 26/18 26/24 38/14 58/22 59/19</p> <p>govern [1] 9/4</p> <p>government [46] 1/13 4/19 8/2 8/21 9/21 9/23 12/18 12/24 12/25 14/16 14/18 14/21 19/8 20/10 21/10 21/14 21/18 23/15 23/20 24/16 25/20 28/23 29/6 30/18 31/6 31/18 32/16 33/19 35/22 37/24 43/9 43/22 44/10 45/14 46/9 46/14 47/13 48/14 54/6 55/20 55/23 57/5 57/10 57/22 58/3 59/10</p> <p>government's [18] 11/15 12/17 23/7 24/11 24/22 25/7 32/14 33/4 34/1 34/2 34/15 35/4 37/16 38/15 42/24 45/11 48/12 57/16</p> <p>Governor [1] 2/3</p> <p>GPS [1] 51/13</p> <p>grand [1] 50/7</p> <p>great [2] 37/16 51/7</p> <p>grenades [1] 24/8</p> <p>ground [1] 23/6</p> <p>grounds [2] 8/5 12/12</p> <p>group [13] 23/8 31/23 33/19 33/20 34/12 35/1 35/11 36/22 38/10 41/25 43/4 44/17 45/13</p> <p>groups [4] 18/3 34/11 42/4 42/9</p> <p>guess [6] 22/12 28/8 39/23 43/25 47/7 58/19</p> <p>guilty [4] 8/8 8/9 8/11 8/14</p> <p>gun [1] 35/13</p> <p>guns [3] 26/17 27/8 29/4</p>
<p>E</p> <p>each [5] 6/14 8/14 16/24 32/18 49/25</p> <p>earlier [2] 31/7 41/20</p> <p>early [2] 13/2 50/4</p> <p>easily [1] 35/17</p> <p>east [1] 36/17</p> <p>echoing [2] 6/9 55/10</p> <p>Edward [1] 4/15</p> <p>effect [3] 33/6 33/8 34/25</p> <p>effectuate [3] 35/7 37/5 43/13</p> <p>efforts [1] 10/14</p> <p>eight [1] 38/10</p> <p>either [3] 35/19 51/18 58/7</p> <p>election [3] 23/18 24/20 49/19</p> <p>Electoral [4] 31/20 42/2 43/11 49/22</p> <p>electronic [2] 51/13 51/16</p> <p>electronic-communication [1] 51/16</p> <p>else [9] 15/23 16/2 17/13 17/13 18/16 21/7 56/20 57/2 59/9</p> <p>elsewhere [1] 44/13</p> <p>email [6] 1/16 2/5 2/15 2/19 2/24 54/21</p> <p>emotionally [1] 51/6</p> <p>Empire [1] 2/4</p> <p>encouragement [2] 32/10 32/11</p> <p>encrypted [2] 51/18 51/18</p> <p>end [4] 9/18 37/16 46/11 50/24</p> <p>enforcement [3] 40/14 40/16 43/5</p> <p>engage [3] 28/11 28/17 31/14</p> <p>engaged [2] 26/9 32/2</p> <p>enough [2] 46/18 58/21</p> <p>ensure [1] 52/23</p> <p>entailed [1] 26/15</p> <p>enter [17] 12/23 26/7 26/18 28/4 32/13 32/19 32/24 38/11 38/24 39/4 50/1 50/13 50/15 50/16 53/1 56/14 56/17</p> <p>entered [4] 8/11 8/14 32/12 38/15</p>	<p>entire [1] 51/15</p> <p>extent [1] 56/16</p>	<p>G</p> <p>gas [1] 24/8</p> <p>gathered [2] 10/21 39/2</p> <p>gathering [1] 10/8</p> <p>gave [6] 27/19 30/19 45/23 46/8 46/8 48/6</p> <p>get [17] 11/5 11/6 12/19 13/2 17/16 18/1 18/6 18/11 20/23 25/14 35/19 39/5 39/24 40/21 54/3 54/4 54/5</p> <p>getting [2] 36/16 54/23</p> <p>give [6] 17/5 29/7 47/12 47/23 48/23 55/5</p> <p>given [5] 47/3 53/14 53/20 53/22 57/15</p> <p>Glen [1] 2/4</p> <p>gmail.com [1] 2/19</p> <p>go [18] 6/14 21/22 22/13 23/13 25/22 29/1 36/4 37/12 40/14 40/23 40/25 41/1 42/21 46/22 46/25 47/15 54/13</p>	<p>H</p> <p>had [26] 4/10 9/22 11/11 11/14 11/16 13/9 18/24 23/11 25/22 26/11 27/2 29/19 36/8 37/14 43/8 44/2 44/25</p>	

H	Highway [1] 23	Hill [2] 33/10 33/11	I'm sure [2] 17/1 17/1	Interests [2] 17/1 17/1
<p>had... [9] 46/1 46/4 46/6 47/3 47/4 49/19 53/3 53/18 55/17</p> <p>hand [1] 13/1</p> <p>hands [3] 11/2 26/24 43/21</p> <p>hang [1] 30/8</p> <p>happen [5] 27/20 30/7 43/24 48/4 48/9</p> <p>happened [5] 24/24 27/6 32/15 34/11 35/3</p> <p>happy [1] 22/9</p> <p>has [35] 7/16 8/14 9/21 14/16 16/14 18/19 21/2 22/7 23/3 23/6 27/18 29/4 29/7 29/18 29/18 30/21 30/22 32/1 32/16 33/19 35/25 36/22 36/24 40/18 44/15 46/9 46/10 46/16 50/5 53/9 53/14 53/24 54/11 58/16 59/5</p> <p>hasn't [1] 26/20</p> <p>hatched [1] 25/24</p> <p>have [87]</p> <p>haven't [4] 9/22 23/25 29/21 48/5</p> <p>having [6] 25/18 26/16 28/5 28/25 35/16 35/21</p> <p>he [102]</p> <p>he didn't [1] 26/7</p> <p>he said [2] 33/7 47/14</p> <p>he's [17] 26/24 28/5 28/10 36/5 36/13 36/16 38/13 46/17 46/18 48/7 50/3 51/5 53/8 56/12 56/13 58/15 58/22</p> <p>head [1] 48/21</p> <p>headsets [1] 4/10</p> <p>health [2] 51/4 53/10</p> <p>hear [19] 4/3 4/7 4/9 4/10 5/12 5/13 6/14 6/15 6/16 6/23 19/2 19/6 22/9 31/4 38/1 54/17 55/10 55/11 58/14</p> <p>heard [2] 37/20 37/20</p> <p>hearing [12] 5/7 7/4 9/9 14/17 15/13 20/21 21/15 26/7 28/9 38/5 54/11 61/5</p> <p>hearing's [1] 47/1</p> <p>heavy [1] 26/18</p> <p>held [4] 11/20 29/14 29/14 53/9</p> <p>help [5] 39/19 39/20 39/25 40/14 40/16</p> <p>her [6] 18/7 29/8 39/6 48/3 54/18 54/21</p> <p>here [18] 4/6 7/3 16/2 18/10 21/19 31/5 35/13 38/14 40/5 40/25 41/7 41/17 46/11 50/20 51/1 52/11 53/6 56/18</p> <p>here's [1] 27/21</p> <p>highlight [1] 56/7</p> <p>highlighting [1] 6/2</p>	<p>Hill [2] 33/10 33/11</p> <p>him [26] 15/14 19/18 23/1 23/2 26/11 28/17 28/17 41/3 41/15 45/6 45/7 45/24 45/25 46/2 46/18 46/22 49/19 50/14 51/4 51/7 51/17 51/17 52/25 53/25 54/1 58/1</p> <p>himself [3] 32/12 36/14 36/16</p> <p>hinder [2] 32/20 50/2</p> <p>hint [1] 52/5</p> <p>hired [1] 19/15</p> <p>his [39] 6/5 15/9 21/14 22/6 22/20 22/23 22/23 23/23 25/6 25/9 26/8 26/19 26/24 31/12 32/9 36/3 36/21 46/1 46/6 47/5 47/6 47/18 47/23 47/23 48/1 48/2 48/6 48/6 48/12 49/5 51/8 51/8 53/6 53/7 53/10 54/5 56/24 56/24 59/3</p> <p>hit [1] 9/17</p> <p>hold [1] 56/19</p> <p>holding [2] 17/10 37/16</p> <p>home [4] 29/14 47/6 51/12 59/3</p> <p>honest [1] 29/19</p> <p>Honor [93]</p> <p>HONORABLE [1] 1/10</p> <p>hope [2] 9/8 11/4</p> <p>hopeful [2] 9/5 17/20</p> <p>hopefully [1] 54/4</p> <p>hoping [1] 42/25</p> <p>hotmail.com [1] 2/6</p> <p>hounding [1] 46/5</p> <p>hour [3] 30/19 45/23 51/12</p> <p>house [3] 29/5 58/17 59/1</p> <p>housekeeping [1] 58/13</p> <p>how [18] 8/7 12/6 17/22 17/24 25/9 25/20 28/9 28/16 28/16 34/13 36/5 40/2 42/1 46/5 46/6 56/8 56/19 57/11</p> <p>however [2] 42/6 59/2</p> <p>huge [2] 29/2 29/2</p> <p>hundred [3] 23/12 24/2 24/13</p>	<p>I did [4] 46/25 47/2 48/4 48/20</p> <p>I don't [8] 25/21 39/24 40/24 46/25 47/10 48/19 48/20 49/4</p> <p>I don't think [6] 10/1 37/20 47/3 47/4 47/14 58/20</p> <p>I expect [1] 15/9</p> <p>I guess [6] 22/12 28/8 39/23 43/25 47/7 58/19</p> <p>I have [5] 25/23 28/2 29/17 47/24 48/3</p> <p>I haven't [2] 9/22 29/21</p> <p>I hope [2] 9/8 11/4</p> <p>I just [4] 40/2 40/25 48/5 48/8</p> <p>I know [8] 9/21 18/12 18/18 25/12 29/23 47/7 48/1 58/16</p> <p>I mean [10] 17/16 26/4 26/19 28/2 32/1 32/16 33/23 40/2 40/4 41/2</p> <p>I ordered [1] 14/17</p> <p>I should [2] 7/4 16/7</p> <p>I think [34] 5/22 11/12 11/13 11/20 14/15 14/19 14/23 21/13 25/23 26/6 34/5 34/14 35/22 37/24 38/3 38/4 39/11 40/17 40/24 41/10 43/3 44/16 44/18 45/3 47/12 48/13 50/5 51/1 53/17 53/23 57/10 58/1 58/18 59/20</p> <p>I understand [10] 24/22 25/13 30/8 30/23 40/10 40/17 48/16 52/9 54/11 59/24</p> <p>I want [1] 22/17</p> <p>I was [8] 13/6 32/2 39/5 41/7 47/3 47/4 48/11 58/20</p> <p>I went [2] 27/2 32/17</p> <p>I will [3] 13/21 53/25 58/6</p> <p>I'd [1] 23/19</p> <p>I'll [17] 6/14 7/12 7/13 11/23 12/25 15/2 16/24 17/11 20/22 46/11 48/24 52/16 52/17 53/5 54/21 54/22 55/5</p> <p>I'm [30] 5/3 5/19 5/20 6/15 9/9 9/10 11/22 14/1 14/13 15/3 15/3 17/20 17/25 22/9 23/25 30/9 40/25 42/22 47/14 47/15 47/16 47/16 48/4 48/9 50/8 50/20 54/22 57/9 57/20 59/20</p> <p>I'm just [1] 47/16</p> <p>I'm not [8] 23/25 40/25 47/15 47/16 48/4 48/9 57/9 57/20</p> <p>I'm not sure [1] 17/25</p> <p>I'm sorry [4] 5/3 14/13 15/3 42/22</p>	<p>I've [12] 22/9 23/11 29/19 37/14 46/12 51/4 53/9 54/1 57/24 58/1 58/4 59/19</p> <p>idea [2] 12/6 27/19</p> <p>ideas [1] 49/20</p> <p>Illinois [1] 39/19</p> <p>impetus [1] 36/6</p> <p>important [2] 27/10 37/1</p> <p>incarcerated [1] 46/17</p> <p>incitement [1] 39/2</p> <p>include [1] 59/4</p> <p>included [2] 52/13 57/1</p> <p>includes [1] 51/24</p> <p>incorporate [1] 53/5</p> <p>incorrectly [2] 57/24 58/5</p> <p>incursion [1] 41/8</p> <p>Indiana [1] 2/9</p> <p>indicate [1] 36/2</p> <p>indicated [3] 11/14 14/16 23/5</p> <p>indicates [2] 24/4 25/21</p> <p>indication [1] 23/17</p> <p>indications [1] 35/1</p> <p>indictment [7] 7/16 7/18 31/17 32/17 33/3 33/16 56/2</p> <p>indirectly [1] 58/8</p> <p>individual [2] 19/19 19/21</p> <p>individually [2] 20/24 47/22</p> <p>individuals [3] 36/17 39/15 42/16</p> <p>indulgence [1] 33/10</p> <p>inescapable [2] 49/13 49/14</p> <p>infer [1] 48/11</p> <p>information [5] 15/12 15/22 18/13 45/24 48/18</p> <p>initial [1] 15/13</p> <p>injuries [1] 23/4</p> <p>innocent [2] 29/20 46/13</p> <p>inquiring [1] 41/21</p> <p>inquiry [2] 20/9 48/13</p> <p>inside [1] 45/7</p> <p>insofar [1] 17/22</p> <p>instance [5] 30/18 30/20 30/21 35/12 35/23</p> <p>instant [1] 25/18</p> <p>institute [1] 42/11</p> <p>Insurrection [1] 42/8</p> <p>intend [2] 11/17 14/19</p> <p>intended [1] 30/6</p> <p>intent [3] 33/5 35/5 36/4</p> <p>interactions [2] 23/1 23/16</p> <p>interest [2] 19/14 19/18</p>	<p>Internet [1] 29/9</p> <p>interrupt [1] 26/2</p> <p>interstate [1] 59/5</p> <p>interview [5] 30/19 45/23 47/4 47/12 53/15</p> <p>intricately [1] 26/9</p> <p>invade [4] 23/18 24/19 37/19 38/2</p> <p>investigation [6] 10/8 10/9 10/18 10/21 34/6 43/1</p> <p>invited [1] 40/1</p> <p>invoke [1] 42/7</p> <p>involved [8] 26/16 28/7 32/23 37/7 38/18 38/18 41/5 48/5</p> <p>involves [2] 44/7 50/22</p> <p>iota [1] 46/10</p> <p>is [169]</p> <p>is there [5] 15/23 17/13 18/15 21/7 32/22</p> <p>issue [8] 18/19 19/25 21/2 25/15 40/17 47/13 47/17 55/22</p> <p>issued [1] 17/8</p> <p>issues [5] 6/8 16/3 22/20 24/24 51/8</p> <p>it [65]</p> <p>It is [1] 30/1</p> <p>it's [30] 5/22 6/2 9/10 10/23 12/7 13/10 13/10 13/14 21/24 22/7 22/21 23/22 24/2 24/25 27/5 27/5 27/5 37/22 38/21 40/4 40/10 42/15 45/2 45/20 49/19 51/6 51/11 54/24 55/1 55/10</p> <p>its [5] 12/18 23/20 35/23 46/9 55/23</p> <p>itself [3] 32/12 33/20 57/5</p>
J				
<p>jail [3] 22/24 23/1 59/23</p> <p>January [23] 23/10 23/13 23/14 24/24 25/16 26/10 30/5 31/14 31/21 32/3 32/10 32/20 32/24 33/9 34/2 34/3 37/18 38/24 39/12 44/2 46/17 50/1 50/4</p> <p>JC [4] 4/8 9/11 13/4 19/5</p> <p>Jessica [2] 2/7 4/15</p> <p>Jessica Marie [1] 4/15</p> <p>job [1] 37/16</p> <p>John [3] 2/16 2/17 4/22</p> <p>JohnMachado [1] 2/19</p> <p>joined [1] 37/2</p> <p>JUDGE [6] 1/11 12/2 13/22 15/8 17/8 21/1</p> <p>Judge Cooper [1] 13/22</p> <p>jurisdiction [1] 18/8</p> <p>jury [2] 13/21 50/7</p> <p>just [41] 6/13 7/7 7/12</p>				

J
just... [38] 7/13 8/19
 12/13 12/25 17/15
 17/23 19/8 20/14 23/3
 26/4 27/5 27/25 29/17
 31/8 34/25 35/2 36/1
 37/21 39/23 40/2 40/6
 40/7 40/25 42/20 46/1
 47/16 48/5 48/8 48/23
 51/1 51/5 52/20 55/21
 56/7 57/4 58/12 58/12
 59/13
justice [2] 10/10 17/1
justify [1] 59/21

K
Kate [1] 55/15
Kathryn [2] 1/13 4/18
kathryn.rakoczy [1]
 1/16
keep [3] 18/12 28/22
 29/10
Keepers [13] 23/9
 23/16 25/13 25/16
 25/22 33/17 39/10
 39/14 39/25 42/10
 42/15 43/19 51/24
Kelly [8] 2/21 4/17 4/25
 5/6 12/3 14/16 18/18
 34/23
Kelly Meggs [1] 4/25
Kentucky [1] 39/18
kettle [1] 33/12
kind [8] 19/12 27/12
 28/11 28/17 40/18
 44/11 51/16 52/13
knew [2] 37/3 46/3
know [43] 9/21 11/11
 14/13 17/15 18/3 18/4
 18/12 18/18 19/4 19/11
 25/12 25/22 25/25 26/6
 26/13 27/24 28/14
 28/15 28/15 29/23
 33/21 38/10 38/23 41/4
 43/2 43/17 44/14 46/4
 47/7 48/1 48/8 49/5
 49/9 49/13 52/2 52/20
 53/5 53/14 56/16 57/17
 57/25 58/4 58/16
known [3] 32/19 47/1
 49/25

L
labeled [1] 22/8
lack [1] 53/23
language [2] 56/2 56/5
large [1] 38/6
larger [1] 10/9
last [10] 16/1 26/7 28/3
 28/9 41/7 46/25 47/8
 48/13 53/5 53/6
lasted [1] 50/4
law [14] 2/17 2/22
 27/14 27/14 27/16
 27/16 27/17 29/21
 35/14 40/14 40/16
 42/11 43/5 59/20
laws [1] 35/13

lawyer [7] 19/11 19/20
 19/15 19/17 19/20
 19/22 20/23
lawyers [2] 15/6 19/15
lead [3] 44/12 49/23
 49/23
leader [3] 33/16 42/14
 43/19
leaders [2] 23/16 23/17
leadership [3] 43/7
 43/16 43/18
learning [1] 43/3
least [11] 11/13 23/12
 24/2 24/13 32/5 32/5
 32/7 45/12 50/12 50/17
 53/2

leave [1] 58/15
leaving [1] 59/3
led [1] 26/10
legal [2] 28/24 28/25
Leigh [1] 1/13
length [2] 9/24 12/6
lesson [1] 46/18
let [21] 6/13 14/12 16/9
 18/2 18/4 19/25 20/18
 26/4 27/21 31/4 31/24
 33/8 33/9 33/10 33/25
 49/4 56/11 57/11 57/25
 58/4 58/19
let's [7] 7/6 8/16 12/15
 41/1 41/2 50/17 51/1
letter [1] 35/14
level [3] 9/1 40/21
 42/11
liability [1] 46/16
liberty [2] 53/21 53/21
lie [1] 45/5
lied [4] 30/18 30/20
 46/10 47/16
lieutenant [1] 26/23
light [5] 52/21 53/13
 53/14 53/19 53/24
like [11] 22/22 22/23
 23/12 24/2 24/13 34/11
 34/22 35/18 37/21 42/4
 42/10
likely [1] 11/14
limitations [1] 61/7
limits [1] 52/2
line [16] 6/5 6/7 19/5
 21/21 26/5 27/24 30/10
 34/14 38/10 46/11
 47/15 47/15 54/20 55/7
 55/10 55/12
lines [1] 5/15
listened [1] 38/5
listening [1] 30/10
litigator [1] 37/15
little [3] 9/9 10/24 28/1
live [3] 29/10 29/11
 36/16
Lives [2] 42/3 49/9
LLP [1] 2/13
local [1] 39/25
location [1] 26/13
log [1] 21/13
long [3] 12/6 36/15
 54/11

look [7] 9/22 20/18
 27/2 41/2 41/4 46/25
 57/20
looked [2] 24/1 39/14
looking [3] 44/5 44/8
 54/22
looks [2] 23/12 24/2
lose [1] 54/18
lost [2] 19/4 55/18
lot [5] 24/6 26/24 40/21
 43/4 44/16
Louisville [1] 39/17
love [2] 40/13 40/13
lower [1] 22/23
lying [1] 45/19

M
Machado [4] 2/16 2/17
 4/22 14/1
made [2] 17/19 43/4
mail [1] 52/1
main [1] 35/23
major [1] 25/3
make [9] 6/13 10/14
 20/9 20/24 35/18 50/20
 54/6 54/10 59/22
making [5] 10/14 28/12
 33/20 35/9 37/7
man [13] 23/1 27/19
 29/18 29/20 30/14
 30/18 30/20 30/21
 30/24 30/25 46/10
 46/13 46/16
management [1] 22/22
manner [1] 56/5
many [4] 25/5 25/6
 36/23 36/23
march [3] 1/5 32/11
 61/10
Marie [1] 4/15
marshals [2] 18/7
 18/12
Martial [1] 42/11
materials [8] 9/2 9/4
 10/7 10/11 10/15 10/22
 10/25 11/6
matter [6] 9/6 10/13
 31/12 42/3 49/9 61/4
matters [3] 13/12
 43/21 58/13
may [18] 7/15 10/20
 13/13 15/9 15/13 22/16
 28/13 34/18 37/13
 38/13 41/19 44/2 45/17
 47/1 54/6 54/20 55/10
 57/5
maybe [4] 11/12 20/18
 34/3 54/15
MD [1] 2/4
me [43] 4/3 4/7 5/12
 5/13 6/13 6/14 6/16
 8/18 8/18 12/19 14/12
 16/9 17/21 18/25 19/2
 19/25 20/18 26/4 26/8
 26/20 27/21 28/8 31/4
 31/24 33/25 37/15
 38/17 38/20 40/7 44/7

meet [2] 18/1 57/14
meeting [1] 45/7
meetings [1] 23/9
Meggs [39] 2/21 4/17
 4/25 5/6 5/11 5/12 5/13
 6/4 6/6 6/25 7/8 7/12
 8/14 12/3 12/3 12/21
 14/12 14/16 14/25 15/1
 15/2 15/8 16/12 17/18
 18/6 18/18 18/18 19/2
 19/3 19/4 19/8 19/19
 19/24 20/10 20/14 21/3
 21/9 34/23 42/17
Meggs' [2] 7/11 8/20
Meggs,in [1] 7/20
MEHTA [1] 1/10
member [2] 25/13
 36/23
members [3] 43/5
 44/17 56/6
membership [1] 23/17
memorandum [1]
 23/20
mention [1] 41/20
mentioned [2] 41/24
 56/5
merely [1] 35/15
Merit [1] 3/2
message [1] 44/24
messages [9] 23/12
 25/6 34/22 36/1 36/14
 36/15 39/13 39/15
 50/14
Michelle [2] 2/7 4/21
microphone [1] 6/1
might [16] 20/11 20/16
 33/22 34/9 34/11 34/12
 34/14 42/1 42/4 42/7
 43/14 44/3 44/11 47/16
 47/17 47/17
military [3] 43/5 49/16
 53/8
military-style [1] 49/16
militia [1] 42/9
million [1] 33/11
mind [4] 28/22 29/10
 33/13 38/21
mindful [2] 10/11 43/1
mine [1] 26/19
minimum [1] 56/12
Minute [1] 12/23
minutes [2] 25/24
 37/25

mirror [2] 44/10 44/15
mistake [1] 59/22
mistaken [1] 25/4
moment [2] 20/1 49/4
Monday [1] 57/8
monitor [3] 28/16
 28/16 52/3
monitoring [1] 51/13
month [2] 24/17 38/4
more [11] 10/17 10/21
 11/22 24/3 24/14 33/11
 35/2 36/9 44/12 48/13
 50/24
most [3] 29/19 33/7
 37/1
motion [13] 9/22 10/3
 11/8 11/15 11/17 12/17
 12/18 14/15 14/18
 14/24 15/25 22/7 38/22
motions [2] 15/5 15/20
Mountains [1] 29/12
move [1] 15/14
moving [1] 18/7
Mr [3] 9/14 20/22 22/13
Mr. [114]
Mr. and [2] 12/21 21/3
Mr. Bennie [1] 13/20
Mr. Brennwald [2]
 14/7 16/20
Mr. Caldwell [62]
Mr. Caldwell's [8]
 15/25 21/15 33/6 33/13
 35/8 51/4 52/4 57/16
Mr. Crowl [1] 46/1
Mr. Douyon [2] 52/11
 54/3
Mr. Fischer [6] 14/13
 14/14 26/2 27/21 36/11
 43/4
Mr. Kelly [1] 18/18
Mr. Machado [1] 14/1
Mr. Meggs [17] 5/13
 6/4 6/6 6/25 7/8 7/12
 8/14 14/12 15/8 19/2
 19/3 19/4 19/8 19/19
 19/24 20/10 42/17
Mr. Meggs' [2] 7/11
 8/20
Mr. Meggs,in [1] 7/20
Mr. Nestler [2] 10/19
 18/19
Mr. Parker [1] 5/10
Mr. Wilson [5] 5/17
 14/13 14/15 18/20 20/1
Mrs. [1] 29/4
Mrs. Caldwell [1] 29/4
Ms [1] 54/17
Ms. [45] 5/10 5/10 5/11
 5/12 6/19 6/22 9/21
 11/18 11/20 12/21
 13/18 14/25 15/17 16/5
 16/12 16/14 17/18
 17/18 18/6 18/18 20/10
 21/3 21/20 31/4 31/24
 37/14 37/25 38/5 39/6
 42/17 42/21 43/25 45/6
 45/8 45/19 45/19 45/25
 46/24 54/12 54/16

mirror [2] 44/10 44/15
mistake [1] 59/22
mistaken [1] 25/4
moment [2] 20/1 49/4
Monday [1] 57/8
monitor [3] 28/16
 28/16 52/3
monitoring [1] 51/13
month [2] 24/17 38/4
more [11] 10/17 10/21
 11/22 24/3 24/14 33/11
 35/2 36/9 44/12 48/13
 50/24
most [3] 29/19 33/7
 37/1
motion [13] 9/22 10/3
 11/8 11/15 11/17 12/17
 12/18 14/15 14/18
 14/24 15/25 22/7 38/22
motions [2] 15/5 15/20
Mountains [1] 29/12
move [1] 15/14
moving [1] 18/7
Mr [3] 9/14 20/22 22/13
Mr. [114]
Mr. and [2] 12/21 21/3
Mr. Bennie [1] 13/20
Mr. Brennwald [2]
 14/7 16/20
Mr. Caldwell [62]
Mr. Caldwell's [8]
 15/25 21/15 33/6 33/13
 35/8 51/4 52/4 57/16
Mr. Crowl [1] 46/1
Mr. Douyon [2] 52/11
 54/3
Mr. Fischer [6] 14/13
 14/14 26/2 27/21 36/11
 43/4
Mr. Kelly [1] 18/18
Mr. Machado [1] 14/1
Mr. Meggs [17] 5/13
 6/4 6/6 6/25 7/8 7/12
 8/14 14/12 15/8 19/2
 19/3 19/4 19/8 19/19
 19/24 20/10 42/17
Mr. Meggs' [2] 7/11
 8/20
Mr. Meggs,in [1] 7/20
Mr. Nestler [2] 10/19
 18/19
Mr. Parker [1] 5/10
Mr. Wilson [5] 5/17
 14/13 14/15 18/20 20/1
Mrs. [1] 29/4
Mrs. Caldwell [1] 29/4
Ms [1] 54/17
Ms. [45] 5/10 5/10 5/11
 5/12 6/19 6/22 9/21
 11/18 11/20 12/21
 13/18 14/25 15/17 16/5
 16/12 16/14 17/18
 17/18 18/6 18/18 20/10
 21/3 21/20 31/4 31/24
 37/14 37/25 38/5 39/6
 42/17 42/21 43/25 45/6
 45/8 45/19 45/19 45/25
 46/24 54/12 54/16

Case 1:21-cr-00028-APM Document 79 Filed 03/15/21 Page 68 of 72				
<p>M</p> <p>Ms.... [5] 54/19 55/5 55/16 56/10 57/11</p> <p>Ms. Connie [3] 14/25 18/6 18/18</p> <p>Ms. Meggs [6] 5/11 5/12 12/21 16/12 17/18 21/3</p> <p>Ms. Parker [3] 5/10 6/19 11/20</p> <p>Ms. Rakoczy [19] 9/21 20/10 21/20 31/4 31/24 37/14 37/25 39/6 42/21 43/25 45/19 46/24 54/12 54/16 54/19 55/5 55/16 56/10 57/11</p> <p>Ms. Sandra [2] 11/18 16/5</p> <p>Ms. Steel [1] 17/18</p> <p>Ms. Watkins [11] 5/10 6/22 13/18 15/17 16/14 38/5 42/17 45/6 45/8 45/19 45/25</p> <p>much [5] 35/15 36/20 36/22 41/24 60/2</p> <p>must [1] 58/7</p> <p>mute [8] 4/8 5/14 5/15 6/7 9/14 9/16 27/24 55/11</p> <p>muted [4] 9/11 9/12 13/6 54/20</p> <p>muters [1] 6/5</p> <p>my [27] 5/19 5/19 5/20 5/24 5/25 17/16 18/18 21/22 22/8 22/20 22/25 25/17 25/21 25/23 25/25 26/5 27/21 38/21 40/10 40/15 41/14 46/13 47/20 48/20 53/11 59/16 59/23</p> <hr/> <p>N</p> <p>names [1] 15/3</p> <p>narrow [1] 46/19</p> <p>national [1] 23/16</p> <p>nature [1] 25/3</p> <p>Navy [2] 26/24 31/1</p> <p>near [2] 15/10 29/12</p> <p>necessarily [6] 20/12 35/13 41/14 43/14 44/15 56/19</p> <p>necessary [4] 14/8 31/22 34/8 37/8</p> <p>neck [1] 22/23</p> <p>need [6] 7/5 13/13 15/23 34/12 41/16 52/11</p> <p>needed [2] 33/22 34/16</p> <p>needs [2] 7/8 58/24</p> <p>neglected [1] 41/20</p> <p>Nestler [2] 10/19 18/19</p> <p>never [3] 27/2 30/2 37/14</p> <p>Nevertheless [1] 50/9</p> <p>new [2] 22/6 44/9</p> <p>news [1] 27/5</p> <p>next [12] 8/23 9/5 13/2 13/3 14/10 14/20 16/6</p>	<p>20/21 48/11</p> <p>nine [2] 32/18 34/3</p> <p>no [33] 1/4 4/5 4/13 4/14 4/15 4/16 4/16 4/17 7/7 7/20 11/23 12/6 16/4 16/14 16/18 18/11 20/7 22/17 23/15 24/20 30/5 38/14 41/4 48/10 49/14 50/13 51/15 51/22 53/2 53/2 53/8 55/16 59/22</p> <p>non [1] 51/18</p> <p>non-encrypted [1] 51/18</p> <p>none [1] 48/16</p> <p>norm [1] 53/22</p> <p>not [100]</p> <p>note [5] 36/11 44/24 52/1 55/9 61/5</p> <p>noted [1] 10/19</p> <p>nothing [2] 43/19 46/20</p> <p>Notice [2] 57/10 58/3</p> <p>noticing [1] 57/12</p> <p>notion [4] 40/5 41/10 42/7 44/1</p> <p>November [2] 24/18 50/4</p> <p>now [19] 4/9 4/10 6/9 11/1 13/14 16/6 16/15 19/1 21/24 34/6 34/7 38/12 44/6 44/7 51/5 52/2 52/7 52/21 53/14</p> <p>number [7] 24/25 24/25 29/2 29/3 30/20 38/14 45/18</p> <p>nuts [1] 54/24</p> <p>NW [4] 1/14 2/9 2/17 3/4</p> <hr/> <p>O</p> <p>Oath [13] 23/9 23/16 25/13 25/16 25/22 33/17 39/10 39/14 39/24 42/10 42/14 43/19 51/24</p> <p>Obama [1] 27/2</p> <p>obey [5] 27/13 27/14 27/16 27/16 27/16</p> <p>obfuscated [1] 35/16</p> <p>object [4] 11/14 12/4 12/7 12/12</p> <p>objection [2] 16/15 16/18</p> <p>observed [1] 25/8</p> <p>obstruct [4] 35/5 37/3 55/25 56/3</p> <p>obstruction [2] 7/24 53/13</p> <p>obtaining [1] 10/8</p> <p>obviously [10] 10/7 15/20 23/4 25/21 30/4 30/4 34/6 44/15 46/12 57/22</p> <p>Ocala [1] 2/23</p> <p>occurred [2] 39/3 61/5</p> <p>occurring [2] 32/21</p>	<p>off [11] 5/20 5/22 5/24 6/1 6/3 13/10 13/11 21/13 30/13 48/20 55/1</p> <p>offenses [2] 25/4 41/18</p> <p>offer [1] 45/8</p> <p>offers [1] 45/5</p> <p>office [5] 1/13 2/17 2/22 10/9 10/10</p> <p>officer [1] 24/5</p> <p>official [2] 3/3 7/24</p> <p>okay [43] 6/9 6/10 6/11 6/18 7/2 7/10 9/7 9/13 9/20 11/10 12/9 12/14 12/22 13/3 13/8 13/23 14/3 14/12 15/2 15/18 15/23 16/19 16/22 18/4 18/9 18/14 20/8 20/17 21/6 22/1 22/2 22/5 31/3 48/22 49/1 52/7 52/19 55/8 55/13 56/25 57/19 58/11 59/23</p> <p>old [4] 27/19 30/11 51/4 53/8</p> <p>once [1] 15/21</p> <p>one [23] 18/22 20/15 24/25 26/13 29/2 30/18 30/19 30/21 34/13 37/20 38/22 41/16 41/19 41/24 42/15 43/14 45/18 46/10 46/24 48/13 52/23 58/6 58/16</p> <p>ongoing [2] 34/6 43/1</p> <p>online [2] 51/17 51/24</p> <p>only [4] 5/20 19/17 29/7 50/22</p> <p>open [1] 19/5</p> <p>opens [1] 12/5</p> <p>opinion [1] 46/13</p> <p>opportunity [4] 11/16 17/5 32/11 39/1</p> <p>oppose [1] 11/17</p> <p>opposite [1] 25/17</p> <p>options [1] 57/6</p> <p>order [21] 9/4 11/6 12/23 13/11 17/3 17/7 29/15 30/25 34/12 34/21 42/1 44/21 46/20 46/21 52/12 52/14 52/18 54/4 56/22 57/1 57/8</p> <p>ordered [3] 14/17 51/22 58/15</p> <p>ordering [1] 56/23</p> <p>orders [1] 31/2</p> <p>other [26] 7/5 10/12 11/12 11/22 13/12 15/5 16/1 16/2 19/15 20/9 21/13 25/15 27/22 28/2 28/9 28/12 30/11 30/12 32/12 32/18 42/4 49/25 51/3 53/4 54/14 55/21</p> <p>others [9] 8/19 32/19 33/17 34/4 49/16 49/24 49/25 56/14 56/18</p> <p>ought [6] 15/5 18/16 18/25 20/9 21/8 56/19</p>	<p>our [10] 14/10 16/15 20/21 30/4 34/20 36/15 44/24 57/3</p> <p>out [31] 11/5 11/7 13/2 17/16 17/23 18/2 22/17 22/20 23/19 23/24 25/11 27/8 29/5 29/10 30/3 31/5 35/21 37/22 37/22 40/16 44/4 45/20 47/21 49/10 52/16 52/16 54/2 55/21 56/18 58/17 59/1</p> <p>outside [3] 26/17 28/14 59/5</p> <p>outstanding [1] 17/18</p> <p>outweigh [1] 17/1</p> <p>over [3] 10/7 10/25 23/11</p> <p>overcome [1] 51/6</p> <p>overt [1] 56/6</p> <p>own [8] 19/20 24/11 25/6 25/7 33/6 33/13 43/21 49/10</p> <p>owns [1] 48/15</p> <hr/> <p>P</p> <p>P.A [1] 2/3</p> <p>p.m [3] 1/6 13/7 60/3</p> <p>pain [3] 22/22 22/22 51/7</p> <p>pain-management [1] 22/22</p> <p>pandemic [1] 61/6</p> <p>papers [5] 13/1 22/9 22/20 26/14 46/9</p> <p>paragraph [5] 32/17 32/17 49/24 55/22 56/1</p> <p>parameters [1] 9/3</p> <p>Parker [18] 2/12 2/16 4/16 4/17 4/22 4/23 5/4 5/4 5/10 5/10 6/19 11/18 11/20 11/24 13/20 14/4 16/5 16/21</p> <p>Parkers [2] 7/7 8/20</p> <p>part [13] 27/11 28/21 30/1 35/8 37/4 37/6 38/6 38/25 39/11 40/2 43/13 56/22 56/24</p> <p>participant [1] 49/16</p> <p>participants [1] 36/23</p> <p>participated [1] 49/6</p> <p>participating [1] 35/9</p> <p>particular [3] 37/6 48/7 53/1</p> <p>particularly [2] 44/23 48/7</p> <p>parts [1] 36/5</p> <p>passing [1] 51/25</p> <p>passive [1] 35/2</p> <p>passport [1] 56/24</p> <p>password [1] 48/6</p> <p>passwords [2] 47/23 53/16</p> <p>past [1] 23/13</p> <p>patient [1] 17/23</p> <p>patriots [1] 33/12</p> <p>Pause [1] 48/25</p> <p>peace [1] 23/24</p>	<p>peaceful [1] 44/16</p> <p>Pennsylvania [1] 2/13</p> <p>people [18] 11/22 17/24 24/9 26/25 27/8 27/9 28/12 30/9 30/12 32/10 32/12 34/3 38/10 38/12 39/4 39/10 52/4 53/4</p> <p>people's [1] 30/12</p> <p>perceived [2] 36/7 49/12</p> <p>percent [6] 23/4 46/8 46/23 47/13 47/18 57/13</p> <p>perhaps [2] 29/18 42/3</p> <p>period [1] 16/13</p> <p>permission [1] 58/17</p> <p>permitted [1] 59/1</p> <p>persist [1] 45/15</p> <p>persisting [1] 45/4</p> <p>person [1] 23/3</p> <p>personal [2] 53/7 53/7</p> <p>perspective [5] 34/15 35/4 40/18 40/18 45/11</p> <p>pertained [1] 23/9</p> <p>pertains [2] 15/24 17/14</p> <p>peterson [3] 2/7 2/11 4/21</p> <p>phone [7] 5/18 5/20 5/25 29/7 29/8 29/8 48/3</p> <p>pick [1] 30/11</p> <p>picking [1] 13/21</p> <p>picture [1] 24/17</p> <p>pictures [1] 24/1</p> <p>place [3] 11/6 38/13 46/1</p> <p>places [2] 17/25 48/8</p> <p>Plaintiff [1] 1/4</p> <p>plan [30] 23/17 24/21 25/22 25/23 25/24 31/19 31/21 32/24 33/14 33/22 34/3 34/20 35/7 35/16 37/2 37/4 37/6 38/1 38/6 38/7 38/10 38/23 38/25 39/12 41/8 41/22 42/8 43/14 56/17 56/18</p> <p>planned [6] 30/6 31/13 32/18 37/18 49/25 53/3</p> <p>planning [16] 26/9 26/10 26/12 26/16 28/7 28/23 28/23 29/1 32/2 32/7 36/25 38/19 41/5 49/6 50/12 53/3</p> <p>plans [4] 28/12 33/21 34/24 35/6</p> <p>platform [1] 18/1</p> <p>platforms [1] 27/15</p> <p>play [1] 7/14</p> <p>played [2] 44/3 44/4</p> <p>players [1] 36/23</p> <p>plea [1] 8/10</p> <p>plead [2] 8/7 8/8</p> <p>pleading [2] 36/16 44/24</p> <p>pleadings [2] 31/18</p>

P	Q	R	Record [7]	retired [1]
<p>pleadings... [1] 33/4 pleas [1] 8/13 please [10] 5/14 5/15 5/21 6/6 7/14 22/16 37/11 48/24 55/1 61/5 plot [1] 37/19 plotting [2] 24/18 25/5 point [24] 10/4 11/9 15/9 18/20 20/12 20/13 20/16 22/17 23/19 24/23 25/11 27/10 30/3 30/18 30/19 30/21 31/8 34/19 34/23 43/8 45/17 55/21 56/8 57/21 pointed [1] 22/20 points [1] 26/21 police [6] 24/7 36/7 39/19 39/20 39/25 40/13 political [2] 40/20 44/21 pose [1] 44/11 posited [1] 32/1 position [6] 11/22 11/23 11/25 34/1 34/2 57/16 possess [2] 58/7 58/9 possibilities [1] 41/25 possibility [5] 19/14 36/2 36/3 42/13 42/18 possible [4] 6/4 11/7 19/16 42/24 possibly [1] 24/14 post [2] 33/7 37/23 posting [1] 34/23 posture [1] 15/17 potential [7] 18/21 20/14 20/15 32/5 44/12 49/7 50/24 potentially [2] 13/25 26/17 power [2] 42/12 44/16 practically [1] 36/9 pre [3] 24/21 25/8 37/18 pre-plan [1] 24/21 pre-planned [1] 37/18 precise [2] 18/12 36/4 precisely [2] 10/24 33/21 preliminary [1] 9/1 preparation [9] 28/7 28/23 28/24 32/3 32/8 38/19 41/5 49/7 49/17 prepare [1] 17/6 prepared [13] 16/10 20/1 20/25 31/22 32/23 34/7 34/15 35/1 35/7 37/4 43/12 43/22 47/15 preparing [2] 29/1 42/18 present [5] 16/2 19/10 19/14 36/12 36/13 presented [6] 18/10 24/16 25/1 32/12 35/22 39/1 President [7] 34/9 42/5</p>	<p>49/18 press [1] 9/16 pressing [1] 11/22 presumably [1] 47/5 presumption [1] 53/21 pretrial [2] 52/16 53/22 Prettyman [1] 3/4 prevent [1] 28/17 previously [1] 53/18 prior [4] 37/18 41/22 53/8 53/23 probable [3] 50/6 50/18 50/19 probably [2] 39/22 58/20 Probation [1] 59/4 problem [1] 55/16 problematic [1] 44/21 problems [1] 51/7 proceed [3] 19/21 19/23 21/4 proceeding [4] 7/24 35/6 37/3 56/4 proceedings [7] 1/10 3/6 32/21 50/2 55/25 60/3 61/4 process [3] 12/6 33/2 34/10 produce [2] 9/24 10/22 produced [2] 3/7 24/20 producing [1] 10/2 production [2] 8/22 13/11 progresses [1] 10/21 project [1] 10/16 promise [1] 57/18 proof [2] 29/24 45/22 property [3] 8/2 28/5 48/2 proposed [1] 8/23 prosecutors [1] 10/6 prospect [1] 50/23 protect [1] 27/9 protected [1] 31/15 protection [1] 40/21 protective [2] 9/3 11/5 protesters [1] 28/25 protests [1] 28/24 provide [2] 23/2 53/16 provided [2] 9/2 11/3 providing [1] 9/6 prudent [1] 20/12 public [2] 2/8 17/1 public's [1] 30/9 pudding [1] 45/22 pull [1] 27/7 purposes [2] 20/12 58/18 pursuant [1] 54/1 put [16] 4/10 11/5 13/4 13/9 19/25 34/13 38/23 40/18 46/12 50/17 51/2 53/12 53/14 53/19 56/12 58/1 PUTZI [1] 2/3</p>	<p>question [11] 29/22 33/25 37/17 38/21 41/6 43/25 44/7 46/24 48/11 48/14 50/22 questioning [1] 50/8 questions [3] 22/12 28/19 47/7 quibble [1] 25/12 quick [5] 26/12 26/15 27/11 28/13 35/18 quickly [4] 11/7 13/2 54/11 59/23 quite [2] 11/1 13/10 quote [1] 37/21 quoted [1] 25/2</p> <p>raise [3] 16/2 17/14 57/15 raised [6] 18/19 19/9 31/7 38/22 41/9 53/18 Rakoczy [23] 1/13 4/18 9/21 20/10 21/20 31/4 31/24 37/14 37/25 39/6 42/21 43/25 45/19 46/24 54/12 54/16 54/17 54/19 55/5 55/15 55/16 56/10 57/11 rallies [1] 27/2 rally [1] 34/25 rank [1] 43/6 rationalization [1] 49/14 reach [1] 52/16 reaction [5] 26/12 26/15 27/11 28/13 35/18 read [4] 7/13 22/9 45/19 45/20 reading [1] 7/17 reads [1] 32/18 ready [4] 26/17 35/10 37/8 40/6 real [3] 26/11 26/25 42/13 reality [3] 27/3 29/13 30/14 really [3] 38/1 43/20 51/7 Realtime [1] 3/3 rear [2] 44/9 44/15 rear-view [2] 44/9 44/15 reason [4] 10/5 10/14 28/13 43/13 reasons [5] 17/11 18/13 44/17 53/20 59/3 rebutts [1] 41/10 recall [1] 14/21 received [1] 7/16 recently [2] 8/20 17/8 recognize [1] 52/2 recognized [1] 26/6 recommend [1] 27/12 recommending [1] 26/12 reconsider [1] 22/8</p>	<p>8/13 47/8 47/8 53/6 61/3 record's [1] 52/20 recorded [2] 3/6 25/9 recurrence [1] 44/12 reference [2] 37/21 39/17 referred [2] 42/7 43/18 refers [1] 56/17 reflect [2] 7/15 8/13 reflection [1] 59/15 Reform [1] 50/9 regards [1] 52/17 Registered [1] 3/2 relatively [1] 54/5 release [14] 15/14 50/21 51/10 52/12 52/13 53/8 53/25 54/4 56/22 56/24 57/1 57/7 58/10 59/21 released [2] 28/10 31/10 releases [1] 46/22 relevant [1] 10/12 remain [1] 58/24 remaining [1] 9/4 remember [1] 24/14 remotely [1] 61/7 renew [1] 15/20 reply [2] 12/24 12/25 Reporter [4] 3/2 3/2 3/3 3/3 reporting [1] 61/7 represent [2] 19/16 20/1 representation [2] 18/21 19/13 representations [1] 16/23 represented [1] 19/10 representing [2] 19/17 19/22 request [2] 22/8 57/3 requests [5] 10/3 54/7 54/10 54/10 55/18 require [1] 29/24 required [3] 50/9 50/20 51/20 researched [2] 29/21 39/13 resort [3] 31/9 42/1 42/4 respect [17] 8/25 14/12 14/24 15/8 15/17 18/5 18/17 26/5 31/7 41/18 43/8 43/23 44/23 50/10 50/18 52/25 55/23 respectfully [5] 26/21 28/21 37/10 39/9 40/9 response [2] 12/17 14/18 responses [2] 12/16 12/19 restricted [1] 8/5 restriction [1] 58/9 restrictive [1] 54/1 result [2] 10/23 17/10</p>	<p>26/24 review [2] 17/5 22/7 revisiting [1] 15/9 revolt [1] 34/13 right [37] 4/2 5/8 7/3 7/8 8/12 8/16 13/13 14/6 14/9 15/4 15/15 15/19 17/13 18/15 19/7 19/19 19/20 20/4 21/7 21/12 21/17 22/6 31/4 40/19 43/4 44/5 45/15 48/23 48/24 49/3 49/10 49/11 52/6 52/7 52/10 59/8 60/1 righteous [1] 45/10 righteousness [1] 45/13 rioting [1] 39/3 riots [1] 39/18 rise [1] 34/11 risk [1] 44/11 Ritchie [1] 2/3 river [1] 35/17 RMR [2] 61/2 61/11 road [2] 40/24 41/1 ROBERTSON [1] 2/13 role [2] 44/3 49/11 rolling [1] 10/23 routinely [1] 22/21 roving [1] 40/5 rub [1] 30/12 ruling [3] 55/20 55/23 57/6 run [1] 27/8 Ruth [1] 4/16</p> <p>S</p> <p>safety [3] 31/11 50/23 52/23 said [14] 11/3 14/14 28/6 28/8 33/7 36/18 43/19 45/19 47/14 49/21 51/24 53/5 53/6 53/24 same [10] 12/12 15/16 16/17 16/21 17/17 18/1 18/1 19/11 40/21 55/12 Sandra [7] 2/16 4/16 4/22 5/4 11/18 14/4 16/5 Sandra Parker [1] 5/4 saw [1] 8/20 say [17] 7/4 7/14 30/9 31/8 36/13 40/11 42/20 42/23 45/5 45/6 45/9 47/23 48/9 48/21 49/4 54/9 56/18 saying [15] 6/15 20/15 27/16 30/11 33/20 34/20 34/25 45/5 47/15 47/16 47/16 48/4 48/9 55/17 57/4 says [3] 28/22 36/14 36/16 schedule [1] 17/17 screen [1] 55/2 Screenplay [3] 37/9 41/11 41/13</p>

S	Significantly [2]	spectrum [1]	strikes [1]	than [6]
<p>SE [1] 2/13 search [6] 47/5 47/6 48/1 48/2 48/16 53/16 searches [1] 48/7 second [2] 48/23 56/22 secret [2] 23/9 53/9 section [5] 7/23 8/1 8/4 8/6 56/1 Sections [2] 8/1 8/4 security [1] 18/13 see [11] 11/8 13/11 15/11 15/19 20/23 21/18 35/2 43/7 43/15 43/24 47/17 seek [1] 11/8 seeking [1] 44/18 seem [1] 51/9 seems [4] 26/20 28/6 32/4 40/7 seen [1] 51/4 sees [1] 22/21 seized [1] 29/6 selfies [1] 30/16 send [1] 54/21 sending [1] 36/2 sense [5] 18/10 43/6 49/10 49/10 53/25 separate [1] 20/5 seriously [1] 57/11 seriousness [1] 59/16 serve [1] 15/13 Services [1] 52/17 set [8] 12/15 13/4 13/14 14/21 33/12 46/10 52/17 54/1 seven [1] 10/6 several [2] 9/5 45/12 sfbrennwald [1] 2/15 shall [1] 51/15 shares [1] 31/6 she [5] 29/4 29/7 29/7 37/15 37/25 she'll [2] 18/10 55/6 Shelli [1] 2/11 shifted [1] 23/6 shortly [2] 44/25 55/7 shot [1] 24/5 shots [1] 22/23 should [6] 7/4 16/7 19/12 35/11 44/21 54/15 shouldn't [1] 54/9 show [3] 25/7 33/13 33/17 showing [1] 55/1 shows [4] 24/11 36/22 40/7 41/3 side [3] 25/17 36/17 40/19 sides [1] 22/10 sign [1] 35/14 Signal [4] 23/7 23/8 25/19 43/17 signed [2] 21/3 54/4 significance [1] 26/14 significant [3] 11/3 23/4 25/10</p>	<p>45/20 similar [1] 44/13 simply [1] 23/2 since [3] 11/20 46/17 55/21 single [3] 19/13 19/21 48/5 sir [6] 5/13 6/16 6/23 7/14 20/2 22/4 sitting [2] 23/24 24/12 situated [1] 56/13 situation [6] 19/12 22/21 25/8 35/25 46/5 49/18 skim [1] 23/11 slightly [1] 53/12 small [3] 54/7 54/9 54/10 smaller [1] 18/3 smartphones [1] 51/15 so [78] so I think [3] 29/2 39/21 50/17 social [4] 25/9 27/15 39/13 39/15 social-media [3] 27/15 39/13 39/15 solely [2] 31/13 56/3 some [35] 7/4 8/17 9/1 11/3 15/9 18/12 18/20 20/12 20/13 20/16 22/12 25/14 30/12 32/4 33/8 33/9 33/11 34/23 35/24 38/9 38/14 38/18 38/19 41/9 42/11 43/6 43/7 43/23 45/1 46/16 53/11 53/17 53/25 56/6 58/14 somebody [3] 13/24 20/20 26/16 someone [5] 5/17 20/19 24/17 34/19 42/4 something [9] 25/5 27/13 34/25 41/6 42/18 44/13 44/21 50/8 57/22 sometimes [3] 30/8 30/10 30/11 somewhat [2] 37/22 39/9 soon [2] 11/5 54/5 sorry [8] 4/12 5/3 6/8 6/11 13/6 14/13 15/3 42/22 sort [12] 10/16 18/25 26/4 26/9 26/14 38/23 44/1 44/5 44/7 46/2 47/15 58/8 sounds [1] 37/21 span [1] 23/13 speak [3] 20/23 48/5 50/14 speakers [2] 5/22 5/24 speaking [3] 4/18 5/16 27/25 specific [4] 37/17 38/1 39/22 58/20 specifically [4] 17/2</p>	<p>speedy [4] 16/10 16/16 16/25 17/2 Speedy Trial Act [1] 16/25 spoke [1] 29/3 spoken [1] 47/22 spontaneous [2] 25/8 25/24 spontaneously [1] 38/11 Sr [1] 2/2 stack [3] 38/15 39/11 39/22 stand [5] 8/17 8/22 13/11 13/24 14/2 standard [3] 52/12 52/15 57/14 standards [1] 59/20 standing [1] 17/7 start [4] 7/6 7/11 8/21 39/9 started [2] 24/10 50/3 state [4] 23/17 41/21 42/25 58/15 stated [1] 12/13 statement [2] 46/8 46/9 statements [1] 48/12 STATES [9] 1/1 1/3 1/11 4/14 7/23 7/25 8/3 8/6 49/18 stationing [1] 28/14 status [4] 1/9 7/4 15/7 53/22 stay [4] 42/12 51/20 57/20 58/22 staying [1] 57/7 Steel [1] 17/18 stenography [1] 3/6 step [3] 34/10 40/6 42/5 Stephen [1] 2/12 steps [2] 8/23 24/15 Steven [1] 4/23 still [13] 7/5 15/25 17/18 17/19 17/19 19/5 21/18 21/20 22/3 44/19 45/13 49/1 54/19 stolen [1] 49/19 stop [12] 23/18 24/19 31/19 32/20 33/2 34/8 34/10 34/21 42/2 42/5 44/18 50/1 stopping [2] 33/15 43/10 storm [3] 34/4 34/19 55/24 storming [2] 45/8 56/4 straight [1] 46/19 straightforward [1] 29/19 streams [1] 36/16 street [4] 1/14 2/17 2/22 33/12 strength [3] 44/6 50/10 50/22</p>	<p>style [2] 40/12 49/16 subject [2] 51/12 61/6 submit [1] 43/22 submits [1] 43/9 such [3] 38/25 42/16 57/6 sudden [2] 24/7 27/7 suffering [5] 22/18 23/1 29/18 30/24 46/16 suggested [1] 39/1 suggesting [1] 26/12 Suite [4] 2/4 2/9 2/18 2/23 superseding [2] 7/16 7/18 support [1] 33/22 supported [1] 31/16 supporters [3] 27/1 27/4 40/20 supports [1] 50/6 suppose [1] 18/25 supposed [2] 28/9 59/20 sure [11] 6/13 9/10 11/22 14/1 17/25 20/24 35/9 37/7 37/12 40/25 41/23 surrender [1] 56/23 SW [1] 2/22 system [1] 55/11</p> <hr/> <p>T</p> <p>tablets [1] 51/16 take [11] 9/24 10/17 11/23 12/7 30/25 31/1 43/21 47/13 47/16 51/8 59/15 taken [7] 33/6 37/22 37/22 42/15 45/20 53/10 56/19 taking [2] 11/25 30/16 talk [2] 21/8 34/18 talked [1] 11/19 talking [6] 9/15 26/25 27/6 28/12 28/14 36/5 teach [1] 46/18 tear [1] 24/8 technical [2] 6/8 56/8 technically [1] 24/23 technological [2] 6/11 61/7 technology [1] 54/24 teleconference [1] 5/6 telephonic [1] 51/25 tell [5] 46/2 46/15 47/2 51/5 54/22 tend [1] 18/23 term [1] 10/16 terms [7] 8/21 9/23 15/6 32/7 50/20 52/11 56/8 terrible [1] 9/9 testing [1] 46/2 text [4] 25/6 44/24 50/14 52/12 text-message [1]</p>	<p>24/24 thank [12] 16/7 21/10 21/16 22/15 28/19 39/7 46/23 55/2 59/7 59/11 59/25 60/2 thank you [10] 16/7 21/10 21/16 22/15 28/19 46/23 55/2 59/7 59/11 59/25 Thanks [1] 56/21 that [359] that'll [1] 20/22 that's [29] 7/9 12/20 21/5 23/2 24/12 24/13 25/9 29/2 29/22 29/25 31/17 32/15 36/6 39/5 40/24 44/8 46/22 48/21 49/20 49/23 50/7 52/22 56/9 56/9 56/10 57/1 57/22 58/10 58/18 their [23] 5/15 5/15 5/18 5/18 5/18 9/2 16/9 17/4 17/19 19/16 23/3 25/19 27/9 34/24 35/16 39/15 39/21 40/13 43/7 43/21 46/4 49/10 49/11 them [23] 14/19 17/5 17/20 20/14 20/21 21/19 23/11 25/18 25/19 33/8 33/9 33/10 40/1 44/3 44/19 45/24 46/3 46/3 46/6 46/7 47/22 52/18 54/10 themselves [2] 29/25 40/12 then [12] 8/16 12/24 15/5 16/23 17/18 17/22 31/4 46/4 55/18 57/23 57/24 58/4 there [1] 32/9 there [63] there's [14] 9/8 14/15 15/4 23/21 28/1 30/10 33/2 35/4 38/14 41/4 50/6 50/18 50/25 53/2 therefore [2] 53/17 61/6 these [23] 4/10 8/17 15/3 15/7 23/15 25/16 25/22 27/15 27/15 33/21 34/3 38/14 39/4 39/10 39/15 40/12 40/21 44/1 45/2 47/1 50/11 52/6 52/12 they [75] they'll [1] 57/25 they're [9] 12/5 20/25 27/6 29/12 35/15 42/6 42/18 54/9 54/10 they've [1] 40/16 thing [3] 40/10 51/3 58/6 things [7] 8/16 8/22 13/11 22/22 26/18 34/13 54/14 think [64]</p>

T	U	V	W	
<p>third [1] 57/3 this [91] THOMAS [3] 1/6 2/2 4/14 thoroughly [1] 21/2 those [18] 10/22 13/1 17/11 26/19 33/12 35/9 38/12 40/19 44/9 44/14 44/18 47/8 48/8 49/15 49/20 53/17 53/20 59/2 though [2] 14/25 34/17 thought [4] 18/24 19/24 34/9 34/13 threat [1] 44/8 threatened [1] 30/22 three [4] 11/13 51/5 54/7 55/17 through [15] 6/14 15/11 16/10 16/24 17/8 17/11 22/6 27/8 36/4 36/18 39/14 46/17 50/4 51/18 55/10 throughout [1] 27/15 time [28] 9/24 10/3 10/17 13/15 13/21 16/5 16/13 16/15 16/24 17/3 17/8 17/11 17/22 18/1 24/5 24/9 25/4 26/24 28/4 36/13 37/24 41/7 45/7 47/9 48/13 53/5 53/6 55/12 times [2] 27/6 51/5 timing [1] 18/12 Title [4] 7/22 7/25 8/3 8/6 titled [1] 61/4 today [4] 9/1 18/6 29/4 50/8 today's [1] 20/12 together [2] 38/16 39/4 told [5] 27/12 27/13 45/24 46/3 46/6 toll [1] 10/3 took [2] 32/5 56/7 top [2] 48/20 53/9 totally [2] 24/25 45/21 Towers [1] 2/4 traffic [1] 24/13 train [1] 40/1 training [5] 39/16 39/21 39/22 40/1 49/16 transcript [5] 1/9 3/6 25/2 47/1 61/3 transcription [1] 3/7 transition [1] 44/16 transpired [1] 34/14 transporting [1] 18/7 travel [2] 39/20 59/5 treatment [1] 22/24 trespassing [1] 29/21 trial [5] 16/10 16/16 16/25 17/2 17/10 troops [1] 27/3 truly [1] 29/20 Trump [3] 27/1 27/4 40/20 truthful [3] 45/24 46/8</p>	<p>truthfully [1] 46/3 try [5] 17/16 27/8 33/8 33/9 33/10 trying [9] 10/22 11/6 35/14 35/15 39/5 42/24 43/9 49/11 50/15 Tuesday [2] 14/20 14/23 turn [5] 5/21 8/16 15/25 22/13 55/1 turned [2] 5/20 10/25 turns [1] 45/8 two [10] 11/12 19/13 25/24 26/13 29/3 30/19 30/20 45/23 47/7 51/5 two-hour [2] 30/19 45/23 type [3] 22/24 29/13 49/17</p> <p>U</p> <p>U.S [1] 1/13 U.S. [1] 10/10 U.S. Attorney's Office [1] 10/10 ultimate [1] 50/20 ultimately [5] 43/17 43/21 50/16 52/20 53/20 unable [1] 23/2 uncovered [1] 10/12 under [5] 16/25 42/8 50/9 58/1 59/20 understand [14] 10/5 20/24 24/22 25/13 30/8 30/23 39/23 40/2 40/10 40/17 48/16 52/9 54/11 59/24 understanding [2] 40/15 47/20 understands [1] 55/20 unfortunate [1] 49/20 Unfortunately [1] 18/11 unincarcerated [1] 22/21 UNITED [9] 1/1 1/3 1/11 4/14 7/23 7/25 8/3 8/6 49/18 United States [5] 7/23 7/25 8/3 8/6 49/18 United States of [1] 4/14 unknown [2] 32/19 49/25 unlawful [3] 43/10 43/10 43/13 unlawfully [4] 31/19 34/10 35/5 37/2 unpack [1] 23/21 until [3] 16/15 18/24 57/8 unusual [1] 23/3 up [17] 12/6 18/3 24/18 29/8 30/11 34/11 36/4 37/16 38/10 40/7 42/9 42/15 42/20 42/23 43/4</p>	<p>update [1] 18/6 upfront [1] 42/24 upon [3] 15/14 16/23 44/3 us [3] 17/23 22/3 49/1 usdoj.gov [1] 1/16 use [10] 15/12 29/8 31/22 34/12 35/7 35/10 35/19 37/4 43/12 54/23 using [2] 5/20 24/7</p> <p>V</p> <p>various [1] 8/17 vehicles [1] 35/19 version [1] 47/18 versus [1] 4/14 very [11] 23/3 29/17 35/17 36/20 36/22 42/13 49/21 51/11 54/1 59/23 60/2 vest [1] 18/13 veteran [1] 53/9 via [5] 1/10 5/1 5/4 5/6 55/6 Vice [2] 34/9 42/5 victim [1] 49/20 video [9] 5/18 5/19 5/19 9/15 21/22 21/23 36/18 36/19 45/25 video-camera [1] 36/19 videoconference [3] 1/10 5/2 5/5 view [7] 26/5 43/8 44/9 44/15 48/12 56/19 59/16 violate [2] 46/20 59/22 violation [5] 7/22 7/25 8/3 8/6 52/6 violence [21] 30/22 30/22 31/9 31/22 32/6 32/6 33/22 34/12 34/16 35/7 35/10 35/22 37/5 37/7 42/1 42/4 43/12 44/12 49/7 50/12 50/24 Virginia [4] 47/21 51/14 58/25 59/6 virtue [1] 39/2 visits [1] 59/2 voluminous [1] 9/6 voluntarily [1] 53/15 vote [4] 31/20 42/2 43/11 49/23 vs [1] 1/5</p> <p>W</p> <p>wait [3] 15/19 18/24 35/2 waiting [4] 40/6 43/7 43/15 43/23 waive [6] 7/17 16/5 16/10 16/13 19/21 20/25 waiver [1] 21/3 want [18] 12/15 12/16 15/20 16/2 19/11 22/10 22/17 25/12 26/14</p>	<p>46/21 46/22 47/22 48/8 48/21 55/21 wanted [1] 56/7 wants [3] 12/24 17/14 57/10 warrant [1] 47/21 warranted [1] 17/3 was [110] Washington [9] 1/5 1/15 2/10 2/14 2/18 3/5 32/3 34/24 35/12 wasn't [2] 38/12 43/14 watched [1] 45/25 watching [3] 43/7 43/15 43/23 Watkins [16] 2/7 4/15 4/21 5/3 5/10 6/22 13/18 15/17 16/14 38/5 42/17 44/25 45/6 45/8 45/19 45/25 way [8] 9/14 21/4 33/21 39/4 45/2 50/17 51/2 54/5 ways [2] 34/16 43/7 we [96] we will [3] 9/5 16/5 57/17 we'll [15] 8/13 11/5 12/23 15/19 15/25 17/15 17/20 17/22 17/24 17/25 18/2 18/2 18/4 22/13 31/5 we're [13] 7/3 9/5 10/7 11/9 11/20 11/25 13/16 15/11 15/16 20/15 28/14 31/5 57/4 we've [5] 11/3 11/19 17/24 18/3 19/4 weapons [7] 27/8 28/15 35/11 35/16 35/17 35/20 48/15 Wednesday [1] 14/20 week [2] 13/2 40/11 weekend [2] 13/1 60/2 weekends [1] 40/10 weeks [2] 9/5 25/6 weight [1] 41/17 well [17] 11/25 12/12 12/15 13/18 15/19 17/12 20/18 26/21 30/9 34/18 38/5 38/9 45/5 57/11 57/20 58/11 58/19 went [14] 21/23 25/16 25/17 25/25 27/2 29/24 30/1 32/17 36/5 37/25 39/10 39/17 39/19 39/21 were [40] 11/14 18/7 18/24 23/24 24/7 24/9 24/11 25/20 27/7 27/16 28/25 29/1 29/6 31/7 31/9 33/20 34/7 34/15 35/1 38/6 39/15 39/16 39/16 39/18 40/19 41/7 42/5 43/6 43/9 43/12 43/15 43/22 43/23</p>	<p>44/18 46/2 46/7 47/8 47/10 48/16 55/17 Western [3] 51/14 58/24 59/5 what [47] 6/15 13/4 13/4 14/21 19/8 20/22 25/1 26/8 26/15 27/6 27/20 28/8 31/5 32/1 32/4 32/15 32/22 35/2 35/22 36/9 36/17 38/15 39/5 39/6 39/24 39/25 40/11 40/11 41/2 41/6 43/3 43/7 43/15 43/17 43/18 43/24 44/3 45/9 45/13 49/11 49/17 52/3 52/3 52/11 53/6 56/18 59/16 what's [3] 32/14 40/4 42/7 whatever [5] 28/13 34/8 34/16 51/13 58/9 when [19] 5/15 9/15 10/24 18/10 24/7 25/6 26/25 35/16 39/5 39/21 40/23 41/20 43/18 43/19 45/8 46/7 47/7 48/16 53/22 where [16] 8/16 8/22 10/3 10/19 11/8 13/11 22/21 23/13 30/18 30/20 30/21 31/12 45/1 45/23 52/7 54/23 whether [11] 11/17 16/9 28/16 47/2 47/13 48/14 48/15 49/8 51/5 51/6 57/5 which [21] 8/14 12/6 15/14 19/12 19/25 23/8 23/24 25/23 27/1 28/4 31/16 32/2 33/7 33/21 34/1 37/21 38/23 39/11 39/24 43/9 48/12 while [4] 24/1 30/16 36/22 42/25 who [13] 8/25 16/1 17/17 23/3 24/17 28/12 30/24 37/14 39/24 40/1 40/19 42/16 49/18 who'd [1] 35/18 who's [1] 51/23 whole [1] 46/5 why [9] 7/11 8/21 10/16 14/13 22/12 44/9 44/17 44/19 44/19 wife [8] 19/11 19/17 19/22 20/2 20/6 23/23 48/1 48/2 will [25] 8/11 9/5 9/24 10/17 10/25 11/1 13/21 14/1 14/10 16/5 30/24 31/1 46/19 46/20 46/20 51/12 53/25 54/10 55/9 55/21 56/25 57/17 58/4 58/6 59/23 William [5] 2/2 3/2 61/2 61/10 61/11 willing [3] 29/7 29/16 40/6</p>

Wilson [11] 2/21 2/22
 4/24 5/17 9/14 12/2
 14/13 14/15 18/20 20/1
 20/22
wish [6] 7/17 8/7 19/20
 19/22 20/5 48/20
wishes [1] 21/4
within [2] 9/5 56/1
won't [1] 28/10
word [1] 51/8
words [6] 19/15 26/19
 33/6 33/7 33/13 33/15
working [2] 9/3 38/7
worry [1] 45/9
would [38] 8/8 12/4
 12/7 12/12 16/13 18/20
 18/24 19/20 25/11
 28/21 30/3 31/9 39/9
 39/20 40/11 40/11 42/9
 43/22 43/24 44/20
 44/24 45/6 45/14 45/18
 47/13 48/24 51/17
 51/17 52/23 56/22 57/3
 57/4 57/5 57/7 57/7
 57/14 57/18 59/4
wouldn't [1] 48/21
wreaks [1] 27/15
written [1] 12/16
wrong [1] 49/12
wronged [1] 49/11

Y

yards [2] 24/2 24/14
Yeah [4] 14/1 16/7
 18/23 56/9
year [1] 27/19
years [4] 29/20 31/1
 51/4 53/8
Yep [1] 55/4
yes [19] 6/17 6/20 6/21
 6/23 7/1 7/19 8/24 9/12
 12/21 19/6 20/3 21/1
 21/23 22/4 32/2 35/11
 49/2 52/8 59/18
yesterday [6] 10/20
 11/12 12/18 13/5 14/17
 14/17
yet [3] 9/23 47/25 48/6
you [112]
you know [6] 26/6 41/4
 46/4 49/9 52/2 52/20
you'll [3] 17/23 52/6
 54/3
you're [6] 4/8 9/15
 27/23 27/24 27/25
 54/15
you've [6] 7/21 15/21
 38/22 39/1 41/9 59/16
you-- the [1] 7/12
your [124]
Your Honor [92]

Z

Zaremba [4] 3/2 61/2
 61/10 61/11
zealously [1] 19/15
Zello [2] 25/18 36/13