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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 COURTROOM DEPUTY: This is Criminal Matter 21-117, United States of America v. Ryan Taylor Nichols, as Defendant 1.

Counsel, please identify yourselves for the record, beginning with the government.

MS. ROCHA: Good afternoon, Your Honor. Sarah Rocha for the United States, and I'm joined by Doug Brasher.

THE COURT: All right. Thank you.

MS. WEST: Good afternoon, Your Honor. Kira Anne West for Mr. Alex Harkrider, who I know is with us. I don't see him, but I see his little block there. I know yesterday he had a hard time -- there he is.

THE COURT: He made it. Thank you.

DEFENDANT HARKRIDER: Sorry about that.

MS. WEST: Again, Your Honor, I have Ms. Cubbage with me.

THE COURT: All right. Thank you.

MR. MCBRIDE: Good afternoon, Your Honor. Joseph McBride on behalf of Mr. Nichols.

1 THE COURT: Thank you, Mr. McBride.

2 And, Mr. Nichols, the way they have the camera set up,  
3 you're pretty far away. Can you see and hear us all right?

4 DEFENDANT NICHOLS: Yes, sir. I can, Your Honor.

5 THE COURT: All right. Thank you. I appreciate the  
6 ability to get on today. I called this emergency hearing on  
7 your behalf because of the change in circumstances. We have  
8 had pending now for a while the extensive habeas motion for  
9 immediate pretrial relief and emergency hearing.

10 THE COURT REPORTER: Judge, I'm sorry. Can we ask  
11 Mr. Nichols to mute until he needs to speak. I'm getting an  
12 echo and static.

13 THE COURT: All right. Certainly.

14 Mr. Nichols, is there a way you can mute that on the  
15 computer?

16 THE COURTROOM DEPUTY: Your Honor, I have muted him,  
17 but they will have to unmute him when you do need him to speak.

18 THE COURT: Okay. It should be muted okay now,  
19 Mr. Nichols. If it's a problem, you need to talk again, we'll  
20 get you back on for the court reporter.

21 But I was saying the document was filed August 30th, an  
22 extensive document, attached with some couple hundred  
23 paragraphs of the concerns that occurred at the D.C.  
24 correctional center. And then the government's opposition has  
25 been timely filed on the 15th. And I told Mr. McBride I wanted

1 to get that and then see if he had a reply, to set this in for  
2 a hearing. I received a supplemental, actually, on  
3 September 8th from Mr. McBride. I asked if the situation  
4 occurred at the -- problem with the jail authorities that had  
5 resulted -- which the Court was not aware of until I was told  
6 about it; that Mr. Nichols has been transferred to another  
7 facility.

8 So, Mr. McBride, a couple things I wanted to ask you,  
9 and then your -- if you have any concerns. First was you had a  
10 reply due that's -- that's due in a few days, and I really  
11 wanted to see if you're going to address the change of  
12 circumstances, because I think it may even moot or change the  
13 original approach in the habeas petition. And secondly, if you  
14 needed more time to do that because the circumstances have  
15 changed beyond your control.

16 So I just want to see where we are on that and --  
17 setting a hearing date for you at some time in the near future  
18 once we get things settled in.

19 MR. MCBRIDE: Sure. Thank you, Your Honor.

20 With regard to -- to the habeas motion and -- and the  
21 outstanding emergency bail application as well, under the  
22 Bail Reform Act, that, sort of, you know, talks about similar  
23 circumstances; there's certainly a point of intersection  
24 between the two. We -- we want to -- we need to argue both of  
25 these motions in the totality.

1           What has transpired at the D.C. jail with regard to --  
2           to Mr. Nichols is -- is abominable. We have a situation where  
3           we have named particular guards, particular long-time offenders  
4           from that facility, in our habeas petition. After the petition  
5           was given to the jail, those specific members of that staff  
6           retaliated against Mr. Nichols. They retaliated against the  
7           members in the pod that he was in. People were maced. People  
8           were transferred. Mr. Nichols was put in solitary confinement,  
9           stripped of his privileges for reasons that, once again, are  
10          completely unjustifiable.

11          The last time the jail did this, he ended up on suicide  
12          watch. Moreover, as laid out in our papers, the jail has  
13          routinely confiscated his discovery and, in doing so, has  
14          disrupted the process, our ability, to be able to prepare for  
15          trial.

16          But what's even worse than that, Judge, is the fact that  
17          Mr. Nichols has been in possession of a -- of a zip drive  
18          that -- that contains trial prep, trial strategy, secret  
19          communications --

20                THE COURT: I don't mean to interrupt you,  
21          Mr. McBride, but the government's response, I thought, covered  
22          several of those areas, and I was looking for -- if you wanted  
23          to file a reply, answering the government's response, because  
24          they did discuss those areas. It may be if you have a  
25          continuing concern about his present confinement, that may be

1       separate. As to discovery, it -- the government's  
2       representations are inaccurate, you could attack that. They  
3       said it was taken as part of their normal practice and no one  
4       has looked at them and no one will use them until he gets those  
5       back. He actually got them back in 90 minutes. But I don't  
6       know because I haven't seen your response as to all the  
7       government's allegations.

8               MR. MCBRIDE: Your Honor, we are working on -- on the  
9       response. We anticipate having it to you, I believe, later on  
10      today.

11             With -- with regard to the issue being moot, it's  
12      certainly not moot. Mr. Nichols has no access to his discovery  
13      where he's at. None of -- his -- his discovery did not travel  
14      with him. The drive that we are talking about that has secret  
15      attorney-client-privileged communications on it was taken for  
16      90 minutes at that first instance. It takes nine seconds to  
17      copy what's in that drive -- what's in that drive.

18             With all due respect to the government, their word  
19      is meaningless when it comes to me defending my client.  
20      It's meaningless because of the way that they had treated him  
21      and their constant disregard for his rights as a pretrial  
22      detainee.

23             Judge, that drive did not even make the trip with him to  
24      Virginia. It's gone. It's in the wind. We -- I mean, our  
25      entire trial prep has disappeared. I -- the -- the tactical

1 advantage that this gives to the other side, never mind the  
2 constitutional violations that are -- are at issue here are  
3 unconscionable.

4 You know, I have another pending habeas in Christopher  
5 Quaglin's case. Christopher Quaglin was moved six times. Each  
6 time we called out a prison for what was going on with him, he  
7 was moved around like a chess piece. Simply moving him around  
8 to thwart the -- the judicial process is not a fix.

9 The jail needs to be held accountable. We need to --

10 THE COURT: I understand. I'm familiar with his  
11 case. It's before a different judge.

12 But I -- I still think you're going to have to file a  
13 reply that addresses these, the response to the government, and  
14 the change of circumstances. Habeas goes to where he is being  
15 confined at the time he filed the habeas. He's no longer  
16 there. That changes, somewhat, the position of the habeas.

17 It doesn't affect your challenge that the discovery has  
18 disappeared and he needs that for trial and that your  
19 allegations -- they're a very, very serious one, whether the  
20 government has looked at your attorney-client privilege. If  
21 that's true, that would be an extremely serious problem, and  
22 then we would take appropriate action. The government's  
23 represented no one has seen it, but there may have to be  
24 affidavits to answer all these questions, and you may need some  
25 affidavits to witnesses as well, if you wish to go ahead with

1       this.

2               But I think you need to file a response that addresses  
3       the change of circumstances and the government's position in  
4       their response where they indicated what happened and why, from  
5       their point of view, including the discovery. And I am not  
6       aware of what this new facility is -- central Virginia,  
7       wherever it is. I don't even know where it is -- what  
8       provisions they have and how they're equipped to handle these  
9       matters. And I think that's a separate problem. It's a new  
10      problem; that the access to discovery at the D.C. jail is  
11      fairly extensive. What these other facilities have, I don't  
12      know. And that's something we'll have to hear about.

13             But I really want to get a response, answer to the  
14      government's opposition, that -- that treats what is moot and  
15      what isn't, that treats whatever has recently happened. And if  
16      there are affidavits of witnesses, that you need, to list  
17      those, and we can see where we go in from setting up the  
18      hearing. And I did that now because I don't want this to drag  
19      on and get a response to you that's not responsive to  
20      everything and then we have to have some more pleadings. I'm  
21      trying to get it all put together for Mr. Nichols' situation.

22             Let me ask the government about this for a minute.  
23      Mr. McBride has made some very serious allegations. Your  
24      response indicated no one looked at the discovery and it was  
25      returned, but then he said it disappeared again, and he's not

1 received it back, and he doesn't trust the government hasn't  
2 been looking at it and reviewing it.

3 I don't know if you've protected the thumb drive or not.  
4 I don't know of any fast ways on how it's protected or not.

5 But, Mr. Brasher or Ms. Rocha, what about the  
6 allegations of trying to get this thing resolved, this motion?

7 MS. ROCHA: Your Honor, the government certainly --  
8 certainly, the prosecution team has not seen these materials.  
9 We refer to the factual -- you know, the information that we  
10 provided on -- in our response. The first time -- we  
11 understand that even in Mr. McBride's petition, it acknowledges  
12 that those materials were returned. If there's some issue  
13 about -- I don't know if this is something specific to  
14 something he had when he was in the D.C. facility that he may  
15 not have in the Virginia facility or if it's some kind of  
16 return of property.

17 You know, we haven't seen anything. We're happy to --  
18 to look if there are particular things that we can assist with,  
19 but the prosecution certainly has not reviewed any of his  
20 materials.

21 THE COURT: Well, not only the prosecution, but any  
22 member of the -- the Justice Department, the prosecutors. But  
23 is there any indication that -- and I don't know if it's a  
24 protected -- a protected thumb drive. I think that's what he's  
25 referring to. That anyone at the jail looked at it. I don't

1 know.

2 I think we're going to have to do some review of this  
3 and have some more accurate information brought to the Court as  
4 to where the thumb drive is and what's happened to it and what  
5 the access was, available or not.

6 Mr. McBride, does that have a password access?

7 MR. MCBRIDE: No, not -- I believe it does -- it does  
8 not, Judge. Mr. Nichols is very limited as to what he can do  
9 there with the drive at the -- at the jail. We are at a  
10 disadvantage in terms of his ability to access it when he  
11 could. So there was no way for us --

12 THE COURT: Let me -- you're talking about a thumb  
13 drive, as I understand it.

14 MR. MCBRIDE: Yes.

15 THE COURT: And you didn't put on a password so when  
16 he plugged it into the computer there, he would have to enter a  
17 password to see it? So any prisoner that picked it up could  
18 look at it?

19 MR. MCBRIDE: No, no, Judge. It's -- it's a thumb  
20 drive that he keeps on his person.

21 THE COURT: All right. Well --

22 MR. MCBRIDE: That he keeps on his person. He plugs  
23 it in --

24 (Indiscernible simultaneous cross-talk.)

25 MR. MCBRIDE: He plugs it out.

1 THE COURT: -- effective.

2 MS. ROCHA: Your Honor -- Your Honor, if I may. My  
3 understanding is that there is -- I want to clarify from  
4 before. It's our understanding that the drive -- this is in  
5 relation to the September 5th issue and his transfer; that the  
6 drive is still at the D.C. jail and Mr. McBride can pick it up.

7 THE COURT: All right.

8 MR. MCBRIDE: Judge, I -- I just -- I have a  
9 question. We have an outstanding motion before the Court  
10 that's not the habeas petition. It -- it is the -- the -- the  
11 bail motion; the -- the motion for release as related to the  
12 Bail Reform Act. Is there a way that we can get a date for a  
13 hearing?

14 THE COURT: You don't think that that's intimately  
15 involved with your other matters here?

16 MR. MCBRIDE: Sure, there are points of intersection  
17 between the two, Your Honor, but this --

18 THE COURT: One of the first -- the supplement is all  
19 about the problems at the jail, the D.C. jail; your supplement  
20 you wrote. And then the original one -- I'll pull it out  
21 now -- to the emergency petition.

22 MR. MCBRIDE: Your Honor, respectfully, I also see  
23 that Mr. Nichols has -- has his hand up, and he -- he may want  
24 to say something.

25 THE COURT: All right. Well, we'll have to ask the

1 courtroom deputy if she can somehow tell the jail to help him  
2 turn on his machine for a minute.

3 THE COURTROOM DEPUTY: Your Honor, I just sent them a  
4 message asking to unmute.

5 THE COURT: All right. Thank you.

6 THE COURTROOM DEPUTY: He's unmuted now, Your Honor.

7 DEFENDANT NICHOLS: Thank you. Your Honor, may I  
8 address the Court, please?

9 THE COURT: Yeah. If it's relevant to what we're  
10 talking about, you certainly may.

11 DEFENDANT NICHOLS: Yes, sir, it is relevant to what  
12 we're talking about.

13 So good afternoon, Your Honor. Almost a month ago, we  
14 put a motion in regarding Sixth Amendment discovery violations.  
15 D.C. DOC illegally and discriminately confiscated my hard drive  
16 for close to an hour before returning it, giving plenty of time  
17 for them to transfer all of my attorney-client-privileged work  
18 to another device.

19 Two weeks ago, I was moved to the general population  
20 side of the jail without the U.S. marshals' consent and placed  
21 in punitive solitary confinement. During the move, my hard  
22 drive was successfully stolen by D.C. DOC and never returned.  
23 I asked for it to be returned all week and was ignored. That  
24 hard drive contained my last 20-plus months of  
25 attorney-client-privileged notes, trial strategy, video files,

1 habeas corpus grievance information, and much more.

2 Last Monday I was moved to a new jail, which I'm in now.  
3 Now I have zero access to evidence.com, zero access to my  
4 discovery hard drives, zero access to the law library, zero  
5 access to call my attorney on a privileged line as desired, and  
6 zero way to work on my case in any meaningful way. For months,  
7 Your Honor, I've brought to your attention the discovery issues  
8 I've had. Instead of the issues improving, they've only gotten  
9 worse.

10 I may no longer be in a jail that systematically abuses,  
11 mistreats, and tortures myself and other inmates, but I'm now  
12 in a jail where I cannot prepare for my trial in a meaningful  
13 way. This isn't progress but, rather, a step backwards.  
14 What's happening to me is not only unfair, it's  
15 unconstitutional. I have a right to equal and fair protection  
16 under the law, but so far that standard hasn't been applied or  
17 even been met.

18 Your Honor, I'm respectfully requesting to be placed on  
19 home confinement pending trial, even under the strictest  
20 conditions, so I can prepare for my trial and defend myself in  
21 court fairly.

22 Thank you, Your Honor.

23 THE COURT: All right. I appreciate your concerns.  
24 As I've always mentioned, discovery is important to you. I  
25 have no facts before me that I know where the thumb drive has

1       been, except the government's represented now they think it's  
2       at the D.C. jail, and your continuing complaints about your  
3       ability to review it. Obviously, you don't have it, you can't  
4       review it. And I assume at the new jail you'll have the  
5       ability to do that when it gets there. But I understand your  
6       concerns about wanting to get ready for your trial.

7               I've been trying to get to trial. We've had three  
8       different trial dates that counsel has continued. And it makes  
9       it very difficult.

10              MS. WEST: Your Honor, Ms. West here.

11              I don't have a dog in this fight, really, but I have to  
12       say, in my experience at the D.C. jail, I've had clients'  
13       personal property, such as a hard drive or thumb drive,  
14       disappear into a black hole of netherus [sic]. I've tried to  
15       investigate it, find out where it is. Nobody ever gets back to  
16       me. So just for what it's worth.

17              THE COURT: There's a new counsel at the jail and a  
18       new assistant trying to try to get things done, which I hope  
19       will be better. The Court actually has a working committee  
20       trying to resolve problems with the jail, with the judges, that  
21       we've been working with.

22              But right now we need to get facts about where it is and  
23       how we can get it to Mr. Nichols if -- and secondly, we'll  
24       probably have to have the government get an affidavit from some  
25       people that it's not been looked at or used in any way. And

1 then Mr. McBride can answer that, as best he wants, and  
2 Mr. Nichols can come and testify, if he wants, about it.

3 But I don't have any other way to ensure the validity of  
4 the thumb drive not having been reviewed and tampered with in  
5 any way. But I think we'll have to establish that. And  
6 Mr. McBride's attack is based on the supposition -- but no  
7 evidence -- that they did download and look at it. I don't  
8 know that. And so we'll have to see where that goes.

9 Mr. Nichols' concern, now he's been moved, is because of  
10 his fear that, now, he can't get discovery back and look at it.  
11 I don't know that yet either.

12 Additionally, the fact he's moved, I don't think can --  
13 he can seek immediately without some hearings as to  
14 retaliation. There were several individuals moved after some  
15 kind of confrontation with the guards. And, again, I don't  
16 know the facts of that. There have been different allegations  
17 of each side as to what happened, and the jail, obviously, has  
18 a right to execute its disciplinary functions as it wishes, as  
19 long as they're appropriate. But I don't know anything.

20 And I think if Mr. McBride wants to explore into that,  
21 we're going to have to set up a minitrial and have to have  
22 witnesses called -- and he'll have to have witnesses called to  
23 establish their point of view. And I have to make a factual  
24 determination. But I think the first thing we need to do is  
25 determine what happened to the thumb drive and -- and

1 Mr. Nichols get it and he review it as appropriate under the  
2 regulations of his new jail.

3 And I don't think I can get those answers in the next  
4 couple of days. So this emergency relief to let him out, based  
5 upon the suppositions of all these things have happened, except  
6 that he was transferred and he says he was in solitary  
7 confinement, which the government, I believe, denied in its  
8 motion that he was mistreated at the old jail. I think when he  
9 gets to the new jail, things will be a little bit different.  
10 So I -- I don't see the basis right now for the emergency  
11 relief to be granted on -- until I find out exactly what's  
12 going on.

13 So I'll set a hearing up in the next couple of weeks,  
14 and I'll do it right now. But I think Mr. McBride's got the  
15 burden, since it's his motion, to produce some type of evidence  
16 as -- supporting that the disc -- the thumb drive has been  
17 examined by the government and used against -- and to be used  
18 against him at trial, apparently. At least that's what  
19 Mr. McBride alleged what happened. I don't know of any  
20 evidence that -- the government says they think it has not  
21 been, but I think the government has an obligation as well to  
22 ensure what happened to the thumb drive and where it can get it  
23 back to the possession of Mr. Nichols.

24 MR. MCBRIDE: Your Honor, may I be heard for one  
25 moment, please?

1 THE COURT: All right. And then we'll finish up.

2 MR. MCBRIDE: Okay. Thank you, Your Honor.

3 I just want to make sure that we don't reduce the  
4 totality of our -- our habeas petition and our other motions to  
5 whether or not they looked at the drive. If they did that,  
6 it's certainly an egregious violation on their part. But we  
7 believe that we have substantial grounds to argue for his  
8 release. We -- it's no -- Ryan Nichols has never had a  
9 disciplinary incident under which he's been convicted at that  
10 jail.

11 After we filed a habeas -- and we named  
12 Lieutenant Lancaster -- there's a massive incident that -- that  
13 results in his subsequent -- in his subsequent transfer. Now  
14 we have all these jurisdictional questions about the habeas  
15 petition. Is it moot? Is it not moot?

16 I mean, the Supreme Court has carved out an exception  
17 for this kind of thing where -- wherein a case is capable of  
18 repetition, yet evading review. This is the kind of thing  
19 where they can repeat over and over and over again unless  
20 Your Honor holds their feet to the fire and -- and -- and holds  
21 them accountable in court. I mean, they can theoretically  
22 transfer him once a week until -- until trial happens.

23 THE COURT: I think. It's --

24 (Indiscernible simultaneous cross-talk.)

25 MR. MCBRIDE: -- incredibly.

1           THE COURT: There was a concern. You mentioned a  
2 case, and Judge Mehta has a case of a January 6th defendant who  
3 could not get his discovery done because he had been  
4 transferred five or six times.

5           And there is a provision in the Bail Reform Act for a  
6 temporary release to get ready for trial, and then you have to  
7 go back in the jail when you've gotten your work done. He used  
8 that in that case -- in an opinion he put out -- that it was  
9 very rarely done and it was not to be used as a typical example  
10 by other January 6th defendants -- because he was convinced  
11 after the multiple transfers to this individual that he had not  
12 been able to get ready for trial, and he had a trial set.

13           We need to get a trial set. We need to then see how he  
14 can complete his discovery review. If it turns out I become  
15 convinced he can't do it adequately, I can take advantage of  
16 that provision. If I think he can do his discovery, then he  
17 stays where he is. I have no concern. I don't know where that  
18 is at this point.

19           But secondly, your concern, seems to me, was that  
20 your habeas was his conditions under -- which he was serving  
21 under Lieutenant Lancaster and the mistreatment he was getting  
22 at that jail, which is no longer possible because he's not  
23 there.

24           It doesn't answer your discovery issues. It doesn't  
25 answer if you think that there should be some constitutional

1 determination as -- under the Eighth Amendment, mistreatment at  
2 the jail, which requires a trial, which requires a separate  
3 cause of action trial.

4 So what I'm going to do is set a hearing up now in a  
5 couple of weeks where you've had a chance to respond to the  
6 government's opposition, which they've laid out, and any  
7 additional things they filed regarding where the thumb drive is  
8 and where it went and where -- what activities are available  
9 for Mr. Nichols to look, and do his discovery where he is now.  
10 And we'll take those up as best we can at that time.

11 I do think that -- that there are some issues with the  
12 habeas, since he's been moved, certain areas that you have to  
13 address in the response.

14 So let's look at the calendar and try to put this  
15 together in a sensible fashion so we can do it; try to move  
16 this case forward so we can get to trial. That's been my  
17 problem all along.

18 And your opposition -- I don't know. Your response to  
19 the government's opposition is due in a few days. You said  
20 you'll be ready for that. That's fine.

21 Look at the week of October 3rd. Let's see our schedule  
22 for coming back.

23 MR. MCBRIDE: Judge, with regard to the motion  
24 schedule, if -- if we're, sort of, increasing the scope of the  
25 schedule where I need to respond to the move now, we would ask

1 for more time on it. That way we can incorporate the Court's  
2 considerations into that motion.

3 THE COURT: Well, that's fine. What would you like?

4 MR. MCBRIDE: Just -- today is -- if we can get it to  
5 you by -- by the end of next week, the 29th, is -- is fine.

6 THE COURT: The 30th is Friday. That's fine.

7 MR. MCBRIDE: The 30th. The 30th would be great.  
8 Thank you.

9 THE COURT: All right. Let's look to the 6th or 7th  
10 of October. My schedule is clear on the 7th. On the 6th I  
11 have hearings at 11:00 and 2:00, which will take a while. On  
12 the 7th after -- I've got something early. So after,  
13 apparently, 11 o'clock on the 7th, I could hold a hearing on  
14 the emergency petition for release and parts of the habeas that  
15 I think are still viable.

16 MR. MCBRIDE: The 7th works for us, Your Honor.

17 THE COURT: How about Ms. Rocha?

18 MS. ROCHA: That's fine for the government,  
19 Your Honor.

20 THE COURT: So if the government is going to file a  
21 surrepley, they can do so. But I have to have it in time for  
22 the 7th.

23 All right. So we'll do it at 11:00 a.m. on October 7th.

24 Mr. Nichols, we're going to do a hearing in your various  
25 petitions at this time that are pending, the emergency

1 release -- release from jail for discovery reasons and for --  
2 originally based upon your mistreatment at that old jail. And  
3 then, secondly, on the areas of the habeas, we can see.  
4 There's some areas that Mr. McBride has raised that will  
5 require witnesses and, I think, supplemental, additional  
6 briefing as to what we're really looking at.

7 But we'll do that on the 7th at 11:00 a.m., and we'll  
8 proceed. If you want to appear in person, Mr. Nichols, you  
9 have to get here, and the marshals would have to bring you  
10 down. And that's -- I assume it's a substantial drive. I  
11 don't know where this prison is. I think it's in  
12 western Virginia, but I don't know how far. But it might be  
13 central Virginia. It may be a two- or three-hour drive.

14 MS. WEST: Where he's at?

15 MR. MCBRIDE: Well, just -- Mr. Nichols -- Ryan, you  
16 can correct me if I'm wrong, but I believe the understanding is  
17 that Mr. Nichols would prefer to do it virtually because each  
18 time he travels back and forth from the jail, he's got to be  
19 quarantined for 14 days at a time. And that's, obviously, a  
20 major inconvenience. So if we need --

21 THE COURT: That's not a problem. I think -- I think  
22 we can do it by Zoom. Although I think that it would be better  
23 if it were in person. But we can do it by Zoom if Mr. Nichols  
24 is -- prefers that.

25 MR. MCBRIDE: Your Honor, may I inquire with

1 Mr. Nichols, just while we're all here are, just as to his  
2 position if he wants to do it in person or not?

3 THE COURT: Certainly.

4 MR. MCBRIDE: Ryan, do you have a position on what  
5 you'd like to do?

6 DEFENDANT NICHOLS: We can do it in person. That's  
7 fine.

8 MR. MCBRIDE: Okay. In person it is.

9 THE COURT: Okay. I appreciate it, Mr. Nichols. You  
10 don't have to, if you don't want to. There's a burden of  
11 bringing you for the marshals. But if that's what you want,  
12 we'll do it at 11:00 a.m. on the 7th of October.

13 MS. ROCHA: Your Honor -- Your Honor, if I may, I  
14 think we raised this at the last hearing. So apologies for  
15 raising it again.

16 But I do just want to be very clear. From the  
17 government's perspective, I understand D.C. was served with a  
18 habeas petition, but the United States has still not been  
19 served the last time I checked. So I just want that to be  
20 clear again.

21 MR. MCBRIDE: That's -- that's inaccurate. We filed  
22 an affidavit of service, which isn't required. Service was  
23 effectuated. We tried multiple times. I think we actually  
24 effectuated service twice, some two weeks before the last --  
25 the last status conference -- or hearing that we had. We're

1 actually prepared to move for default should it move into  
2 another week or two from now.

3 THE COURT: There's a report of signature for service  
4 on the docket that we can look at. It is a part of the  
5 certified mail-type return. Although I'll note the -- it's not  
6 indicated that anyone signed for it. But it does have the  
7 address to be used for the government. You might look at the  
8 docket, and you can see about that.

9 MS. ROCHA: Your Honor, my -- this is for my -- my  
10 colleagues and other parts of the office. But my understanding  
11 is that the rules require service on the U.S. Attorney's  
12 Office, and that that has not been done. But -- but, again,  
13 that would be, you know, for -- for some of my colleagues to  
14 handle, but I'm happy to -- to follow up with them. But I want  
15 to note that, again, in relation to the habeas petition.

16 THE COURT: All right. All right. We'll be back on  
17 the 11th, and -- I'm sorry -- on the 7th at 11:00 a.m., and  
18 Mr. Nichols has elected to come in in person. And we'll be  
19 here at that time. I hope the parties can take a look to kind  
20 of resolve some of these issues and get down to what we really  
21 have to decide in the case.

22 I can see, unfortunately, in my point of view, that  
23 there's going to be a long delay getting to trial if we're  
24 going to have to go through some kind of ancillary trials and  
25 call witnesses and various sides to try to establish what

1 really happened either at the local jail or with the  
2 thumb drive that the petitioner says the government stole and  
3 read. I don't have any evidence that happened. It was  
4 definitely taken away from him, but no evidence that anybody  
5 read it. And there will have to be some -- the government has  
6 denied that, then it puts the burden on the plaintiff to show  
7 it was potentially opened and read by someone.

8 MR. MCBRIDE: Your Honor, just lastly, we -- we  
9 agree -- we share your concerns about getting to trial, and  
10 we -- we want Mr. Nichols to be able to go to trial having made  
11 it through his discovery at least one time in its totality.  
12 That's why we're asking for him to be released pending the  
13 trial so we can get him ready and get back to trial. Whatever  
14 happens at trial, happens at trial. We just want to make sure  
15 that he's prepared.

16 THE COURT: Let me ask you on the trial dates. We  
17 continued them, the most recent one, because of your health  
18 situation. Where are you on your health situation, without  
19 going into any particulars?

20 MR. MCBRIDE: Coming -- I'm coming along, Your Honor.  
21 I -- I just left the hyperbaric chamber right before I was  
22 here. I came straight here, straight back home, and here I am.  
23 So I'm -- so I'm on schedule.

24 THE COURT: And schedule, how about a trial in  
25 January?

1 MR. MCBRIDE: Well, no, I don't -- trial in January,  
2 we're not on schedule for because I have other trials. I have  
3 a trial in December. I have a trial in February. January  
4 doesn't work. But my understanding is that we're on track for  
5 March. So I'm on -- I'm on schedule for March for sure.

6 THE COURT: I just want a record that establishes  
7 that we have tried to get in for trial and we can't.

8 I'm going to extend the time of the speedy trial this  
9 time until our next hearing date. I find the interests of  
10 justice require that and outweigh the interests of the  
11 defendant and the public in a speedy trial because of the  
12 necessity to resolve these disputes that have arisen. And I've  
13 tried to get another trial date sooner than counsel say they're  
14 available.

15 All right. We'll be back then.

16 MS. WEST: Your Honor, may I be heard?

17 THE COURT: Ms. West.

18 MS. WEST: I'm sorry, sir. Do I have to have my  
19 client appear at this hearing on October 7th?

20 THE COURT: Nope.

21 MS. WEST: Yes. Thank you, sir.

22 And my other issue, I wanted the Court to know that I  
23 have a felony January 6th trial in December, the first week. I  
24 have a felony January 6th trial before Judge Lamberth on  
25 January the 17th. And I am purposely trying to keep March open

1       because of previous conversations I've had with the Court about  
2       a trial date. But I just wanted the Court to know, as -- as in  
3       all of these other cases, I just -- my calendar is starting to  
4       fill up with trials, but I have not set anything for March.

5               THE COURT: All right. I appreciate that. Thank  
6       you. And if you aren't going to resolve this, we'll get a  
7       March trial, we hope, get it done.

8               All right. Thank you, Counsel.

9               (Proceedings were concluded at 2:10 p.m.)

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CERTIFICATE OF STENOGRAPHIC 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 13th day of October, 2022.

/s/ Nancy J. Meyer  
Nancy J. Meyer  
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