IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,	)	Criminal Action
	)	No. 1:21-cr-00222-TFH
Plaintiff,	)	
	)	
vs.	)	**Bond Hearing** (via Zoom)
	)	
Julian Elie Khater and George Pierre Tanios,	)	Washington, D.C.
	)	April 27, 2021
Defendants.	)	Time: 9:00 a.m.

Transcript of **Bond Hearing** (via Zoom)
Held Before
The Honorable Thomas F. Hogan (via Zoom)
United States District Judge

A P P E A R A N C E S

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P R O C E E D I N G S

(REPORTER'S NOTE: This hearing was held during the COVID-19 pandemic restrictions and is subject to the limitations of technology associated with the use of technology, including but not limited to telephone and video signal interference, static, signal interruptions, and other restrictions and limitations associated with remote court reporting via telephone, speakerphone, and/or videoconferencing.)

THE COURT: I will note for the record, we moved this case up to 9 o'clock because of the demands on the available videoconferencing in the jail and other hearings booked starting at 11:00. We have to complete this by 11:00. It's booked all day long.

THE COURTROOM DEPUTY: Your Honor, this morning this is the matter United States of America v. Julian Khater, along with co-defendant George Tanios. This is criminal record 21-222.

I'm going to ask the parties to identify yourselves for the record, please.

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

THE COURT: All right. Good morning.

MR. TACOPINA: Good morning, Your Honor. For Mr. Khater, Joseph Tacopina and Chad Seigel.

MR. SEIGEL: Good morning, Your Honor.

THE COURT: Good morning. Thank you.

MR. TACOPINA: Along with --

MS. GROSS: Good morning, Your Honor. Go ahead.

MR. TACOPINA: Go ahead.

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

THE COURT: All right. Thank you.

MR. TACOPINA: I forgot Mr. Thomas, our local counsel who is there. I didn't introduce him.

THE COURT: Thank you, Mr. Thomas.

Let me ask Mr. Khater and Mr. Tanios, if -- I'll call you each by name and just, please, answer for the record that you can hear the Court.

Mr. Khater?

DEFENDANT KHATER: Yeah, I can hear you.

THE COURT: All right. Mr. Tanios?

DEFENDANT TANIOS: Yes, I'm here, sir.

THE COURT: All right. Which one is which?

DEFENDANT KHATER: I'm Mr. Khater.

THE COURT: All right. Thank you, Mr. Khater.

All right. You have to keep your sound off unless you need to talk because the court reporter can't hear with the background noise. I appreciate that.

DEFENDANT KHATER: Yes, Your Honor.

THE COURT: We're here for the hearings on Mr. Khater's motion for release of custody -- he had not

previously had a bond hearing and waived it earlier -- and Mr. Tanios' motion to review the order of detention from the magistrate judge that previously ruled against his release.

I have been provided with extensive briefing by the parties. I received recently last night a reply opposition, rather, from the government. And there have been marked as exhibits -- a series of exhibits that I have reviewed. That included 18, I believe, letters for Mr. Khater on his behalf; several letters for Mr. Tanios; includes exhibits the government had used at the detention hearing in West Virginia as well, that had been presented, which are the videos and clips from the videos -- or stills from the videos the government had produced in their allegations against the defendants.

The defendants each have been charged with multiple offenses, including several felonies in this matter. So I'm faced with under the Bail Reform Act -- obviously we've had multiple reviews of these types of cases because we have over 210 cases pending. We expect to get at least another hundred in the future. I appreciate counsel who've come into these cases. We've had prosecutors from all over the country, as well as public defenders who have volunteered to come in from all over the country to assist us in these matters.

The detentions have been contested in many of these cases because of the, I think, somewhat unusual nature of these

cases. We've had not only the high publicity and the probably historic occasion of January 6th but -- and the attention that arise therefrom, but also the nature of the individuals, many of whom do not have prior criminal records. Many have been held. Many have been released. It depends upon the individual facts in each case that the government can show and the defendants can show.

With that background, perhaps we can start with Mr. Khater first -- and he is the one who was allegedly directly involved in violence against police officers -- and consider the factors that we must under the Bail Reform Act where there's a violent felony charged; unless I -- it's a shall hold, unless I can find a combination of conditions that would reflect that he should be released under appropriate conditions.

So I'll start with that. I'll start with -- Mr. Tacopina, I assume, will start with the presentation on behalf of Mr. Khater. As I said, I've read each of the letters from the family members, the parents, the aunts, the uncles, the brothers, and the cousins, as well as sisters-in-law, I believe, in this matter. So I'm -- we'll hear from Mr. Khater at this time through his counsel.

MR. TACOPINA: Your Honor, thank you very much. Joseph Tacopina for Mr. Khater.

And you just referenced those -- those character

letters. We obviously -- we submit those in -- in lieu of calling witnesses to say exactly what they've written there and what, I think, would be an expeditious and an efficient use of the Court's time to just rely on the letters submitted. We've discussed that with the government last night. So we don't intend on calling witnesses today to really read what's before you and what I know you've already read.

And, look, Your Honor, you referenced this date and this event. We recognize the surrounding circumstances of this case that invokes a great deal of emotion. It's hard not to think of the events that unfolded on January 6th and -- and not have a visceral reaction, particularly as rioters entered the Capitol Building, breaking windows, ramming open doors, doing things that -- that horrified us as we watched.

But Julian Khater was not one of them. He never entered the Capitol Building. He never sought to threaten members of Congress, never intended to forcibly interfere with the peaceful transfer of power. Instead, the act attributed to him was limited and isolated, that never transgressed that barrier that laid directly before him.

Moreover, according to the detailed criminal complaint that was filed initially, the single act of using bear spray, which subsequently turns out not to be bear spray, by the way, which he did not personally purchase or carry to the Capitol, occurred as much as 8 feet away from officers only after he

emphatically and -- and in panic yelled that he himself had just been sprayed. And the videotape that we've been provided by the government in clips -- and we could -- we could display them at a later point -- showed just that; show him being sprayed quite aggressively by an officer before he responded by spraying with some sort of chemical spray, which appears to be a pepper spray or Mace, something that's legal.

Look, the circumstances giving rise to this case are extraordinarily unique, without question, and -- and -- with the -- with the fact that many defendants charged with violent or aggressive behavior on January 6th have been released pending trial. And, Your Honor, I'm going to go through some of these cases at the end because there's acts far more aggressive, far more violent than anything that -- that Mr. Khater's charged with, and they've been released, some of them on their own recognizance.

So I -- I think these factors coupled with the history and characteristics of Mr. Khater, who has absolutely no prior contact with the criminal justice system, support -- support his pretrial release. In fact, any notion that he poses a risk of flight or danger to the community is really undercut by those 18 letters, half dozen -- dozen and a half, actually, letters that -- that are -- are attached to our submission. And those are people who know him best, know Mr. Khater best and his character and his exemplary background.

Your Honor, excuse me one second. I'm getting an Adobe warning on my screen or something. So let me --

What do I do here?

MR. SEIGEL: Remind me later.

MR. TACOPINA: Remind me later. Okay.

Whoops. Hello. There's a -- sorry, guys. Hold on a second.

THE COURT: That's all right.

MR. TACOPINA: I -- I don't see anyone anymore. I just see -- I love this. Hold on.

THE COURT: I would much rather have personal appearances, if I could, but the court's been closed, so...

MR. TACOPINA: I know. We're looking forward to it, Your Honor, actually. I've not quite adapted to this yet either.

Anyway, I -- I think where I was basically coming to is that we request that he be released on what I would say is an enormously substantial, excessive, quite frankly, bail package with -- with really very tight pretrial conditions, including a $15 million bond, which, from my understanding, in -- in -- in the District of Columbia is sort of unheard of, secured by five properties comprising of approximately $1.5 million in equity, guaranteed by 16 family members who will co-sign as financially responsible assurities; home detention with electronic monitoring, and a condition that Mr. Khater surrender any and

all passports. Again, I don't believe it's warranted or necessary, but I want to let the Court know we're willing to provide any assurances because there is no scenario where we have any sense that Mr. Khater will not appear for every proceeding and certainly will not be a danger to the community.

I'm not going to go through the law. You've read our brief, Your Honor. You've read our -- our submissions on *Salerno* and *Singleton* and all that, but I think the case that you brought to our attention on the last appearance, the *Munchel* case, does -- does bear spending a few minutes on.

THE COURT: And *Munchel* can be read a couple different ways. So let me have your impressions of *Munchel*.

MR. TACOPINA: Yeah. My impression is the one that favors our side.

But -- but, you know, obviously, look, with the danger to the community prong, which I think the government focused on in their submission, the evidence must prove that defendant actually possesses and -- and -- and -- and poses a danger to the community, not that he does so in theory. And -- and with regard to that consideration, the Court of Appeals in -- in *Munchel*, of course, stated that the threat must be considered in context as well as the defendant's means of carrying out the threat in the future; accordingly, whether the defendant poses a particular threat depends on the nature of the threat identified and the resources and capabilities of the defendant.

And in assessing whether -- look, Your Honor, I'm not going to go through the four statutory factors that -- that -- assessing whether the pretrial detention is warranted.

THE COURT: Let me -- let me ask you this: Have you looked at the *Chrestman* case by judge -- Chief Judge Howell in our court who laid out factors or guide --

(Indiscernible simultaneous cross-talk.)

MR. TACOPINA: We have. We have.

(Indiscernible simultaneous cross-talk.)

THE COURT: -- and how they -- they fit what happened here?

MR. TACOPINA: I -- I did look at it. And I actually -- the government cited it. And when the government cited it, I felt sort of remiss that we didn't cite it in our case because I think it actually helps us significantly.

The government cites -- cites *Chrestman*, saying that five -- I have the government's brief in front of me. On page 16 and 17, they say that five out of the six factors supporting dangerousness exist -- okay -- page 16 of the government's brief that we received last night. That's not accurate. It's just not accurate. First, *Chrestman* did not specifically provide a numbered list of factors but rather talked about them.

THE COURT: Right.

MR. TACOPINA: But even adopting the government's

list -- just assuming we adopt that list of six, these factors show that risk of -- of future dangerousness does not exist.

Whether the defendant has been charged with a felony or misdemeanor -- okay -- that's largely a -- a red herring, Your Honor, as many people charged with felonies have been found not to be a danger and released. So let's put number one to the side. That's the one that we don't contest and -- and certainly he's -- he does meet.

Two, the extent of the defendant's prior planning. Here there was no extensive prior planning. There was nothing. The only proof they have of prior planning is a 39-second phone call the day before without any substance as to what the call was or what the substance of the call was. That's all the government shows. That's --

THE COURT: That's the call -- is that the call from the arms dealer?

MR. TACOPINA: Correct, Your Honor.

THE COURT: All right. The co-defendant --

MR. TACOPINA: And if you remember that little interaction there based on the -- the government's own reports and -- and the agent's reports is that when they -- Mr. Tanios went into the arms dealer, he made sure he purchased something that was legal. He actually said where he was going and said, "Could I bring this down?" And the guy said no. At one point, one of the -- the -- you know, the -- a part of the store said,

"No, you can't bring that down." It was some sort of a -- what was it?

MR. SEIGEL: Pepper ball.

MR. TACOPINA: Yeah, a pepper ball. And then -- and then he was told the things that he purchased were legal and were -- he was able to possess. So he went out of his way, Mr. Tanios, to make sure he was purchasing things that were, in fact, legal.

So -- but, anyway, back to the prior planning. That's it. A 39-second call before entering this store. Thirty-nine seconds. We don't know if there was a connection, if there was a voice mail left, or whatnot.

Number three, according to the government in the *Chrestman* factors, whether the defendant used or carried a dangerous weapon. The government can't show bear spray -- okay -- at all, and -- and there's no proof of that. And pepper spray is not a dangerous weapon. It's used for defensive purposes. And we have a case, obviously, that supports that in the Fourth Circuit, United States -- it's cited in our papers. It's -- oh, I'm sorry. This is -- this is a case we found in response to their submission, but *United States v. Campbell*, Fourth Circuit case -- this is the 259 -- oh, my gosh, maybe I need glasses.

Can you help me?

MR. SEIGEL: I'm sorry. 259 F.3d 293.

MR. TACOPINA: So, which in -- in this case Mace used against an officer was not -- was deemed not to be a dangerous weapon. And that's what we're talking about here, Mace/pepper spray, something that's completely legal, used for defensive purposes.

The fourth factor that the government cites out of the *Chrestman* case is evidence of coordination with other protesters before, during, or after the riot. And they cite that as powerful evidence in one of the factors that -- that support detention. There was no coordination. Mr. Khater was not part of the Proud Boys or some of these extremist groups of zealots who were there, and -- and coordinating and planning months in advance. He was a guy who believed in -- in a cause, went down there, watched his Commander in Chief speak, and -- and wound up at a rally. So there was no coordinating, no planning. He went down there with Mr. Tanios to -- to support what he believed was the -- the appropriate outcome in -- in this matter.

But it wasn't something where he was part of an extremist group. There was no interaction with any extremist groups or any planning with any others who had planned, as evidence shows, months and months in advance.

Number five, whether the defendant played a leadership role in the events of January 6th. There's obviously no proof of that because Mr. Khater did not.

And then number six, the defendant's words and movements during the riot, whether the defendant remained only on the grounds surrounding the Capitol or stormed into the Capitol interior or whether -- or whether the defendant injured, attempted to injure, or threatened to injure others. So there was actually two separate factors in *Chrestman* that the government lumped together here under one factor, because it knows that Mr. Khater did not storm the Capitol Building. And it's sort of trying to minimize that factor. Like, it's not one of the important --

THE COURT: Isn't the government really arguing or -- or asserting that the defendant's actions played a direct role in the ultimate breach because --

MR. TACOPINA: Yeah, they're arguing that.

THE COURT: -- they breached -- they breached a particular police line where Mr. Khater's action disabled at least three officers, they claim, and -- and the undermanned line then was stretched thin, the other officers who left to cover and help them, and then other people right next door broke through the line and came in? At the end of one of the videos, some of the attack came on the police officers when they pushed the fence down.

MR. TACOPINA: Yeah, I saw it. I mean, it was -- it was sort of appalling. And whoever that person is, hopefully, gets called to justice. I saw that. Mr. Khater never came

close to touching a police officer, never came close to breaching that barrier. And I read that in the government's brief, page 19, the submission, last night.

The government says that the defendants, these two gentlemen there, their actions played a part in the ultimate breach of the police line protecting the Capitol. And that was your question, Your Honor. Again, we're talking about three officers being temporarily away from their post while there were many -- if you looked at the videos -- many, many other officers present.

The part Khater's alleged act took was immaterial to the storming of the Capitol. The act he committed, assuming it's true, was immaterial to the storming of the Capitol, a part of which he did not even participate in. And, more importantly, it was not the result or a result that he intended. So -- so, you know, when you see the interaction -- I'll point out one thing.

You know, the government says that it was strategic timing that Mr. Khater sprayed -- and this was sort of along the same line -- that he sprayed his Mace or pepper spray or whatever that was -- and, again, it was a small bottle -- that he sprayed it strategically as they were trying to pull down the -- the barrier of some sort.

Well, you know, the government has said that, I mean, literally a dozen times in their brief. I mean, repeatedly,

repeatedly, repeatedly. They could say it a hundred times today as well, but a hundred times it'll be proven not to be accurate because by video that they provided, it shows that -- Mr. Khater allegedly spraying seconds after an officer sprayed in his direction. And there's a video of an officer -- I mean, I have a picture. It's Exhibit 4. And I don't think the picture is going to do any justice here. As a matter of fact, I'm sure it won't.

There's a spray from the -- from the officer who sort of rushed into the crowd with this -- it's -- yeah, I see it's Exhibit 4 at 2 minutes 23 seconds -- I'm sorry -- 2 -- 2:23 and 8 seconds. 2:23 p.m. and 8 seconds. Where an officer storms into the crowd with this -- looks like a machine gun sort of spraying thing and sprays everyone. And Mr. Khater is right there. It's right after that that he sprays back this little pepper spray. So it wasn't strategically timed to breach a barrier.

THE COURT: We'll look at the videos because I think they're very important evidence in the case and see if we can determine.

MR. TACOPINA: Yeah, I -- I do too. And -- and I don't know --

Do we want to play this now?

Gil, is your intention to play these videos?

THE COURT: I think the government will show some

videos. Mr. Light can --

MR. LIGHT: Yes. Yes, Your Honor, we would -- we would like the chance to walk through the videos with the Court.

THE COURT: We'll play the videos later.

MR. TACOPINA: Okay. And then I just want -- Your Honor, I don't know how we'd do this logistically because we don't have a video control thing here, but if -- if Mr. Light --

Gil, if you could at one point, I'd like you to just stop at a certain point. We can do it now or we can do it later when you're playing the videos, if that's okay.

MR. LIGHT: Sure.

MR. TACOPINA: So, Your Honor, that's -- that's sort of the -- the *Chrestman* argument. I -- I don't think that supports the government's theory at all, quite frankly. I think five of those six factors -- four and a half of -- of the six factors that they've listed very much support the release of -- of Mr. Khater.

Again, going back to whether he poses a danger to the community, you know, you look at -- and his background is evidenced by the letters, his -- his -- the fact that he was born in this country, very close-knit family, a college graduate from -- from Fairleigh Dickinson in New Jersey, a proprietor of his own business that was unfortunately shuttered

during the pandemic, lives with his family, lives with his father and -- and mother.

And basically, unlike others associated with the events of that January 6th riot -- again, Mr. Khater is an individual -- an individual who believed he was, you know, supporting a rightful cause, but he was not part of some far-right neofacist organization that engaged in political violence. He's never participated in a single act of violence and is not an inherently violent person.

And, again, those letters say a lot regarding who he is. Dr. Fox, his -- his -- Dr. Anne Fox, who is one of Mr. Khater's aunts, just said something that I felt was really on point here, which was -- and I'm not going to read any of his letters, but that -- that Julian is fiercely loyal and will stand by his family no matter what. And given that fact, there is every reason to believe that he will not leave 16 members of his family absolutely destitute who -- at least 16 members prepared to sign on that -- that bond. They would be in financial ruin by violating any condition of his release. And I -- I sort of believe Mr. Khater's well aware of that.

And there are other factors also that I think go towards -- towards his release. And, look, there's also obviously the weight of the evident argument -- weight of the evidence argument, Your Honor. And I know -- and I'm cognizant that we have an 11 o'clock stop. We have a co-defendant here.

So I'm trying to summarize what would have been a much longer presentation.

But -- I know you've read our submission, but on page 15 we sort of go through the weight of the evidence arguments regarding, you know, him appearing to hold a canister of bear spray, which turns out not to be bear spray. In fact, proof that the officers at best are -- are equivocal given the government's claim he stood as much as 8 feet away from the officers and didn't spray directly at them, but only in the officers' direction. I'm quoting from the government's submissions -- complaint.

And for that matter, any notion that he took deliberate aim at the officer is undercut by the very allegation in the criminal complaint that he, quote -- that he haphazardly, quote, moved his arm from side to side in -- in the midst of an unruly crowd after he himself was immediately sprayed seconds before by a chemical agent.

THE COURT: Let me ask you about the timing you're -- you're discussing here in this. I looked at the video. And we'll look again, and we can stop it, and you can talk about it again. That Mr. Khater complained about being sprayed, and he takes this can of chemical spray at that point and then talks some more with Mr. Tanios.

Then he walks to the front of the line. He wasn't in the front of the line right away. And he then sprays the

officers, whether a short distance or a longer distance -- and it may have been twice he sprayed the officer, it looks like, when I looked at the video. But you can see that the officers retreat -- that both -- all three of them are hurt. And the evidence is, obviously, one died but they're not connecting it with this attack. And the others were injured, one for several weeks, the female officer, with scabs on her face and her eyes. So there's no question they were sprayed by a chemical spray that damaged them.

MR. TACOPINA: Uh-huh.

THE COURT: I'm not sure that I understand that he did it instinctively immediately after he had been sprayed with some substance himself.

MR. TACOPINA: But, Your Honor, you're missing one important time slot. I have it in front of me. I'm going through this. There was the initial statement of -- of, you know, his saying he was just sprayed, but we're talking about now nine minutes later.

Within seconds prior to his spraying what you just described, those -- those two little episodes where his arm is going side to side spraying for a few seconds, within seconds prior to that, at -- at 2:23:05 on the video, he is sprayed. The officer comes out -- an officer -- we don't know who it is -- in some white sort of riot gear comes into that crowd where Mr. Tanios was right -- Mr. Khater was right in the

middle of. By the way, completely separated at this point from Mr. Tanios. But he's right in the middle of it.

And this officer sprays this enormous white spray that comes out in -- in great force with great distance into the crowd. This -- just into a crowd of individuals. And Mr. -- I'm looking at the exhibits, Exhibit 4. Mr. Khater is right in the line of fire of that. It's within seconds after that that he sprays back. So that's what's missing in Your Honor's timeline. There's an important -- that's an important factor because that is what's instinctive about this. That's what's reactionary about this. That's what is not premeditated about this.

The government says that -- in page 5 of their brief that Mr. Khater can be seen holding a white can with a black top at 2:14; okay? Don't forget, the spray you're describing is at 2:23, Your Honor. That is not the moment that -- the -- the white can with the black top is not the moment of the alleged assault but nine minutes beforehand. That bottle was never -- there's no evidence that that bottle was ever sprayed at all. He didn't use it.

And -- and, in fact, there's -- the video shows he didn't use that bottle, which means he exercised restraint during a period of heightened emotionally sensitive moments there where the crowd was sort of getting riled up, and he claims he was just sprayed, so he did not use that.

So it's a different time -- and when you see the video, Your Honor -- I'll -- I'll ask Mr. Light to stop it at certain times, but at 23:08, seconds before he sprays, the only two incidences where he is spraying -- and what is not a canister, white canister with a black top, it's not bear spray. It's a small can of either pepper spray or Mace or some chemical agent that's legal. It's right after he sprayed -- right after there's a -- a horrific and strong spray of white chemical substance into the crowd. So that's important, Your Honor.

It's not -- it's not this, you know, he got sprayed nine minutes earlier, he had this can, and this was a planned attack at that moment. He was reacting to just being sprayed seconds before, and that's so important. It's important because, you know, it shows that this is not a premeditated, planned-out event. It's reactionary, emotional reactionary.

And I'm not -- this is a bail hearing right now, Your Honor. I'm not -- I'm not -- this is not a trial on whether he should be held legally responsible, if found guilty or not guilty, but this is a bail hearing. So I think that's an important -- very important factor here.

And, look, again, we -- we've gone through -- and I'm not going to read different portions of our papers, our submissions, as to why he doesn't pose a danger. But I think that it's very clear that, you know, while the government may attempt to paint Mr. Khater as some zealot hell bent on

destroying democracy, the facts in this case simply don't give rise to that fanciful image at all.

You know, who he is, who he's been all his life is the person that's before you in that orange jumpsuit in custody. And -- and -- and that's what's important. And the act here was a spontaneous, random -- wrong, but spontaneous, random act that is a reaction to him just being sprayed, as you're going to see on video, without question, seconds before.

You know, the other thing on flight risk, Your Honor, one of the factors is -- is -- the government cites that -- I'll -- I'll -- I'll -- actually, I'm going to get to their brief in a second.

What I wanted to say -- one thing that I want to say before I address some of the other issues in the government's brief is that, you know, the other cases here that have been heard regarding the Capitol riot and -- and the -- the -- the bail hearings sort of really support the release of Mr. Khater in -- in -- in -- in accordance with -- with the action from *Salerno* that's laid out; that our society, liberty is the norm and detention prior to trial without trial is -- is a careful, limited exception, which I know Your Honor is familiar with.

Many defendants in this matter, in the Capitol riots matter, have been charged with violent and aggressive behavior on January 6th and have been released pending trial, some without any -- any bail at all. In *United States v. Palmer*,

one of the defendants in this Capitol riots case -- or series of cases -- *Palmer*, detention was not justified for a defendant accused of throwing a wooden plank at officers, spraying the contents of a fire extinguisher at officers, throwing the fire extinguisher at officers, and then picking it up and throwing it a second time at officers. Detention was not justified in that case.

THE COURT: Was that a magistrate judge in another district or one of our judges?

MR. TACOPINA: Okay. It has to be a magistrate judge case, Your Honor. It's 21- -- I don't know if the government --

THE COURT: Many magistrate judges in other districts have looked at this differently from the judges in our court, and for whatever reasons the government at that point did not oppose it in some cases.

MR. TACOPINA: Yeah. Well, I -- it's the same obviously -- same prosecuting office, and if they're not opposing a factual scenario like that -- but, you know, Mr. Palmer -- the *Palmer* matter has appeared before in the district court in D.C., and his bail status has not changed. So wherever that was initially determined to be, you know, ruled on --

THE COURT: There are multiple cases, because of the number of cases we have, from various courts, as well as our

court, releasing people and detaining people, and I think that they're not always consistent.

MR. TACOPINA: That's Judge Michael Harvey, Your Honor. That's one of your magistrates, I assume.

THE COURT: Right. Judge Harvey?

MR. TACOPINA: He's the judge who made that finding in *Palmer*.

THE COURT: It also depends upon the government's position in those cases.

MR. TACOPINA: I would imagine, based on what the government wrote in their submission last night and -- and -- and their position today, that someone who from a minimum of 8 feet away sprayed a legal chemical substance into a crowd while waving his arm side to side for a matter of seconds immediately after being sprayed himself, would -- would be, I think, less of a danger to society than an individual who throws a wooden plank at police officers, who sprays a fire extinguisher at police officers, who takes the empty fire extinguisher and throws it at the police officers, who then picks up the empty fire extinguisher for a second time and throws it at another set of officers. That's *Palmer*. So I -- I -- I can't imagine the same U.S. Attorney's Office thinks that conduct was -- warrants release while Mr. Khater's conduct warrants detention.

THE COURT: All right. I'll ask the government about

that. We need to move along a little bit because we've got two hearings and I've got a deadline to get them done.

MR. TACOPINA: I'm -- let me just say this. I'm going to try and summarize. If you add the point at the detention --

THE COURT: It'll take a while to look at the videos, and that's going to be the important part of the case.

MR. TACOPINA: Agreed. And if you could just -- if I could just focus your attention, Your Honor, on pages 21 and 22 and 23, the last three pages of our submission. The reason I want to do that is I was about to go through a series of cases, over a dozen, where people who have done far, far more violent, more egregious acts than -- than Mr. Khater have been released.

I mean, punching a police officer repeatedly in the face after tearing off his helmet, that individual was released. An individual who ran through the Capitol doors throwing a baton, you know, in a glorified violent protest shouting, you know, things like, you know -- acts of violence against -- against members of Congress. I'm not done. I'm going back in, you know, so on and so forth. You know, cursing. And -- and one in possession of a knife and yelling into the crowd. I mean, grabbing officers' face masks and shields. These are all individuals that are outlined in the three pages that I've just, you know, pointed the Court -- directed the Court's

attention to. Breaking windows and -- and all sorts of things. These people have been released in this matter.

I mean, violent, violent acts against police officers, and the cases are all here. They're -- they're cases from -- from, you know, the January 6th event. So I'm not going to go on and read them all, but I just believe the conditions that we're presenting really, really speak to the fact that Mr. Khater is not a risk and is not a danger. And the bail package that we're representing, Your Honor, I don't think anyone can dispute, is an enormously substantial bail package, especially -- especially when you're considering what the guidelines in this case would be.

I mean, a risk of flight -- when you're talking risk of flight, he has 16 family members whose lives would be over, financially ruined. Everyone who loves him would lose everything they had. And, you know, he's a young man that has a college degree and has a life ahead of him. To throw all of that away for what -- you know, in a very aggressive guideline assessment would be on the low end five years, and -- and there's -- depending on, again, how this weapon is -- is -- is evaluated because -- again, started off to be bear spray, which it is not. It could be significantly less than that.

So -- so I think that's an important factor in risk of flight, but, you know, I have a lot of comments on the government's response that we received last night. You took us

through some of them. I don't know if I should bring up -- hold on one second. Let's see if I can wrap this up for you right now, Your Honor, because I do know you want to get to that tape. I -- I apologize for taking up so much time but there's a lot of facts and a lot of this came to us just last night.

Anything in particular we want to go through here?

MR. SEIGEL: (Inaudible).

MR. TACOPINA: Your Honor, one other thing -- and I don't know how -- how the Court is -- is -- is relying on this or considering it again. This has to deal with the magistrate judge's comments in West Virginia regarding the co-defendant's detention hearing. But -- but, you know, he said I understand this is a one-time event and it's not representative of their character, but many people spend life in prison for a one-time event. But -- but what he said there -- again, *Munchel*; right? *Munchel* is not obviously the law that -- that was being followed in West Virginia. You know, those are exactly the factors under *Munchel* that justify release here in this case.

THE COURT: You might -- you might take a look at, while the government is arguing, a case called *United States v. Fairlamb*, F-a-i-r-l-a-m-b, cited by Judge Lamberth two days ago. It's Criminal No. 120 -- 21 -- Criminal No. 120 by Royce -- Judge Royce Lamberth, where he goes through the various factors --

MR. TACOPINA: Do you have a citation, Your Honor?

THE COURT: The fellow had hit a police officer, and he held that's enough to hold him. He disagreed with the other judges who read that differently. It's an interesting opinion. It was just published, and he -- he thinks assaulting a riot-clad, gear-clad police officer does show a danger to the community and disregard under the law and relies upon *Munchel*.

MR. TACOPINA: In that case, though, Your Honor, I could distinguish that just factually. And I haven't seen it yet. We're pulling it up right now. Punching an officer, assaulting an officer with your fist is far different than reacting to being sprayed by this enormous blast of chemical spray and spraying back with a pepper spray. That's -- that's --

(Indiscernible simultaneous cross-talk.)

THE COURT: The video where three officers were injured, that causes me some concern.

MR. TACOPINA: Well, Your Honor, again, it was reactionary. It's a one-time event. *Munchel*, the fact that it is not representative of who he is or that it is a one-time event is a mightily important factor, but, again, I'll cite you -- for every case you want to cite, like *Fairlamb* -- and we're pulling it up -- I'll cite you ten others where an officer was hit with a --

THE COURT: I understand. I understand there's

differences in how the judges have ruled in different cases, and I think you have to analyze each case and see why.

In any event, let me turn to the government on this and hear -- because Mr. Khater's produced 18 family members and -- who have verified that he is a peaceful, law-abiding citizen, that he actually wanted to be a sheriff -- sheriff's deputy, and none of them can believe that he could possibly harm anyone according to their letters. Additionally, the factors, as has been produced by his counsel concerning not only the *Palmer* case, but it was a reaction, it was not an intentional assault upon any police officers with a legal can of Mace as opposed to a bear spray as has been advertised in the papers.

Mr. Light.

MR. LIGHT: Yes, Your Honor. Thank you.

Where we'd like to begin is with the video. And it will take me just a moment to switch to share the screen. But let me just say at the outset, to address a couple of things Mr. Tacopina said, Mr. Khater, to be clear, walked straight up to three police officers and sprayed them directly in the face, one of them at the end, a female officer, where he advanced on her while she wasn't looking. And the video is very clear as to that. We're going to watch that. So the idea that he was far away or that this was some sort of a distant attack is not borne out by the video, and 5 to 8 feet is just a couple steps away.

This is -- I also want to correct some of the inaccuracies in terms of the timeline. And I think that our review of the video will show how the perspective of some of the surveillance video is distorted because of where it stands and how it captured the events, which is why it's so critical to view all the video collectively.

So I'd like to start with the -- Government's Exhibit 3. I'm going to share my screen now.

THE COURT: All right.

MR. LIGHT: And if it's okay with Your Honor, what I'd like to do is begin earlier before the attack and -- and really cover the extent of the defendants' conduct, both Mr. Khater and Mr. Tanios, from the moment they first appear about 13 minutes before the actual attack all the way up through the attack.

THE COURT: All right. Thank you. I think I need it from the defendant too. So it helps.

MR. LIGHT: All right. Can everyone see my screen?

THE COURT: All right.

MR. LIGHT: So beginning here with Government's Exhibit 3, we're playing it from the beginning, and the first thing we see is that the defendants arrive and try to get a little closer to the line. Now, what you're seeing here is an arrow designating Mr. Tanios in the red cap.

I'm going to hit play. You're going to see the arrows

that we inserted to follow the defendants, and there's Mr. Khater in the pom-pom Trump hat. And as they arrive -- just to set the scene for the Court, this is the lower west terrace of the Capitol. This scaffolding is the uncompleted inauguration scaffolding, right on the west side where the -- where the entrance is. This is the lower terrace, and steps lead up to the upper west terrace where the actual platform for the inauguration is.

So as you can see, the defendants are moving closer. And what I'll do is -- I'm going to skip to the two-minute mark of this tape, which is 2:11:45 p.m.

MR. TACOPINA: Hold on a second, Gil, if you don't mind.

Your Honor, Joe Tacopina. I don't know if you can see me.

THE COURT: Go ahead.

MR. TACOPINA: But -- but there are things here -- like, for instance, we're skipping to 2:11 -- we're skipping to 2:11 something. Gil, what did you say it was?

MR. LIGHT: 45.

MR. TACOPINA: 45. At 2:11:06, there's this plume of smoke in the air. A chemical agent was deployed. That's something I want to show, but -- so I don't know if you want me to -- Mr. Light, want me to interrupt your presentation and ask you to go back and play that.

MR. LIGHT: I'm -- I'm happy to go back and -- because we are going to show some more of that as well, but I'll go to 2:06 -- 2:11:06.

MR. TACOPINA: 2:11:06, please. Thank you.

MR. LIGHT: This is at 2:11. I'm just going to hit play. So that is a plume of smoke from the crowd, and we'll let this play through for a little bit. What this shows is that Mr. Khater and Mr. Tanios were watching the riot beginning right in front of them. There are smoke bombs. There are people throwing objects at the officers. I'm going to pause and -- and let everybody watch what transpires here for just a few seconds.

But notice the action that's unfolding right in front of the defendants. That's smoke from the crowd.

MR. TACOPINA: And it's right after that where Mr. Khater says he got sprayed. So, of course, it's two minutes later. Of course, that smoke from the crowd -- whatever the crowd means. We don't know who deployed that -- is obviously flying in the direction of Mr. Khater. And Mr. Khater was not the originator of that plume of smoke, so --

MR. LIGHT: There's the javelin being thrown, and now you're going to see shortly police pepper spray and an advance of the line and rioters tangling with police here. And at this point Mr. Khater, as you can see, begins walking back.

So we play that clip to show just at the outset that it

was clear to the defendants what was going on here at the Capitol Building. They didn't just walk up to a peaceful protest and suddenly, you know, were -- were grabbed by impulse to spray officers. They saw exactly what was happening. The assault on the Capitol had begun.

And if we then forward a little bit further to the four-minute mark. Sorry about that. Now we're at 2:13:45. And, again, this is not directly addressing what Mr. Tacopina just spoke about, but I feel it's helpful to go chronologically, Your Honor.

So this is the moment where we're going to see this from two different angles, from the surveillance camera and also from amateur video, if you will, open source media video, that is captured in Government's Exhibit 5. This is at 2:13:45. This is about ten minutes before the actual assault on the three officers occurs. And if we press play, you see Mr. Tanios with his phone up filming the ongoing riot and the skirmishes that is -- that are happening.

And Mr. Khater is working his way back to Mr. Tanios. He's now waving his red hat to try and flag down Mr. Khater. And right here -- I'll pause it there. I missed it by just a fraction. But you can see Mr. Khater reach -- I'm going to go back just a little bit so we can see that again. There you can see right here -- if everybody can see my cursor -- Mr. Khater reaching into Mr. Tanios' backpack. That's at 2:14:18 where

I've stopped this Government's Exhibit 3.

As we continue, he then stands behind Mr. Tanios, and he appears to be reaching into that backpack, stands behind him for a second. And if we see over here, you'll notice it's a little covered by this red arrow, but that there is a person with a camera walking around. And now they continue to talk.

So let me pause here and at this point bring up Government's Exhibit 5. Please let me know if the screen share goes away. Pausing it right there.

MR. TACOPINA: And what's the time on this?

MR. LIGHT: If the Court can hear -- this is Exhibit 5. This is a nontime-stamped video. This was open source media. This was not from any surveillance footage.

MR. TACOPINA: Okay.

MR. LIGHT: It was found on the internet. This is The Convo Couch exhibit, No. 5. And what we just heard -- I want to make sure the Court could hear it -- was that Mr. Khater walked up to Mr. Tanios and said, "Give me that bear shit."

THE COURT: I didn't hear any of that.

MR. LIGHT: Let me -- let me try to play it again and --

THE COURT: It did not come up for me -- or the video didn't come up either, the sound or the video. Let me see if there's another one to look at here. I still have your other

video on.

MR. LIGHT: Okay. Hang on one second. I want to make sure I'm sharing the right video. I'm just going to exit this. Okay. I have to reshare each individual frame. And now I got it.

Can everyone see that now?

THE COURT: Now I've got it, yes.

MR. LIGHT: Okay. I'm going to play -- this is Government's Exhibit 5 -- from the beginning. Okay. Was Your -- was Your Honor able to hear that audio?

THE COURT: No. Unmute. I did unmute. It says unmute, press -- unmute your microphone.

MR. TACOPINA: Gil, I didn't hear it either, by the way.

MR. LIGHT: There was no audio coming through?

MR. TACOPINA: I didn't hear it, no. Your Honor, I don't think you having your mute button pressed affects your ability to hear, just us hearing you. And I'm no expert on this, but that's what I've been told. But, Gil, it didn't play the audio.

MR. LIGHT: I appreciate that. Let me try one more time here to reset it up and share -- make sure I'm sharing with audio. There's share computer sound. That will help. This should work. I apologize to the Court. Let me try this one more time. The audio come through that time?

THE COURT: Yes.

MR. LIGHT: Okay.

THE COURT: We couldn't -- couldn't understand it, but it came through.

MR. LIGHT: Okay. It's -- it's probably best viewed -- and this is why we provided the -- the exhibits closer -- we -- why we provided the exhibits directly to the Court; it must be best viewed in chambers to be able to hear it with headphones. I don't trust the --

THE COURT: All right.

MR. LIGHT: I don't trust the audio on this sharing device to be -- for you to be able to hear it clearly, but hopefully the Court will accept our proffer that what you can hear Mr. Khater say is "Give me that bear shit." Let me keep playing and see what we can hear.

MR. TACOPINA: By the way, Your Honor, just so -- so we don't have to go through this sort of -- you having to hear it in the back. We'll stipulate to that. We heard that too. Not right here, anyway, but I heard it in a much more clearer audio. So Mr. Light's representation is accurate as far as what we heard also.

MR. LIGHT: We appreciate that.

So I'll just play through this clip so you can see it's the same clip that -- or the same action that we just viewed in Government's Exhibit 3.

THE COURT: All right.

MR. LIGHT: I stopped it here, Your Honor, at the 36-second mark of this clip, Government's Exhibit 5, where you can see over here on the left side -- lower left side that Mr. Khater is holding something in his hand.

We provided some still shots. Let me show you a picture of that for the Court. And there is a better place to see it. It's also 36 seconds where there's a long canister in Mr. Khater's hand.

So what is heard on this -- from listening to the audio is that Mr. Khater says, "Give me that bear shit." Mr. Tanios says, "No, no, no. Not yet, not yet. It's early." And the camera pans away, comes back to them and you can hear Mr. Khater saying they just effing sprayed me. That's the -- the essence of the video conversation that's captured at this moment. And I'm going to return to that when we talk about planning and coordination. But what this shows is that the spray that Mr. Khater is complaining about has already happened. And I want to be clear as we move forward, Mr. Khater was not sprayed by police pepper spray seconds before he sprayed the three officers. And we're going to show you that right now.

MS. GROSS: Judge, real quick. I have an objection, just -- just in general, with Mr. Light's kind of description of what is said in the video. The full video, there are other

words being said by my client, Mr. Tanios, that Mr. Light conveniently has not stated to the Court. And I know it's hard to hear, but there are -- there are other words. It's not just "Give me that bear shit" and then Mr. Tanios saying later, basically. That's not all that's said.

And I want the Court to be aware that there are other words said by Mr. Tanios. It's "Don't do it, don't do it" at 12 seconds and "Hold on, hold on" at 19. And then he says something -- you know, something about later, but there -- I think it's disingenuous to -- to not listen to the entire clip. It's not just "Don't do it, don't do it" or it's not just "Hold on, hold on." There's a "Don't do it, don't do it" too.

So please, Judge, if you can -- you know, on headphones it's much easier to hear, especially noise-cancelling headphones. But I want the Court to know that there's more conversation than what the government is alleging.

THE COURT: All right. Did Mr. Tanios at that point -- did I observe he had an earpiece in, some kind of ear --

MS. GROSS: It's like a phone -- like a phone connector.

THE COURT: Yeah. All right. Thank you.

Well, obviously I'll listen to these again if the parties wish me to. I would like to make decisions promptly, but if I have to, I can wait and listen to these again to make

sure I have the full evidence before me of what happened and what you can interpret from it.

MR. LIGHT: Your Honor, just to respond to that briefly, the clips that -- that we pointed out, there's -- what we can hear clearly, there's lots of talking on there. It's not always clear who is talking, but in any event, we're not trying to be disingenuous with any of these facts. Mr. Tanios clearly says, it's early, not yet. And, you know, when he's saying don't do it -- if -- if he's, in fact, saying don't do it, it's perfectly consistent with him saying hang on, now is not the time, not yet; implying the time is coming. And we're going to see when the time came just a few minutes later.

So let me move forward to Exhibit 4. And I can summarize for the Court that the two defendants stand next to each other for approximately seven minutes after this clip. They're talking. You can see them talking with each other. I'm about to share my screen for Government's Exhibit 4, and I'm cuing it up to time stamp -- bear with me while I get this next clip. The Court's brief indulgence.

All right. I'm going to be sharing my screen for Exhibit 4. This is the same United States Capitol Police pole camera that we see in Exhibit 3.

Is my screen visible to Your Honor?

THE COURT: Yes. Thank you. And it's at --

MR. LIGHT: This is Government's Exhibit 4.

THE COURT: -- 2:20:02?

MR. LIGHT: That's correct. At 2:20, at this moment, Mr. Khater begins to walk away from Mr. Tanios. I'm going to hit play. You can see them talking. We're at 2:20:09. They're engaged in conversation. There is no audio on this surveillance footage. And then Mr. Khater begins to walk towards the police line, and you'll see him moving through the crowd and getting closer. I was going to play this all the way through, but I know our time is short.

So I'm going to skip to right before the assault. But I do just want to say that what's important from the government's perspective is that at this moment what is not happening between 2:20 and 2:23 when the actions start, so to speak. There's no activity. There's no one pulling on the barriers. There's no group effort, and Mr. Khater is standing here, as you'll see, face to face with a line of police officers that are guarding the -- the bike rack barrier that's been erected to keep the crowd out.

And, actually, I did almost a good enough job talking to get us through where we want to be. So I'm going to skip to 2:22. And I'm going to let this clip play for the next two minutes or so.

I want to pause it at 2:22:40 and point out a few individuals here -- or at least where they are. It's hard to see them, but you will see them shortly. In the white shirt,

that is Lieutenant Bagshaw, who's referenced in our brief. He is in a riot helmet and a white shirt with a tie, and he -- you will see him dispensing pepper spray from a Super Soaker-type device. Officer Sicknick, Officer Edwards, and Officer Chapman are all standing in this area right here.

I'm going to press play again. Now, in just a couple seconds a skirmish will break out that is largely blocked from this surveillance video, right here on the lower right of the screen where I'm circling below the green, looks like a Trump sign and an American flag on top of it. You won't see all that action, but that's where an attack on the line begins at 2:22 -- or 2:23:00. And you can see the officers moving. I paused it there at 2:23:01. You can see something gets their attention, and they start walking down towards that skirmish.

At this point at 2:23:04, Mr. Khater is going in and out of view because there are flags blocking his head. Mr. Tanios is standing over here on the left observing what's going on. Now you can see that this spray begins right here from Lieutenant Bagshaw because of what's going on down here. And you'll get better views, Your Honor, from the body-worn camera footage that we're about to play of what's really going on in this well, so to speak, this area that's cordoned off by the bike rack -- bike rack barrier.

And let me say this: The perception in this particular video shot is skewed. This is a pole camera that's at least

50 yards away. This is zoomed in. This does not do a good job with depth perception, and as you'll see from the video clips we're about to show, these individuals are standing very far away that are over here on the right.

We're at 2:23:10 playing through. Now, what you just saw was a man in blue. That was Officer Sicknick, and he lurched backwards behind this flag. We're going to see that again on a different angle. So I'm going to just keep proceeding here. But you can see Mr. Khater right here, and it's hard to see on this shot, but his arm is up and extended. He has already begun spraying. You see him advance. And I pause it again, and I would like the Court to pay attention to the arm that is extended because Officer Chapman has just been sprayed.

And then at that moment right there, if the Court saw, he got up basically point blank to Officer Edwards, who is right here. You can see her leaning over, unable to see, blinded from the spray.

The other thing I'll point out here, as I pause it at 2:23:19, is look down at the bottom of the screen, what I'm highlighting here. These are ropes or a bungee cord or some sort of strap that attached to this bike rack barrier, and multiple people are pulling on that barrier.

So the timing here is essential. Mr. Khater began spraying. He waited for those minutes we showed you, and then

he began spraying when the attack on the barrier began. I'll play this through to the end. Because at this moment, Lieutenant Bagshaw, in the white shirt, sees Mr. Khater because Mr. Khater was still spraying. And I'll get back to that -- that point in time to let the Court watch that just one more time.

You see an arm extended right here on the 2:23:23. You see Mr. Khater's hand is pointed out. Watch Lieutenant Bagshaw, what he sees. Mr. Khater is still spraying. And, Your Honor, this is after the three officers that we've named have -- have already been sprayed and fallen off the line. You can see Officer Sicknick back here off -- off to the right. He's had to retreat because he's been blinded after being assaulted.

You can see Officer Chapman on his body camera -- we'll show you -- but he is moving around here unable to see as well, and Officer Edwards is ducked over behind these people requiring assistance. We'll get to all that. But watch Lieutenant Bagshaw, sees what's going on, and then he chases him down. That's when Mr. Khater got sprayed the second time.

I'd like to now move on to Exhibit 6. Bear with me while we cue that up. There is sound on. This is a body-worn camera device that's attached to Officer Brown. What I'd like the Court to note is -- first, we're going to just hit play at the beginning here when Mr. [sic] Brown looks over to his side,

you'll see how much space there is in that well in reality, not according to the last video.

Okay. So all the way down here you can see how deep that line is, and that is not evident on Government's Exhibit 3 or 4.

So let me cue this up to -- I'm sorry. I'm going to have to share this a different way so I can manipulate it. Bear with me, Your Honor. I do apologize.

MR. TACOPINA: Your Honor, and while he is doing that, Mr. Light is doing that, I just want to say I will need a minute to reply to this at the end. I just won't take much time. But I do want to reply to some things. I didn't want to interrupt Mr. Light's presentation, but obviously it's very relevant. So I'll just need a minute to reply.

MR. LIGHT: All right. My screen should be sharing. You should be able to hear audio. Can everybody see Government's Exhibit 6?

THE COURT: All right.

MR. LIGHT: We're at 2:22 -- 14:22:50 on the time stamp on this body camera. I'm going to hit play.

I want to show right here -- I paused it at 2:22:57. This man all the way back here, that's Lieutenant Bagshaw in the white shirt, and the other officers, who are the subject of the assault, are not in view.

I'm pausing it here at 2:23:03. You can see the

officers reacting to the skirmish. This is Officer Chapman right here in that helmet. Now it's in slow motion. We've slowed this down, and I am going to hit pause because here you can see Officer Edwards marked in green, and here you can see Officer Bagshaw beginning his spray. This is at 2:23:06. And you'll see that Mr. Khater is nowhere near that spray. He is further over here. He's going to pop up in just a minute.

That red arrow -- and I just paused it at 2:23:07 -- you can see Mr. Khater's hat. And I'll ask the Court to note soon you're going to see a hand extended up high in the air holding a can and spraying at officers.

I paused it at 2:23:07. Again, we're in slow motion. So we're going very slowly. This individual with the yellow arrow, that's Officer Chapman; and we're soon going to see Officer Sicknick. That's him in the blue with the blue arrow. Here's where Officer Bagshaw is. Here's where Chapman, Sicknick, and Edwards are. They're far away. This looks to be a distance of about 10 to 15 feet.

Now, this is after Officer Sicknick has been sprayed. He's turned away. Right here, there's Officer Chapman who's engaging with a protester who's lurched at him. And that's Mr. Khater with his hand still up in the air. Mr. Khater is turned towards Officer Chapman. And the assault on Officer Edwards is partially blocked in this view. You saw Mr. Khater turn towards her. Exhibit 6.

I'd like to bring up Exhibit 7. And I am going to play Exhibits 7, 8, 9, and 10 at this point, pausing them briefly, but this should not take too long. They're short clips.

All right. Can the Court see Government's Exhibit 7?

THE COURT: Yes.

MR. LIGHT: And I'll hit play. As we're paused here, before I get going here, you see the red arrow is Mr. Khater's face standing just a few feet directly apart from Officer Edwards here marked by the green arrow.

This is Officer Chapman's body-worn camera. Officer Chapman is one of the officers who gets assaulted, and you'll see when he starts moving around a lot his reaction to the spray.

Over here on the left you can see the scuffle beginning at 2:23 over the fence, and Officer Sicknick's blue jacket was just visible. It just stepped out of the screen.

There's Officer Bagshaw before he starts spraying, and officer -- and Mr. Khater is all the way back over here to the right on this camera. And here is Officer Bagshaw -- I'm sorry, Lieutenant Bagshaw beginning his spray. Here is Mr. -- or Officer Sicknick. This is at 2:23:05.

There's Mr. Khater spraying directly at Officer Chapman. That's Exhibit 7.

I'd like to move on to Exhibit 8. Now after having watched the body-worn camera, it's helpful to go back to the

surveillance footage camera for a slowdown and a close-up of the actual spraying incident, and this is a short clip slowed down starting at 2:23:11. I'll share this screen with the Court.

Can the Court see Government's Exhibit 8?

THE COURT: Yes.

MR. LIGHT: Now, again, here is Mr. Khater's hat, red arrow. This is Officer Edwards with the green arrow, and this is at 2:23:11. There's Officer Sicknick -- I paused it here -- just turning his head to the right. That's the first moment he turns away, as we saw in the other clip. There's Officer Bagshaw shooting in a totally different direction. And on this clip they look closer, but we know that they're really not that close at all; there's a lot of space between them. And that Officer Bagshaw is shooting in a south to southwest direction, while Mr. Khater is all the way up here far north, if you will, of that and more in line with these three officers.

But I will also point out that at this moment that Officer Sicknick turned his head, here you see this hand right here, and you can focus on this hand and Mr. Khater as he continues to advance on the officers. There he is walking forward. He's got Officer Chapman and there point blank on Officer Edwards. And then he continues to spray. That's -- that's Exhibit 8.

I'd like to play two more exhibits quickly. Can

everyone see Government's Exhibit 9?

THE COURT: Yes.

MR. LIGHT: Now, this is Lieutenant Bagshaw's body-worn camera. This is the individual who actually did the spraying in the white shirt that we were talking about, Lieutenant Bagshaw. So I'll press play on Government's Exhibit 9.

This is just a view of Officer Sicknick. As it'll show, Officer Edwards and Officer Chapman. This is ten seconds before the chaos breaks out. And there's Officer Bagshaw on the pole cam.

Now, there's a lot going on here. So I'll just press pause so we can see everything. On the left is Officer Chapman's body-worn camera, which we've seen. On the right is Officer Brown's body-worn camera, which we've seen, and the video below is Government's Exhibit 4, which we've seen.

These are synchronized as close as possible so we can see --

MR. TACOPINA: Where Bagshaw's body camera? Where did that go to?

MR. LIGHT: That is -- that is not being shown right now. That was shown earlier in that other clip; that -- that was at the beginning of this clip just for spacing.

MR. TACOPINA: Just for a second, though. Do you

have the rest of the body camera footage of Lieutenant Bagshaw?

MR. LIGHT: Not as part of our exhibits, and I can proffer to the Court that once he began spraying and taking out -- and engaging with the line of protesters, there was really nothing to see because his Super Soaker gun was right in front of the camera.

MR. TACOPINA: We'll get that, to see it ourselves, though; right? Officer --

MR. LIGHT: Yes, that will be produced in the course of discovery.

Now, here again, we can see the depth of Officer Brown's camera view and Officer Chapman's view. And let's play through. You can see where he is when he's spraying. That's Chapman's spray down here. The same thing up here on Brown's body-worn camera. And there's Officer Sicknick. There's Officer Chapman, and Officer Edwards is behind this gentleman right here.

Officer Sicknick, reacting to being sprayed. Officer Chapman. And there's Mr. Khater's hand that's extended. You'll note his leg took a step forward. He's leaning in to attack his target, and then he turns to Officer Edwards.

In my last clip I'll show Exhibit 10, Officer Hawkins' body-worn camera. And, Your Honor, we show this just to show the degree of the injury here and what happened to

Officer Edwards specifically. I'm hitting play on Exhibit 10. This is at 2:23:40. You can hear Officer Edwards say, "I got it right in the eye there." And what we'll note is at this point Officer Edwards -- we're not just down one police officer. She has to walk away and is off duty, unable to perform her duties, but a second officer -- actually two other officers have -- she's essentially blinded at this point.

And, Your Honor, I'll just note Exhibits 11 and 12 as well. These are images of Officer Sicknick going back and struggling to recover on the upper west terrace for nearly 20 minutes, along with other officers who were up there with them. But, again, Officer Sicknick, Officer Edwards, and Officer Chapman all had to retreat from the line after this. They could not perform their job. They were suffering the effects of the spray directly in the face, and it led to the collapse of the line.

So, Your Honor, that's the video presentation. I'm prepared to begin my argument. I don't know if Your Honor wants me to continue with my evaluation of the nature and circumstances of the --

THE COURT: We have to finish, and we're going to have to give Mr. Tanios an opportunity to be heard as well. We're going to have to quit at 11 o'clock. I have no choice. So I want to try to get everyone's statements and arguments in, and then I'll have to reserve the ruling because we don't have

time to finish it.

MR. TACOPINA: Well, I just -- we can put it in writing. I'd have to respond to a few things that I just saw, and I was quiet throughout Mr. Light --

THE COURT: Well, I'm happy to have you do that in writing. We're going to have to give Mr. Tanios an opportunity to be heard. The government has some -- has to answer some of your accusations as to the -- the action by Mr. Khater having been sprayed by the officer, Bagshaw, and the issues you've raised as to the other cases, like *Palmer*, and applying the same standards at that -- releasing individuals who are much worse actors than Mr. Khater, but we'll see when we have time to do all that.

I'll let Mr. Khater respond through his counsel now for about three minutes. And then why doesn't the government say whatever they need to say. So Mr. Khater -- we're going to get to Ms. Gross and Mr. Tanios heard as well at this time.

If you want to respond.

MR. TACOPINA: Yes, Your Honor. I'll take that 180 seconds. We've got a clock going here so I'm going to be strict.

Let me just -- on the video, there's just two things I just want to address real quickly. First of all, we're not saying that Mr. Khater didn't at any point spray that Mace. Okay. He got sprayed twice. The government admitted that. So

this is not about whether he did or didn't. It's a spontaneous act -- or reactionary act, not a meditated act, and that's what's important.

In the lieutenant -- Lieutenant Bagshaw's videos where you saw at the end where he was spraying into the crowd, you know, they showed you a clip where he was spraying one direction and Mr. Khater was in a different direction. Lieutenant Bagshaw was moving around the entire time. He sprayed in all different portions of the crowd. And if you look at Exhibit 7 at 14:23:05, Lieutenant Bagshaw sprays right -- and it's the government's exhibit that they just played. He sprays right at Julian Khater, right at him.

And in response, Mr. Khater did not use the bear spray that he had in his hand at an earlier time because -- that was recovered, by the way. Those bear spray bottles were recovered unused -- unused -- but he used a defensive spray called pepper spray, and -- and that's what was recovered. And it was dispensed when they recovered that, and it's a different canister completely. You can see by the hand, that first canister nine minutes earlier was a bigger thing with a white top. This was a small handheld thing, which is known as Mace or pepper spray. That's a defensive mechanism.

Number -- number 5, Exhibit 23 -- no, Exhibit 8. I'm sorry. The last one shown is after Officer Chapman was sprayed. It -- it's the aftermath, again, of the spray by

Lieutenant Bagshaw. They make that like an isolated incident, but you don't see any spray. It's seconds after Lieutenant Bagshaw sprayed into the crowd with that soaker gun or whatever they call it, but he didn't just go in one direction. He went all over, and you can see it -- you can see it in the first video.

I mean, if you go back to that Exhibit 4, that -- that cam pole that the government presented as evidence and is going to use as evidence, at 23:05 to 08 there's a stream of spray that goes directly to the little red arrow, and that's Mr. Khater.

Now, the government is saying, well, that's -- it's a skewed perception in this video. They use that video for the first 20 minutes of this argument to argue what it showed. When they show something that's not great, it's now skewed, the perception.

If you look at Exhibit No. 7, you see the video of the close-up of Lieutenant Bagshaw spraying directly where Mr. Khater is. He reacted, Your Honor. That's all I'm saying. So I'm not trying to argue that he didn't spray or didn't -- or did spray or didn't spray. He reacted. But the point is none of this was ever brought up. The 23:05 was never brought up in -- in the video clip where -- the spray by Lieutenant Bagshaw in any of the government's prior arguments or any of the government's papers. It's as if it didn't happen. It's at

nine minutes earlier they complained about being sprayed, and then nine minutes later he sprayed somebody, as sort of a premeditated act. It was not like that. He sprayed in response to a massive soaker spray that -- I guess that was my alarm -- a massive soaker spray that -- that was dispersed into the Court.

Last thing I want to say is regarding *Fairlamb*, the case that you cited, Your Honor. We looked at it and I've read it during some of Mr. Light's presentation. A 111(b) charge of violence does not create a presumption of future danger. And *Fairlamb* is simply saying that it's one consideration of future risk, but you have to look at the other factors, and the court did in *Fairlamb*. In fact, in that case, the defendant's actions were clearly premeditated, and that's the difference.

So if you look at -- at -- I have -- I've heard the case here. This is where, you know, he said how far do you want to go to defend our Constitution. Defendant said that he showed up aggressively at officers asking if they were Americans; that, you know, he attacked these officers physically. It's -- it's a complete -- across the barricades, which Mr. Khater never did.

The factual patterns are completely, completely different there. In fact, at one point, the defendant expressed no remorse after the fact by posting on social media his willingness to engage in, quote/unquote, war, on his own

social media page, after the January 6th act. So *Fairlamb* and this case are completely different. It's a premeditated act that actually shows no remorse. That's not here.

Also, again, the other bail factors under future risk -- Your Honor, 33 years of otherwise outstanding and -- and -- and spot-free life, if you will.

THE COURT: All right.

MR. TACOPINA: And, again, this was a one-time event that is not something that's going to happen again.

THE COURT: All right. Thank you. Thank you.

Mr. Light, you can respond to a couple of things. And then we've got to move on, in fairness to Mr. Tanios. On -- I can see the videos and see the timing myself and everything like this. One is the pepper spray can as opposed to a large bear spray can.

MR. LIGHT: Yes, Your Honor. It -- it does appear that the bear spray that Mr. Khater was holding ten minutes before the assault is not what was used during the actual assault. What was used was that -- a smaller can of -- of a different chemical spray. And what -- the bear spray is relevant because it goes to the planning.

And if I can take a step back, the day before -- as we presented by proffer in our brief, the day before all this happened, on January 5th at about 5 o'clock in the evening, Mr. Tanios walks into -- I think it's been referenced as the

arms dealer in this hearing -- to a store and begins asking questions about what he can legally bring to D.C. He cannot bring a firearm he's told. He cannot bring a pepper ball gun, but he's told he can bring Mace. What does he buy? He buys two cans -- two cans -- of bear spray. And that's the bear spray that we saw on the video.

He also buys two smaller cans of some form of a pepper spray, of a Mace. And we believe this is the Mace that was used in this assault, the chemical spray -- this is what was recovered from Defendant Khater's residence -- having been emptied, and a similar bottle recovered from Mr. Tanios' residence as well. So this goes to planning.

And let me bring this back to *Chrestman* and the guidepost factors that have been laid out by Judge Howell and essentially endorsed by the *Munchel* court. We have the extent of the defendants' prior planning, for example, quote/unquote, by obtaining weapons or tactical gear. This planning right before of purchasing bear spray, why are they buying bear spray to go to a city? This was a quick trip to D.C. It's an uncontested fact that there are no bears in downtown D.C.

Why are you attending a mass gathering of -- like this for -- with like-minded individuals, arming yourself with large supplies of this -- of these dangerous weapons that you can legally carry, understood, but there's really only one explanation for why the defendants are gearing up like this.

Because they understood what's going to happen on January 6th, and they're prepared to use it. They're prepared to use it to effectuate their goals. It's the only explanation for the timing and the preparation. This is how all the factors in *Chrestman* support a finding of dangerousness by this Court.

Obviously felonies versus misdemeanors. I don't need to spend time on that.

Whether the defendants used or carried the dangerous weapons. Your Honor, dangerous weapon can be defined both by it being a chemical spray -- and we have case law that supports that being a dangerous weapon -- also if it is capable of causing injury. And certainly these canisters of chemical spray are dangerous weapons under the law.

The fourth factor, evidence of coordination with other protesters before, during, or after the riot. Well, they coordinated with themselves in terms of talking about when the right time to -- to use this spray was. No, no, no. It's early. It's early. And I have to focus on those words from Mr. Tanios to Mr. Khater, because they're really at the heart of the conspiracy charge that we've alleged and why these defendants pose a danger to society.

We know the time of this conversation is after they've witnessed the violence, ten minutes before the assault is initiated. What can -- wait. It's early. Not yet. What

could that possibly mean, other than they are lying in wait. They know that an attack on the police line is coming. They wait patiently for that happen. Khater gets in position. He's standing waiting. And the moment the breach attempt happens, that's when he springs into action. This elevates the severity of his conduct because it's not random. It's not impulsive. It's not getting caught up in the emotion of the moment. It's premeditated violence. It's violence at point blank with a dangerous weapon on unprotected, distracted, unsuspecting officers.

This caused injuries to all three officers who suffered the effects of the spray a significant amount of time, taking them out of the line of duty, allowing the line to collapse. This is dangerous, severe conduct as envisioned by the court. And I won't regurgitate the -- the characterization of the different categories by the *Munchel* court, but it's clear which category these defendants fall into, and that is of the more severe conduct.

The coordination I was talking about in terms of factor four, not just with each other, but the coordination of action with the people attacking the police line.

Obviously on number five we have not alleged any type of leadership role on the events of January 6th. But with regard to number six -- and I believe Mr. Tacopina said that I was --

THE COURT: Conflating.

MR. LIGHT: Conflating. Thank you for the word.

-- was conflating factors here -- the exact words from the *Chrestman* decision are the words and movements during the riot, e.g., whether the defendant remained only on the ground surrounding the Capitol or stormed into the Capitol interior or whether the defendant, quote, injured, attempted to injure, or threatened to injure others.

These defendants injured police officers, sworn officers of the law that are -- were doing their constitutional duties. They were doing their jobs, and these defendants in concert got together to execute an assault on them. And there is no more severe conduct that happened in this Capitol riot because this allowed the riot to achieve its goals; meaning breaking down police barriers.

Without actions like what these two defendants executed, along with many other of their co-conspirators, if you will, the other rioters at the Capitol, without those actions, the police barrier doesn't fall. The Capitol does not get breached without this step-by-step assault on the police lines.

Now, I know Your Honor would like me to discuss the other cases that Mr. Tacopina discussed. And what we can say is that with regard to the cases cited in Defendant Khater's brief, all but two of them discuss a 111(a) charge. In other words, there's no charge of using -- of assault with a dangerous weapon in there with the exception of two cases. And

I can tell -- I can proffer to the Court, as we put in the brief, that with regard to both those two cases, the government, for whatever its reasons, never sought detention, and detention release, if you will, was decided by a magistrate court outside of the District of Columbia. From my understanding, there are other factors at play with regard to those particular defendants, and there were no injuries of any sort to the officers that were assaulted in those cases. So that easily distinguishes those two cases.

With regards to the other cases that Mr. Tacopina cites, we're talking about actions of punching. We're talking about actions of shoving and lots of other conduct that does not rise to the level of a direct spray.

THE COURT: All right. Let me have you finish. Thank you. I need to get to Ms. Gross and Mr. Walker and their client for about 15 minutes before I have to close.

We're going to have to have submitted arguments, further arguments later, but we're going to have to finish. So let me have Ms. Gross start with Mr. Tanios and his position in this matter. We've seen the videos, and as to what he said or not, I'll have to listen to the evidence, as you suggested, Ms. Gross, with earphones, which I'll do. But I want to hear your side of the position as to Mr. Tanios' involvement in this.

MS. GROSS: Thank you, Judge.

Yeah, I don't think Mr. Tanios can get a meaningful hearing, you know, within the next 12 minutes. So would the Court -- I had two witnesses prepared for today. Would the Court like to hear those? What would -- or my proffer? What would the Court prefer?

THE COURT: I'd like to hear the witnesses. I want to get what evidence in I can get today. I can hear argument later.

MS. GROSS: Okay.

THE COURT: Evidence.

MS. GROSS: I should have them in the waiting room, Mr. Smith, if you can see them. One is Sean Ruth.

Can you hear me, Mr. Smith?

THE COURT: I'm sure he's there turning back on. Harold, are you available?

THE COURTROOM DEPUTY: I'm right here. Looking at the waiting room at this time, and all I see is an individual with the spelling of Ayslynn. I'm not sure who that individual is. Anyone familiar with that person?

MS. GROSS: I did ask them to put their real names on there. So let me -- oh. It's his daughter's name. That is -- that is Sean Ruth.

THE COURTROOM DEPUTY: Okay. I'm admitting him now.

MS. GROSS: Okay. I think Mr. Ruth is connected. Can you hear me? We can't hear you.

THE COURT: You're still muted, sir. Can you check that?

MS. GROSS: Oh, there.

THE COURTROOM DEPUTY: There we go.

MR. RUTH: Can you hear me now?

MS. GROSS: Yes.

THE COURTROOM DEPUTY: Can you hear me loud and clear?

MR. RUTH: Yes, sir.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Oath administered to Mr. Sean Ruth.)

MR. RUTH: I do, sir.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. GROSS:

Q. Okay. Mr. Ruth, can you see me and hear me?

A. Yes, ma'am.

Q. Okay. If you could just tell the -- just spell your name for the court reporter. I gave it to her, but I just want to make sure it's correct.

A. All right. First name is Sean, S-e-a-n. Last name Ruth, R-u-t-h.

Q. Thank you, Sean.

Can you just tell me a little bit about your background.

What do you do for a living?
A. I'm actually retired military. I've spent 20 years with the West Virginia National Guard, 19th Group Special Forces. I've got two tours, one Iraq, one in Afghanistan. Actually, my job over there in Afghan- -- or Iraq was sensitive site exploitation team leader where we went out and wrapped up terrorists. And I put together this thing called a PUC packet. It's personnel and control packets which we've sent to the Central Criminal Court of Iraq to get terrorists found guilty and actually go to jail.
Q. Thank you. Thank you for your service.
Sean, I'm sorry I'm being very short, but I have to get through some questions --
A. I understand.
Q. -- very quickly.
So can you tell me what you do for a career now that you're retired military?
A. Now that I'm a disabled veteran, because after 20 years of jumping out of planes my knees and back are shot, I had to retire from the military. But I didn't get too far away.
I work at the Mountaineer Challenge Academy at Camp Dawson, the same place I worked for 20 years with my group from special forces. And I teach -- or I'm a squad leader that teaches disadvantaged youths and try to make them into assets to our society, which without the program they would not be.

Q. That's great.

And do you live in Morgantown, Sean?

A. Yes, ma'am, just outside of Morgantown. It's Westover, but I just walk over the bridge to Morgantown.

Q. Okay. And can you tell us -- tell the Court how you know George.

A. Back in '07 I bought a business downtown, and between my business and the apartment I lived on on High Street was his business, Sandwich University. And every night going home I'd stop by and grab a sandwich, and he was always back there cooking and making sandwiches for me, and we got to know each other that way.

Afterwards, he bought a bar right underneath, 4th and Goal, and that's where I'd end up to go and watch my Washington football team play every Sunday. So we became friends that way.

And about three years ago he asked me to invest in his company. So knowing how great his product is, I decided to say yes, and I invested in his company. And I'm a 20 percent owner of Sandwich University with him.

Q. Okay. So how long have you been friends with George or known George in the community of Morgantown?

A. That's 13 to 14 years, ma'am.

Q. Okay. Would you say -- do you talk often?

A. Yes, ma'am, especially -- since we became business

partners, we have business meetings every so often.

Q. Sure. Can you tell me --

(Indiscernible simultaneous cross-talk between the witness and Ms. Gross.)

BY MS. GROSS:

Q. That's okay. Sorry. Cut you off.

Can you tell me a little bit about George's character, for the Court.

A. He's kindhearted. I look at him as a big teddy bear. He's not violent whatsoever. I've never seen him show aggression towards anybody. As somebody that would wrap up terrorists and evil villains overseas, I was trained to see people that are violent, that are evil-spirited, and he is none of those whatsoever.

I would not allow him to come over to my house to play with my daughter, have cookouts with me if I thought he'd be any type of threat or any danger to my daughter because she is the most important thing in my life.

Q. Sure.

And can I ask you a little bit about -- you know, you had mentioned your background and -- and George. You don't know George to be in any extremist group like Proud Boys or a militia type --

A. No, not all. No, no.

Q. Let's go to the events that were going to happen at the

rally on January 6th. Were you going to go with George to that rally?

A. Yes, ma'am. A week prior he asked me to go with him, and I was excited. And I said yes, a hundred percent, I want to go with you. But because of my job, it was cycle break. That's where the students leave and we have to clean the facility and stuff. Anyways, that was a mandatory workweek, and they would not let me take leave to go join him.

But I was planning on going with him, and we were planning on going to just support Donald Trump and go to the rally. There was no plan of going to the Capitol Building afterwards or anything like that. It was just go, support the President, go see the rally. He thought it was going to be historical because of just the size of it.

Q. So whenever you say there was no plan, George never discussed any plan other than to attend the rally with you?

A. Exactly. And I think if he had more plans, I'm the one he would have confided in and would have told me about. We don't keep secrets from each other, and with us having the same political background, he knows he can always talk to me about it.

And nowadays it's kind of hard to say you're a Trump supporter without getting some type of backlash, but he knew I was a safe place, and he would always tell me what was on his mind when it came to politics.

Q. Okay. And you didn't -- you didn't end up going with him obviously; right?
A. No, ma'am, I couldn't. I was at work that day.
Q. But when he discussed it with you, it was a plan to go with him and Julian; correct?
A. Yes. I didn't know his friend. He just said there was a friend from Pennsylvania that was going with him, and he wanted me to be kind of the third wheel and go with them.
Q. Okay. And was there anything further mentioned about -- about violence or being violent at the rally?
A. No, not -- not -- not at all. No, ma'am. And I mean --
Q. Was George expecting violence?
MR. LIGHT: Objection.
THE COURT: I don't know if he knew what he was expecting or not. If you can lay a foundation for it.
MS. GROSS: I'll withdraw it.
A. Well, I knew he was worried about --
THE COURT: No question right now. Thank you.
THE WITNESS: Okay.
MS. GROSS: Stop. Sorry. I withdrew the question. I'm sorry to confuse you.
That's okay, Sean. I don't have anything further. The time is very short, and I just appreciate you coming today. Thank you so much.
THE WITNESS: Yes, ma'am. Thank you.

THE COURT: Does government want to briefly question?

MR. LIGHT: Very brief, Your Honor.

CROSS-EXAMINATION

BY MR. LIGHT:

Q. Good morning, Mr. Ruth. Just one question for you. You weren't with Mr. Tanios at any type of arms supply dealer or shop where chemical spray was sold on January 5th, 2021, were you?

A. No, sir, I was not with him. I was at work.

Q. And you, as you stated, weren't with him on January 6th, 2021, at all; is that fair to say?

A. That is correct, sir.

Q. All right. Thank you for your service, sir.

MR. LIGHT: I have no further questions.

THE WITNESS: Not a problem. Thank you.

THE COURT: Appreciate it.

Ms. Gross, do you have another witness that's here or didn't make it?

MS. GROSS: I did. I'm looking to see if -- I can't see if they're in the room or not yet.

THE COURT: Harold, can you see if there's any other witness?

MS. GROSS: It's Zyad, Z-y-a-d, Hage.

THE COURTROOM DEPUTY: Yes, Your Honor. I am admitting Mr. Hage at this time.

THE COURT: All right. If Judge Boasberg needs the thing, tell him we're a few minutes late.

MS. GROSS: I'll try to be short, Judge. So sorry.

THE COURT: That's fine.

MR. HAGE: Can you hear me?

MS. GROSS: Yes.

THE COURTROOM DEPUTY: Raise your right hand, please, sir.

(Oath administered to Mr. Zyad Hage.)

THE WITNESS: I do.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. GROSS:

Q. Zyad, I'm Beth Gross. Can you see me?

A. Yes, I can see you.

Q. Okay. I'm just going to ask you a few short questions, just because we're short on time here, about George; okay?

Zyad, can you just tell me a little background about yourself. Where are you from? Where do you live? What do you do?

A. So I was born and raised in New Brunswick, New Jersey. I currently live in California. I'm a retired correctional officer. And right now I do direct lending with a -- with a mortgage company.

Q. Okay. And how do you know George?

A. George is my first cousin, my uncle's son. We grew up together, you know, went to school together, went to elementary school together. You know, he's like a brother to me. We talk two to three times a day -- two to three times a week, just to keep in touch.

And, you know, he's always been -- he's always been by my side since I was a little kid, since we've grown up together. And even when I moved to California and he moved to West Virginia, we still made it a point to keep in touch at least weekly.

Q. Do you see each other often too?

A. We try to. I mean, family's important. Like, he would drive to New Jersey when I was living in New Jersey to spend the holidays, Christmas, Thanksgiving. Spend time with my kids. Even -- he had a business out in California he was trying to start. He came out here to visit me. So as much as we could spend time together, we -- we do.

Q. Great.

And could you tell me just -- just a little bit about George's character. What -- what -- how do you see George? Tell the Court.

A. He's a good-hearted father. I mean, he's a father of three children. Every time I talk to him he's either taking care of his kids or working. That's his life. I mean, you know, he would pick his son up from school, drop him off. He would

take care of his family. Always asked about his aunts and uncles. He's a kindhearted person. Never had any disrespect towards any type of law enforcement. Never had any bad intentions to ever harm anyone. I don't even think I ever seen him get into a physical fight, you know, and I've known him my whole life.

He's -- his life was working every day, going home, taking care of the kids. When I talk to him, he's either behind the stove cooking or at home with the kids climbing on him. You know, that's his life. He -- he doesn't have any bad bone in his body.

Q. Okay. Thank you.

And just -- just to clarify, I know you're cousins with George. Your families have been close for a long time, like you just testified. George's -- George's family -- someone else is popping up here. Can you still see me, Zyad?

A. Yeah.

Q. Okay. George's family and your family, you are -- your family is immigrants from Lebanon; is that right?

A. Correct.

Q. Okay. Can you tell the Court your thoughts, I guess, on -- on whether George would disappear to Lebanon for a flight risk, because you mentioned that to me?

A. Well, here's -- so his whole family is here. I mean, his -- his -- his closest family is here. We do have aunts and

uncles in Lebanon, but everyone in Lebanon wants to come to America because it's so bad over there.

First, he would never abandon his family. He's a family man. He would never leave his children, leave his wife. His goal is to take care of his family and protect his family. I would never see him as a threat to leave the country.

And I know that he's confident in what -- in proving his innocence, and he's looking forward to going to court. If there's anyone that wants to stay here and face what he has to face and look forward to it, he's looking forward to going to court and proving his innocence.

I don't believe at all he would be a threat to leave the country. His whole family is here. His wife is here. His kids are here. His business is here. I mean, I -- you know, I spoke to him a few times. I'm -- he would be willing to work from home to take care of his family.

MR. LIGHT: Objection.

THE COURT: I don't have a concern about risk of flight.

MS. GROSS: Okay. Thank you, Zyad. And thank you for helping us today. I'm not going to ask you anything else. The Court is on a timeline. I appreciate it. Thank you.

THE WITNESS: Thank you. Thank you, Your Honor.

THE COURT: Mr. Light.

CROSS-EXAMINATION

BY MR. LIGHT:

Q. Briefly, sir. Did you speak to Mr. Tanios on January 5th of 2021?

A. No, I don't believe I spoke to him.

Q. And you didn't speak to him on January 6th of 2021 either; is that correct?

A. Trying to remember. I don't recall. I might have spoken to him the day he was driving back home from that event.

Q. You were --

A. He never showed any concern about the event or anything that went wrong during the event or anything that he had any concern about.

Q. You weren't with him that day, though; is that fair to say?

A. No, I was not with him.

MR. LIGHT: Thank you very much, sir. No further questions.

THE COURT: All right. Thank you, sir. You're free to go. I appreciate it.

THE WITNESS: Thank you, Your Honor.

THE COURT: Let me talk with counsel about scheduling on this.

I know we don't have all the evidence in. I need to go through the videos again and -- as Ms. Gross has raised some questions on what was said on certain tapes, and certainly

Mr. Tacopina has raised questions on the timing and the directions of the bear spray -- whatever spray it was -- pepper spray that Officer Bagshaw was using and how it affected his client, Mr. Khater, and the relation to that, Mr. Khater's movements or not.

I'm not too concerned about the law. I can read that and know that. The issue really for me is the factual findings that have to be made and the -- what counsel asked me to conclude from those findings.

I suggest that we should have you back for an argument on the merits of this case in short time in the future. I can't finish them today. And to give you justice, we've got to have a little more time. And the government should have more time. They haven't had a chance to rebut or respond to some -- the positions yet.

I'm going to have to pull my calendar up and look when we can do it. We have a lot of these cases. It's rather busy, and I'm sure you're busy as well. So let's look at the calendar when we can get you back, and I think it would be better to have an oral presentation. If you want to file something in writing, that's fine, and -- but I want to try to get time in when we can get you back, and the defendants need to be resolved, their position here.

Unfortunately, I am not available -- I've got matters -- I'm -- I'm actually out of town the first three days of next

week. When I get back, I have hearings set all day. On the 6th I'm tied up. I may be able on the 6th to squeeze you in early in the morning on Thursday, the 6th, and be ready. On Friday I've got hearings all day. The week of the 10th I have hearings all day on Monday.

But first real day I have an opening would be the 11th of May. I hate to delay it that long, but I could give you a little time on -- as I said, maybe this Friday, if you'd be ready to argue by this Friday. If the parties are available, I can give you a little time Friday morning, otherwise -- that's the 30th. Otherwise it's going to have to be May, as I indicated, and the first full day I have available in May, the first day is the 11th -- Tuesday, the 11th.

MR. TACOPINA: Your Honor, did you say something about either the 6th or 7th of May?

THE COURT: Well, I -- I said the 6th of May. Wait a second. Let me see. The 7th of May? The 7th of May I'm totally tied up. The 6th of May I have a little bit of time early in the morning. I'm -- I could probably do a 9:30 hearing for an hour or so at most on Thursday, the 6th. It --

MR. TACOPINA: Your Honor, just so I'm clear what that is. That -- that is a continuation of the oral argument as to Mr. Tanios or --

THE COURT: For both. For both counsel. What I've heard today, the evidence I've heard today, and in the meantime

I will review the videos again. And I'll listen to what Ms. Gross said, to the discussions that Mr. Tanios may have had, what exactly he said or not. And then I'll hear -- you've had a lot of time already. But I'll give each side some more time on the 6th if you're available, if the government's available, at 9:30 and make a decision.

Is the government available on May 6th?

MR. LIGHT: We are, Your Honor. I guess I would suggest that an hour might not be enough time, considering Mr. Tanios' has not yet had a chance to really make any type of presentation, and we'd want to rebut that.

THE COURT: I may have to put time limits on everybody. If the schedule is such, we want to do it on the 6th, we can do it. Otherwise I can have more time later.

MR. LIGHT: We're available on the 6th in the morning and -- and on the 11th as well.

THE COURT: All right. Ms. Gross, how are you?

MS. GROSS: I'm available on the 6th and the 11th.

THE COURT: Okay. And Counsel --

THE COURTROOM DEPUTY: Your Honor, Harold Smith.

THE COURT: Yes.

THE COURTROOM DEPUTY: Looking at the availability at the jail, the 6th would be a better date in the morning.

THE COURT: We can get them on the 6th?

THE COURTROOM DEPUTY: Yes.

THE COURT: Okay. Can we do it earlier, like at 9:00, so I can put in enough time?

THE COURTROOM DEPUTY: Yes, sir, we can start at 9:00 a.m.

THE COURT: All right. We're going to finish this hearing starting at 9:00 on Thursday, the 6th, at 9:00 a.m., and if there's a problem on my schedule, I'll let you-all know. But I'm going to try to arrange it for that 9:00 a.m. on the 6th of May.

And at that point what we'll do is have Ms. Gross, if she has anything else to add that she hasn't had a chance to add yet, as well as whatever factors she wants me to consider based on the evidence.

And Mr. Tacopina will respond with whatever he wants to respond, what the government has already argued in their time already, but we'll give them some more time and give the government their rebuttal argument, and that will end the case that day.

And if I'm in a position, I'll issue an opinion that day. If I feel I have to reconsider the factors some more, I'll have to do an opinion shortly thereafter, but my preference is to issue an oral opinion, if I can.

All right. We'll be back May 6th at 9:00 a.m.; and we'll have -- make sure both defendants will be available at that time.

All right. I appreciate the work on this today.

MR. TACOPINA: Your Honor -- okay. This is really -- I'm sorry about this, but I think I -- I'm trying to work through this. I think on -- on May 5th, which is Wednesday night, I have to stay overnight for some medical tests or something, but I just realized that. It's not on my calendar for May 6th, but it is for May 5th. If that's the case, I could still try and do it from wherever I am or my partner, Chad Siegel, will just -- you know, I don't want to -- I don't want to -- the calendar is hard enough to get everyone together here.

I know you do.

He just has to be finished by 11:00. We have another federal sentencing, but -- but -- okay. So, anyway, we'll shoot for 9:00, let's see what happens. Hopefully I won't have to stay overnight or hopefully I'll be out by then.

THE COURT: Well, let me know if it's a problem in advance so we can work it out with counsel; all right?

MR. TACOPINA: Yes, I'll -- yeah, I just want to alert the Court to that. I'm not quite sure what the whole procedure is, how long it is or anything, but I just saw that little note in my calendar, so...

THE COURT: Well, if I can -- if we have to, we can move it, but just let us know.

MR. TACOPINA: All right. Thank you, Your Honor.

THE COURT: All right. Thank you, Counsel.

(The proceedings concluded at 11:11 a.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Nancy J. Meyer, Registered Diplomate Reporter, Certified Realtime Reporter, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenograph notes and is a full, true, and complete transcript of the proceedings to the best of my ability.

Dated this 20th day of May, 2021.

/s/ Nancy J. Meyer
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