

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\* \* \* \* \*

UNITED STATES OF AMERICA,	)	Criminal Action
	)	No. 21-197
vs.	)	
	)	
RACHEL MARIE POWELL,	)	February 11, 2021
	)	2:17 p.m.
Defendant.	)	Washington, D.C.
	)	

\* \* \* \* \*

**TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE BERYL A. HOWELL,  
UNITED STATES DISTRICT COURT CHIEF JUDGE**

**APPEARANCES:**

FOR THE GOVERNMENT: ELIZABETH ALOI  
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ALSO PRESENT: CHRISTINE SCHUCK, Pretrial Officer

Court Reporter: Elizabeth SaintLoth, RPR, FCRR  
 Official Court Reporter

Proceedings reported by machine shorthand, transcript  
 produced by computer-aided transcription.

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

1  
2 THE DEPUTY: The United States District Court for  
3 the District of Columbia is now in session. Chief Judge  
4 Beryl A. Howell presiding.

5 Matter before the Court, Magistrate Case  
6 No. 21-197, United States of America versus Rachel Marie  
7 Powell.

8 Your Honor, for the record, Ms. Christine Schuck  
9 from pretrial is present on the phone.

10 Counsel, please state your names for the record,  
11 starting with the Government.

12 MS. ALOI: Good afternoon, Your Honor.  
13 Elizabeth Aloï for the United States.

14 THE COURT: Yes. Good afternoon, Ms. Aloï.

15 MR. ENGLE: Good afternoon, Your Honor.  
16 Michael Engle for Ms. Powell.

17 THE COURT: All right. Good afternoon, Mr. Engle.  
18 Good afternoon, Ms. Powell.

19 Are you having any difficulty hearing, or can you  
20 hear everything?

21 THE DEFENDANT: I can hear everything.

22 THE COURT: All right. Good.

23 So this hearing is being held remotely with  
24 counsel for both sides, the Government and the defendant,  
25 participating via video conference, and Ms. Powell also

1 participating via video conference.

2 Ms. Powell, do you agree, after consultation with  
3 your counsel --

4 THE DEFENDANT: Yes.

5 THE COURT: -- to participate in this hearing  
6 remotely rather than being physically present in the  
7 courtroom today?

8 THE DEFENDANT: Yes.

9 THE COURT: I would like to remind anyone who is  
10 listening to this hearing over the public teleconference  
11 line that, under my standing order 20-20, recording and  
12 rebroadcasting of court proceedings, including those held by  
13 video conference, is strictly prohibited.

14 Violation of these prohibitions may result in  
15 sanctions including removal of court-issued media  
16 credentials, restricted entry to future hearings, denial of  
17 entry to future hearings, and any other sanctions deemed  
18 necessary by the presiding judge.

19 All right. So let's begin with the Government's  
20 pending motion which is an appeal of the magistrate judge's  
21 release order.

22 I have reviewed, in connection with this hearing,  
23 the Government's motion and attached memo, and the complaint  
24 underlying the charges in the case. I have also reviewed  
25 the defendant's opposition memo which was very promptly

1 filed even before I had seen the Government's.

2 I have also looked at the transcript of  
3 proceedings that the Government supplied before the  
4 magistrate judge in the Western District of Pennsylvania,  
5 and that magistrate judge's order setting conditions of  
6 release, and the Pretrial Services Report from the Western  
7 District of Pennsylvania.

8 I also did review, earlier today, two exhibits: A  
9 PowerPoint presentation on a CD, and a DVD with some video  
10 footage that the Government supplied.

11 I take it, Mr. Engle, you have been privy to all  
12 of that information?

13 MR. ENGLE: I have, Your Honor.

14 THE COURT: Okay. Good.

15 All right. So it's the Government's motion, so I  
16 will give you the floor, Ms. Aloï.

17 How do you say your name?

18 MS. ALOI: Aloï.

19 THE COURT: Aloï?

20 MS. ALOI: Yes, Your Honor. It's Ms. Aloï.

21 THE COURT: Aloï, okay. So correct me if I  
22 mispronounce it. I apologize if I do.

23 MS. ALOI: Thank you.

24 Your Honor, on January 6th, the defendant picked  
25 up a large pipe and used it as a battering ram to break into

1 the U.S. Capitol. Then, amplified by a bullhorn, she  
2 corralled her fellow rioters and gave instructions on how to  
3 take the Capitol, including instructions that I believe you  
4 indicated you saw in the video, that seemed to suggest an  
5 operative knowledge of the interior layout of the Capitol.

6 THE COURT: I know that that's one of the --  
7 excuse me.

8 I know that that's one of the suggestions that the  
9 Government had made, that she had some preplanning knowledge  
10 of the Capitol's layout, which is -- given what occurred and  
11 how close members of Congress and staff and other people  
12 came to -- mobs walking through the Capitol floors, you  
13 know, it was a little bit concerning -- quite concerning.

14 But having looked at that video, does it indicate  
15 that she had, sort of, a floor plan? Or does it indicate  
16 that she had at some point been inside the Capitol, through  
17 that broken window perhaps, and then hopped back outside?  
18 Because she was only giving directions -- not about the full  
19 layout of the floor but, sort of, the layout of that office  
20 where the broken window was.

21 MS. ALOI: Your Honor, I think the former is  
22 currently under investigation.

23 I think the latter is quite clear; that she did,  
24 in fact, enter the Capitol, assessed the situation, exited,  
25 and then gave direction to the fellow rioters on how best to

1 accomplish their goal of interrupting the proceedings.

2 She seems to indicate that there is a place where  
3 you might be able to drop down. I don't think that is  
4 immediately obvious to individuals who may be looking in  
5 that window; but we're still evaluating what -- or  
6 investigating what information she may have had in advance  
7 of the riot that day.

8 We do know that she was in touch with at least one  
9 other militia member whom she traveled to the Capitol with.  
10 This is --

11 (Simultaneous speaking.)

12 THE COURT: This is the Mr. Kevin Lynn; is that  
13 right?

14 Excuse me. That's Kevin Lynn.

15 MS. ALOI: That's right, Your Honor.

16 THE COURT: Well, that's -- I mean, the only  
17 reason I know that name is from *The New Yorker* article you  
18 attached to your briefing.

19 Has -- have the investigators, the FBI, gotten any  
20 further information from Mr. Lynn?

21 MS. ALOI: Your Honor, I am not prepared to  
22 proffer today any additional information on that.

23 THE COURT: Okay.

24 So, I mean, we have both the defendant's statement  
25 at the window saying: Here is what you are going to find in

1 that other room, two doors -- some other stuff.

2 But, also, there seems to be an Exhibit 10 that  
3 the Government produced in connection with this PowerPoint.  
4 It appears to show the defendant inside the Capitol. But  
5 was that before or after she was standing outside with the  
6 bullhorn; do you know?

7 MS. ALOI: Your Honor, I can show some additional  
8 video footage that may shed a little bit more light on that.

9 The crowd with the bullhorn -- the crowd following  
10 the battering ram -- there appears to be a wave moving into  
11 the Capitol; and there is additional footage that you see of  
12 her inside holding a cell phone in a tunnel. I believe that  
13 happened subsequent to the battering ram and bullhorn into  
14 the room incident, and it was taken later in time.

15 THE COURT: Okay. And the video -- the video that  
16 you showed me, what was the source of that?

17 MS. ALOI: So the FBI has been pulling videos from  
18 the United States Capitol Police's cameras that were all  
19 over the complex that day.

20 I have two videos I'm prepared to show you; the  
21 first one, I believe, is pulled from that footage. The  
22 second one is actually one we just received yesterday,  
23 although I did provide it to defense counsel in advance of  
24 this; and it is actually from a Twitter feed that appears to  
25 be pulled from the footage that other people had taken. And

1 we are currently piecing together how to show that from the  
2 official footage. But it does show the defendant fighting  
3 at the police line, at the police barricade. And so it  
4 lends more explanation to what happened that day -- in the  
5 complex that day.

6 (Simultaneous speaking.)

7 THE COURT: Okay. And the video -- the video that  
8 you collected yesterday that you are prepared to show today  
9 was not on the DVD that you provided to me that I have  
10 looked at already?

11 MS. ALOI: That's correct, Your Honor.

12 We provided you with a DVD of the exhibits from  
13 the underlying proceeding.

14 This would be a new video --

15 THE COURT: Okay. Sure.

16 MS. ALOI: -- although it has been provided to  
17 defense --

18 (Simultaneous speaking.)

19 THE COURT: And I am looking forward to seeing  
20 that.

21 I just want to get a couple of other, sort of,  
22 niggling questions that I have to resolve.

23 The defendant's memo says, as a legal matter, that  
24 the criminal charges filed against Ms. Powell cannot trigger  
25 the rebuttal presumption that no conditions of release can



1 adequately assure her attendance at trial. He says that in  
2 the defendant's memo at page 2.

3 Does the Government agree with that statement?

4 MS. ALOI: The defendant has been charged with a  
5 crime of violence, 18 U.S.C. 1361, which I think permits the  
6 hold for the purposes of this hearing.

7 My understanding is that we would have to prove  
8 dangerousness or flight risk by a preponderance, and clear  
9 and convincing evidence, respectively; and then you would  
10 have to find that there are no conditions of release that  
11 are -- that can reasonably assure the safety of the  
12 community or the appearance of the defendant in court.

13 THE COURT: No. I think the -- I think Mr. Engle  
14 is talking about the rebuttable presumption advanced under  
15 18 U.S.C. Section 3142(e)(3).

16 Aren't you, Mr. Engle?

17 To interrupt you for just a second.

18 MR. ENGLE: Yes, Your Honor.

19 This is not one of those cases where the nature of  
20 the charge creates a presumption of intention that the  
21 defendant would then need to rebut.

22 The burden here, as counsel for the Government has  
23 stated, rests with the Government in this particular  
24 analysis, Your Honor.

25 THE COURT: Well, that's where I was a little bit

1 puzzled because the rebuttable presumption as, Mr. Engle,  
2 you pointed out, is a pretty important consideration at a  
3 detention hearing and whether or not this is the type of  
4 case -- the type of charges where the rebuttable presumption  
5 applies; this is a pretty important factor for a judge to  
6 look at.

7 And the defendant is charged with a violation of  
8 18 U.S.C. Section 1361, which makes it a crime to willfully  
9 injure or commit any depredation against any property of the  
10 United States. And, here, the defendant is charged with  
11 damage to the Capitol window in excess of \$1,000. So that's  
12 a felony that carries a maximum term of imprisonment of ten  
13 years.

14 Isn't that correct, Ms. Aloï?

15 MS. ALOI: Aloï. Yes, that's correct.

16 THE COURT: Aloï. Why I have trouble with your  
17 name, I don't know.

18 MS. ALOI: Aloï.

19 THE COURT: Well -- so the problem, as I see it,  
20 is the rebuttable presumption in 18 U.S.C. Section  
21 3142(e)(3)(C) applies to an offense that's listed in  
22 18 U.S.C. Section 2332(b)(g)(5)(B) -- which is a long list  
23 of enumerated offenses -- for which a maximum term of  
24 imprisonment of ten years or more is prescribed.

25 So I will ask the Government, isn't 18 U.S.C.

1 Section 1361, relating to Government property or contracts,  
2 which is charged as a felony because the property damage  
3 exceeded \$1,000 among the listed offenses in 18 U.S.C.  
4 Section 2332(b)(g)(5)(B), so that the rebuttable  
5 presumption, under 18 U.S.C. Section 3142(e)(3)(C), does  
6 apply here, contrary to the defense memo?

7 MS. ALOI: Your Honor, I do not disagree with your  
8 analysis.

9 THE COURT: Okay. Well, I can't -- I shouldn't be  
10 the only person in the courtroom looking at the statute  
11 books; but that's how I read it, unless I hear otherwise.

12 But the defendant said this in the memo, I don't  
13 think it was addressed --

14 MR. ENGLE: Right.

15 THE COURT: -- or, if it was addressed, I think  
16 everybody assumed, at the hearing before the magistrate  
17 judge in the Western District of Pennsylvania, this is not a  
18 rebuttable presumption case. My reading of the statute is  
19 that it is a rebuttable presumption case.

20 I am not sure it's going to change the parties'  
21 arguments; but I think the rebuttable presumption applies  
22 here clearly under the applicable statutes.

23 One of the things that the magistrate judge in  
24 Pennsylvania said was that the defendant, if released -- as  
25 a release condition was not to have any guns at her house.

1           As I read the hearing transcript, the defendant  
2           gave her guns to some unnamed friend. So has the Government  
3           been able to secure those guns -- figured out where those  
4           guns are -- in order to secure them to make sure that, if  
5           the defendant is released, she can't go back and pick up her  
6           Glock, or whatever other kind of gun she had? She had a  
7           couple.

8           MS. ALOI: Your Honor, I think this actually  
9           speaks to one of the considerations which is the defendant's  
10          history and characteristics. I think it's poor judgment to  
11          take the firearms and simply hand them off. Yes, law  
12          enforcement is working in Pennsylvania to secure the  
13          weapons.

14          I don't have an up-to-the-minute update on that.  
15          I know they were about to do so when they were looking into  
16          it yesterday.

17          THE COURT: But the location of those firearms was  
18          ultimately disclosed, even though not made part of the  
19          record of the hearing that was provided to this Court?

20          MS. ALOI: Yes, I believe -- that's my  
21          understanding. I can confirm that with the Court if it is  
22          necessary.

23          MR. ENGLE: If I may, Your Honor, on that point.

24          Obviously the issue with respect to whenever an  
25          individual might be released back to their community, back

1 to their home, they would not be permitted to have firearms  
2 in that house.

3 I instructed my client to have those firearms  
4 removed to a place where -- if she was released after the  
5 hearing in the Western District, that law enforcement could  
6 pick those up at a location that would not be her home,  
7 where she would not have access to them. And what the judge  
8 had indicated was she wanted them turned over to either  
9 local law enforcement or federal law enforcement, which --  
10 we were prepared to make those arrangements if the matter  
11 had not been appealed.

12 THE COURT: Okay. So, right now, those guns are  
13 sort of, floating around somewhere? Okay.

14 All right. So I am going to return to Ms. Aloï.

15 I think I got it right that time --

16 MS. ALOI: Thank you.

17 THE COURT: -- to proceed with whatever new  
18 evidence you want to present that I haven't seen yet.

19 MS. ALOI: Yes, Your Honor. Let me go ahead and  
20 pull up the video.

21 There are two videos; one video that shows the  
22 battering ram incident, which I believe -- which I am happy  
23 to show you, although I believe you are familiar -- it  
24 sounds as if you are familiar with those facts and I would  
25 like to show you if the opportunity comes up. And, then,

1 the other one is the new one that I referenced just a few  
2 moments ago.

3 (Whereupon, a video was played.)

4 MS. ALOI: You will see the defendant wearing a  
5 pink hat.

6 THE COURT: Actually, I am not seeing anything.

7 MS. ALOI: It says that I am screen sharing.

8 Let me pause.

9 My screen is telling me that I am screen sharing.

10 (Proceeding pauses.)

11 THE COURT: Mr. Engle, could you see that  
12 videotape?

13 MR. ENGLE: No, Your Honor. I could not.

14 I saw the screen of the computer, but not the  
15 video.

16 THE COURT: Right. All we could see was the  
17 directory, Ms. Alooi, but not the actually played video.

18 MS. ALOI: All right. Let me -- let me try this  
19 again.

20 THE COURT: Okay. Now, we can see it -- or at  
21 least I can see it.

22 Mr. Engle, are you able to see it?

23 MR. ENGLE: Yes. I see what looks like the video  
24 image now.

25 MS. ALOI: Okay. Let me rewind it a bit here.

1           As I noted a moment ago, the defendant is wearing  
2           the pink hat.

3           (Whereupon, a video was played.)

4           MS. ALOI: I share this because there was a  
5           suggestion at the detention hearing that the defendant was  
6           not involved in other violent conduct beyond the battering  
7           ram at the Capitol window incident. But here you can see  
8           she's involved in pushing up against the police line and  
9           forcing -- pushing possibly past it.

10          And here.

11          That's the entirety of the clip. I think now --  
12          it's now back on the main screen.

13          THE COURT: Was part of that at the -- there was a  
14          little piece of that -- was that at the doorway where the  
15          one officer had been squeezed between the two doors and was  
16          yelling in pain -- a videotape we have all seen a number of  
17          times on the news?

18          MS. ALOI: Your Honor, I think -- I don't want  
19          to --

20          (Simultaneous speaking.)

21          THE COURT: It looked like a similar doorway.

22          MS. ALOI: Your Honor, I'd agree it looks like a  
23          similar doorway.

24          I have been to the Capitol and I have seen the  
25          doorway -- where the window was broken and where they went

1 through. We are in the process of confirming precisely at  
2 what moment in time and where this occurred. As I  
3 indicated, we did pull the video off of Twitter; and now we  
4 have to go back and match it against the official footage.

5 I think -- even if it were not the precise place  
6 where the police officer was pushed up against the door in  
7 the clip that I think you are referring to that's been  
8 widely circulated, it does show her involvement in  
9 reaching -- or in breaching the police line and physically  
10 engaging with law enforcement.

11 The other video -- while we're screen sharing, let  
12 me go ahead and show the other one.

13 I think I know how to do this now. Bear with me a  
14 moment, please. I have to open up the video in order to --  
15 I know how to do it.

16 Okay. Are you able to see this?

17 THE COURT: Yes. We're able to see this.

18 (Whereupon, a video was played.)

19 MS. ALOI: I think that video is particularly  
20 instructive not only because it shows her taking a battering  
21 ram to the United States Capitol but, also, because she  
22 appears to be directing the individuals around there and  
23 seeking their assistance in what's going on.

24 Obviously, we can't hear what she's saying over  
25 the crowd; but her body language and actions -- it seems to



1 indicate that she is corralling other rioters to assist with  
2 the battering ram.

3 And I show you these because the magistrate in  
4 Pennsylvania made a finding that the defendant is dangerous  
5 and, certainly, the Government supports that finding, and  
6 thinks that it is correct.

7 I can speak to -- I know you had some questions.  
8 I am happy to continue or address any other questions that  
9 you may have.

10 I did want to take a moment to address --

11 (Simultaneous speaking.)

12 THE COURT: Well, I mean, I think -- let me  
13 just -- I will just tell you the things that give me some  
14 concern here.

15 And I fully appreciate the Government's position  
16 that using a battering ram to bash down windows in the  
17 Capitol is dangerous; I think the magistrate judge in  
18 Pennsylvania recognized that. But that was a tool that she  
19 didn't carry with her from Pennsylvania to D.C. to do harm.  
20 She likely found that on the grounds of the Capitol where  
21 she wasn't supposed to be anyway; and she used that  
22 battering ram to hurt property.

23 And there is -- as defense counsel has pointed  
24 out, there is no evidence that -- unlike other defendants  
25 that I have in front of me -- that she was carrying a gun --

1 you know, stun guns, batons, other kinds of weapons with  
2 her.

3 Of course, I have seen the evidence that she was  
4 carrying a backpack, and the Government doesn't know what  
5 she had in that backpack. So it might be, when the  
6 investigation continues, you will find out what it actually  
7 was; but at this point you don't have that proffer to make.

8 Am I correct in that?

9 MS. ALOI: Yes, Your Honor.

10 Well, we know she was carrying earmuffs designed  
11 to muffle gunfire, and that her jacket may have been  
12 designed to conceal a firearm -- a conceal-carry jacket, if  
13 you will.

14 Do I know whether or not she was carrying a  
15 firearm on that day? No, I do not. I just know that she  
16 certainly has access to them.

17 And when law enforcement searched her residence  
18 they found firearm paraphernalia. And they also found  
19 smashed cell phones that had their SIM cards removed from  
20 that, which indicates to me that --

21 (Simultaneous speaking.)

22 THE COURT: Where did they -- and where did they  
23 find those items?

24 I know defense counsel made the argument at the  
25 hearing, well, she has got all of these kids; maybe the kids

1 decided they didn't want to be connected anymore and smashed  
2 up their phones, which would be unusual. But where were the  
3 phones found in these bags with creepy items in them, you  
4 know, these knives and such?

5 MS. ALOI: The phones were found in a hallway; and  
6 so I don't think there is anything specifically tying them  
7 to the children.

8 Also, I can represent to the Court that the  
9 children's father was concerned about their lack of  
10 electronic devices because he wanted to make sure that they  
11 could engage with virtual school. And when the children  
12 were left with him, their, I guess, iPads, or whatever it  
13 is -- their computers were not brought. So there was no  
14 foresight to make sure that the kids were able to connect  
15 with their schooling when they were left with the father. I  
16 think that is being sorted out. I think he's made  
17 arrangements to make sure that they have the computer  
18 technology that they need.

19 At least one bag appeared -- my understanding is  
20 that at least one of these -- what law enforcement has  
21 described, as you read from the hearing provided yesterday,  
22 as a "go bag" was in her room -- so her bedroom, and then  
23 the phones were in a hallway.

24 THE COURT: All right. So --

25 MS. ALOI: Sorry. I don't --

1           THE COURT: I'm sorry. Were you saying something  
2 else?

3           MS. ALOI: You know, I don't have additional  
4 representations as to what she actually had on her person  
5 that day beyond the jacket and the earmuffs designed to  
6 muffle gunfire.

7           It may be that she was opportunistic in her taking  
8 of the battering ram and engaging others to assist in that  
9 violent behavior.

10          But I do want to reiterate that that wasn't her  
11 only violent activity that day. She also was involved in  
12 breaching the police line as you just saw from that video.

13          And she made a point to try to tell her  
14 colleagues -- "colleagues" is obviously not the right  
15 word -- the other rioters who were inside the Capitol, when  
16 she was reaching in with the bullhorn -- she told them that  
17 they still had another window that they needed to break to  
18 facilitate entry; so her plotting was methodical there. She  
19 went in, assessed the scene, came out, took up a bullhorn  
20 and gave very clear directions, including the need to break  
21 an additional window.

22          THE COURT: The Government doesn't have any  
23 evidence that she actually brought that bullhorn with her to  
24 be a leader of this insurrection. Do you have any evidence  
25 that she had -- this was her bullhorn?

1 MS. ALOI: So we are still investigating the  
2 origin of the bullhorn.

3 THE COURT: I see.

4 MS. ALOI: We have seen her it take out on the  
5 Capitol grounds. We don't see her actually take it out,  
6 correct. She is seen with it on the Capitol grounds. We  
7 don't know whether or not she took it from her backpack or  
8 picked it up from the ground.

9 We think it's at least possible that the battering  
10 ram was from the construction that was related to the  
11 inauguration. I don't have -- I don't have any evidence  
12 that the bullhorn was part of that construction.

13 In addition, there is information in the  
14 possession of law enforcement that she has had a bullhorn  
15 with her at another event; so that at least on one other  
16 occasion she has been seen at a rally with a bullhorn.

17 THE COURT: But certainly no bullhorn was  
18 recovered from her house or her car?

19 MS. ALOI: Correct. That's correct.

20 THE COURT: All right. Well, I know the  
21 defendant's memorandum says that the Government has  
22 characterized the defendant as a leading participant in the  
23 violent insurrection at the Capitol; and I'm quoting the  
24 defendant's memo there. And I think that's -- it's probably  
25 a fair characterization of how the Government is viewing

1 this defendant. Is he correct in that?

2 MS. ALOI: Yes, Your Honor.

3 When we see the footage from January 6, we see the  
4 defendant in a leading role. I think, you know, her  
5 relationship to the other rioters is still being  
6 investigated. But we certainly see her leading other  
7 rioters on that day, both with the bullhorn, with the  
8 battering ram, at the very front of the police line in the  
9 footage that you just saw. She is front and center in the  
10 incursion.

11 THE COURT: All right. Well, I mean, having  
12 looked at that -- I mean, she is using the bullhorn; she is  
13 giving directions. You know, there are other people in the  
14 video also talking, saying: Get more people.

15 You know, it's hard to say in a mob that's all  
16 focused on one goal of disrupting a constitutional process  
17 which one was a leader of the other.

18 I do -- in terms of assessing dangerousness, let  
19 me just say that that's clearly one of the things I have  
20 been doing this in a number of these appeals and in a number  
21 of the cases that have been assigned to me.

22 I have been a bit puzzled. And I hope this is --  
23 I don't mean to be unfair if this is not your case.

24 But I have, for example, a case against two  
25 defendants, last name of Ochs and DeCarlo, they have been

1 indicted for felonies as well as misdemeanors; they were  
2 both affiliated with the Proud Boys. They had planning --  
3 planning before January 6th for what they were going to do  
4 when they got here. They raised money. They were online  
5 all over the place talking about what they were going to do  
6 here. They wrote on top of the Memorial Door in the Capitol  
7 building: MURDER THE MEDIA. And I think they're charged  
8 with a 371 conspiracy because they were really working  
9 together, leading others to get them to come to the Capitol  
10 for this insurrection; and the Government hasn't asked for  
11 pretrial detention for both of those Proud Boys.

12 So I look -- I look at that situation, and I am  
13 concerned about equitable treatment of all of these  
14 defendants in what is a very difficult circumstance of  
15 figuring out who is in charge of what, who is doing what,  
16 and figuring out levels of dangerousness.

17 One could say that every single person on this  
18 Capitol grounds posed a danger to this democracy; it was so  
19 unpatriotic it makes my straight hair curl. But on the  
20 other hand, under the statute, I am looking at whether or  
21 not there are conditions or a combination of conditions that  
22 could mitigate those risks of both flight and dangerousness  
23 to other persons and the community; and that's -- so, you  
24 know, that has to be my focus.

25 What makes this defendant more dangerous than

1 these other two defendant Proud Boys who had a lot more  
2 clear planning -- the Government's proffer is much more  
3 planning, also facing felonies?

4 MS. ALOI: Well --

5 THE COURT: But, like this defendant, I think they  
6 didn't have weapons, firearms, stun guns, batons -- other  
7 kinds of weapons inside the Capitol when they were in there  
8 doing their damage to property; and their murder-the-media  
9 inscription on the historical door of the Capitol that  
10 apparently can be fixed for under a thousand dollars, unlike  
11 this defendant whose breaking of the window is going to cost  
12 a lot more, making her subject to a felony that also  
13 triggers the rebuttable presumption.

14 What makes her so different that she needs  
15 pretrial detention because of her dangerousness rather than  
16 the two Proud Boys where the Government is not even asking  
17 for pretrial detention?

18 MS. ALOI: Your Honor, I am not in a position  
19 right now to speak to what the Government will or may ask  
20 for in that case, nor do I want to get into the specific  
21 facts of that matter for a number of reasons, not least of  
22 which I am not as well versed as the people handling that  
23 matter.

24 What I can say is the Government is deeply  
25 troubled by the erratic nature of this defendant's conduct,



1 and that this particular defendant's irreverence towards the  
2 aims of law enforcement, her treatment of firearms, her  
3 abandonment of her children on multiple occasions, give us  
4 grave concern about her inclination to comply with  
5 conditions of release. So we did --

6 (Simultaneous speaking.)

7 THE COURT: Well, is it because -- you mean her --  
8 you are saying her abandonment of her children. I mean, I  
9 have to say I do think that's a little bit of a strong term  
10 when she left them with their father, right? Isn't that  
11 what she did?

12 MS. ALOI: She -- her father -- the children's  
13 father was not aware that this was coming in advance, was  
14 not told how long they would be there, and was not given  
15 contact information with which to reach the defendant. She  
16 showed up --

17 THE COURT: So let's make sure we're both clear.

18 On January 6th, when she came to Washington, D.C.,  
19 she left her children at home alone.

20 On January 30th, when she dropped her children off  
21 and then left without a forwarding address or contact  
22 information, are you saying that both January 6th and  
23 January 3rd -- January 30th through the 4th -- both were  
24 incidents of abandonment of her children?

25 MS. ALOI: I think they're incidents of concern.

1 I think leaving children alone -- I can't speak to  
2 whether or not it's appropriate for the children to have  
3 been left alone without any adult on January 6th.

4 I can say I don't think it's appropriate, but I  
5 understand that one of the children was 17. Perhaps -- you  
6 know, perhaps she was told to take good care of her  
7 siblings; I don't know at this point.

8 But I do know that on January 30th, immediately  
9 before or contemporaneous with speaking to *The New Yorker*,  
10 the defendant did the same. She left -- she appeared to  
11 anticipate a longer -- a longer departure, and left the  
12 children with her ex -- her soon to be ex-husband with no  
13 warning. And I do think that she abandoned them to him, and  
14 they are fine; and he is prepared and willing to watch them  
15 or to be their guardian for as long as he needs to.

16 But she did not, in any way, indicate what was  
17 going on; she didn't give a reason. She simply left. And I  
18 think "abandonment" is an appropriate characterization of --

19 THE COURT: I see.

20 And one of the things that is concerning to the  
21 Government about that, that leaving of her children on  
22 January 30th and essentially, sort of, leaving without any  
23 forwarding information or telling them where she was going,  
24 or whatever -- is it the Government's -- I want you to  
25 articulate why is that so suspicious?

1           Are you -- do you think she was starting to flee  
2 then? I mean, put it in words.

3           What's the inference that you are asking to be  
4 drawn from that circumstance?

5           MS. ALOI: Yes, Your Honor.

6           As I understand -- I think you can draw an  
7 inference from the fact that she was about to get caught  
8 because she had given an interview or was about to give an  
9 interview to *The New Yorker*; the article was going to be  
10 published the next day. She was aware of the fact at this  
11 time that there was a be-on-the-lookout before it was  
12 published, seeking -- because law enforcement was seeking  
13 her whereabouts. And she made -- she didn't appear to take  
14 any -- to take the steps necessary to make sure her children  
15 could attend school, for example.

16           So it appeared as if she was about to be caught.  
17 She knew the article was about to become public, that the  
18 Internet was about to know her identity; and she made a snap  
19 judgment to take off.

20           Now I don't know where she was on January 30th --

21           THE COURT: So you -- you're raising the suspicion  
22 that she was taking off based on the timing on January 30th  
23 of her leave-taking and the publication of *The New Yorker*  
24 article; do I understand that right?

25           Because the BOLO advertisement with her picture by

1 the FBI -- basically a poster for a person of interest --  
2 that was published like two weeks earlier.

3 So, you know, it couldn't have been --

4 MS. ALOI: That's right.

5 THE COURT: You know, if the BOLO was posted on  
6 January 16th, and she left January 16th or the 17th, I could  
7 see how you could draw the inference that perhaps she knew  
8 it was just a matter of time before the FBI was going to  
9 recognize her and she wanted to evade law enforcement, and  
10 she took off. But that's not the timing here.

11 MS. ALOI: That's right, Your Honor.

12 The BOLO was posted, and law enforcement received  
13 a host of tips that they were investigating as to her  
14 identity; but she confirmed her identity to the media, not  
15 to law enforcement -- but to the media on the weekend of  
16 January 30th. And so right as that -- her identity was  
17 about to be made public -- and the confirmation of her  
18 identity, I should add -- the FBI had received tips prior to  
19 that; but they were in the process of confirming it using  
20 law enforcement tools to -- and in the intervening time she  
21 went and talked to Ronan Farrow who published the article  
22 with her identity in it. So it was the confirmation of her  
23 identity that was about to be made at the same time that she  
24 took off.

25 THE COURT: Well, I mean --

1 (Simultaneous speaking.)

2 THE COURT: I think the defendant -- the defense  
3 counsel makes two good points about using that -- the  
4 January 30th leave-taking as evidence of an intent to flee.  
5 And one of those points is: If you really want to evade law  
6 enforcement and not be recognized, why talk to *The*  
7 *New Yorker*?

8 I mean, no matter how charming that reporter might  
9 be, I mean, why do that? That really is not easy to  
10 reconcile with that; that's number one.

11 And number two, the biggest sticking point I think  
12 that you have on risk of flight and also, in some ways, to  
13 dangerousness and helps the defendant rebut the presumption  
14 is that: If you are a person with an intent to flee, why do  
15 you hire an attorney to negotiate your surrender, -- and  
16 then actually surrender when you are told -- on the same day  
17 you are told there are charges pending against you and the  
18 FBI wants you? It's -- that's --

19 (Simultaneous speaking.)

20 MS. ALOI: Your Honor --

21 THE COURT: Maybe she thought better of it about  
22 fleeing? Or -- but even if -- you know, no matter what her  
23 original intent was, she decided against it. But if she  
24 decided against it, that's -- that is a nail in the coffin  
25 on the risk of flight proffer by the Government, isn't it?

1 MS. ALOI: Your Honor, I would like to speak to  
2 that because I think the defense has not accurately  
3 released -- we disagree with the way in which they convey  
4 the facts here.

5 We never accepted a self-surrender of her. She  
6 got caught, and so she was going to be arrested; but she was  
7 in her car. And the defense proffered to us that he didn't  
8 know -- I don't know if that is true or not -- her precise  
9 location.

10 And so to set the time frame here, as you are no  
11 doubt aware, the law enforcement -- the FBI, in particular,  
12 had some serious concerns about engaging with somebody who  
13 they believed was engaged in erratic behavior right on the  
14 heels of the absolute tragedy that happened in Florida and  
15 really wanted to see if they could peacefully take her into  
16 custody.

17 And so the -- I notified the defense attorney at  
18 7:00 a.m. on the day that she was arrested. Eleven hours  
19 later she drove to FBI -- a resident agency. I can't speak  
20 to precisely what happened in between. I know at some point  
21 there were representations made that she was four hours  
22 away. She didn't show up four hours later; she showed up  
23 some time after that. In the intervening time she appeared  
24 to have disposed of the phone that she had on her person at  
25 some point that day.

1 I am not in her head. I can't pretend to know  
2 what she was thinking or what guidance she had been given.  
3 But I do think you can infer from that erratic behavior that  
4 she may be a flight risk because she, at least that day,  
5 appears to have spent 11 hours in the car, and at some point  
6 the decision was made to drive to the FBI field office. But  
7 I would present that that was because she got caught and was  
8 going to be arrested, not because she was in some way  
9 self-surrendering.

10 If you read *The New Yorker* article, you will find  
11 that she did not express remorse in that article. There  
12 were people who were at the Capitol --

13 (Simultaneous speaking.)

14 THE COURT: I noticed.

15 MS. ALOI: Yeah. There were people at the Capitol  
16 who got caught up in the heat of the moment and who  
17 afterwards threw up their hands and said, oh, I made a  
18 mistake. Right?

19 They -- this is not that case. Right?

20 This is not a case in which somebody got caught up  
21 in the heat of the moment and then apologized to *Newsweek* or  
22 apologized to the media.

23 This is a case where a self-serving interview was  
24 given to *The New Yorker* to try to frame the conduct, I  
25 guess. I can't say why it was done. But I don't see in

1 that article any indication that the defendant feels bad  
2 about what she did or that she is not inclined to do it  
3 again.

4 And I think there are a number of things that  
5 would indicate that she's at least contemplated, including  
6 the destruction of the cell phones, the go bags, the lack of  
7 her discernible whereabouts for the 11 hours when her  
8 attorney was contacted and when she ultimately was taken  
9 into custody. And so I think there's many inferences that  
10 can be drawn from that, I take it.

11 THE COURT: With respect to these "go bags" --  
12 when I read the hearing, I thought the go bags were -- you  
13 know, a bag that's ready to pick up and go if you wanted to  
14 flee somewhere. I was expecting to see toothbrushes, you  
15 know, things like that. That's not what was in these bags.

16 MS. ALOI: Yeah.

17 THE COURT: Why are they called "go bags"?

18 MS. ALOI: As best I have been able to discern,  
19 they're survivalist bags. You know, they were not grabbed  
20 by her because they remained in the house. I think it's  
21 still a matter that's under investigation, what precisely  
22 they were for.

23 THE COURT: Okay. All right.

24 I will turn to Mr. Engle.

25 MR. ENGLE: Thank you, Your Honor.



1           Your Honor, I will try to address the various  
2 issues that you have discussed with the Government.

3           First, with respect to the issue of risk of  
4 flight, Your Honor, I can tell you that certainly -- if you  
5 are interested in keeping your identity a secret and hiding  
6 out and considering becoming a fugitive, you certainly don't  
7 give an interview like the one my client gave to *The*  
8 *New Yorker*.

9           There was nothing about the BOLO -- as Your Honor  
10 had pointed out, it had been out for a while -- that either  
11 required my client to go to the FBI or indicated that she  
12 had been charged with a crime.

13           As soon as she knew she had been charged with a  
14 crime, all she indicated to me was: Where should I be going  
15 to turn myself in? You don't hire an attorney and ask that  
16 attorney to negotiate a voluntary surrender and then want to  
17 flee. That's what Ms. Powell did. She engaged me for the  
18 purpose of finding out whether there were charges pending  
19 against her and/or arrange for her voluntary surrender to  
20 deal with them if that was the case.

21           I emailed the U.S. Attorney's Office on the 3rd to  
22 ask whether or not there were charges pending and offering a  
23 voluntary surrender of my client in the District of  
24 Columbia. I heard back from the Government at 7:00 a.m. on  
25 the 4th. I tried calling my client a number of times during

1 the course of that morning and got voicemail.

2 As soon as I was able to get her on the phone,  
3 which was around midday, I gave her instructions. I was  
4 simultaneously taking calls from FBI Special Agent Jordan,  
5 who was the agent in New Castle, Pennsylvania holding the  
6 warrant for Ms. Powell. It was his preference that  
7 Ms. Powell surrender to him as opposed to randomly driving  
8 to Harrisburg and surrendering to agents that didn't know  
9 anything about the case or have any paperwork on it.

10 Ms. Powell agreed that she would drive to western  
11 Pennsylvania. We know that at 12:37 p.m., from the hearing  
12 notes, that --

13 I'm sorry. Your Honor, my screen froze. Can you  
14 still hear me?

15 THE COURT: Yes.

16 MR. ENGLE: Okay. Sorry.

17 -- that she stopped at a Sheetz about 45 minutes,  
18 an hour or so, outside of Harrisburg in order to get  
19 something to eat. She was instructed to obviously take her  
20 time driving and not to speed because there was a warrant  
21 for her at that point in time. And she made it back to  
22 western Pennsylvania and, per the instructions of Agent  
23 Jordan, surrendered herself to him at his office. That's  
24 not the conduct of an individual who has a desire to flee.

25 She has eight children, Your Honor; five of whom

1 are home schooled by her that live with her primarily;  
2 although, of course, they see their father and they spend  
3 time with their father as well. She home schools a 4-year  
4 old, a 10-year old, a 12-year old, a 15-year old, and a  
5 17-year old. She also has a 19-year old, a 21-year old, and  
6 a 23-year old -- adult children who live nearby where she  
7 lives. The argument that she would want to flee and leave  
8 those children behind I submit to you does not have merit,  
9 Your Honor.

10 In addition, the pretrial services report I think  
11 makes substantially clear that Ms. Powell does not have the  
12 financial wherewithal to be able to flee from anywhere. And  
13 so the risk of flight issue --

14 THE COURT: But she was able to absent herself  
15 between January 30th and February 4th somewhere, even though  
16 you say she did not run nor did she hide during that period;  
17 but what was she doing during that period?

18 She wasn't at home, right? She certainly didn't  
19 have her children. So she must have had the wherewithal to  
20 be somewhere between January 30th and February 4th. What's  
21 that?

22 MR. ENGLE: Certainly, Your Honor.

23 THE COURT: What was she doing?

24 MR. ENGLE: I don't --

25 THE COURT: Remember, you have got a rebuttable

1 presumption here. What's your rebuttal to rebut the  
2 presumption that she was fleeing at that point?

3 MR. ENGLE: Well, Your Honor, first of all, she's  
4 not fleeing from anything at that point because there were  
5 no charges at that point, so she is not fleeing from the  
6 law. And that's the issue -- is whether she would be  
7 considered a fugitive or a flight risk.

8 The issue is when you know you have a legal  
9 obligation to turn yourself in, do you? The answer to that  
10 in this case is that she did.

11 Wherever she was, we know that she wasn't doing  
12 anything illegal or improper. Obviously one of the things  
13 that she was doing during that time period was trying to  
14 find an attorney to represent her. She was dealing with  
15 that particular issue, seeking referrals and talking to  
16 people that she knew about trying to engage counsel which  
17 she then ultimately did.

18 So there is --

19 (Simultaneous speaking.)

20 THE COURT: Yes. But I would be hesitant,  
21 Mr. Engle, to push the principle that she doesn't -- based  
22 on her financials she doesn't have the wherewithal to flee  
23 when she was certainly able to flee between January 30th and  
24 February 4th suspicious minds would proffer.

25 MR. ENGLE: Respectfully, Your Honor, there is no

1 indication that she fled anywhere.

2 Leaving her children with her soon to be  
3 ex-husband, the children's father, was not an unusual thing  
4 in the sense that he would see them, care for them, and was  
5 part of their lives. There is no indication she even left  
6 the Commonwealth of Pennsylvania, Your Honor.

7 And what I am suggesting is that as a flight risk  
8 you would have to have the means and the ability to get out  
9 of the country and to someplace where you were beyond  
10 extradition.

11 One, that is not her intention. You don't hire a  
12 lawyer to say: I want to surrender myself if there are  
13 charges against me -- if that's what you intend to do. She  
14 has made absolutely no move to do anything like that. So  
15 the argument that Ms. Powell is a flight risk does not seem  
16 to be based upon any facts or evidence, Your Honor.

17 Moreover, as Your Honor said -- that you were  
18 grappling with the issue of conditions or a combination of  
19 conditions that can overcome these issues and reasonably  
20 assure her appearance and the safety of the community, I  
21 respectfully submit that the conditions that were set forth  
22 by the magistrate judge in the Western District that confine  
23 her to her home, that put her on electronic monitoring,  
24 restrict her travel --

25 THE COURT: And what is the curfew? What was the

1 curfew that was imposed? There is home detention and -- but  
2 no curfew, or just home detention all the time except for  
3 discussions with her attorney or medical issues?

4 MR. ENGLE: Home detention for all time but for  
5 anything that would be approved by pretrial services, Your  
6 Honor; that's, I believe, what Judge Lenihan ordered, if I  
7 am not mistaken.

8 So those circumstances which -- certainly given  
9 someone who cares for that many children and who home  
10 schools them, she has every reason to be at home. She would  
11 be under monitoring so that we'd know where she is if she  
12 attempted to do something in violation or contravention of  
13 those release conditions. And it's circumstances where  
14 pretrial services and/or the Court, Your Honor, would have  
15 to approve any form of travel outside of the home for a  
16 legitimate purpose.

17 And under those circumstances -- under those  
18 conditions, I respectfully submit that those conditions  
19 allow for both the appearance of the defendant when  
20 necessary and the ability to assure that she's not going to  
21 be a flight risk; and it also helps with the safety issue as  
22 well, Your Honor.

23 THE COURT: Was there a mask mandate imposed on  
24 this defendant by the Western District of Pennsylvania  
25 magistrate judge so that she would not pose a risk to the

1 health and safety of the community when she left her house  
2 for any reason?

3 MR. ENGLE: That was not addressed, Your Honor.

4 MS. ALOI: No.

5 MR. ENGLE: It never came up during the course of  
6 the hearing.

7 THE COURT: Because from the pictures I have seen  
8 from January 6th -- I don't think she's wearing a mask in  
9 any of those pictures in that crowd of people.

10 MR. ENGLE: Your Honor, I would submit to the  
11 Court that I don't believe that my client would have any  
12 problem with a mandate that would be related to having to  
13 wear a mask. If that was one of the conditions of her  
14 release, I would submit to you that Ms. Powell wants to  
15 follow every single condition that this Court would impose  
16 upon her.

17 THE COURT: How about the safety of her own  
18 children to keep them from being effected with COVID? Does  
19 she have a concern about those children?

20 MR. ENGLE: Your Honor, obviously, if she's at  
21 home with the children and she is not going anywhere, people  
22 in the same households don't wear masks around each other,  
23 and they don't pose a risk to them. The children are home  
24 schooled, and she is on home confinement --

25 THE COURT: Yes. But my understanding is -- from

1 both *The New Yorker* article, and from seeing the pictures of  
2 her on January 6 -- even though she has children at home and  
3 she home schools them, she goes out in public without a  
4 mask --

5 MR. ENGLE: Well --

6 THE COURT: -- posing a significant risk to  
7 bringing infection home to children.

8 MR. ENGLE: Respectfully, Your Honor -- first of  
9 all, her children have not contracted COVID to my knowledge.

10 But, second, that risk is mitigated very easily by  
11 making a condition of release that if she is permitted to go  
12 outside the home for any reason that pretrial services deems  
13 appropriate or is Court authorized, that she would be  
14 mandated to wear a mask; so I believe that that condition  
15 can be satisfied very easily, Your Honor.

16 THE COURT: All right. I will hear -- are you  
17 done, Mr. Engle?

18 MR. ENGLE: Your Honor, I would just also point  
19 out the fact that -- there is no indication that my client  
20 had ever been to the Capitol before.

21 The allegations that perhaps some people had been  
22 given tours of the Capitol on the day before or that they  
23 had prior knowledge from visiting the Capitol in advance of  
24 the 6th in order to gain intelligence about the interior of  
25 the property -- Your Honor, the testimony from the agent at



1 the detention hearing was pretty clear that there is no  
2 evidence whatsoever that Rachel Powell had ever been to the  
3 Capitol before that day, which I would respectfully submit  
4 belies the argument or the thought that she was some kind of  
5 organizer or leader with respect to this.

6 Much of what is argued by the Government is based  
7 upon speculation at this point and not evidence, Your Honor;  
8 and, therefore, I am respectfully asking the Court to impose  
9 those conditions or combination of conditions that you deem  
10 appropriate to safeguard the community.

11 Similarly, I believe that they can be similar to  
12 what has previously been ordered with whatever other  
13 additional modifications the Court would deem appropriate  
14 for this circumstance.

15 But I respectfully ask that the Court allow  
16 Ms. Powell to return to her children and give her the  
17 opportunity to follow the rules and abide by the Court's  
18 order. And I submit to you that she certainly will have  
19 counsel that would be instructing her to do all of those  
20 things; and I submit to you that she will follow the rules  
21 if she's given that opportunity.

22 THE COURT: Ms. Aloï.

23 MS. ALOI: Your Honor, there is nothing in the  
24 record to suggest that this defendant is interested at all  
25 in following rules.

1           On the point that the defendant just made about --  
2           I'm sorry -- defense counsel just made about not visiting  
3           the Capitol beforehand, I will just note that in her own  
4           words she's indicated that -- the necessity of banding  
5           together or being banded together with folks who are  
6           like-minded, aligned in fighting law enforcement on a  
7           variety of issues. I think in that particular instance, on  
8           the banding together, it was particularly to fight the mask  
9           mandates that have been imposed. And so I think she's been  
10          a very adamant -- adamantly opposed to wearing a mask. In  
11          fact, I understand from -- that she was actually fired from  
12          a job for failing to wear a mask.

13           And I would also just would question who was home  
14          schooling her children on January 6th. I mean, it's clear  
15          now that the children are -- their father has made  
16          arrangements for their schooling. But who was home  
17          schooling the children the first week in February? The fact  
18          that she had obligations to educate her children and then  
19          made decisions not to speak to her irreverence for rules  
20          that might be imposed on her behavior or restrictions that  
21          might be imposed on her behavior.

22           THE COURT: All right. The Court is ready to rule  
23          on the Government's motion regarding the magistrate judge's  
24          decision to release the defendant pending trial.

25           At the outset, a review of the applicable law is

1 appropriate here since -- particularly in this case where  
2 the appropriate burdens have been somewhat confused between  
3 the parties under the Bail Reform Act, 18 U.S.C. Section  
4 3142(e)(3)(C), in a case where, "There is probable cause to  
5 believe that the defendant committed an offense listed in  
6 18 U.S.C. Section 2332(b)(g)(5)(B)," involving a federal  
7 crime of terrorism for which a maximum term of imprisonment  
8 of ten years or more is prescribed, such as the charge  
9 against this defendant under 18 U.S.C. Section 1361, the  
10 Court must presume, unless the defendant rebuts the  
11 presumption that no condition or combination of conditions  
12 will reasonably assure the appearance of the defendant as  
13 required and the safety of the community. See 18 U.S.C.  
14 Section 3142(e)(3) and Federal Rule of Criminal Procedure  
15 46(a).

16           Once the presumption is triggered it imposes on  
17 the defendant, at a minimum, a burden of production to offer  
18 some credible evidence that rebuts it. Importantly, the  
19 burden of persuasion remains with the Government throughout.

20           In assessing whether a defendant has successfully  
21 rebutted the presumption, the Court must take into account  
22 the available information concerning the four factors set  
23 out in 18 U.S.C. Section 3142(g). These factors are: The  
24 nature and circumstances of the offense charged; the weight  
25 of the evidence against the person; the history and

1 characteristics of the person, including the person's  
2 character, physical and mental condition, family ties,  
3 employment, financial resources, length of residence in the  
4 community, community ties, past conduct, history relating to  
5 drug or alcohol abuse, criminal history, and record  
6 concerning appearance in court proceedings; and then,  
7 finally, the Court has to consider the nature and  
8 seriousness of the danger to any person or the community  
9 that would be posed by the person's release.

10 On an appeal from a magistrate judge's order of  
11 pretrial release, the district court must conduct a *de novo*  
12 review.

13 In conducting this review, the Court examines the  
14 available information that touches upon the four statutory  
15 factors that I just listed; and I will discuss each of those  
16 factors starting with the nature and circumstances of the  
17 offense charged.

18 These -- this consideration, this factor, nature  
19 and circumstances of the offenses charged, weigh strongly in  
20 favor of a finding that no condition or combination of  
21 conditions will reasonably assure this defendant's  
22 appearance.

23 She has been charged with three serious felony  
24 offenses. The first offense: Obstructing, influencing, or  
25 impeding any official proceeding, or attempting to do so, in

1 violation of 18 U.S.C. Section 1512(c)(2), for violently  
2 entering the Capitol building during the certification of  
3 the vote of the Electoral College in the 2020 Presidential  
4 Election through a broken window; providing instructions to  
5 others about how to penetrate the Capitol and disrupt the  
6 proceedings; forcing her way through police lines and  
7 barricades, as we saw from the video shown today -- this  
8 offense is very serious. It carries a penalty of up to 20  
9 years' imprisonment.

10 The defendant is next charged with willfully  
11 entering or committing depredation against any property of  
12 the United States, in violation of 18 U.S.C. Section 1361,  
13 for using a large pipe -- and when I say "large," I mean  
14 really long and large -- as a battering ram that was heavy  
15 enough to work -- it did; it broke through a window of the  
16 Capitol building. The value of the window damaged by the  
17 defendant is more than a thousand dollars, and so this  
18 offense carries up to ten years' imprisonment. In addition,  
19 this offense triggers the rebuttable presumption in favor of  
20 pretrial detention.

21 Finally, the defendant is charged with knowingly  
22 entering or remaining in any restricted building or grounds  
23 without lawful authority, knowingly engaging in any act of  
24 physical violence against any property in any restricted  
25 building of the Capitol grounds while carrying a dangerous

1        weapon, in violation of 18 U.S.C. Section 1752(a)(1),  
2        (a)(2), (a)(4), and (b)(1)(A), for entering the Capitol  
3        grounds with a large pipe and using that pipe as a battering  
4        ram to damage a window of the Capitol building. This  
5        offense also carries up to ten years' imprisonment.

6                She's also charged with misdemeanor offenses; I  
7        don't even have to get into those.

8                On January 6th, she actively participated in this  
9        assault on the U.S. Capitol during this joint session of  
10       Congress. During this assault, scores of individuals forced  
11       entry into the Capitol by breaking windows, pushing through  
12       the Capitol's doors, breaching closed areas, assaulting  
13       members of the Capitol Police -- all intended to disrupt the  
14       constitutional function of Congress necessary to the  
15       presidential transition and to the functioning of our  
16       democracy. It was intended to disrupt the peaceful  
17       transition of power to a new administration as designed  
18       under our U.S. Constitution.

19                As we all know, members of Congress, staff, media,  
20       Vice President Pence were all forced to flee from their  
21       normal constitutional tasks; many of them afraid for their  
22       lives. The Government has presented overwhelming evidence  
23       that this defendant not only was present at the U.S. Capitol  
24       for these events, but enthusiastically participated in the  
25       assault on the Capitol, even providing guidance and

1 encouragement to others in this mob, encouraging them with a  
2 bullhorn to coordinate together in order to take this  
3 building.

4 The Government has presented evidence of videos  
5 and photos that show the defendant violently using this  
6 large pipe as the battering ram, and then standing outside  
7 of that broken window speaking through the bullhorn, giving  
8 some instructions about what she had seen when she was  
9 inside -- two doors further in -- ways to further penetrate  
10 the Capitol. And as the Government has pointed out, she  
11 also talked about wanting to coordinate together if we're  
12 going to take the building.

13 In these pictures and videos, the defendant is  
14 seen wearing a distinctive pink hat. And as if this wasn't  
15 enough, used a bullhorn to gain attention for herself there,  
16 perhaps to find and claim a leadership role. Whether she  
17 actually had one or not is not particularly clear, but she  
18 certainly tried to with her bullhorn.

19 But even in the aftermath of this terrible day of  
20 January 6th, in the wake of the tragic deaths, hundreds of  
21 police officers injured, the defendant tried to garner even  
22 more attention to herself, sitting down for an interview  
23 with *The New Yorker* in which she admitted her involvement in  
24 the Capitol assault to disrupt our constitutional democracy.

25 As the Government has pointed out --

1           And where is the Government? I have lost her  
2 picture. Is she listening? Is she here?

3           MR. ENGLE: I am not sure, Your Honor. I have  
4 lost her as well.

5           THE DEPUTY: She is not here.

6           THE COURT: I just noticed that.

7           THE DEPUTY: She is not here.

8           THE COURT: Would you tell her -- send her an  
9 email to rejoin? Just tell her to call in.

10           (Whereupon, the proceeding pauses.)

11           THE DEPUTY: Ms. Aloi, are you joining us via  
12 phone?

13           MS. ALOI: Yes, my apologies. My computer lost  
14 the signal -- (unintelligible).

15           I'm sorry. I just joined by phone.

16           THE COURT: Okay. That's fine, you are joining by  
17 phone then.

18           I just started on *The New Yorker* article.

19           As the Government pointed out, what strikes me  
20 about that article and the interview is that this defendant  
21 had no apology, no remorse, no embarrassment.

22           Instead, she's quoted as saying: Listen, if  
23 somebody doesn't help and direct people then do more people  
24 die? That article is just downright offensive. She doesn't  
25 appear to even understand the gravity of her actions and her



1 offense -- that is, her felony offenses.

2 The tragic deaths that occurred on January 6th  
3 were entirely unnecessary and preventable, not by giving  
4 detailed or some instructions to the mobs surrounding her  
5 but, instead, by respecting the democratic processes and  
6 institutions of our Government, respect that the defendant  
7 clearly lacks.

8 At the same time, this defendant didn't cause  
9 injury specifically to people, there is no evidence that she  
10 brought with her a weapon, although that evidence might be  
11 developed during the course of the investigation of her  
12 actions that day; but based on the proffer in front of me, I  
13 do take note of the fact that she doesn't appear to have an  
14 actual gun, stun gun, zip ties, other kinds of things to  
15 pose injury to actual individuals inside.

16 Nonetheless, the nature and circumstances of the  
17 offenses, felony offenses, clearly weigh in favor of  
18 pretrial detention.

19 The weight of the evidence against the defendant,  
20 the second factor, is overwhelming. The Government has  
21 videos, photos of the defendant from the assault on the  
22 Capitol. The pictures in the videos clearly show the  
23 defendant in her little pink hat; no mask in this crowd;  
24 using a pipe to break a window; climbing -- going into --  
25 going inside the building; giving instructions through a

1 bullhorn.

2 In addition, the Government has cell tower data  
3 confirming that the defendant's cell phone was connected to  
4 towers in Washington, D.C. on January 6th; and then the  
5 defendant herself just admitted it to *The New Yorker* when  
6 she -- perhaps in a way to garner more notoriety, fame; who  
7 knows? She talked to *The New Yorker*. The weight of the  
8 evidence weighs heavily in favor of pretrial detention.

9 As to the defendant's history and characteristics,  
10 she has no criminal history. She also has very strong ties  
11 to the area where she resides.

12 As the magistrate judge who granted pretrial  
13 release noted, she's lived in the same Pennsylvania area  
14 since she was about 15 years old. She is in the course of  
15 getting a divorce from her husband. She's raising five  
16 children who live with her, ranging in age from 4 to 17,  
17 whom she home schools. She also has three adult children  
18 living nearby. So her ties to the area are deep, and  
19 certainly raises some confidence that she's going to stay  
20 there and not flee.

21 Of course, her whereabouts in the period between  
22 January 30th and February 4th raises questions about whether  
23 she was trying to attempt to evade arrest, flee, avoid the  
24 consequence of her conduct, felonious conduct, on  
25 January 6th. But to counteract that, the defendant did hire

1 an attorney, asked that attorney to find out if she were  
2 charged; and she ultimately did voluntarily surrender on the  
3 same day she was told by her attorney she had been charged  
4 with a crime.

5 When the defendant learned the FBI was executing  
6 an arrest warrant and search warrant at her home, on  
7 February 4th, she made arrangements to return to western  
8 Pennsylvania. She turned herself in. She followed the  
9 instructions of the FBI agent who held the warrant for her  
10 arrest.

11 She willingly provided the FBI with her passport.  
12 She made arrangements to remove her legally owned firearms  
13 from her home. And all of this is important information, as  
14 I've already mentioned during the course of this hearing, in  
15 rebutting a presumption about her being a risk of flight and  
16 that reasonable conditions, such as home detention with  
17 location monitoring, can be imposed to assure her appearance  
18 at future court proceedings, so this factor weighs in favor  
19 of release.

20 As to the last factor, the nature and seriousness  
21 of the danger to any person or the community posed by this  
22 defendant's release, it was clear that -- based on the  
23 proffer of the evidence, the photos, the videos, defendant's  
24 own admissions in *The New Yorker* article, she was actively  
25 involved in the assault on the Capitol on January 6th.

1           She is however accused only of destruction to  
2           property, not of causing harm to people, even with her  
3           pushing and shoving the police line. Moreover, she has no  
4           criminal record. She surrendered herself to law  
5           enforcement, removed the firearms from her home.

6           And despite the fact that we don't really know  
7           what she was doing between January 30th and February 4th,  
8           there is nothing that we know about that that suggests she  
9           poses a danger to the community or that no condition or  
10          combination of conditions will assure her appearance as  
11          required or compliance with release conditions intended to  
12          mitigate risks of danger to the community that she poses.

13          The Government calls her a leader in this  
14          insurrection; it's not clear to me that that's correct. She  
15          may just be a follower -- one of the people following the  
16          mob. And there is no evidence in the proffer that's been  
17          given based on her social media, even her admissions to  
18          *The New Yorker*, that she was part of a larger group of  
19          people whose mission is disruption. So, for that, I do find  
20          that there are conditions of release that could mitigate the  
21          seriousness of any danger or risks she poses a danger to the  
22          community.

23          So upon consideration of the proffered evidence  
24          presented, the factors set forth in 18 U.S.C. Section  
25          3142(g), the possible release conditions set forth in

1 Section 3142(c), the Court finds the statutory factors --  
2 some of them do weigh in favor of pretrial detention and  
3 others weigh in favor of pretrial release, and that the  
4 Government hasn't met its burden completely of establishing  
5 that there are no conditions or combination of conditions  
6 that would reasonably assure her appearance or clear and  
7 convincing evidence that she poses such a danger to the  
8 community that there are no conditions of release that could  
9 assure the safety of the community or other persons.

10 The Government's motion is therefore denied.

11 The magistrate judge's pretrial detention ruling  
12 is affirmed.

13 The defendant will be released pending trial  
14 subject to the following conditions:

15 She must report to pretrial services by phone.

16 And I think she's going to be supervised in  
17 pretrial services in the Western District of Pennsylvania.

18 Ms. Schuck, are you still on the line? Is that  
19 correct?

20 MS. SCHUCK: Yes, Your Honor.

21 We will be requesting her to seek supervision from  
22 the Western District of Pennsylvania.

23 THE COURT: Thank you.

24 She will be required to report to pretrial  
25 services weekly by phone. She must verify her address with

1 pretrial services.

2 She's already surrendered her passport. She must  
3 not obtain another passport or international travel  
4 document. Her travel is restricted to the Western District  
5 of Pennsylvania; and she may only come to the District of  
6 Columbia for court purposes.

7 The defendant must avoid all contact, directly or  
8 indirectly, with any person who is or may be a victim or a  
9 witness in the investigation or the prosecution.

10 She must not possess a firearm, destructive  
11 device, or other weapon. And since the FBI has seized all  
12 of those materials, including weird knives and such, from  
13 her house -- I take it that those are gone from her house.  
14 She is not to possess those kinds of weapons.

15 She must not use or unlawfully possess a narcotic  
16 drug or other controlled substance defined in 21(b)(1)(C)  
17 Section 802, unless prescribed by a licensed medical  
18 practitioner.

19 The defendant is placed on home detention. She  
20 will be restricted to her residence at all times except for  
21 employment, medical, substance abuse or mental health  
22 treatment, attorney visits, court appearances, or  
23 court-ordered obligations, or other activities approved in  
24 advance by pretrial services.

25 She must submit to location monitoring as directed

1 by the pretrial services officer or supervising officer, and  
2 comply with all program requirements and instructions  
3 provided, and must pay all or part of the cost of the  
4 program based on her ability to pay.

5 Should she leave her residence with the  
6 approved -- under the terms of this order or as approved by  
7 pretrial services, she is required to wear a mask.

8 The defendant must report to pretrial services, by  
9 phone, any contact she has with law enforcement as soon as  
10 possible after such contact, including arrests, questioning,  
11 and traffic stops.

12 She must also report as soon as possible to  
13 pretrial services any change in address, telephone, or  
14 employment status.

15 The Court is to be notified of any violations of  
16 this order.

17 Ms. Powell, I want to remind you that your  
18 presence is required in court, and that you will be advised  
19 when next to appear; so keep in close touch with your  
20 counsel to make sure you know when that is.

21 I am required to caution you about your conduct  
22 during your release pending trial and certain penalties that  
23 could apply to you.

24 First, failing to appear in court as required is a  
25 crime for which you can be sentenced to imprisonment.

1           Second, if you violate any condition of your  
2           release, a warrant for your arrest may be issued and you may  
3           be jailed until trial. You may also be prosecuted for  
4           contempt of court.

5           Third, committing a crime while on release may  
6           lead to more severe punishment than you would receive for  
7           committing the crime at any other time.

8           Finally, it is a crime to try to influence a  
9           juror, to threaten or attempt to bribe a witness or other  
10          person who may have information about this case, to  
11          retaliate against anyone for providing information about the  
12          case, or to otherwise obstruct the administration of  
13          justice.

14          Ms. Schuck, is there anything else that you would  
15          recommend that I give her directions on because she's going  
16          to be supervised in the Western District of Pennsylvania?

17          MS. SCHUCK: Just -- we'd request that she report  
18          to the Western District of Pennsylvania as directed versus  
19          weekly by phone, which extends it to the Western District of  
20          Pennsylvania to allow her to come in in person or by phone;  
21          however they deem appropriate.

22          THE COURT: All right. I will make that change in  
23          the modification.

24          So you will get your direction, Ms. Powell, from  
25          the Western District of Pennsylvania pretrial services



1 office as they are going to be supervising you. I don't  
2 want to give additional instructions to them that is not in  
3 accord with their normal practices there.

4 All right. Is there anything further today from  
5 the Government?

6 MS. ALOI: No, Your Honor.

7 THE COURT: Mr. Engle?

8 MR. ENGLE: No, Your Honor. Thank you.

9 THE COURT: All right. You are all excused.

10 MR. ENGLE: Have a good day, Your Honor.

11 THE COURT: You too.

12 (Whereupon, the proceeding concludes, 3:41 p.m.)

13 **CERTIFICATE**

14 I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby  
15 certify that the foregoing constitutes a true and accurate  
16 transcript of my stenographic notes, and is a full, true,  
and complete transcript of the proceedings to the best of my  
ability.

17 PLEASE NOTE: This hearing was held in compliance  
18 with the COVID-19 pandemic stay-safer-at-home orders and is  
19 therefore subject to the limitations associated with the use  
20 of technology, including but not limited to telephone signal  
21 interference, static, signal interruptions, and other  
restrictions and limitations associated with remote court  
reporting via telephone, speakerphone, and/or  
videoconferencing capabilities.

22 This certificate shall be considered null and void  
23 if the transcript is disassembled in any manner by any party  
without authorization of the signatory below.

24 Dated this 23rd day of February, 2021

25 /s/ Elizabeth Saint-Loth, RPR, FCRR  
Official Court Reporter