

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

Criminal Action No.
1:21-cr-00117-TFH
Friday, June 10, 2022
11:08 a.m.

RYAN TAYLOR NICHOLS and
ALEX KIRK HARKRIDER,
Defendant(s).

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TRANSCRIPT OF STATUS HEARING
HELD BEFORE THE HONORABLE THOMAS F. HOGAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States:

DOUGLAS BURTON BRASHER, ESQ.
DOJ-USAO
Northern District of Texas
1100 Commerce Street
Third Floor
Dallas, TX 75242
(214) 659-8604
douglas.brasher@usdoj.gov

For Defendant Nichols:

JOSEPH DANIEL MCBRIDE, ESQ.
THE MCBRIDE LAW FIRM, PLLC
99 Park Avenue, 25th Floor
New York, NY 10016
(917) 757-9537
jmcbride@mcbridelawnyc.com

For Defendant Harkrider:

KIRA ANNE WEST, ESQ.
LAW OFFICE OF KIRA WEST
712 H Street, NE, Unit 509
Washington, DC 20002
(202) 236-2042
kiraannewest@gmail.com

Court Reporter:

Lisa A. Moreira, RDR, CRR
Official Court Reporter
U.S. Courthouse, Room 6718
333 Constitution Avenue, NW
Washington, DC 20001
(202) 354-3187

P R O C E E D I N G S

THE COURTROOM DEPUTY: This is Criminal Case No. 21-117, United States of America vs. Ryan Taylor Nichols as Defendant 1 and Alex Kirk Harkrider as Defendant 2.

We have, on behalf of Pretrial Services, Ms. Shay Holman, and on behalf of courtesy supervision in the Eastern District of Texas, Ms. Howard.

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

MR. BRASHER: Good morning, Your Honor; Doug Brasher for the government.

THE COURT: Thank you, Mr. Brasher.

MR. MCBRIDE: Good morning, Your Honor; Joseph McBride for Mr. Nichols.

THE COURT: Thank you, Mr. McBride.

MS. WEST: Good morning, Your Honor; Kira Anne West for Mr. Alex Harkrider, who is present via video WebEx Zoom, and we waive our right for an in-person hearing.

THE COURT: All right. Thank you.

This is a Zoom conference because of the pandemic and because of the distances that counsel and Mr. Harkrider are from the Court rather than being in person. Mr. Nichols is still in confinement, and, because of the somewhat resumption of the pandemic, we're going to continue this hearing by Zoom with no objection of the parties.

1 I wanted to get together today -- and I appreciate
2 the few minutes of waiting for me. I really wanted to get
3 together to talk about a few things and hear from counsel
4 as well, the concerns they have for Mr. Harkrider's and
5 Mr. Nichols's positions in these matters.

6 The first is obviously we have our schedule
7 now. We changed our trial date at counsel's request by
8 Mr. Nichols, and we have the original pretrial motions to
9 suppress and in limine motions due in approximately no more
10 than a month, July 18th; to make sure we're ready to go on
11 those.

12 Additionally I want to talk a little bit with
13 Mr. Harkrider, when we totally finish, and with his
14 supervisor in Texas as well as here as to any confusions
15 over the bond requirements.

16 And as to Mr. Nichols, I wanted to check with
17 Mr. McBride and the same thing of Ms. West and Mr. Brasher,
18 who I think was not originally in this case, as to what plea
19 offers there have been, whether there's anything in written
20 format given to each defendant or counsel for them to review
21 with their clients. Because I have found in the past at
22 times we don't have it on the record, and an individual
23 chooses to go to trial, they get convicted, then they raise
24 questions why they weren't offered a chance to plea because
25 they will represent they never heard about a plea offer from

1 the government. So I want to make sure that's on the record
2 and done properly and also, in light of the various trials
3 I've had, that counsel on both sides are reviewing their
4 options as we go towards trial.

5 So with that, I'll start with the government. Are
6 there any other concerns that have arisen, discovery issues
7 that we have and as to whether or not you have made any
8 written plea offers to both defendants' counsel?

9 MR. BRASHER: I have not, yet. So I am not aware
10 of any -- I am not aware of any other discovery issues or
11 any issues that have arisen. There have been a couple of
12 requests that I have received from defense counsel, and I
13 responded to them.

14 There's one that I'm still trying to respond to.
15 There was a question about some body-worn camera that
16 appears to capture the officer sending and/or receiving a
17 text message, and we're looking into that still. But there
18 were some other questions about body-worn camera footage and
19 who it belongs to, and I believe we've answered and resolved
20 all those questions.

21 I do have one question about the pretrial order in
22 the schedule, if the Court would indulge me, and that is I
23 see that the motions in limine and motions to suppress would
24 be due July 18th, and then as part of our joint pretrial
25 statement, which would not be due until October 17th, would

1 be when we would exchange exhibits and make objections to
2 each side's exhibits, proposed exhibits. And I just want to
3 make sure that -- you know, we'll do our best to anticipate
4 any issues that may come up where we feel we need to move in
5 limine on, but I would just -- I would ask if we would still
6 then be permitted, you know, when we get to defense
7 exhibits, and there's a particular exhibit that we think
8 should be addressed before trial, whether that's -- whether
9 the Court wants us to do that in those objections or whether
10 we can still file a motion in limine at that point.

11 THE COURT: All right. We'll talk with counsel
12 and take care of that. I agree that if something new comes
13 up that was unknown before on either side, and it presents a
14 problem, we would have to do a review of it. I would hope
15 to take those up at the final pretrial conference, but, if
16 necessary, we can take it earlier than that, as soon as it
17 becomes evident that there is such a problem that exists
18 between the parties as to plea offers.

19 MR. BRASHER: As to plea offers, my records show
20 that written plea offers were made. I'm trying to pull them
21 up now.

22 MS. WEST: June 23rd of 2021.

23 MR. BRASHER: Yes. And one was made -- and it was
24 made to your predecessor; is that correct?

25 Let's see. No, I have it --

1 MS. WEST: I've never had a predecessor.

2 MR. BRASHER: That's right. So June 23rd I have
3 an email with a written plea offer for Mr. Harkrider, and
4 similar, June 23, 2021, I have an email with a written plea
5 offer for Mr. Nichols.

6 THE COURT: Okay.

7 MR. BRASHER: Those have both expired without
8 being accepted.

9 THE COURT: All right. And there have been no
10 other conversations? You've initiated no other
11 conversations about it since then?

12 MR. BRASHER: I have not initiated any. If the
13 defendants were to come to me, I would always listen.

14 THE COURT: All right. Thank you.

15 All right. Just for the record, those are the
16 outstanding plea offers. There have been no other plea
17 offers made, and, by no response, apparently they've been
18 rejected.

19 All right. So let me go, then, with counsel, and
20 we'll start with Mr. Nichols's counsel, Mr. McBride, as to
21 where you are in getting ready for trial and issues you may
22 have that need the Court's consideration.

23 MR. McBRIDE: Thank you, Your Honor. I just want
24 to make a brief record about a few things.

25 First and foremost, I'm receiving communication

1 here as we speak from Mr. Nichols's family that the public
2 line doesn't appear to be working. They obviously want to
3 be able to listen to the proceeding today. I know that --

4 THE COURT: Let me hold on that for a minute then.
5 Let me ask Ms. Hill to check on that.

6 THE COURTROOM DEPUTY: Your Honor, I can reconnect
7 the public line right now.

8 THE COURT: Okay. It shows on my screen that the
9 public line is there, but I can't tell if it's connected up
10 or not.

11 THE COURTROOM DEPUTY: It will take me a few
12 moments.

13 THE COURT: All right.

14 (Pause)

15 THE COURT: While we're waiting, Mr. Nichols, it
16 looks like you've gotten a haircut or a beard cut.

17 DEFENDANT NICHOLS: Yes, sir, I have. Yes, Your
18 Honor. We got one this last Friday again, so they're doing
19 it monthly now.

20 THE COURT: That's good.

21 DEFENDANT NICHOLS: Yes, sir.

22 (Pause)

23 MS. WEST: Judge, Kira West here for Alex
24 Harkrider. I'd like to add one thing with regard to the
25 plea offers, and Mr. Brasher can say whether or not that's

1 correct, but the offer that I received is known as a wired
2 offer.

3 THE COURT: All right. I don't know if that still
4 counts or not. I'd be disappointed if it is still a wired
5 offer.

6 I think we'll have Mr. Brasher look at the record
7 and see as well as he may want to consult about that.

8 MR. BRASHER: That was -- I will tell the Court
9 that was a new concept that I learned when I joined the
10 detail so I will look into that.

11 THE COURT: Yes. I think it's -- the Court
12 doesn't like them. Obviously the government has their
13 prerogatives, but we can see what would be best in that
14 situation in this case.

15 THE COURTROOM DEPUTY: Your Honor, I have
16 reconnected the public line.

17 THE COURT: All right. Mr. McBride, can we get
18 back together again?

19 MR. McBRIDE: Yes. Good morning, Your Honor, and
20 thank you for the opportunity to speak here today.

21 So regarding preparation for trial, we are still
22 on track at this point.

23 Regarding our being in possession of any new
24 offer, we are not. The last offer that was made was in June
25 of 2021, also a wired offer at that time. We maintain the

1 position where we're open to plea negotiations up until the
2 moment of trial, and that is, you know, something that we
3 are willing to discuss within reason.

4 Outside of that, we are still currently on track
5 for trial for November 1st at this time.

6 Judge, I do want to make a record about a few
7 concerns that I have.

8 THE COURT: All right.

9 MR. McBRIDE: So last night, on prime time
10 television, we saw the January 6th Committee present a one-
11 sided narrative to the public about what happened that day.
12 We have concerns that this is a deep -- that this is
13 poisoning the jury pool; that this is going to remove
14 our ability to select any jury that hasn't been
15 indoctrinated to the Committee's way of thinking by the time
16 that Mr. Nichols's case goes to trial or any other January
17 6th defendant's case goes to trial.

18 We're talking about a prime time presentation.
19 It's a one-sided narrative. It's consistently hammering
20 home the narrative of insurrection, domestic terrorism, you
21 name it. These are the talking points for the Department of
22 Justice's prosecution.

23 There was a video presented by a journalist at the
24 presentation last night, Nick Quested. The video is 17
25 minutes and -- 17 minutes and 20 seconds long,

1 approximately, in it's unedited form. The video has footage
2 that is arguably favorable to the prosecution in these cases
3 and the Committee's narrative; and it clearly has footage
4 that is exculpatory, that would support a counter narrative
5 about some of the things that we have been talking about
6 that day, in particular self-defense, defense of a third
7 person, what happened to Ashli Babbitt, Roseanne Boyland,
8 and how that worked through the public consciousness of the
9 members of the crowd. The exculpatory parts of the footage
10 last night were purposefully edited out while the parts that
11 make all January 6ers look bad were included and were
12 drilled down upon.

13 We feel that this is very unfair. There is a
14 protective order in this case that we are subject to and we
15 are hamstrung by. We are not allowed to just share
16 information in video with the public to launch a captive
17 offensive in the public sphere -- this is the world we live
18 in now, social media -- in order to counter balance what is
19 happening.

20 But the government -- well, I should say the
21 Congress last night, there were multiple times where body
22 cam footage that's subject to the protective order in this
23 case was used, audio was used, CCT footage was used. And I
24 say this because these are all the reasons for the
25 government's justification. This is the material backbone

1 as to why the protective order is necessary.

2 The government has said, in its papers and in the
3 protective order that we all signed off on, that national
4 security is at risk; that, you know, certain parts of the
5 Capitol are at risk. Policing procedures are at risk. We
6 can't let the public have access to all these things;
7 therefore, the protective orders are necessary.

8 But Congress last night just published all that
9 information to the world, so I would submit that the
10 protective orders in these cases are no longer relevant
11 because the federal government has, in purpose and in
12 effect, essentially waived the reasons for the protective
13 order by publishing these documents, these videos, these
14 pictures to the public.

15 We are deeply concerned, and this is, you know,
16 not -- this is not directed toward the U.S. attorney in this
17 case, of course, but we are deeply concerned about an
18 improper collusion between the Department of Justice and
19 Congress where Congress feels to be prosecuting the case.
20 It's one thing to say we have a legitimate interest in
21 investigating the events of that day. It's another thing to
22 present a one-sided narrative where you are selecting and
23 editing footage that is damning and that is casting the
24 people who were there that day in the worst light possible.

25 This is very prejudicial, and it's damaging to our

1 ability for a fair and reasonable trial.

2 THE COURT: Let me ask where are you going with
3 this? Do you want to file motions because of the
4 legislators' actions -- I don't see any evidence that
5 Justice did it, but the legislative actions in holding these
6 public hearings and putting forth this narrative that you
7 say is only one-sided?

8 It does concern the Court certainly as potential
9 jury prejudice. We'll have to take care of that as time
10 goes on. The trial has been delayed. If the trial was next
11 week, I'd be very concerned. I would delay the trial
12 frankly. But we have a November trial date.

13 But I am worried about -- I agree with you on any
14 kind of retained prejudice the public may get from this
15 presentation over the next few weeks that will occur. And
16 that is unfortunate, when Congress decides to do their
17 public hearings. They have a right to do hearings. They
18 have a right to broadcast them.

19 We ran into this in the Watergate era. There are
20 some cases on it in the Watergate era. One is a case where
21 Colonel North was convicted by a jury of this court after a
22 long trial before Judge Gesell, one of the finest judges.
23 At the same time, Congress had propelled his testimony on
24 the Hill, and despite all the warnings of Justice and his
25 own counsel, he was forced to testify; and, therefore, they

1 held his trial conviction had to be thrown out because of
2 what they caused. The legislative process caused damages to
3 his opportunity to defend himself.

4 But in any event, I don't see that at this extent
5 yet, but I think it is a concern you've highlighted.

6 As to the protective order, I think that obviously
7 this will have to be considered by the Court after filings,
8 whatever, you make on it and whatever the government's
9 response is. I suspect we'll be hearing this in the other
10 cases as well, and I hope there will be a response by the
11 government as to whether this moots the issue in the
12 protective order or not because Congress, according to your
13 allegations, has played certain videos from certain cameras
14 that the government held it's necessary to keep secret as to
15 the location of the use.

16 So I think you have a legitimate concern. That
17 does concern the Court, but I think we'll have to have a
18 normal court process to bring that up.

19 All I can do is suggest to you that I have
20 concerns, and I think that it remains to be seen where we go
21 with them and as to whatever motions you feel are
22 appropriate to vitiate the protective order. And the
23 government can respond to that, and we will at that point
24 see where we go.

25 But it is a concern, that Congress has decided to

1 publicize their approach of the Committee to this time when
2 we have multiple cases pending here in this court.
3 Legislature is independent from the Judiciary and Executive,
4 and they follow their own needs and requirements.

5 So I think we'll have to await further
6 development, but I appreciate your bringing that up because
7 I think that is a concern.

8 All right.

9 MR. MCBRIDE: Thank you, Your Honor. At a
10 minimum, we will certainly be filing a motion with regard to
11 the protective order to have the protective order, in
12 essence, repealed. I'm not sure if a writ of mandamus is
13 necessary. We will do the research here in the next few
14 days, and we will certainly file something. And I thank
15 Your Honor for sharing our concern objectively on the
16 matter.

17 I just -- I do want to make a brief record of one
18 other thing. Back in December I've been on record during
19 Mr. Nichols's bail hearing about some of the treatment that
20 he had been enduring. We are in the final stages of a
21 habeas petition, which will assert that he is being punished
22 in violation of his due process rights.

23 You know, Mr. Nichols is a military veteran,
24 honorable discharge, who has PTSD. It is a serious
25 underlying medical condition. Recently, for completely

1 unjustifiable reasons, he was held in prolonged solitary
2 confinement for upwards of three weeks. At some point he
3 actually ended up on suicide watch.

4 It's very concerning the way that he continues to
5 be treated in there. We have First Amendment rights
6 concerns. When we're talking about his case and when we're,
7 you know, having different discussions, he seems to be
8 retaliated against on a regular basis. You can kind of map
9 these things out, trace them to each other.

10 And also, at the last status hearing I made
11 arguments before Your Honor about Mr. Nichols's access to
12 his discovery with regard to the Evidence.com database and
13 Relativity.com database. Mr. Nichols went almost two months
14 without any access to -- I mean, it's almost been the entire
15 time since the last adjournment, since the last status
16 conference, where Mr. Nichols has not had regular access.

17 There were several weeks where he had no access
18 whatsoever, and he still has not been given access to the
19 Relativity.com database despite Your Honor's instruction on
20 it at the last status hearing.

21 So I just wanted to make a record about that as
22 well and to raise the point of the forthcoming habeas
23 petition which will speak about right to counsel violations,
24 due process violations, and, of course, his illegal
25 punishment, which we will lay out in our papers.

1 Thank you, Judge, for hearing me today.

2 THE COURT: That's all right. What about -- are
3 you talking about his limited access? He's not on the
4 regular rotation to receive a laptop every so often on the
5 list they have when they circulate them to all of the
6 prisoners? They are not providing that to him on the normal
7 rotational basis?

8 MR. MCBRIDE: No, they certainly are not. And the
9 court -- the jail, D.C. Jail, has moved to sort of a hybrid
10 system where defendants are allowed to use laptops in
11 certain sets of circumstances, and then, when they're not
12 able to have the laptop, they usually have a tablet, and on
13 that tablet they have access to the Relativity.com database.

14 They're not given -- I mean, the Evidence.com
15 database.

16 They're not given access to Relativity yet, which
17 we don't know why, but in Mr. Nichols's case in particular,
18 his access to any of those things has been regularly removed
19 from him for extended periods of time which appear to be for
20 purely punitive reasons. That is the only reasonable
21 explanation that we have because Mr. Nichols has -- you
22 know, he's a model citizen there at the prison. He's never
23 been really accused of doing anything wrong. There has
24 never been a meritorious claim against him for misconduct
25 ever since he's been there, so there's no reason under the

1 sun why he shouldn't have regular access to these things.

2 So we submit to the Court that -- and we will lay
3 that out in our motion -- that it is for punitive reasons.

4 THE COURT: All right. Mr. Brasher's in Texas.
5 He does not have direct access to the jail. I assume that
6 our local Assistant U.S. Attorney might have. He may have
7 to inquire about that because that has concerned the Court
8 before, about Mr. Nichols's access, and, you know, it's a
9 serious matter. I think we have to make some arrangements
10 that are -- for his accessibility, but also I'll have to
11 have a response from the jail people.

12 The general counsel over there generally follows
13 up with me. Hopefully we can get some explanation as to
14 what goes on. Sometimes there are two sides to the story
15 that I don't know of yet.

16 But I think I'm going to have the government
17 inquire as to Mr. Nichols's situation. I don't know why he
18 was in solitary confinement unless there was exposure to the
19 variant, the COVID variant that's around that has risen high
20 in the jail in the last couple of weeks and recent month or
21 two and has calmed somewhat down now, I hope. But they did
22 have a lockdown in the jail for a while because of the
23 reoccurrence of the pandemic situation.

24 But I will look into that. I will ask the
25 government to look into that and then file a report as to

1 the access for Mr. Nichols to have his discovery as allowed
2 by the Court. We were assured that would happen the last
3 time we discussed this.

4 All right. I'll turn to Ms. West as to where you
5 are in getting ready for the trial. Any materials or
6 concerns you have?

7 MS. WEST: Good morning still, Your Honor; Kira
8 West for Alex Harkrider.

9 I first want to say that I am not going to file a
10 writ of mandamus in this case. That's for sure. But I'm
11 happy to work with Mr. McBride on his issue so a motion for
12 change of venue, I'm sure, is forthcoming.

13 The only other fact I'd like to add to that,
14 because the Court has expressed his concern, is the first
15 thing I got on my Apple watch this morning was my Apple
16 News, and it was all about the January 6th program last
17 night, and I think that, you know, this is a problem. I'm
18 going to read the Watergate cases. I appreciate the Court
19 letting me know about that.

20 With regard to what Mr. McBride said about the
21 protective order, how I've handled this in my other cases
22 is -- because it's almost impossible to keep track of what's
23 highly sensitive and what's not and so on and so forth -- I
24 just send an email to the AUSA saying, "Look, I think this
25 is out in the public sphere. I'm bound by the protective

1 order, but do you mind if I share this with so and so?" And
2 nobody's ever said no, you can't do that.

3 So what's happening, as I think the Court knows,
4 is that many of the videos that are subject to this
5 protective order are out in the public sphere. So I think
6 that probably there are some things that still need to be in
7 the protective order, and I think trying to parse out what
8 those are is going to be a pretty big job.

9 I am preparing for trial. The limine and motion
10 to suppress date of July 18th, I may -- I don't know at this
11 time. I may ask for an extension, and here's why. That's
12 still three months before trial. I think there -- I might,
13 in my trial preparation, find that there are other things as
14 far as discovery, motions in limine, that would need to be
15 added. And I just wanted to let the Court know that if I do
16 file my motion in a timely fashion, that I would most likely
17 supplement it as I get closer to trial.

18 THE COURT: We're trying to put this in a place so
19 everybody knows where we're going when we get to trial. I
20 really don't want to have a lot of late motions coming in
21 except, as the government suggested, on both sides. If
22 there's some problem that comes up after the pretrial
23 statement that no one knew about, that's understandable.
24 But I'd like you to keep working and trying to get all the
25 motions in as soon as possible, and then we'll see.

1 On, again, the protective order issues, I think,
2 as these hearings, which are going in seriatim for the next
3 three or four weeks apparently, that will cause issues, and
4 we'll have a more developed record on that.

5 I appreciate Ms. West's approach. If there's a
6 particular matter in a protective order that you think needs
7 to be reviewed with others, whether they're other lawyers in
8 your office or other investigators or your counsel -- your
9 client or his family so you can understand the issues
10 better, you can ask the government -- or because the video
11 has been made public, as some of those last night were, if
12 the Court agrees that those can be released from the
13 protective order and used as appropriate, I don't see a
14 problem with that on an informal basis of counsel as long as
15 they have a clear understanding of what's being discussed.

16 And obviously you can come to me to ask for
17 relief, partial relief from the protective order, and I will
18 have an opportunity to consider that.

19 On the pleas, I do want counsel to take a look at
20 that on both sides and -- on the wire nature and on, as the
21 record has developed, whether the positions have changed on
22 either side at all. We have had trials go forward here, and
23 the results are public, what the jury verdicts are. Some of
24 the similar defenses may have been raised, so I think it's
25 something for the parties to consider. That's all.

1 Mr. Nichols has been incarcerated for a very long
2 time. I'm bothered by that because people have the right to
3 a speedy trial. We've run into the pandemic. We've run
4 into over 800 of these cases now pending and causing delays,
5 and the discovery is massive. There's thousands of hours of
6 videos to review so that you can find exculpatory or
7 inculpatory information, whatever it may be, and that's the
8 time that's been spent necessarily, unfortunately.

9 I don't want to push this matter off any further,
10 and I hope that Congress will finish their legislative
11 investigation and reports as soon as possible so that can
12 get well beyond us and behind us by the time we reach the
13 trial. But it certainly will be part of any voir dire
14 process that we do.

15 Let's see, we'll continue obviously the next --
16 whether it's three or four weeks that they're going to
17 continue with this report that Congress is doing, which
18 Congress has a right to do. It's their legislative process.
19 We'll have to see what the outcome of all that is, if it
20 goes with the change of venue issues, et cetera.

21 The Zogby Report, I guess you call it, that we got
22 earlier -- I have it in another case that has been filed,
23 that a change of venue can be based upon this survey done in
24 the District of Columbia. It has been questioned highly by
25 various people and the weight it can be given. There are

1 some judges that have it under advisement right now. There
2 are two of them who are considering it. The motions have
3 been arguing the right, but I expect there to be a decision
4 on that certainly. I have one that's under advisement right
5 now on whether to change venue and using that as the basis.

6 The generic rule, obviously, is despite
7 publicity -- and as I said the Watergate cases are the
8 quintessential example. They were raised in other cases in
9 the Watergate series, and I would hear the judge through it
10 all. But it was considered the general rule that it's not
11 enough to have just a general political climate that's
12 antithetical to the defendant's position, and we have to be
13 more focused on that.

14 But it's up to you all to take a look at those
15 issues and see and take a look at the survey that was done
16 to see if it's appropriately done. That will be -- I think
17 before your motions get in I suspect some other judge may
18 have decided, and I may have decided in another case.

19 But I would like to see where you all come from on
20 that, if there's something new that hasn't been considered
21 yet, if you're intending on filing one. You have the
22 additional factor of the congressional hearing, which was
23 not part of the earlier agreement, and the publicity
24 generated by that. It's regretful that the Congress put
25 that in now right in the middle of our handling of these

1 cases.

2 All right. What we'll do, then, is we're going to
3 go with our schedule. Our next operative date is the
4 October 18th motions date, and we'll see about, Ms. West,
5 whatever motion you have in mind and any opposition or
6 replies. We've set forth for the government two days in
7 post -- pretrial motions hearings.

8 I would still like to do -- it's now June 10th. I
9 think about the middle of July towards the -- maybe after
10 the July 18th date, certainly thereafter, if there's any
11 concerns or delays we should probably go ahead and set a
12 status call so we have a date that you can all focus on if
13 you need to come back rather than waiting until August to
14 raise some new issue. So let's look at the calendars for a
15 minute in the latter part of July.

16 (Pause)

17 THE COURT: I have time on July 21st and time in
18 the afternoon on July 22nd, if counsel are available those
19 days.

20 MS. WEST: The afternoon of July 21st is best for
21 me, Your Honor.

22 THE COURT: Let me hear from other counsel.

23 MR. BRASHER: The 21st works for me as well, and I
24 could likely do that in person or virtually.

25 THE COURT: All right. We'll see about that in a

1 minute.

2 How about Mr. McBride?

3 MR. McBRIDE: Yes, Your Honor, the 21st works
4 well.

5 THE COURT: All right. And, Ms. West, you said
6 the afternoon is better for you on the 21st?

7 MS. WEST: Yes, Your Honor.

8 THE COURT: All right. I think right now,
9 Mr. Brasher, unless you want to travel to D.C. for some
10 reason, we can still do these status calls by Zoom. There
11 will be a point, because these are felony cases, where the
12 substantive motions are going to have to be heard in person.

13 MR. BRASHER: I just raise that because I will be
14 in person on a hearing on Friday, the 22nd, so I can just --

15 THE COURT: Oh, you're going to be here anyway.

16 MR. BRASHER: I will be there anyway.

17 Mr. Harkrider wouldn't be, unless he came out for it.

18 THE COURT: Right, Mr. Harkrider wouldn't be.

19 Well, I'm going to put it on by Zoom. I'd rather
20 not have you be the only one here in person. I wouldn't do
21 that unless all the other lawyers are here and counsel are
22 here. I'll leave it on for Zoom at this time, and hopefully
23 wherever you are here you can communicate by Zoom all right
24 with the case.

25 We'll put it on at 2:00 p.m. on Thursday, July

1 21st, a status call to make sure the opening motions have
2 been filed and that we're all in line to move forward on
3 this. And if there are other problems that come up --
4 Mr. McBride has a motion pending I haven't ruled upon yet,
5 but he can do it. He filed something very recently now -- I
6 mean, very shortly now. I'll try to hear that in advance of
7 that time. And with respect to this case, I won't have to
8 resolve anything else, but we'll try to take care of that.

9 And I think the government certainly should be
10 on notice, and we do want to have some understanding of
11 Mr. Nichols's access to discovery that has been an ongoing
12 problem. Sometimes there have been some misunderstanding of
13 whether it's available or not. Sometimes there's not a good
14 explanation for it. And we can take it up whenever that
15 particular issue is ripe for this matter.

16 And, again, I'm going to ask the government to
17 review the status of pleas and the wired nature of the
18 pleas, and if the government wants to reopen any
19 consideration of the plea with the defendants and
20 defendants' counsel, they will be open to discussions as
21 well.

22 All right. If that's it, I'm going to talk to
23 Mr. Harkrider's Pretrial Services officer. Mr. Nichols can
24 stay on, and Mr. McBride, if they wish, or if they leave.
25 It's just going to be making sure that the Pretrial Services

1 understands the orders that have been put out on what
2 Mr. Harkrider is going to be doing or not doing.

3 MR. BRASHER: Your Honor, I have one issue that I
4 think involves everyone before we do that. Speedy trial. I
5 believe the Court had tolled it until today.

6 THE COURT: Right.

7 MR. BRASHER: My preference, obviously, would be
8 to toll it until November 1st, but if the Court wants to do
9 it until July 21st, we would not be opposed to that either.

10 THE COURT: All right. Thank you. I was going to
11 do that at the end, but I realize that if Mr. Nichols leaves
12 he wouldn't hear that so I want to make sure that both
13 defense counsel may have their clients' consent to extend
14 the speedy trial. I'm going to make it through the next
15 status call, and if motions are filed, that would extend it
16 in any event, but I'll make it until the next status call on
17 July 21st, if counsel for the defense agree with me.

18 MS. WEST: Ms. West for Mr. Harkrider, we agree.

19 MR. McBRIDE: Mr. McBride for Mr. Nichols, we
20 agree.

21 THE COURT: All right. Thank you. I'll make a
22 finding that the interests of justice outweigh the interests
23 of the defendant and the public in an immediate speedy trial
24 and the need to prepare the case for trial to make sure the
25 parties have access to the discovery and can proceed with

1 the motions they need to file before we can get to the trial
2 date, so I'm going to exclude today's time through the July
3 21st date from the next status call.

4 All right. So as I said, Mr. Nichols, you're
5 welcome to stay. I'm going to talk to Mr. Harkrider in
6 Texas as well as the D.C. Pretrial Services officer on
7 Mr. Harkrider's bond issues. That's all. There are no
8 serious issues. It's a matter of clarifying whether he's
9 supposed to be leaving or not, the house, et cetera.

10 DEFENDANT NICHOLS: Thank you, Your Honor. I'm
11 going to go ahead and leave now. You all have a good day,
12 and I'll see you back in court in July.

13 THE COURT: Thank you, Mr. Nichols.

14 DEFENDANT NICHOLS: Thank you.

15 THE COURT: Mr. McBride, you're free to go, if you
16 wish.

17 MR. McBRIDE: Thank you, Your Honor. Have a nice
18 day, everyone.

19 THE COURT: All right. Let me talk with Pretrial
20 for a minute on this matter and any concerns they've got. I
21 understand there may be concerns about his conditions of his
22 release as to the Court having ruled, since there was no
23 access for location monitoring, that we had changed those
24 conditions but left them as basically home detention, and
25 which I concluded that he was going to continue to report

1 and have Pretrial Services be notified when he was traveling
2 outside of his home there in Texas, not only outside the
3 state and his needs for his volunteer work, but my thought
4 was reporting when he'd have to leave the house for any
5 particular reasons beyond the normal ones with medical care
6 that he gets and related-type matters.

7 But let me just hear what the concern is of
8 Pretrial, what we need to do to make sure we're on the same
9 page.

10 PRETRIAL OFFICER HOLMAN: Good morning, Your
11 Honor; Shay Holman, Pretrial Services. As you are aware,
12 Pretrial contacted the Court last week with clarification in
13 reference to this matter, and you and I had a conference
14 call earlier this week.

15 On July of 2021 the Court lifted the location
16 monitoring condition for Mr. Harkrider, and Pretrial
17 Services in D.C. interpreted that, as we always do when the
18 LM is lifted, that that means whatever posture he's on,
19 whether it's home confinement or curfew, that that is lifted
20 as well. However, it wasn't stated specifically in the
21 minute order "remain on home confinement." It just stated,
22 as Your Honor just said, "requests permission from Pretrial
23 for his travel."

24 So Mr. Harkrider has a new case manager in Texas,
25 and she was going through the file and asked for

1 clarification. That's how it was brought to our attention.

2 So we just need clarification, but I also will
3 point out at this time Mr. Harkrider has been under pretrial
4 supervision for over a year now and has been compliant. If
5 he -- if the Court thinks that the order should state still
6 "home confinement," Pretrial would note that after a year in
7 total compliance we do ask for a step down.

8 So at this time we don't feel that there's a need
9 to continue -- he's not on -- he doesn't have a GPS device
10 around his ankle. We don't feel that there's a need to
11 continue any type of home confinement. The Court has been
12 granting him extensive travel because of his volunteer work
13 over the last year that he does, and he has been compliant
14 in keeping up with Texas and informing them of his travel
15 and reporting back, and the Court just granted an order for
16 him to travel from May 18, 2022, to August 31st for his
17 volunteer work.

18 So at this time Pretrial feels that there's no
19 need to continue any type of home confinement requirement.

20 THE COURT: Well --

21 MS. WEST: Your Honor, I'm sorry to interrupt, but
22 I notice that Mr. Harkrider dropped off the screen.

23 THE COURT: I was just trying to say that.

24 MS. WEST: And I called him, and he is -- the
25 electric meter man is there and cut off his power so...

1 This could only happen to him, poor kid.

2 So he's going to try to reconnect with his phone.

3 THE COURT: All right.

4 MS. WEST: I apologize.

5 THE COURT: Well, that's not your fault. It's no
6 one's fault at all.

7 I'm sure Ms. Hill can get him back on on the
8 phone, if he calls in.

9 THE COURTROOM DEPUTY: Your Honor, I'll let you
10 know. Once I see him in the waiting room, I can go ahead
11 and admit him.

12 PRETRIAL OFFICER HOLMAN: Ms. West, does he have
13 just the number to call in and not the videoconference
14 number, but just the phone number?

15 MS. WEST: I don't think he even has the phone
16 number, but if somebody puts it in the chat for me, I will
17 get it to him.

18 THE COURTROOM DEPUTY: I'll go ahead and send that
19 to you now, Ms. West.

20 MS. WEST: Thanks so much.

21 (Pause)

22 (Discussion off the record)

23 THE COURT: You gave him the information so he
24 should be trying to get on now?

25 MS. WEST: Yes, Your Honor. I texted him the

1 phone number. He has to put the --

2 THE COURTROOM DEPUTY: Your Honor, I have him in
3 the waiting room now. I just admitted him.

4 THE COURT: Good, thank you.

5 THE COURTROOM DEPUTY: Mr. Harkrider, can you hear
6 me?

7 THE DEFENDANT: Yes, ma'am, I can hear you. I
8 apologize. Someone from the electric company cut my power
9 so I lost WiFi.

10 THE COURT: All right. Mr. Harkrider, Judge
11 Hogan. You're back on. We were just discussing the
12 conditions, bond conditions, and some confusion on
13 continuing on lockdown in the house, which really has not
14 been working in any event.

15 Ms. Holman, do you want any particular language
16 change in the pretrial order? I've been reading -- it's
17 Ms. Holman -- the order I got in here on June 8th concerning
18 the general supervision, the third-party custodian, that his
19 other conditions he needs to follow, and is there any other
20 confusions I need to clear up or to change that order for
21 you?

22 PRETRIAL OFFICER HOLMAN: Your Honor, the
23 recommendation that I've put in my report dated June 8th --

24 THE COURT: Right.

25 PRETRIAL OFFICER HOLMAN: -- states "removal of

1 home confinement."

2 THE COURT: Right.

3 PRETRIAL OFFICER HOLMAN: "The defendant will be
4 required to notify Eastern District of Texas regarding
5 travel within the state of Texas. Court approval is needed
6 for all travel outside the state of Texas and travel outside
7 the continental U.S."

8 And I worded it like that based on our phone
9 conversation. I thought that you had indicated you liked
10 being kept aware of the travel outside of Texas for any of
11 his volunteer work, but I will defer to the Court on that.

12 And, Your Honor, Ms. Howard in Texas is also on
13 the phone, if she wants to add anything.

14 THE COURT: All right. Okay. Fine.

15 Ms. Howard, anything else you'd like?

16 PRETRIAL OFFICER HOWARD: No, that's fine. I
17 don't have any issues with Mr. Harkrider. He keeps me very
18 informed of his whereabouts even if it is in Texas, so I
19 have no issues with any of the suggestions Ms. Holman has
20 given.

21 THE COURT: The only condition -- the only thing I
22 would add to that is one of the special conditions is he's
23 allowed to travel to the VA Hospital in Shreveport,
24 Louisiana, for medical appointments that are needed provided
25 he advises you of his appointment and time and date, so that

1 restrictions about the Court approval needed for travel
2 outside of Texas would not apply to that medical treatment
3 that he's been getting in Shreveport.

4 PRETRIAL OFFICER HOWARD: And that's fine with me.

5 PRETRIAL OFFICER HOLMAN: And the order can say,
6 Your Honor, "with the exception to travel to Louisiana to
7 the VA hospital."

8 THE COURT: Right. All right. We'll do that.
9 I'm going to strike the requirement for home confinement, if
10 that was considered to still be in there, and that he's
11 required to notify the Eastern District of Texas regarding
12 travel within the state of Texas and Court approval to
13 travel outside the state and outside of the United States
14 with the exception that he can certainly travel to the VA
15 hospital in Shreveport, Louisiana, for medical appointments
16 as needed and advise the Pretrial Services for travel.

17 PRETRIAL OFFICER HOLMAN: And, Your Honor, one
18 additional reference you just brought up. In reference to
19 the third-party custodian, I don't know if the Court and the
20 government still feel that's necessary since he's being
21 removed off of home confinement, and I don't know if that's
22 still necessary, but I'll defer to the Court and the
23 government.

24 THE COURT: I'll ask if the government has any
25 concerns about that.

1 MR. BRASHER: Your Honor, we would ask that that
2 condition remain. I think it's not asking a whole lot more,
3 and it just adds one more layer of protection, especially
4 since we're dealing with remote attorneys and remote Court,
5 just to have one more person right there in the home.

6 THE COURT: She is nearby, and I don't think it
7 requires -- does it require any reporting by her to the
8 Pretrial Services?

9 PRETRIAL OFFICER HOLMAN: Only if there is a
10 violation, Your Honor.

11 But I'll have to ask Ms. West. I don't believe
12 she lives in the home.

13 THE COURT: I don't think so either.

14 MS. WEST: She does not. She lives very close by.

15 PRETRIAL OFFICER HOLMAN: Right. So I just wanted
16 to make sure that the AUSA was aware of that. She does not
17 live in the home with Mr. Harkrider.

18 I was not aware of that, so I appreciate that.
19 But I think that position -- our position would stay the
20 same.

21 THE COURT: All right. Well, as long as it's not
22 a burden and it's unfair to her, I'm going to leave it in
23 just to make sure.

24 Mr. Harkrider, if something happens, she has to
25 let us know.

1 All right. So, Mr. Harkrider, you're going to be
2 released on the general terms of supervision we had before.
3 I'm striking, however, that you should be in home
4 confinement as that was the concern. Obviously we're
5 stepping down to that requirement. And the travel
6 notifications are as we've indicated except you can travel
7 to Shreveport for medical treatment as needed, and I see no
8 other problems with that.

9 All right. Thank you, Counsel, for working that
10 out, and we'll continue that Pretrial Services order as I
11 just indicated.

12 And Ms. Holman and Ms. Howard, if there's any
13 issues, you let me know, but I think Mr. Harkrider has shown
14 that he can be relied upon.

15 PRETRIAL OFFICER HOLMAN: Yes, Your Honor, and
16 I'll wait for the Court to issue the minute order.

17 THE COURT: All right.

18 PRETRIAL OFFICER HOLMAN: Thank you.

19 THE COURT: All right. Thank you, Counsel. I
20 appreciate you getting on.

21 All right. Mr. Harkrider, we're going to conclude
22 this hearing at this time.

23 DEFENDANT HARKRIDER: All right. Thank you very
24 much, Your Honor. Hope you have a great day.

25 THE COURT: All right. Thank you.

1 MS. WEST: Good afternoon, Your Honor.

2 MR. BRASHER: Thank you, Your Honor.

3 (Whereupon the hearing was
4 concluded at 12:02 p.m.)

5
6 **CERTIFICATE OF OFFICIAL COURT REPORTER**

7
8 I, LISA A. MOREIRA, RDR, CRR, do hereby
9 certify that the above and foregoing constitutes a true and
10 accurate transcript of my stenographic notes and is a full,
11 true and complete transcript of the proceedings to the best
12 of my ability.

13 **NOTE:** This hearing was held remotely by Zoom or some
14 other virtual platform and is subject to the technological
15 limitations of court reporting remotely.

16 Dated this 26th day of July, 2022.

17
18
19 /s/Lisa A. Moreira, RDR, CRR
20 Official Court Reporter
21 United States Courthouse
22 Room 6718
23 333 Constitution Avenue, NW
24 Washington, DC 20001
25