

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States of America, )  
)  
Plaintiff, ) Criminal Action  
) No. 21-cr-175  
vs. )  
) JURY TRIAL  
Ethan Nordean, ) Day 47  
Joseph R. Biggs, )  
Zachary Rehl, ) Washington, DC  
Enrique Tarrio, ) March 14, 2023  
Dominic J. Pezzola, ) Time: 1:30 p.m.  
)  
Defendants. )

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TRANSCRIPT OF JURY TRIAL  
HELD BEFORE  
THE HONORABLE JUDGE TIMOTHY J. KELLY  
UNITED STATES DISTRICT JUDGE

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

2           THE COURT: All right. Ms. Hernandez, are we on the  
3 same page as far as the video goes?

4           MS. HERNANDEZ: I believe so, Your Honor. The video  
5 I was working from had a map on the side. It had something  
6 like this, an image on the side, I hadn't even noticed. It was  
7 the government's video. But they have found a video that is --  
8 appears to be the one I wanted to play.

9           THE COURT: Okay. And it's already in evidence, as  
10 it turned out.

11          MS. HERNANDEZ: I don't know if it's already in  
12 evidence, but -- I don't know if it's already in evidence.

13          MR. KENERSON: It's not, but we won't object.

14          (Bench discussion:)

15          MR. PATTIS: Judge, I did have an occasion to review  
16 the local rule at lunch. And I had reviewed it prior to trial  
17 as written, and I clearly didn't read it correctly. It talks  
18 about prohibited radio and photograph -- or, photographs and  
19 recordings and broadcasts and radio and television. I took it  
20 to refer to court reporters coming in here to record things  
21 that they would use outside the courtroom, and so I've erred.

22          I've asked for the sidebar since a whole cottage  
23 industry has grown up over me being rebuked in the evening  
24 news. You've reached whatever conclusions you have about my  
25 conduct in this trial. If you think discipline is warranted,

1 fine, but that's my explanation.

2 And I had reviewed it because I wanted to make sure I  
3 didn't run afoul of the pretrial publicity rules in this case  
4 because I have a big mouth, as you may have noticed. So, you  
5 know, I won't say anything more in my defense, and I will  
6 simply accept whatever decision you make. But I want you to be  
7 aware of that.

8 THE COURT: Thank you, Mr. Pattis. As I said -- I'm  
9 not going to say anything further. Thank you for your  
10 representations. Let's proceed.

11 (Open court:)

12 THE COURT: Ms. Harris, you may bring in the jury,  
13 and the witness as well.

14 (Whereupon the jurors enter the courtroom.)

15 THE COURT: All right. Everyone may be seated.

16 Ms. Hernandez, you may proceed.

17 MS. HERNANDEZ: Sorry, Your Honor.

18 CROSS-EXAMINATION (Contd.)

19 BY MS. HERNANDEZ:

20 Q. Agent Miller, before lunch, I had asked you questions about  
21 whether you had seen Mr. Rehl high-fiving or hugging these  
22 individuals who you invariably identified as part of the  
23 Marching Group. Do you remember that?

24 A. Correct.

25 Q. I'm not talking about the Philly Proud Boys. I'm not

1 talking about Freedom Vy or Mr. Giddings, correct?

2 A. Now clarified, yes. Correct.

3 Q. I'm sorry?

4 A. Correct.

5 Q. We're not talking about the Philly Proud Boys he came with.  
6 We're talking about these other gentlemen that you pointed out  
7 during your direct examination. Do you remember that?

8 A. Yes.

9 Q. Okay. So, and you indicated that you thought you had seen  
10 a video where Mr. Rehl had actually fist bumped, or something  
11 to that effect. Do you remember that?

12 A. I do.

13 Q. But you don't have a video to show me because you're on the  
14 witness stand, correct?

15 A. Correct.

16 Q. All right. I want to play a video which, I believe, the  
17 government has already introduced, and it's 145CX, C as in  
18 Charlie, X as in extra.

19 And this is from approximately -- it starts at 1:14:58  
20 on January 6.

21 Go ahead. Thank you.

22 (Video played.)

23 Actually, can you speed up to about the 2-minute mark,  
24 please.

25 (Video played.)

1           And there's a shamrock or something at the bottom of the  
2     page. Do you see that?

3     A. I do.

4     Q. And who do you see in there?

5     A. Joseph Biggs, Paul Rae, Fonticoba, Nordean, Johnson,  
6     Fischer --

7     Q. And you don't --

8     A. -- Mr. Rehl is on the outside.

9     Q. I'm sorry. I didn't mean to interrupt.

10    A. I think I was done.

11    Q. And Mr. Rehl is not in there, in that shamrock?

12    A. Correct. He's to the right.

13    Q. And can you keep on playing, please.

14           (Video played.)

15           Can you stop it?

16           Is this Mr. Rehl here (indicating)?

17    A. It is.

18    Q. So, when -- whatever is happening over here, celebratory  
19    fist bumping, patting on the back or whatever, Mr. Rehl is not  
20    participating in that, correct?

21    A. Correct.

22    Q. Keep on playing, please.

23           (Video played.)

24           And there's a circle down here. What is it that is  
25    going on down there at the bottom of that video (indicating)?

1 A. Looks like a fist bump.

2 Q. And, again, Mr. Rehl is not fist bumping, correct?

3 A. No.

4 Q. Keep on playing, please.

5 (Video played.)

6 And who is that in there (indicating)?

7 A. That is Nordean, Biggs, Rae, Fonticoba, and I think  
8 Giddings is on the back of that.

9 Q. And Mr. Rehl is not, again, in that shamrock shape?

10 A. He is not.

11 Q. Go ahead.

12 (Video played.)

13 You can stop it if you want, please.

14 So is that the video you were thinking of?

15 A. Yes.

16 Q. So you were mistaken?

17 A. I believe so. Yes, I was mistaken.

18 Q. Thank you.

19 Mr. Rehl did not fist bump Fonticoba or all those other  
20 people you mentioned?

21 A. Correct.

22 Q. Thank you.

23 Now I would like to play a video of Mr. Rehl right  
24 before he goes into the Capitol. And, again, the wonderful  
25 Ms. Amanda Rohde is going to help me pull up this video,

1 please.

2 MS. HERNANDEZ: And, Your Honor, I would like to -- I  
3 don't think this has been introduced, the government does not  
4 object to its introduction, so I would like to -- I think this  
5 is Rehl Exhibit 50.

6 MR. KENERSON: No objection.

7 THE COURT: It will be admitted and permission to  
8 publish.

9 MS. HERNANDEZ: You can play it, please.

10 (Video played.)

11 BY MS. HERNANDEZ:

12 Q. And that gentleman is Mr. Finley, whom we spoke about  
13 earlier?

14 A. Yes.

15 Q. That's one of the gentlemen that goes into the Capitol with  
16 Mr. Rehl?

17 A. Yes.

18 Q. Okay. Keep on playing.

19 (Video played.)

20 I'm sorry. Can you lower the volume a little? And keep  
21 on playing, please.

22 (Video played.)

23 Stop.

24 And the gentleman we saw for a moment on the screen,  
25 that's Mr. Rehl to the left of Mr. Finley. Did you see that?



1 A. I did. And, yes, it is.

2 Q. Okay. Keep on playing. Thank you.

3 (Video played.)

4 Stop.

5 And that gentleman that came across with the -- a gray  
6 sweatshirt, do you know who that is?

7 A. The one that was talking on the phone?

8 Q. Yeah.

9 A. I do not.

10 Q. Keep on going.

11 (Video played.)

12 Did you hear someone in the background say: I hear  
13 Pence left the building, or something to that effect?

14 A. No. But I wasn't listening for the sound because you have  
15 it turned down.

16 Q. Okay. Can we replay, go back?

17 (Video played.)

18 A. Yes, I hear: Pence got evacuated.

19 Q. You can't identify who said that, correct?

20 A. I cannot.

21 Q. But it's in the vicinity of Mr. Rehl and Mr. Finley, and I  
22 think Freedom Vy is also seen in that video, correct?

23 A. Correct.

24 Q. Okay. Keep on playing, Ms. Rohde. Thank you.

25 (Video played.)

1 Can you go back -- I guess a few -- I think we missed a  
2 part.

3 (Video played.)

4 Have you seen this video that I'm playing for you now?

5 A. I have.

6 Q. And do you, in fact, hear someone in that crowd -- and  
7 "that crowd," I mean Mr. Rehl, Finley, and the Philly Proud  
8 Boys -- say: Do you want to go in to see what happened?

9 A. It's been a minute since I've watched this, so I need to  
10 see it all the way through, then I can answer your question.

11 Q. Okay. Sure.

12 Play, please.

13 (Video played.)

14 Do you hear it? I know it's hard to hear.

15 A. I didn't hear it, but I heard "Pence got evacuated" again.  
16 And, I think it's Hilliard who says it because his --

17 Q. You think it's Hilliard --

18 A. I do.

19 Q. -- because Hilliard being one of the Philly Proud Boys that  
20 we identified earlier?

21 A. Yes.

22 Q. And that part of it we hear clearly, somebody is --

23 Hilliard, you think, is saying: Pence was evacuated, or He's  
24 being evacuated, or something about Vice President Pence has  
25 been evacuated?

1 A. Yes.

2 Q. And let me try one more time and see whether you hear,  
3 moments after that, someone says: Do you want to go in and see  
4 what happened, or words to that effect.

5 (Video played.)

6 Thank you.

7 I don't know if you could hear it or not.

8 A. I still couldn't hear it. There's a lot of background.

9 Q. But we do know that is shortly before they entered the  
10 building; is that correct?

11 A. Yes.

12 Q. That's before. So, it appears from this video, that -- I'm  
13 sorry -- and we saw on there Mr. Rehl, correct?

14 A. We did.

15 Q. Mr. Finley?

16 A. Yes.

17 Q. Freedom Vy?

18 A. Yes.

19 Q. And he's a Proud Boy from Philadelphia?

20 A. Yes.

21 Q. One of the ones who traveled to D.C. with Mr. Rehl?

22 A. Yes.

23 Q. And Mr. Hilliard -- Brian Hilliard?

24 A. Hilliard, yes.

25 Q. Hilliard is one of the others in that group, and that's a

1 person you believe is saying -- is commenting on Vice President  
2 Pence having been evacuated from the building?

3 A. Yes.

4 Q. You didn't see Mr. Giddings in that series of pictures, did  
5 you?

6 A. I think he is in there, but you can't see him very well. I  
7 think he's standing next to Rehl and next to Hilliard.

8 Q. Okay. And you can agree with me that that's shortly before  
9 they go into the Capitol?

10 A. It is.

11 Q. Okay. So at that point, if you know, when they go in,  
12 the -- both the House and the Senate were in recess; is that  
13 correct? If you know.

14 A. I believe so.

15 Q. Okay. So let me just -- I want to play --

16 MS. HERNANDEZ: And this has already been introduced,  
17 Government's Exhibit 405FF, as in Frank, please.

18 MR. KENERSON: May I have a moment to confer with  
19 counsel?

20 THE COURT: Yes.

21 (Off-the-record discussion between Mr. Kenerson and  
22 Ms. Hernandez.)

23 BY MS. HERNANDEZ:

24 Q. Do you remember this picture that was 405FF, as in Frank?

25 A. Yes.

1 Q. And I believe during your direct examination, you were  
2 asked about the flag, correct?

3 A. I was.

4 Q. And your testimony was that it was consistent with one that  
5 was removed from the Capitol.

6 A. Correct.

7 Q. And the reason you said it was consistent with one that was  
8 removed from the Capitol is you cannot tell exactly whether  
9 that's the one removed from the Capitol or not, correct?

10 A. Not based off this photo, correct.

11 Q. Right. It's consistent with it because it is an American  
12 flag, and it appears like one of the ones that were removed  
13 from the Capitol?

14 A. Yes.

15 Q. Okay. And then, I also would like to play -- thank you --  
16 410E, please.

17 (Video played.)

18 Stop.

19 Did you see the projectile that came across the screen  
20 there?

21 A. I did.

22 Q. And on direct, you were asked about that projectile. Do  
23 you recall that?

24 A. I do.

25 Q. And, again, your testimony then, that that was consistent

1 with a fence that had been removed from the Capitol or that  
2 Mr. Biggs had touched before or something like that. Do you  
3 recall that?

4 A. Yes.

5 Q. And, again, the reason you say it's "consistent with" is  
6 that you cannot testify under oath that that's the exact fence  
7 post, correct?

8 A. Correct.

9 Q. Because you would have had to -- it looks like the ones  
10 that were touched by Mr. Biggs?

11 A. Correct.

12 Q. Okay. So, you remember when you testified about -- let  
13 me -- let me ask you another question.

14 Can we play 400A, as in apple, please.

15 (Video played.)

16 And do you recall this video?

17 A. I do.

18 Q. And I believe you said this -- you thought this video was  
19 from Mr. Rehl's phone?

20 A. Correct.

21 Q. Okay. Can you play it, please.

22 (Video played.)

23 Stop.

24 And you heard somebody say --

25 A. "That's fucking Trump."

1 Q. And I believe Mr. Smith asked you about that statement when  
2 he was cross-examining you, correct?

3 A. He did.

4 Q. And you told him that you believed that to be Mr. Rehl?

5 A. I do.

6 MS. HERNANDEZ: Sorry. Did I hear something?

7 (No response.)

8 MS. HERNANDEZ: Okay.

9 Can we play 400D, as in David.

10 (Video played.)

11 BY MS. HERNANDEZ:

12 Q. And is this a video from Mr. Rehl's phone also?

13 A. It is.

14 Q. Okay. And -- sorry. Just setting it up.

15 Is this -- this is what has been referred to as the --  
16 let me rephrase that.

17 This is where there's a bicycle rack that is knocked  
18 over or set aside or something; is that correct?

19 A. This is the First Street breach that we're about to see.

20 Q. And was there a bicycle rack knocked over or pushed aside  
21 or something to that effect?

22 A. Before they got to this point.

23 Q. Before this video?

24 A. Yes.

25 Q. So that's already happened, is what you think?

1 A. I believe so, yes.

2 Q. Okay. But anyway, it's that scene, whether it was right  
3 there or just about?

4 A. Yes.

5 Q. Okay.

6 Go ahead, please.

7 (Video played.)

8 Did hear anything about storming the Capitol?

9 A. I heard: Fuck it. Storm the Capitol.

10 Q. Do you know where in the sequence?

11 A. Yeah. It's in the beginning.

12 Q. I'm sorry. Could you go back and play it again.

13 (Video played.)

14 I'm sorry. Can you stop it?

15 A. It hasn't happened yet.

16 Q. You'll tell us when?

17 A. Yes.

18 Q. Thank you.

19 (Video played.)

20 A. Right there.

21 Q. Okay. Can you just back it up a couple of seconds, so we  
22 can -- go ahead and replay. Thank you.

23 (Video played.)

24 A. It happened again, yes.

25 Q. When you testified on direct examination, you said -- let



1 me back up.

2 There's a lot of voices on this video, correct?

3 A. There is.

4 Q. Because there's a lot of shouting?

5 A. There is.

6 Q. I might even say suggests -- could be described as a bit of  
7 a mob?

8 A. Could be.

9 Q. On direct examination, you described that -- can you --  
10 that voice is -- it was consistent with Mr. Rehl's voice. Do  
11 you remember that?

12 A. I do.

13 Q. And then there was objections, and objections back and  
14 forth, and you eventually said: That's Mr. Rehl's voice?

15 A. Correct.

16 Q. But your first reaction was -- you used the term  
17 "consistent with"?

18 A. I did.

19 Q. And that's the same term you used in these other two  
20 instances when you were not able to specifically state under  
21 oath that that was the flag or that was the fencing, correct?

22 A. Yes.

23 Q. And in any event, you would agree with me that whoever is  
24 saying that is -- it's low enough and among enough other voices  
25 and screams that that person is not leading a charge?

1           Would you agree with me with that, that statement is not  
2           leading a charge?

3           MR. KENERSON: Objection. Speculation. Relevance as  
4           to her opinion as to whether this person is leading a charge.

5           THE COURT: Overruled.

6           The witness can answer, if she can tell from her  
7           observation of the video.

8           MS. HERNANDEZ: Thank you, Your Honor.

9           BY MS. HERNANDEZ:

10          Q. Do you want me to ask the question again?

11          A. Yes, please.

12          Q. So, the question I'm asking you is: There's a lot of  
13          yelling going on?

14          A. There is.

15          Q. And people are already surging forward?

16          A. Yes.

17          Q. And that statement that you heard, "Fuck it. Storm the  
18          Capitol," is that what you heard?

19          A. That is what I heard.

20          Q. That is not -- that's just one of the many cries or yells  
21          or chants that are being heard at the time?

22          A. Yes.

23          Q. And the question I'm asking you, that -- if you agree with  
24          me, that's not a person at the front of the line saying --  
25          directing people to do something, correct?

1 A. So the voice is coming from what I believe to be the  
2 video -- the person who is taking the video --

3 Q. Yes.

4 A. -- and they're maybe 15 people back, so not in the very  
5 front lines.

6 Q. So it's not the very front of the -- it's not what's  
7 causing people to surge ahead?

8 MR. KENERSON: Objection to the causation opinion.

9 THE COURT: Again, overruled, if she can answer based  
10 on the video.

11 A. I don't know what's causing the people to move forward.

12 BY MS. HERNANDEZ:

13 Q. You're familiar with the MoSD, correct?

14 A. Yes.

15 Q. And you listened to a video from -- a Zoom video call?

16 MR. KENERSON: Objection. Scope.

17 THE COURT: Sustained.

18 MS. HERNANDEZ: Your Honor, she's testified about a  
19 number of MoSD messages and the contacts, multiple people among  
20 MoSD, so I believe it's within the scope to that extent.

21 THE COURT: The objection is sustained.

22 BY MS. HERNANDEZ:

23 Q. Are you familiar with the fact that part of the -- let me  
24 back up.

25 At one time, you read a message during your direct in

1       which Mr. Rehl referred to MoSD or Mossad. Do you remember  
2       that?

3       A. I saw it, yes.

4       Q. And you interpreted that to mean he was talking about the  
5       MoSD?

6       A. Re-ask your question.

7       Q. You interpreted that text -- that message that was  
8       introduced through you on direct as Mr. Rehl and others talking  
9       on one of the MoSD Telegram chats?

10      A. I don't recall interpreting it in any way. I think I was  
11      asked what Mossad is, and suggests Israeli Army, special  
12      forces.

13      Q. Did you not also say that you thought -- you mentioned  
14      MoSD. You said: It includes the lifestyle MoSD, or something  
15      to that effect. Do you remember that?

16      A. I would need to see the transcript to know exactly what I  
17      said.

18      Q. Do you think Mr. Rehl, if you -- as you sit there, if you  
19      remember, that Mr. Rehl was talking about Mossad, the Israeli  
20      intelligence service, in that text message?

21      A. I don't know what he was talking about.

22      Q. So, when you were asked by the government -- you remember  
23      testifying about that text message, correct?

24      A. Yes.

25      Q. And you described what the Mossad is.

1 A. I was asked what it is, yes.

2 Q. Right. So what I'm asking you is -- that was part of your  
3 direct testimony. The government introduced it.

4 What I'm asking you is if you recall when you testified  
5 about that message, whether you -- you think you were  
6 testifying about Mossad, the Israeli intelligence agency?

7 A. I was testifying to what the clip read, and then I was  
8 asked what Mossad is.

9 Q. Right. I'm asking you now, do you think you were  
10 testifying about Mossad?

11 A. No.

12 Q. You were testifying about a chat in the MO -- in one of the  
13 MoSD Telegram chat rooms, correct?

14 A. Yes.

15 Q. Could you bring up 546-5, please. It's a message, not a  
16 Telegram message.

17 MR. KENERSON: Number again, please?

18 MS. HERNANDEZ: 546-5. Government Exhibit.

19 BY MR. HULL:

20 Q. And this is a text message between Rehl, a person name  
21 Damon, and a person named John, correct?

22 A. Yes.

23 Q. And you remember testifying about this?

24 A. I do.

25 Q. And you testified that John and Damon are members of the

1 Proud Boys.

2 A. Yes. I know Damon is a member, and John is actually a  
3 prospect.

4 Q. You believe.

5 A. I believe.

6 Q. Do you have evidence of that?

7 A. That he's a prospect?

8 Q. That John is a member.

9 A. No.

10 Q. John and -- and this is a private text message between  
11 Rehl, Damon, and John, correct?

12 A. Yes.

13 Q. This is not one of the MoSD Telegram chats, correct?

14 A. Correct.

15 Q. And this is not one of the other Proud Boy Telegram chats,  
16 correct?

17 A. Correct.

18 Q. And you've never seen John or Damon on any of those  
19 Telegram chats, have you?

20 A. Not with names like this. Like, not Damon and John.

21 Q. So as you sit there, you cannot -- although you testified  
22 under oath that they were Proud Boys, you don't have any  
23 evidence that you can point to right now that they, in fact,  
24 are Proud Boys?

25 A. I believe they are Proud Boys based off the conversations

1 that Rehl has had with them.

2 Q. Based on this conversation -- or, these conversations --  
3 these and other conversations in this 546 series of --

4 A. These and other conversations, yes.

5 Q. Yes. But, again, none of those conversations were found on  
6 a Proud Boys Telegram chat?

7 A. Correct.

8 Q. And none of them were found in the MoSD Telegram chat?

9 A. Not that I can recall.

10 Q. And, again, your testimony was that at about 1:18 p.m.,  
11 Mr. Rehl stopped being in the vicinity of the other defendants  
12 in this -- who are here sitting in this trial, correct?

13 A. Approximately, yes.

14 Q. And he didn't join up with them again?

15 A. Not that I know of.

16 Q. And when I say "again," we're talking about January 6,  
17 while anybody was in the Capitol or the Capitol grounds.

18 A. Okay.

19 Q. Right?

20 A. Yes.

21 Q. They may have met sometime between then and today, but  
22 that's not what we're talking about, correct?

23 A. Correct.

24 Q. So, the videos that were shown and that you testified about  
25 of the various people within the Capitol -- and by that, I mean

1 Mr. Biggs within the Capitol, correct?

2 A. He was.

3 Q. And other -- the marching members or other defendants,  
4 Mr. Rehl was not with them in any of those videos.

5 A. Inside the Capitol, correct.

6 Q. Nor in the videos in which Mr. Nordean was inside the  
7 Capitol?

8 A. What's your question? Was he with Nordean in the Capitol?

9 Q. Right.

10 A. No.

11 Q. Nor Mr. Pezzola?

12 A. Correct.

13 Q. And, in fact, on January 6, Mr. Pezzola and Mr. Rehl were  
14 never together; would you say that?

15 A. Marching Group.

16 Q. They were together as we're all together here?

17 A. Yes.

18 Q. You didn't see them talking to each other?

19 A. I don't recall.

20 Q. I believe you testified about some phone calls that were  
21 either made or attempted to be made between Mr. Tarrio and  
22 Mr. Biggs. Do you recall that?

23 A. I do.

24 Q. On January 6th?

25 A. Correct.



1 Q. Sometime after 2 p.m.?

2 A. I believe so, yes.

3 Q. And also some calls that either were connected or attempted  
4 to be connected between Mr. Tarrio and Mr. Nordean on  
5 January 6?

6 A. Correct.

7 Q. Again, around the same time, sometime after 2 p.m.?

8 A. Yes.

9 Q. You didn't find any such calls or attempted calls with  
10 Mr. Rehl, correct?

11 A. Not that I can recall.

12 Q. You also testified, at several points, that several of the  
13 defendants, including Mr. Donohoe, were pointing in several  
14 directions while they were around or with the Marching Group.  
15 Do you recall that?

16 A. Yes.

17 Q. None of those -- in none of those instance was Mr. Rehl the  
18 one doing the pointing; is that correct?

19 A. He was involved in those conversations -- some of the  
20 conversations.

21 Q. He was involved with Mr. Biggs, with Mr. Nordean, with  
22 Mr. Donohoe?

23 A. Yes.

24 Q. But what I'm asking you about is: There are several  
25 instances where you see people pointing in the direction that

1 it appeared that they were going or would be going.

2 A. Yes.

3 Q. And in those instances, what I'm asking is: It was never  
4 Mr. Rehl who was doing the pointing?

5 A. I don't recall.

6 Q. There were various videos at different locations. One was  
7 going up the stairwell near the scaffolding. Do you recall  
8 that?

9 A. I do.

10 Q. And I think you identified Mr. Donohoe in that group?

11 A. I don't think I identified Donohoe in the scaffolding  
12 video.

13 Which video are you talking about?

14 Q. Up the stairs.

15 A. The one from Rehl's phone?

16 Q. I don't -- whichever --

17 A. We saw several.

18 Q. I'm sorry?

19 A. We saw several.

20 Q. Right. Mr. Rehl was not in that group that was going up  
21 the scaffolding?

22 A. Again, it's -- which video are you speaking of?

23 Q. Any video.

24 A. Correct.

25 Q. Okay. Can you play -- I'm sorry -- 116X -- Government

1 Exhibit 116X.

2 (Video played.)

3 Do you know who that is in that circle (indicating)?

4 A. It's Mr. Rehl.

5 Q. Okay. Go ahead.

6 (Video played.)

7 And he appears to be testing a door?

8 A. He does.

9 Q. He didn't go in?

10 A. Nope.

11 Q. Do you know, from watching videos, whether, in fact, at  
12 some point he went into the bathroom?

13 A. If Mr. Rehl went to the bathroom? I do not know.

14 Q. Inside the Capitol.

15 A. I don't know.

16 Q. With the other -- with either Mr. Giddings or one of the  
17 other Philly Proud Boys?

18 A. I don't know.

19 Q. You also testified about -- let me -- when you see Mr. Rehl  
20 there -- earlier in the day, you saw Mr. Rehl with a radio?

21 A. I did.

22 Q. He's -- he doesn't have a radio at that point. Can you  
23 tell?

24 A. I can't tell.

25 Q. Okay. Do you know whether, at any point, he lost the radio?

1 A. I don't know.

2 MS. HERNANDEZ: The Court's indulgence.

3 (Off-the-record discussion between Mr. Kenerson and  
4 Ms. Hernandez.)

5 MR. KENERSON: For the record, 415X.

6 BY MS. HERNANDEZ:

7 Q. Do you know -- there is no name of any senator on this  
8 door, correct?

9 A. Not that I see.

10 Q. Or a room number, even?

11 A. I don't see anything on the door.

12 Q. Okay. But do you -- had you -- have you looked at other  
13 videos of this situation?

14 A. Yes.

15 Q. Okay. So not just here, but in the other videos that  
16 you've looked at there doesn't appear to be the name of any  
17 senator?

18 A. Correct.

19 Q. And there's a lot of people in this office, correct?

20 A. Yes.

21 Q. Let's be more specific. More than -- more than Mr. Rehl,  
22 Giddings, Freedom Vy, Hilliard, and Finley, correct?

23 A. Correct.

24 Q. And most of those people have -- are not Proud Boys. Do  
25 you agree?

1 A. Not that I'm aware of, correct.

2 Q. Can you keep on playing it, please.

3 (Video played.)

4 Stop.

5 And this is Mr. Rehl back here (indicating)?

6 A. It is.

7 Q. And do you know who is next to him?

8 A. Giddings.

9 Q. Okay. And those two are Proud Boys?

10 A. They are.

11 Q. And these other gentlemen who are a little loud, do you  
12 know whether they were drunk, or anything else?

13 A. I don't know.

14 Q. Okay. Keep on playing.

15 (Video played.)

16 Stop.

17 Does this gentleman seem to be smoking a cigarette  
18 (indicating)?

19 A. He appears to be smoking something, yes.

20 Q. "Something" being other than store-bought Marlboro or other  
21 cigarette brand?

22 A. It looks bigger than a cigarette, but I don't know what  
23 he's smoking.

24 Q. One might not be faulted for thinking he's maybe smoking  
25 some marijuana?

1 A. Possibly.

2 Q. Okay. Keep on going.

3 (Video played.)

4 Now, as far as you know -- strike that. I don't want  
5 you to answer about as far as you know.

6 Mr. Rehl did not take any property from inside that  
7 office?

8 A. Not that I'm aware of, no.

9 Q. Or destroy anything while inside that office?

10 A. Not that I'm aware of.

11 Q. Yesterday you were asked some questions, and then -- by  
12 Mr. Smith about some people in the area of that first breach.  
13 Do you recall that?

14 A. I do.

15 MS. HERNANDEZ: Mr. Smith, can you key up the  
16 photograph that you showed?

17 BY MS. HERNANDEZ:

18 Q. And he pointed to one particular person, if you recall.

19 (No response.)

20 Okay. And was this introduced?

21 And I believe the person that Mr. -- that you  
22 identified -- or were able to identify is a confidential human  
23 source, without mentioning his name; is that correct?

24 A. I need to see the photograph.

25 Q. Well, that's coming. We've had several discussions about

1 this. But someone who pleads guilty, like Mr. Bertino, is not  
2 necessarily a confidential human source; is that correct?

3 A. Correct.

4 Q. He was charged, and then he decided to plead guilty and  
5 sign a -- an agreement that required him to testify, correct?

6 MR. KENERSON: Objection. Misstates as to the order.

7 BY MS. HERNANDEZ:

8 Q. Mr. Bertino signed an agreement that required him to  
9 cooperate, in whatever order that came?

10 A. He did.

11 Q. He was not a confidential human source on January 6th?

12 A. Correct.

13 Q. And what a confidential human source is, is someone who  
14 is has contact with the FBI and is providing them information,  
15 correct?

16 A. Correct.

17 Q. And usually it's information about either events or groups  
18 that the FBI is interested in learning about?

19 A. It's a variety of things.

20 Q. Okay. And generally, such a person has what has been  
21 described as a handler -- an FBI handler?

22 A. Yes.

23 Q. And that just means some agent within the FBI that  
24 maintains contact with the confidential human source, correct?

25 A. Yes.

1 Q. Okay. By "handler," that's all we really mean to say,  
2 correct?

3 A. Yes.

4 Q. And --

5 MS. HERNANDEZ: I'm sorry. Can we publish  
6 Government -- it was Nordean?

7 MR. SMITH: Government Exhibit 447A.

8 MS. HERNANDEZ: This is Government Exhibit 447A, as  
9 in apple. And I understand it's been introduced, so I ask the  
10 Court to let it be published.

11 THE COURT: Very well. It will be published.

12 MR. KENERSON: Just for the record, could we ask for  
13 which timestamp this is stopped at?

14 MS. HERNANDEZ: It's 1:53, at the bottom. That's the  
15 counter on the video, not necessarily the time of day.

16 Do you remember what time of day?

17 MR. SMITH: This is 12:55.

18 BY MS. HERNANDEZ:

19 Q. So is this the area around that first breach? Do you know?

20 A. I believe so. I need to see the video play.

21 Q. Do you want to play a little bit back, or not?

22 (Video played.)

23 A. So this is after the first breach.

24 Q. Sorry?

25 A. After the first breach.



1 Q. Okay. So it's after the first breach. That's enough  
2 information for you --

3 A. Sure.

4 Q. -- as to place the time of this?

5 A. Yes.

6 Q. Okay. Can you go back to where it was?

7 And this person -- this is the person we were just  
8 talking about, correct?

9 A. That is a different part than what we referred to  
10 yesterday.

11 Q. I'm sorry. This is a different --

12 A. So the image that we circled yesterday wasn't this one.  
13 But, yes, it's the same person.

14 Q. It's the same person. You circled a different image. I  
15 think you -- I had recalled that I thought you had circled one  
16 before the first breach.

17 A. It was right after the first breach. It was full body.

18 Q. And when we were seeing people walk through there  
19 (indicating), I saw Mr. Pepe; is that correct? Did you notice  
20 that?

21 A. He is in there, yes.

22 Q. Okay. Anyway, this gentleman that we've circled is a  
23 confidential human source working that day?

24 MS. HERNANDEZ: And, Your Honor, I would like to move  
25 into evidence a message from this gentleman to his --

1 MR. KENERSON: Objection. Foundation. Prior ruling.

2 THE COURT: Sustained.

3 MS. HERNANDEZ: Your Honor, can we --

4 (Bench discussion:)

5 MS. HERNANDEZ: Your Honor, my understanding, this  
6 was a message provided by the government to the defence.

7 THE COURT: Right. And this witness has -- continue.

8 MS. HERNANDEZ: And this is being -- this is not a  
9 hearsay statement because it's a present -- it is an exception  
10 to hearsay rules under present sense impression. And also, the  
11 government has identified this as being exculpatory to the  
12 defendants. So, we would ask that it be admitted.

13 THE COURT: What's the objection?

14 MR. KENERSON: Objection is -- it's the same exact  
15 objection as yesterday. I mean, there's been no change from  
16 the Court's ruling yesterday. I understand the defense is  
17 going to call -- or at least intends to call the CHSs.  
18 Assuming that they do so, they can attempt to move it in then.

19 THE COURT: There's no statement with this witness.  
20 No. I'm sorry. Mr. Smith -- I mean, Ms. Hernandez has the  
21 floor here.

22 Ms. Hernandez, it's -- there's no -- this witness has  
23 already testified she's never seen any of this, the reporting  
24 with this individual.

25 MS. HERNANDEZ: I can ask a few questions on that --

1 I don't recall that testimony -- if the Court would allow me.

2 But, again, I think our position is that the  
3 government has authenticated this document. It's been produced  
4 as -- it's been represented that it is a statement that he sent  
5 to his FBI handler on January 6, as this was going on, just  
6 around this moment in time, so we don't think that any more  
7 foundation needs to be --

8 THE COURT: She's already testified she's never seen  
9 any of this reporting.

10 MS. HERNANDEZ: Thank you, Your Honor.

11 (Open court:)

12 MS. HERNANDEZ: I would like to identify this  
13 document for identification purposes.

14 No?

15 THE COURT: If you can lay the proper foundation, but  
16 we've already -- we discussed --

17 MS. HERNANDEZ: I'm not trying to introduce it. I'm  
18 just trying to identify it. I'm just trying to number it,  
19 like, identify it for identification purposes.

20 THE COURT: Let's go to sidebar.

21 (Bench discussion:)

22 THE COURT: Ms. Hernandez, there's no basis to  
23 proceed with this document now. The witness has already said  
24 she doesn't know anything about this reporting.

25 MS. HERNANDEZ: I wasn't trying to introduce it --

1 THE COURT: I understand -- You asked her and she  
2 said she's never seen it.

3 MS. HERNANDEZ: I didn't want to ask her about it. I  
4 just want it to be part of the record.

5 THE COURT: Let's move on.

6 MS. HERNANDEZ: Thank you.

7 (Open court:)

8 MS. HERNANDEZ: With the Court's indulgence for a  
9 moment, Your Honor, may I speak to --

10 (Off-the-record between Ms. Hernandez and defendant.)

11 BY MS. HERNANDEZ:

12 Q. In investigating this case, Agent Miller, you had a number  
13 of email discussions with other FBI agents; is that correct --  
14 I'm sorry. Text message discussions?

15 A. Yes.

16 Q. And some of those discussions involved Mr. Rehl?

17 A. Possibly.

18 Q. And some of the discussions, I would suggest, were in bad  
19 taste?

20 MR. KENERSON: Objection.

21 THE COURT: I'm going to have to hear you at sidebar.

22 (Bench discussion:)

23 THE COURT: Ms. Hernandez, what are we doing here?

24 MS. HERNANDEZ: Your Honor, they're kind of nasty  
25 emails, where they're talking about listening to seven minutes

1 of yelling between Mr. Rehl and his wife, where they're  
2 suggesting -- and one of the agent says -- Ms. Miller says:  
3 And where is the popcorn?

4 And then there's another message where they're  
5 speculating that Mrs. Rehl is having an affair with Aaron, the  
6 Aaron that we've been talking about. And, again, it's not a  
7 straightforward conversation. It's kind of nasty and laughing  
8 and enjoying the -- sort of the -- Mr. Rehl's bad situation.

9 THE COURT: And, Mr. Kenerson?

10 MR. KENERSON: I do not see any relevance to these --  
11 to these messages. To the extent that there is any minimal  
12 relevance to them, it's vastly outweighed in the 403, by the  
13 risk of unfair prejudice and confusing the jury.

14 MS. HERNANDEZ: I think it goes to this agent's state  
15 of mind. I mean, here's one that says, "I'm waiting for this  
16 to be a legit thing, and when it is, popcorn."

17 "Not yet having come across that one. Ha ha. I'll  
18 bring beer."

19 Yes. And --

20 THE COURT: Just so I understand factually, this has  
21 nothing to do with the -- this is -- what are they listening to  
22 exactly or seeing?

23 MS. HERNANDEZ: I'm assuming --

24 THE COURT: Is this phone calls or email?

25 MS. HERNANDEZ: It sounds like it's phone calls. I

1 don't know what they're listening to. I'm not asserting a  
2 Sixth Amendment issue. There could be a Sixth Amendment issue.  
3 It's just the manner in which they're talking about a person  
4 they're investigating in a very unpleasant way.

5 THE COURT: There's no way this goes to credibility.  
6 It's not being offered to impeach. Only being offered to  
7 impart bias against the witness.

8 MS. HERNANDEZ: I understand. I think it goes to her  
9 professionalism and whether these ought to -- I mean, she has  
10 tried to portray herself as a professional, and there's nothing  
11 professional about this. And if the Court doesn't admit it, I  
12 will mark it for identification for later purposes.

13 THE COURT: All right. You can mark it for  
14 identification. I'm going to exclude it, both as beyond the  
15 scope, as irrelevant and whatever relevance there might be as  
16 precluded by 403.

17 MS. HERNANDEZ: And, again, it goes to credibility  
18 and bias.

19 THE COURT: I'm sorry?

20 MS. HERNANDEZ: I'm sorry. It's my position. I  
21 understand the Court's ruling. I'm not trying to reargue the  
22 point.

23 THE COURT: No. No. No. And if you want, you can  
24 mark it at the end of the day, when we don't have the jury  
25 here.

1 MS. HERNANDEZ: That's fine.

2 (Open court:)

3 MS. HERNANDEZ: I have no other questions, Your  
4 Honor.

5 Thank you, Agent Miller.

6 Thank you, ladies and gentlemen.

7 THE COURT: Very well.

8 MS. HERNANDEZ: And thank you, Ms. Rohde.

9 THE COURT: Very well.

10 CROSS-EXAMINATION

11 BY MR. JAUREGUI:

12 Q. Good afternoon, Agent.

13 A. Good afternoon.

14 Q. My name is Sabino Jauregui, and along with Nayib Hassan, I  
15 represent Enrique Tarrio. I'm going to ask you some questions.

16 If I heard you correctly earlier, you said you are one  
17 of many lead agents in this case?

18 A. Yes.

19 Q. And there are how many lead agents in total?

20 A. Six.

21 Q. Six. And you said that you take all your decisions  
22 together -- you make your decisions together as a group?

23 A. Not all decisions, but decisions, yes.

24 Q. Like a collective, almost, correct?

25 A. Yes.

1 Q. And so is there one of you that's senior in rank that would  
2 make the final decision, like a captain on a ship?

3 A. So, if we had a decision we couldn't come to, I guess an  
4 agreement, we would ask a supervisor.

5 Q. And who is that?

6 MR. KENERSON: Objection. Relevance.

7 THE COURT: Overruled for now.

8 BY MR. JAUREGUI:

9 Q. Who is that?

10 A. Victoria Martinez.

11 Q. And you were involved in this case from the very beginning,  
12 correct?

13 A. January 6, yes.

14 Q. What is your educational background? I know you're a  
15 police officer in Kissimmee and an agent in FDLE, but  
16 educational-wise, what is it? College? Master's?

17 A. I have a bachelor's degree in criminology from the  
18 University of South Florida.

19 Q. Anything else?

20 A. No.

21 Q. Any training in computer forensics?

22 A. Nope.

23 Q. Okay. And you were sworn in as an agent in 2019?

24 A. Yes.

25 Q. Were you still in your probationary period when you were



1 given this case?

2 MR. KENERSON: Objection. Relevance.

3 MR. JAUREGUI: Goes to investigation, credibility.

4 THE COURT: Overruled.

5 BY MR. JAUREGUI:

6 Q. Were you still in your probationary period at the FBI?

7 A. Yes.

8 Q. And which office did you work out of?

9 A. Washington Field Office.

10 Q. Okay. And you met with the government to prepare for your  
11 testimony here these past few days, I assume, correct?

12 A. Yes.

13 Q. Well, let's start with a demonstrative aid there that  
14 you've pointed to throughout your testimony.

15 My client is not depicted. There there's no color for  
16 him, correct?

17 A. Correct.

18 Q. And that's because he was not here on January 6, correct?

19 A. Correct.

20 Q. He was in Baltimore the whole time?

21 A. Yes.

22 Q. Okay. And you know when he was arrested, correct?

23 A. I do.

24 Q. Okay. When was he arrested?

25 A. January 4th.

1 Q. And when he was arrested on January 4th, his phone was  
2 impounded; is that true?

3 A. Yes, taken.

4 Q. Did you do the phone extraction on his phone?

5 A. I did not.

6 Q. Do you know who did the phone extraction on his telephone?

7 A. I do not.

8 Q. Has the FBI ever investigated who did the phone extraction  
9 on his phone?

10 MR. KENERSON: Objection that the FBI investigated  
11 his phone.

12 MR. JAUREGUI: Yeah. Because nobody knows. I was  
13 just curious.

14 THE COURT: Sustained.

15 BY MR. JAUREGUI:

16 Q. But as you sit here today, you have no idea who did the  
17 phone extraction, correct?

18 A. Correct.

19 Q. Do you know who Kate Cain is?

20 A. I do.

21 Q. Who is she?

22 A. I know she works for the FBI.

23 Q. Okay.

24 A. And she's an expert in digital forensics.

25 Q. And you know that she also didn't do the extraction,

1 correct?

2 A. I don't know who did the extraction.

3 Q. Okay. Now, when you got the phone -- let me ask you this,  
4 actually. Let me backtrack.

5 When you reviewed the Telegram and the Parler and all  
6 these things, did you do it from the phone extraction or did  
7 you do it through the Excel spreadsheet message review that  
8 Dubrowski did?

9 MR. KENERSON: Objection.

10 THE COURT: Sustained.

11 BY MR. JAUREGUI:

12 Q. What did you use to review my client's Telegram messages?

13 A. (No response.)

14 Q. It's not a trick question.

15 A. I know. I'm thinking because there's a lot of  
16 investigations within this investigation.

17 I would say an Excel spreadsheet.

18 Q. An Excel spreadsheet. Who sent you that Excel spreadsheet?

19 A. I don't know.

20 Q. You don't know who sent you the Excel spreadsheet with  
21 these Telegrams on it?

22 A. I don't know if it was sent to me or if it was pulled from  
23 an extraction. You can extract the information you're looking  
24 for from an Excel spreadsheet.

25 Q. Well, you don't know who did the Excel spreadsheet.

1           So who sent you the Excel spreadsheet?

2           A. I don't know.

3           Q. Agent, would you agree with me that this case has a huge  
4 amount of digital evidence?

5           A. Yes.

6           Q. It has the most digital evidence of any criminal case in  
7 the history of the United States of America?

8           A. Very large digital evidence, yes.

9           Q. Would you agree with me, in a case like this, digital  
10 evidence is of utmost importance?

11                 MR. KENERSON: Objection as to "utmost importance."

12                 THE COURT: Sustained.

13           BY MR. JAUREGUI:

14           Q. Would you agree with me digital evidence is very important  
15 in this case?

16                 MR. KENERSON: Objection as to how important it is in  
17 this case.

18                 THE COURT: Sustained.

19           BY MR. JAUREGUI:

20           Q. The last few days, as your testimony relates to my client,  
21 it's purely digital evidence, is it not?

22           A. Yes.

23           Q. You're trying to build a circumstantial case with just  
24 messages, correct?

25                 MR. KENERSON: Objection to "trying to build."

1 THE COURT: Sustained.

2 BY MR. JAUREGUI:

3 Q. It's Telegram messages and Parler posts?

4 A. The evidence I presented, correct.

5 Q. Because my guy was not there on January 6.

6 A. Correct.

7 Q. So through your testimony, the exhibits have weaved in  
8 Telegram and Parler messages, correct?

9 A. Yes.

10 Q. Now, you would agree with me that you were taught at the  
11 FBI that when you try and find the source of the evidence, you  
12 want to make sure that you don't contaminate it, and that it's  
13 not tampered or altered, correct?

14 A. Correct.

15 Q. In this case, you have no personal knowledge, and you  
16 cannot testify to the jury whether the extractions were done  
17 correctly, can you?

18 A. Correct.

19 Q. And I assume that since you didn't do Tarrio's extractions,  
20 you didn't do anybody else's extraction in this case, correct?

21 A. I'm not certified to extract any phones. So, correct.

22 Q. Thank you.

23 And do you know who handled the extractions from the  
24 other codefendants in this case?

25 A. I know who handled the extraction for Rehl.

1 Q. Who handled it?

2 A. Lindsey Barnett -- or Barlett.

3 Q. Is she a computer forensic expert?

4 A. I don't know all her background. I just know she's out of  
5 the Philly office.

6 Q. The Philly office?

7 A. Correct.

8 Q. Thank you.

9 Do you know who did any of the other extractions?

10 A. I do not.

11 Q. Agent, did you do geofencing in this case?

12 A. Clarify.

13 Q. Well, you know what a geofence warrant is?

14 A. I do.

15 Q. Okay.

16 A. Did I write one? No.

17 Q. Is there a geofence warrant in this case?

18 MR. KENERSON: Objection. Scope.

19 THE COURT: Sustained.

20 BY MR. JAUREGUI:

21 Q. Would it be fair for me to say that you're not a computer  
22 forensic expert?

23 A. Yes.

24 Q. You're not an expert in Cellebrite?

25 A. Correct.

1 Q. You're not an expert in cell phones?

2 A. Correct.

3 Q. Not an expert in Telegram?

4 A. Correct.

5 Q. Parler?

6 A. Correct.

7 Q. Mobile communications?

8 A. Correct.

9 Q. And did you use any specialized tools to analyze my  
10 client's phone?

11 A. No.

12 Q. You just used the Excel, right?

13 A. Yes. And through Cellebrite.

14 Q. And did you take any training through Cellebrite -- through  
15 the developer of Cellebrite?

16 A. No.

17 Q. Did you take any courses on Cellebrite?

18 A. No.

19 Q. Any courses on file format, structure, databases, anything  
20 on a telephone?

21 A. No.

22 Q. Now, the FBI has their main lab in Quantico, correct?

23 A. Yes.

24 Q. Did you ever send my client's phone to Quantico to have it  
25 analyzed by experts there?

1 A. I didn't send your client's phone, no.

2 Q. Do you know if anybody did?

3 A. I believe, yes.

4 Q. Okay. Who did?

5 A. I don't know who sent it.

6 Q. You don't know?

7 A. No.

8 Q. Okay. Who would have more technical knowledge, Kate Cain  
9 or yourself?

10 MR. KENERSON: Objection. Relevance. Scope.

11 MR. JAUREGUI: Goes to the phone extraction and the  
12 testimony that she's given on Telegram and Parler and 1776,  
13 which we're going to.

14 (Bench discussion:)

15 THE COURT: Her testimony has been she's not an  
16 expert. She doesn't know anything about those things. So I'm  
17 going to sustain the objection.

18 MR. JAUREGUI: You could have just said, "Yes."

19 MS. HERNANDEZ: Your Honor -- Your Honor, to the --  
20 to the extent that this is a conspiracy, it affects us all.  
21 And I just -- this agent went beyond what the expert said about  
22 1776 Returns. She indicated that she had evidence that  
23 Mr. Tarrio had actually created, and she went through this  
24 whole rigamarole about how she got their phone extractions or  
25 whatever.



1           So, again, it affects me because it's a conspiracy.  
2           That's the only reason I'm asserting it. So, I think this  
3           isn't just: Are you competent?

4           THE COURT: Okay. Mr. -- let me hear from -- that's  
5           a fair point.

6           But, Mr. Kenerson, let me hear from you.

7           MR. KENERSON: So, for one, there was no testimony  
8           from Kate Cain on that issue, so in terms of what's in the  
9           record, there's been no testimony.

10          Number two, just, again, the question was: Do you  
11          have more technical knowledge than Kate Cain?

12          She's already said: No.

13          In addition to being irrelevant, whether she has  
14          more than another is subjective and is argument.

15          THE COURT: You're going to have some leeway here on  
16          the point Ms. Hernandez raised, obviously.

17          MR. JAUREGUI: And Ms. Cain did testify as to the  
18          1776 document. That's what I was going to get into next.

19          THE COURT: Well, all right.

20          You know what, Mr. Kenerson, I mean, it is fair for  
21          him to -- I think this is a fair question. I'm going to allow  
22          the question.

23          MR. KENERSON: That's -- wait, whether she has more  
24          expertise question?

25          THE COURT: Well, Ms. Cain had a turn -- testified to

1 certain things. I think it's -- and it's obvious the answer  
2 is: Ms. Cain is more the expert, right? This isn't like a  
3 trick question.

4 MR. KENERSON: All right.

5 THE COURT: All right.

6 (Open court:)

7 BY MR. JAUREGUI:

8 Q. You would agree with me that Kate Cain is a computer expert  
9 and you are not; is that a fair assessment?

10 A. I would agree. I'm not a computer forensic expert.

11 Q. Now, would you agree with me when you reviewed the Excel --  
12 not the actual base data -- that you found that Enrique had not  
13 deleted anything on his phone, correct?

14 A. So, I wasn't the only person that would have gone through  
15 Enrique's extraction. I don't know what you'll -- the phone  
16 was rather large.

17 Q. Okay.

18 A. I don't know what all in different departments.

19 Q. Understood.

20 So, a bunch of people went through his phone; is that  
21 fair?

22 A. Yes.

23 Q. You don't know what people put or took out of there; would  
24 that be fair?

25 A. What do you mean by "put or took out"?

1 Q. Well, you said a bunch of people went through his phone, so  
2 you don't know whether anything was deleted or not.

3 A. The data review, yes.

4 Q. How many people had access to his phone before you got to  
5 it?

6 A. At least two.

7 Q. At least two. Who are those two?

8 A. So, it would have been the analyst on our case at the time,  
9 and we had an agent that was on our case at the time.

10 Q. Okay. And those people went through that phone before you  
11 even touched it?

12 A. They scoped it, yes.

13 Q. And would it be fair to say that when you got to the phone  
14 you had the whole MoSD chat in there and nothing had been  
15 deleted, correct?

16 MR. KENERSON: Objection. Relevance.

17 THE COURT: Sustained.

18 BY MR. JAUREGUI:

19 Q. Was the whole MoSD chat on Enrique's phone, yes or no?

20 A. At the time I looked at it, I believe so, yes.

21 Q. Nothing had been deleted, correct?

22 A. At the time I looked at it?

23 Q. Um-hum.

24 A. I believe so -- well, from that chat. I don't know about  
25 the whole phone.

1 Q. The truth is: You don't really know what's on the whole  
2 phone, do you?

3 A. No, I don't.

4 Q. The correct person would be Kate Cain, correct?

5 A. I don't know if she knows what's on the whole phone, but  
6 she can talk about extracting the phone.

7 Q. Understood. Thank you.

8 Now, let's get into the 1776 document that you think is  
9 very important, correct?

10 MR. KENERSON: Objection as to what she thinks is  
11 important.

12 THE COURT: Sustained.

13 BY MR. JAUREGUI:

14 Q. Did you ever think 1776 was the plan for January 6, Agent?

15 MR. KENERSON: Objection. Relevance.

16 THE COURT: Sustained.

17 BY MR. JAUREGUI:

18 Q. You testified about certain things about a 1776 document  
19 that was found on my client's phone, correct?

20 A. Yes.

21 Q. Okay. And you used that document to turn Bertino, did you  
22 not?

23 A. I don't know that I'm going to say that I used it to "turn  
24 him," but I showed it to him, yes.

25 Q. You showed it to him in an effort to get him to plead and

1 cooperate with you, did you not?

2 A. I showed it to him because I thought he had might have had  
3 some input in that document or saw it before.

4 Q. It's a comon law enforcement technique to use information  
5 like that as leverage to get people to turn; is that true?

6 A. Different people use different techniques.

7 Q. I'm not talking about different people. I'm talking about  
8 you.

9 A. What's your question?

10 Q. Did you use the 1776 document to get leverage over Bertino?

11 MR. KENERSON: Objection. Asked and answered.

12 MR. JAUREGUI: She hasn't answered it.

13 MR. KENERSON: She just said three times.

14 THE COURT: Overruled.

15 A. I showed it to him because I believed he had seen it or had  
16 something to do with writing the document.

17 BY MR. JAUREGUI:

18 Q. That Bertino had some involvement in writing the document?

19 A. Had some involvement in the document, excuse me. Not  
20 writing it, but he had seen it or knew about it.

21 Q. And pray tell me, what facts was that based on?

22 A. So, that was based off the finding of the document. That  
23 was based off messages between Eric and your client -- not  
24 Eric. Sorry. Eryka.

25 Q. Eryka Gemma Flores, right?

1 A. Yes. And he was sent the document on December 30th.

2 Q. Okay.

3 A. He Googled Winter Palace after, and when you open that  
4 document, the title is: Storm the Winter Palace.

5 Q. Okay.

6 A. And then he had sent a text message to Bertino on  
7 January 6th saying: Winter Palace.

8 Q. Okay.

9 A. Which led me to believe that Bertino might know about this.

10 Q. Wow. Okay. That's it?

11 A. At that time, yes.

12 Q. At that time. Okay.

13 Now, you know for a fact that that 1776 document was  
14 never even opened on Enrique's phone?

15 A. I don't know that for a fact.

16 Q. You don't know? Inspector Cain didn't tell you that in an  
17 email?

18 A. I would have to see the email.

19 Q. Okay. If I showed it to you, would it refresh your  
20 recollection?

21 A. Yes.

22 Q. Okay.

23 MR. JAUREGUI: Just for the witness.

24 THE COURTROOM DEPUTY: What's the number?

25 MR. JAUREGUI: It's just to refresh her recollection.

1 I don't know.

2 BY MR. JAUREGUI:

3 Q. Do you see this email?

4 A. I see it.

5 THE COURT: Before we do that, we do need to attach  
6 an exhibit number.

7 THE COURTROOM DEPUTY: 160.

8 MR. JAUREGUI: Tarrio 160. Thank you. Thank you,  
9 your Honor. Thank you, Ms. Harris.

10 I'm going to scroll up.

11 BY MR. JAUREGUI:

12 Q. Agent, would it be fair that this email was sent  
13 November 4th, 2022?

14 A. Yes.

15 Q. At 8:46 a.m.?

16 A. Yes.

17 MR. KENERSON: Objection.

18 THE COURT: Sustained.

19 BY MR. JAUREGUI:

20 Q. Is your recollection refreshed now that you saw the email?

21 A. Yes.

22 Q. Do you see that paragraph from Inspector Cain -- Examiner  
23 Cain?

24 A. I do.

25 Q. Do you need to see it anymore or are you ready to go?

1 A. No, we can go.

2 Q. She sent you an email on November 4th?

3 A. Yes.

4 Q. Sent to you and to Hanak, and the other agents in this  
5 case.

6 A. Yes.

7 Q. She says: There's no way to scientifically prove that that  
8 document was ever even opened, correct?

9 A. In this email, correct.

10 Q. And that document was never --

11 MR. KENERSON: I would ask, under Rule 106, that  
12 the -- Mr. Jauregui continues reading the sentence he was  
13 reading.

14 MR. JAUREGUI: Which sentence? You mean the redacted  
15 block that I have under it?

16 MR. KENERSON: No (indicating).

17 MR. JAUREGUI: I'll have the agent read it.

18 BY MR. JAUREGUI:

19 Q. Agent, if you want to read the whole paragraph for the  
20 government?

21 A. Says: There's no way to tell if this document was open  
22 within the Telegram application on the phone. There would be a  
23 read receipt, appearing as a checkmark, on the center device,  
24 Eryka, indicating that the recipient's device, Tarrio, saw the  
25 message, but it does not indicate if the attachment was



1 actually opened. The only other information that I can tell  
2 you about this document was that the creator was Eryka Gemma,  
3 and it was last printed on 12-29-2020; therefore, it was also  
4 created on or before that date as well. Please let me know if  
5 you have any questions.

6 Q. Is that what the expert told you in that email?

7 A. In the email, yes.

8 Q. Okay. And when you were interviewing Bertino, you told him  
9 that Enrique had created that document, correct?

10 A. I did.

11 Q. Okay. And Mr. Kenerson, the prosecutor, was there with  
12 you, correct?

13 A. He was.

14 Q. And he tried to fix that, what you said to Bertino,  
15 correct?

16 MR. KENERSON: Objection.

17 THE COURT: Sustained.

18 BY MR. JAUREGUI:

19 Q. You changed your story to Bertino after a statement, did  
20 you not?

21 A. I said "created" twice, so, no, I did not.

22 Q. Well, first you said "created," and then, when the  
23 prosecutor said something else, you said, "with help," correct?

24 A. Yes, I believe so.

25 Q. Okay. And that was done intentionally; is that right?

1 A. Not that I'm aware of.

2 Q. You didn't say that intentionally, "with help"?

3 A. So, you're missing a statement within there. I had said:  
4 Tarrio had created the document. Another individual had  
5 said -- I don't remember their exact words, but I think they  
6 said received it. I don't know. I'd need to see the  
7 transcript.

8 Q. Would you like me to play the audio to refresh your  
9 recollection?

10 A. That would be great.

11 Q. Excellent.

12 MR. JAUREGUI: And this is going to be Nordean 506,  
13 from 1 hour, 15 minutes and 49 seconds to 1 hour, 16 minutes  
14 and 46 seconds. It should already be in evidence.

15 THE COURT: Thank you, counsel.

16 (Audio played.)

17 MR. JAUREGUI: It's coming out through the -- it's  
18 not coming out through the Bluetooth.

19 One second, Your Honor. My apologies. Got  
20 disconnected from the Bluetooth.

21 MS. HERNANDEZ: I can't hear.

22 MR. JAUREGUI: I got disconnected from my Bluetooth  
23 speaker. I'm just going to connect real quick.

24 (Audio played.)

25 THE COURT: The best laid plans.

1 (Audio played.)

2 BY MR. JAUREGUI:

3 Q. Does that refresh your recollection?

4 A. Yes.

5 Q. So, basically, you were less than accurate with Bertino and  
6 told him that Enrique had created it, correct?

7 A. I believed, at the time, Enrique did create it.

8 Q. Okay. And then the prosecutor rightly jumps in and says:  
9 Actually, it was sent it, he had access to it?

10 MR. KENERSON: Objection.

11 THE COURT: Sustained.

12 BY MR. JAUREGUI:

13 Q. Well, the prosecutor rebuked what you just said, correct?

14 MR. KENERSON: Objection.

15 THE COURT: Sustained.

16 BY MR. JAUREGUI:

17 Q. Then you said something different, did you not, Agent?

18 A. I said the same thing, and then I said: With assistance.

19 Q. Except you have no evidence that he actually created it,  
20 edited it, or created it with assistance, do you?

21 A. (No response.)

22 Q. Is it, like, a police hunch, like, a cop hunch, that kind  
23 of thing?

24 A. No. So -- okay. No.

25 Q. And you used that 1776 document, plus his firearm offenses,

1 to leverage him, to flip him, did you not, Agent?

2 A. I don't know why Jeremy flipped.

3 Q. You don't know why he flipped?

4 A. Well, so, I'm not responsible for him deciding to cooperate  
5 with the government. That's his decision.

6 Q. Oh. It only took 10 or 12 meetings, right, to get him to  
7 flip?

8 A. I don't know how many meetings it took.

9 Q. But this 1776 and the arsenal of weapons at his house was a  
10 good first step, right, agent?

11 MR. KENERSON: Objection to her view of whether those  
12 are "good first steps."

13 THE COURT: Overruled.

14 BY MR. JAUREGUI:

15 Q. So, good first step?

16 A. Firearms recovered from a search warrant.

17 Q. Okay. And it helps to have added charges to pile on  
18 somebody to help the cooperation; isn't that right, Agent?

19 A. People cooperate for different reasons.

20 Q. Okay. Agent, have you investigated where that document  
21 originally came from before it got to Eryka Gemma Flores?

22 MR. KENERSON: Objection. Scope. Relevance.

23 MR. JAUREGUI: Judge, she's accusing my client of  
24 creating it.

25 THE COURT: Overruled.

1 BY MR. JAUREGUI:

2 Q. Agent, did you know a man named Samuel Armes created this  
3 document?

4 MR. KENERSON: Objection. Scope. Relevance.  
5 Hearsay.

6 MR. JAUREGUI: If she knows.

7 THE COURT: She can answer based on her  
8 investigation.

9 A. My specific role was not the going down the path of the  
10 1776 document.

11 BY MR. JAUREGUI:

12 Q. Okay. So you're telling the members of the jury that as an  
13 FBI agent assigned to one of the most important cases in the  
14 United States of America, you did not follow, or track down, a  
15 lead as to where this document actually came from? You have no  
16 idea, as you sit here right now, where this document originally  
17 came from?

18 A. Again, that was not my responsibility within the case.  
19 That was not what I was assigned to do. Somebody else was,  
20 yes, but I was not.

21 Q. I'm going to try it again. I'm going to do it real simple.  
22 Okay?

23 Do you know where the 1776 document originally came  
24 from? Not what you were assigned to do. As you sit here  
25 today, do you know where that document originally came from?

1 MR. KENERSON: Objection. Asked and answered.

2 THE COURT: Overruled.

3 A. I knew it was -- I know it was sent to Tarrio from  
4 Enrique -- or, not from Enrique Tarrio -- from Eryka Gemma.

5 BY MR. JAUREGUI:

6 Q. Do you know who sent it to Eryka?

7 A. I don't recall.

8 Q. Okay. We'll take it.

9 Now, Eryka Gemma Flores is a lady friend of Enrique,  
10 correct?

11 A. Yes.

12 Q. She kept hounding and kept messaging him and he kept  
13 ignoring her, correct?

14 A. I don't know what the relationship was, the details of it.

15 Q. Okay. Now, you did see that Eryka sent him that document,  
16 correct?

17 A. I did.

18 Q. Okay. And you did review the messages that came before and  
19 after that document, did you not?

20 A. Yes.

21 Q. So you know that Eryka was hounding him nonstop, telling  
22 him that she was the pinnacle of female attractiveness,  
23 intelligence, female submission, and he was blowing her off?

24 A. I don't know about those messages. So, the ones I --

25 MR. JAUREGUI: Sorry. It was probably me.

1 A. -- I had started looking at were December 27th.

2 BY MR. JAUREGUI:

3 Q. Okay.

4 A. And then that's when she's talking to him about wanting to  
5 create something.

6 Q. Okay. And he never responded to her; isn't that true,  
7 Agent?

8 A. I think he did respond, but what his response was, I don't  
9 know offhand.

10 Q. Okay. Agent, did you review the exhibits in this case, the  
11 ones that you testified?

12 A. Yes.

13 Q. You did? Okay. Did you create these exhibits?

14 A. I did not.

15 Q. Okay. Who created these exhibits?

16 A. The attorney's office.

17 Q. The government did?

18 A. Yes.

19 Q. And who created the video exhibits with the little Wite-Out  
20 lines?

21 A. The government did. And they -- I think they had a  
22 subcontractor they use to do that.

23 Q. Okay. And do you have any personal knowledge of the source  
24 data of those videos?

25 A. I have (indicating) for some of them.

1 Q. Okay. You have, what, a little chart that tells you?

2 A. The metadata.

3 Q. The metadata?

4 A. Yes.

5 Q. Okay. But you weren't involved in actually picking the  
6 videos, making sure the times were correct, creating the  
7 Wite-Out lines, any of that stuff?

8 A. I was involved in making sure the times were correct, yes.

9 Q. And how do you go that?

10 A. So I would compare it to the CCTV video footage. I would  
11 find a spot from open source and match it with the CCTV video  
12 footage and then go from there.

13 Q. And then was that video shipped off to the government's  
14 office, and then to a computer editing company, that kind of  
15 thing?

16 A. What do you mean?

17 Q. Well, in these montages that we saw, you didn't create  
18 those, correct?

19 A. I did not.

20 Q. And the government didn't create them, right?

21 A. The government did create -- so, the government created the  
22 exhibits we saw, yes.

23 Q. But they created through a third-party computer company,  
24 right?

25 A. They created it, and then they collaborated with a third



1 party, I think, for the map up top.

2 Q. Okay.

3 A. We would have to ask them specifically because I didn't  
4 have involvement in the creation.

5 Q. You didn't have involvement in how that was done?

6 A. How it was created? No.

7 Q. Now, you've taken multiple trainings on how to testify in  
8 court. That's why you're doing so well, correct, Agent?

9 MR. KENERSON: Objection. Compound. Vague, why  
10 she's doing so well.

11 THE COURT: Sustained as to the compoundness.

12 MR. JAUREGUI: Yes, Your Honor, I understand.

13 BY MR. JAUREGUI:

14 Q. Have you taken classes on how to testify in court?

15 A. Not specific courses, but I have testified before.

16 Q. Okay. How many times have you testified in court?

17 A. Maybe four, approximately. Four or five.

18 Q. As an FBI agent?

19 A. No. FBI, this is my first time as the FBI.

20 Q. Okay. Now, if we could review some exhibits. I know that  
21 you testified as to some Telegram and some Parler exhibits,  
22 correct?

23 A. Yes. Yes.

24 Q. And it's to get an idea of what my client was doing on  
25 January 6 and what his participation was, correct?

1 MR. KENERSON: Objection to the purpose behind it.

2 THE COURT: Sustained.

3 BY MR. JAUREGUI:

4 Q. You testified as to some exhibits that allegedly had my  
5 client in them, correct?

6 A. Yes.

7 Q. Okay. And there's Telegram exhibits that you've reviewed  
8 and Parler exhibits that you reviewed as to the buildup of  
9 January 6, have you not?

10 A. Reviewed, yes.

11 Q. Okay.

12 A. But my specific focus was January 6.

13 Q. I understand. I would like to show you an exhibit that's  
14 already in evidence. It's 508-1.

15 THE COURTROOM DEPUTY: Is that government?

16 MR. JAUREGUI: Permission to publish.

17 It's government exhibit.

18 Thank you.

19 BY MR. JAUREGUI:

20 Q. Now, Agent --

21 MR. KENERSON: Object to scope.

22 THE COURT: Let me hear you at sidebar.

23 (Bench discussion:)

24 THE COURT: Mr. Kenerson, just so I understand, is  
25 your scope objection the date?

1 MR. KENERSON: It's both the date and chat. She just  
2 testified to nothing from January 4th (sic) and nothing from  
3 this chat.

4 THE COURT: Is this going to be within the scope of  
5 your -- Agent Dubrowski?

6 MR. KENERSON: It will not be within the scope of his  
7 second. It would have been within the scope of his first.

8 THE COURT: Counsel?

9 MR. JAUREGUI: Judge, she's testified -- I may be  
10 wrong, I may be going nuts here, but I could have sworn that  
11 she testified to events that happened on January 5th, not just  
12 January 6th.

13 THE COURT: I don't think so. So, I'm going to  
14 sustain the scope. Look, I know this is a little unofficial  
15 here, but if -- I'm not -- if they're -- let me put it this  
16 way: If it connected up into something she did testify to, I  
17 might not enforce it that rigidly, but in this case, I don't  
18 know that that's the case.

19 MR. JAUREGUI: The reason I wanted to get into it is  
20 just they're trying to link up my client to this conspiracy on  
21 January 6. My client was out of the conspiracy once he was  
22 arrested. That's why they had have no Telegram messages  
23 whatsoever that my client was instructing anybody on the  
24 ground. He wasn't on the Boots on the Ground chat. Nothing.  
25 And what these messages are going to show is that other people

1 were actually in charge on January 6, and it was not my client.

2 THE COURT: Well, again, you can -- you can do that  
3 with things that were within her scope on January 6, but I'm  
4 going to sustain as to scope on this.

5 MR. JAUREGUI: Understood.

6 (Open court:)

7 BY MR. JAUREGUI:

8 Q. Agent, I'm going to show you another exhibit. This is  
9 Government's Exhibit 512-1.

10 MR. JAUREGUI: I think this one you introduced?

11 MR. KENERSON: Not --

12 THE COURT: Sustained for the same reason.

13 BY MR. JAUREGUI:

14 Q. Okay. Agent, did Enrique create the Boots on the Ground  
15 chat?

16 A. I'm sorry. Repeat that.

17 Q. Did Enrique create the Boots on the Ground chat group?

18 A. No.

19 Q. Who created that?

20 A. I believe it was Jeremy Bertino.

21 Q. Okay. And Enrique does not participate on that Boots on  
22 the Ground chat at all, correct?

23 A. Not that I know of.

24 Q. Okay. And he sends no messages on January 6 on Boots on  
25 the Ground, correct?

1 A. Correct.

2 Q. And actually, he even gets invited without his consent;  
3 isn't that, right?

4 MR. KENERSON: Objection. Foundation and scope.

5 THE COURT: Can you repeat the question, Counsel?

6 BY MR. JAUREGUI:

7 Q. He gets invited to the Boots on the Ground without his  
8 consent; isn't that right, Agent?

9 THE COURT: Sustained as to scope.

10 BY MR. JAUREGUI:

11 Q. You said he got arrested on the 4th, correct?

12 A. Yes.

13 Q. And when did he get out of jail?

14 A. The 5th.

15 Q. Are there any communications of Enrique between the 4th,  
16 the 5th, or the 6th on Boots on the Ground?

17 A. Not that I'm aware of.

18 Q. You are aware that once Enrique was arrested, there was  
19 mass chaos and confusion in all the chat groups, correct?

20 A. Yes.

21 Q. There was a power vacuum. Nobody knew what to do.  
22 Everybody kept asking what the plan was, right?

23 A. I don't remember the specifics, but I know that there was  
24 deleted chats.

25 Q. There was what?

1 A. People saying: Delete the chats.

2 Q. Delete the chats, right.

3 And they were also saying: What's the plan? I'll spam  
4 post it. What are we supposed to do?

5 Correct?

6 A. I would have to look at those again, but, probably.

7 Q. Okay. And at that point is when YutYut, Stewart, and  
8 Bertino basically take control, correct?

9 MR. KENERSON: Objection as to the characterization  
10 as to who is taking control.

11 THE COURT: She can answer if -- if she would agree  
12 with the characterization.

13 A. Re-ask your question. Sorry.

14 BY MR. JAUREGUI:

15 Q. I probably -- I don't remember it now.

16 But, would it be fair to say that once Enrique was  
17 arrested, YutYut became more active in the chats; is that fair?

18 A. YutYut became -- yes. Became active in the chats, yes.

19 Q. Would it also be fair that Stewart also became more active  
20 in the chats; is that fair?

21 A. I felt like Stewart was active before, yes.

22 Q. And who's the other guy? Bertino -- Jeremy Bertino became  
23 more active in the chats, correct?

24 A. He was active before, too. But, yes, he continued to be  
25 active.

1 Q. Okay. The one that was not active was poor Enrique,  
2 because he was in a jail cell, correct?

3 A. On the 4th, yes.

4 Q. And on the 5th, he wasn't active either, correct?

5 A. Yes. But he wasn't in a jail cell anymore.

6 Q. Even better, right? He's out, free, not active on the  
7 chats?

8 A. Correct.

9 Q. Even on the 6th, wasn't until late, late in the afternoon  
10 that he starts posting stuff, correct? Like at 2 o'clock,  
11 2 something?

12 A. So, he ends up in -- I think it's MoSD, midnight, on  
13 January 6.

14 Q. On January 6?

15 A. Yes.

16 Q. So midnight on January 6. Okay.

17 One second. Thank you.

18 Ms. Harris, please, if I could publish -- should already  
19 be in evidence -- Government's Exhibit 510-29.

20 Thank you.

21 BY MR. JAUREGUI:

22 Q. Agent, could you please read us what's on 8:28:55?

23 A. YutYut Cowabunga, which is Donohoe, says: I have the keys  
24 until Rufio and Zach show up.

25 Q. So right there, YutYut is saying he's basically in charge,

1 correct?

2 A. He's saying, "I have the keys."

3 Q. Okay. And what does that mean, "I have the keys"?

4 A. I don't know what he meant by what he's saying.

5 Q. Would it be fair to say "I have the keys," I'm driving the  
6 car, that kind of thing?

7 A. Maybe, but I don't know what his reference was.

8 Q. Got it.

9 MR. JAUREGUI: If I could please show Agent Miller  
10 509-29. I'll get to it.

11 THE COURTROOM DEPUTY: You said 509-29?

12 MR. JAUREGUI: 509-29. Thank you, Ms. Harris.

13 BY MR. JAUREGUI:

14 Q. Okay. Do you see that one, Agent?

15 A. I do.

16 Q. Okay. And could you please read for the members of the  
17 jury 11:12:06, from Aaron Wolkind?

18 A. "Tell me what the plan is. I'll spam post it."

19 Q. And 11:12:33, from JohnnyBlackbeard?

20 A. "Guys are starting to take their groups off alone because  
21 they can't find leadership."

22 Q. And 11:12:56?

23 A. "Give us a location so we can help keep them together."

24 Q. The last one, 11:21:48?

25 A. It's an audio clip, but it says: We're here. We're doing



1       our thing, at least the MoSD guys that showed up. As far as  
2       anybody else, not really sure what a -- everybody else is doing  
3       as far as, like, you know, the rogue chapters that came out  
4       here, so."

5       Q. And by "rogue chapters," meaning people that are not in  
6       MoSD, correct?

7       A. Again, I don't know what they mean, but that would make  
8       sense.

9       Q. Got it.

10               And do you see my client's little face there on top, all  
11       the way to the left?

12       A. I do.

13       Q. Okay. And what's his color?

14       A. Black.

15       Q. Okay. He's not really in this chat, right, in these  
16       messages, correct?

17               MR. KENERSON: Objection. Vague. What does "really  
18       in" mean?

19               THE COURT: Sustained. If you would clarify.

20               MR. JAUREGUI: I will, Your Honor.

21       BY MR. JAUREGUI:

22       Q. He's not actually participating in this chat, right?

23       A. Not on this page that we're looking at.

24       Q. Right. And the one before, his face was there, as well, he  
25       wasn't participating in that one either?

1 A. Correct. I believe this is the one he came into at  
2 midnight.

3 Q. At midnight?

4 A. Yeah. On the 6th.

5 THE COURT: I think that beeping was reminding us to  
6 take a ten-minute break for the court reporter.

7 So, we're going to do that now and be back in ten  
8 minutes. Ladies and gentlemen, we'll see you in ten minutes.

9 (Whereupon the jurors leave the courtroom.)

10 THE COURT: Agent, you may step down.

11 MR. SMITH: Your Honor, could we ask one scheduling-  
12 related question.

13 THE COURT: Yes.

14 MR. SMITH: Can we have a seat?

15 THE COURT: Yes, you may. Everyone may.

16 MR. SMITH: So, Your Honor, if we proceed with three  
17 government witnesses this week, two more after Agent Miller,  
18 and Joe Biggs gives his opening statement and -- if the  
19 government rests its case, I think the defense would file  
20 Rule 29 motions. And I think the question is: Should we build  
21 into the schedule an anticipation of any argument on those  
22 motions before the defense case begins, or would it --

23 THE COURT: Here's what I think we should do: Why  
24 don't you make the motion orally. I'm going to reserve on the  
25 motions. So I don't -- I don't think we need to -- if you want

1 to file something as well, that's fine. I'm going to reserve  
2 on those motions. So I -- I don't think we need to build in a  
3 huge amount of time, unless there's something very particular  
4 you want me to point to.

5 MR. SMITH: And if we make the motions orally, Your  
6 Honor, would the Court want to hear any argument, or would it  
7 be just kind of a formal sort of --

8 THE COURT: I think the best way we should proceed is  
9 for you to make your motions. Again, we can do it a little --  
10 we can build in a little time, if there are particular things  
11 that you want to -- a brief amount of time for you to point me  
12 to certain things. But my -- at this point, my plan is to  
13 reserve on those motions. And you'll have the opportunity to  
14 file something, you know, subsequent, before I decide them.

15 MS. HERNANDEZ: Judge, I was expecting that you would  
16 grant my motion.

17 THE COURT: Hope springs eternal. But reserving  
18 doesn't mean denying, as you know.

19 MR. SMITH: So the defense should not build in any  
20 time this week in terms of planning when they present their  
21 witnesses for argument on that? We should assume, as soon as  
22 the last government witness goes, then we start with defense?

23 THE COURT: I think, more or less, yes. Correct.  
24 Yes, Mr. Kenerson?

25 MR. KENERSON: On this point, this is something I

1 think the government has been meaning to raise and keeps  
2 neglecting to. But since Mr. Smith reminded me, at least want  
3 to put it on the record. We don't have to discuss it now.

4 But, the government has received no *Jencks* material  
5 from defense at this point. To the extent we're getting close  
6 to defense witnesses, I want to certainly put on the record  
7 we're making the request and demand and ask the Court set a  
8 deadline.

9 THE COURT: And I can -- I just -- isn't that sort of  
10 part and parcel of the motion the government already filed?

11 MR. KENERSON: If it's in there and I missed it,  
12 then, yes.

13 THE COURT: Whether it's in there formally or not,  
14 it's something -- I'll consider all of that at once. And I  
15 think I ordered the defense to respond by tomorrow; is that --  
16 that's my memory. The government had filed a motion for  
17 additional procedures, I think they called it. I think I  
18 ordered the defendants to respond, I think, by tomorrow.

19 But, I hear you, Mr. Kenerson. It's on my radar  
20 about what I order regarding *Jencks* or any of these other  
21 procedures you've laid out. And as soon as they have a chance  
22 to respond, we'll get to it.

23 MR. KENERSON: Understood. And the one thing, just  
24 amongst all of them that we would ask, if the Court is amenable  
25 to ruling, as soon as possible after tomorrow, is at least some

1 idea of the witness order for next week. All we've been  
2 provided of a list of approximately 80 to 90 names, and with no  
3 separation as to what defendant they're linked to even. So,  
4 some idea of next week would be extremely helpful.

5 THE COURT: Well, you have some idea because of what  
6 I said earlier today in terms of Monday. I'm just saying.  
7 Okay. As soon as they have a chance to respond, I'll take that  
8 up. But, I think I hear you on that. I hear you on that.

9 But, you know -- you know what they're going to --  
10 what they're going to be putting up Monday, frankly, whether  
11 we're in their case or not.

12 Can you grab a microphone, Mr. McCullough?

13 MR. MCCULLOUGH: That -- I mean, we know one witness  
14 for Monday, which is represented to be a 30-minute witness.  
15 So, I mean -- and I will tell you, Your Honor, the government  
16 does not intend to do this, you know, three-and-a-half-day  
17 cross of each witness. So, I would -- I tell you, I mean, the  
18 government anticipates that we're going to be moving along at a  
19 clip of multiple witnesses per day, once we get into this.

20 We would like -- it's just going to make this go  
21 efficiently if we can just get a list of witnesses for next  
22 week. Even skinny down the 80 into 30 would be helpful at this  
23 point. And I would think that given all the multiple hands --  
24 but, I think at this point, we should be able to get that from  
25 the defense. I mean, presumably, they've figured that much out

1 at this point.

2 MR. SMITH: Your Honor, the rule for the government  
3 is the notice on the Friday before the following week, so we  
4 haven't come close to that yet. So we would ask Your Honor for  
5 at least parity with the government on advance notice. So, the  
6 government provides notice of who the lineup will be on the  
7 Friday before, Nordean is prepared to give a witness list  
8 for -- on Friday for the following week. And, Your Honor,  
9 we've already given one notice, as Mr. McCullough noted.

10 The only kind of snag here, Your Honor, is this week.  
11 This week, we don't know when the government's case is going to  
12 rest. So, sort of trying to come up with who exactly will  
13 present first is a struggle. Some people are coming from the  
14 West Coast, some are not. And we don't know if there's going  
15 to be time for someone to present this witness, so -- but next  
16 week, Your Honor, we can.

17 THE COURT: Okay. So, look -- well, next week -- I  
18 understand. We're going to have -- the government is going to  
19 have more clarity before the end of the week, let's put it that  
20 way. But I want to give -- I want to give them a chance to  
21 respond. And let's put it this way: I'll take this up first  
22 thing Thursday -- Thursday morning, once the defense has had a  
23 chance to respond, regarding all of these procedures.

24 But they have -- the government -- I'm not saying  
25 you're only going to get one name, but we'll discuss it first

1 thing Thursday about what -- about the -- what information the  
2 defense is going to provide to the government on all these --  
3 on all these fronts.

4 MR. SMITH: Your Honor, I believe I just heard  
5 Mr. McCullough say: Let's just call the defense witnesses next  
6 week. If that's what he said -- I don't know if I heard that  
7 right. If he did say that, we would be amenable to just  
8 setting a date certain --

9 THE COURT: We're not going to govern the proceedings  
10 by sort of whisper back and forth.

11 Mr. Pattis, you have a quizzical look on your face.

12 MR. PATTIS: Always, Judge. That's the nature of  
13 being. But in particular, in this case there's not a -- as  
14 yet, a joint defense agreement on how to proceed, and we may or  
15 may not be able to reach one. If we don't, would -- are you  
16 suggesting that the wisest course would be to proceed in the  
17 order of the indictment?

18 THE COURT: Yes. Correct. I assume the defendants  
19 had -- had expected that. But, to the extent it's been vague  
20 and unclear, yes. I assume -- the reason I assume that is  
21 because Mr. Smith had been sort of taking the lead on at least  
22 expecting he would be the first -- Mr. Nordean would be the  
23 first one to present witnesses.

24 MR. PATTIS: If a defendant needs relief for medical  
25 reasons -- we have a witness who is, frankly, undergoing

1 surgery today. We expected this case to end, as I think most  
2 participants did, earlier, when he first made surgical  
3 arrangements. Could we make application to call someone out of  
4 turn?

5 THE COURT: You can always make an application. I'm  
6 never going to say you can't make an application, let's put it  
7 that way. So let's take -- the poor court reporter. We  
8 promised her a break and she never took one. So, we're going  
9 to take ten minutes and come back in ten minutes.

10 (Recess.)

11 (Whereupon the jurors enter the courtroom.)

12 THE COURTROOM DEPUTY: We are back on the record in  
13 criminal matter 21-175, United States of America versus Ethan  
14 Nordean et al.

15 THE COURT: All right. Counsel for Mr. Tarrío, you  
16 may proceed.

17 MR. JAUREGUI: Thank you, Your Honor.

18 BY MR. JAUREGUI:

19 Q. Agent, I think we left off on exhibit -- Government's  
20 Exhibit 509-29, correct? I had read four messages from it?

21 A. Yes, I believe so.

22 Q. Now, in that exhibit, 509-29, there's no messages, no  
23 encouragement from Enrique at all?

24 A. Can you bring that exhibit back up?

25 Q. Sure.



1 MR. JAUREGUI: Ms. Harris, if you may, please.

2 BY MR. JAUREGUI:

3 Q. Would you like me to scroll down?

4 A. Thank you.

5 Q. Sure. My pleasure.

6 Slower or faster?

7 A. No. You're good. I recognize it.

8 Q. Any messages or encouragement from Enrique in that exhibit?

9 A. Not in that exhibit, no.

10 Q. The next one I would like to show you should also be in  
11 evidence, 510-30.

12 MR. JAUREGUI: Let me get there first, Ms. Harris,  
13 please.

14 Perfect. Thank you.

15 BY MR. JAUREGUI:

16 Q. Now, you see Exhibit 510-30 there on your screen?

17 A. I do.

18 Q. And, again, it's YutYut Cowabunga, who writes a message  
19 basically saying: I've got 30 guys formed on the monument,  
20 correct?

21 A. Correct.

22 Q. In this exhibit, are there any messages or encouragement  
23 from Enrique?

24 A. No.

25 Q. Okay. I would like to show you the next exhibit that the

1 government introduced through you. It is 509-30.

2 MR. JAUREGUI: Permission to publish, please.

3 BY MR. JAUREGUI:

4 Q. And this has audio, so I'm going to play it for you.

5 Do you see that message in front of you?

6 A. I do.

7 Q. And do you remember this one?

8 A. I do.

9 Q. Okay.

10 (Audio played.)

11 Now, you know that an AAR, it's a military term,  
12 correct?

13 A. It could be referring to After Action Report.

14 Q. Right. And that's basically: Let's figure out what we did  
15 wrong so that next time we do a rally, we do it correctly,  
16 correct?

17 A. Could be, yes.

18 Q. Okay. You have no evidence or you've seen nothing that the  
19 Proud Boys planned to storm the Capitol more than once,  
20 correct? I think you testified to that already.

21 A. Correct.

22 Q. Now, I'm going to show you what's already in evidence,  
23 510-31.

24 MR. JAUREGUI: Permission to publish?

25 THE COURT: If the exhibit is already in evidence, no

1       need to request permission.

2               MR. JAUREGUI: Thank you very much, Your Honor.

3       BY MR. JAUREGUI:

4       Q. And I'm going to play this one as well.

5               (Audio played.)

6               Agent, would it be fair to characterize that as another  
7       type of motivational After Action Report-type thing from  
8       Stewart?

9       A. When you say "after action" -- so this is at 12:09 p.m.  
10       Nothing had happened yet.

11       Q. Right. But he's saying: Go out, have a good time, and  
12       we'll talk about it later because we have all these people that  
13       are down, correct?

14       A. Could be. I don't know what he means by what he's saying,  
15       but could be.

16       Q. Okay, Henry Boy is Enrique?

17       A. Again, I don't know if that's who he's referring to, but  
18       that would make sense.

19       Q. And when he says "Have a good time," it means they're going  
20       to go and rally and go and protest, correct?

21       A. I don't know what he means by "Have a good time."

22       Q. So you have no idea what this exhibit means as to any kind  
23       of evidence in this case whatsoever?

24       A. I don't know what Stewart is saying by his statements, what  
25       they mean to him.

1 Q. Got it.

2 And this was also introduced through your testimony on  
3 direct, correct?

4 A. Yes.

5 Q. Again, there's no messages from Enrique in this exhibit,  
6 right?

7 A. Correct.

8 Q. No encouragement by him at all?

9 A. In this exhibit, correct.

10 Q. Yet, his little face is up there in the black circle  
11 (indicating), right?

12 A. Because he's in the chat group, correct.

13 Q. Got it.

14 Why did you put the black for Enrique?

15 A. I didn't make the exhibits.

16 MR. KENERSON: Objection.

17 THE WITNESS: Oh, sorry.

18 BY MR. JAUREGUI:

19 Q. Oh. Do you know who picked the color for Enrique?

20 MR. KENERSON: Still objection. Relevance.

21 MR. JAUREGUI: If she knows.

22 THE COURT: Sustained.

23 MR. JAUREGUI: I would like to show you now what's  
24 previously entered into evidence, Government's Exhibit 510-32.

25 Permission to publish, Ms. Harris?

1 Perfect. Okay.

2 BY MR. JAUREGUI:

3 Q. Agent, can you please read what 12:17:00 says?

4 A. Do You Want Total War says: LOL. This is a mirror of the  
5 12th. Exact same plan.

6 Q. And you know that on December 12th is when the Proud Boys  
7 were stabbed, correct?

8 A. Yes.

9 Q. Okay. It was a day marked by chaos, correct?

10 A. There was violence, yes.

11 Q. Yeah. There was no leadership. All the Proud Boys were  
12 just marching in different directions on the 12th, correct?

13 A. I don't know the details on the 12th, but I know there was  
14 chaos, yes.

15 Q. And this person is saying that January 6 is an exact mirror  
16 of the 12th, correct?

17 A. That's what their statement reads, yes.

18 Q. Again, chaos, no leadership, and that's why he's "eating  
19 and chilling with my chapter," correct?

20 A. That's what he says, yes.

21 Q. And they decided to just march miles away because they  
22 didn't even know what the plan was, correct?

23 A. I don't know why he marched miles away.

24 Q. Well, you know that it's because it's a mirror of the 12th,  
25 correct?

1 A. It's what he says.

2 Q. Okay. Any messages or encouragement from Enrique in this  
3 Exhibit 510-32?

4 A. No.

5 Q. But his face is still there, correct?

6 A. Correct.

7 Q. To try and associate him to what's happening on the 6th?

8 MR. KENERSON: Objection.

9 THE COURT: Sustained.

10 MR. JAUREGUI: If we can put that down, Ms. Harris,  
11 please.

12 BY MR. JAUREGUI:

13 Q. Now I'm going to show you what's also been introduced as  
14 510-31, Government Exhibit.

15 My apologies. Wrong one.

16 It's 509-31. So many I got them confused.

17 This is another group of messages from January 6,  
18 correct?

19 A. Correct.

20 Q. And you -- this was introduced during your direct, correct?

21 A. Yes.

22 Q. Okay. Any messages from my client or encouragement from my  
23 client?

24 A. No.

25 Q. His face is still on the top, though, right?

1 A. Yes.

2 Q. Okay. Let's go to 510-33.

3 MR. JAUREGUI: One second, please, Ms. Harris.

4 Thank you.

5 BY MR. JAUREGUI:

6 Q. You see this message, 510-33?

7 A. I do.

8 Q. Who is -- did this message here on 510-33?

9 A. You mean the message of this picture?

10 Q. No. Who sent the message? I'm sorry.

11 A. Jeremy Bertino.

12 Q. Any encouragement or messages from my client on this  
13 exhibit?

14 A. No.

15 Q. My client's face is still on the top, though, right?

16 A. Yes.

17 Q. Okay. Now, in this case, Bertino, who wasn't even there,  
18 says that "Storming the Capitol right now" at 1:00:25, correct?

19 A. He does.

20 Q. Okay. Now, you do know that Trump was giving a speech that  
21 day, correct?

22 A. I do.

23 Q. And you know that at precisely 12:17 Trump told his  
24 supporters to walk -- to march to the Capitol?

25 A. I don't know about precisely, but, yes, around that time.

1 Q. Approximately.

2 A. Yes.

3 Q. Okay. And he told them that the election had been stolen,  
4 correct?

5 A. I believe so, yes.

6 Q. And it had been stolen by leftist, radical democrats.

7 He said that?

8 A. He did say it was stolen. I don't know his exact words,  
9 but, yes.

10 Q. Okay. And he told this huge mob of supporters: March to  
11 the Capitol, because if not, you're not going to have a country  
12 anymore, correct?

13 A. Something to that effect, yes.

14 Q. And coincidentally, at around 1 o'clock, the Capitol starts  
15 getting breached, correct?

16 A. A little before 1, but, yes.

17 Q. Okay. How long does it take to walk from the Ellipse to  
18 the Capitol, approximately? I'm not going to hold you to  
19 seconds or anything.

20 A. It's about 30 minutes, roughly; 30, 40 minutes.

21 Q. Okay. Thank you, Agent.

22 If we could go, please, to Exhibit 512-8, also  
23 introduced by the government.

24 Do you remember this message, Agent?

25 A. I do.



1 Q. Series of messages. My apologies.

2 Again, Noblebeard says, "Storm the Capitol right now,"  
3 at 1:50, correct?

4 A. Yes.

5 Q. And then: Get there. LOL. I love you.

6 The main messages are from this Bertino guy, correct?

7 A. Yes.

8 Q. Any messages from Enrique here?

9 A. No.

10 Q. Any words of encouragement by Enrique?

11 A. No.

12 Q. Let me show you 509-32.

13 Now, these are a series of messages between Aaron,  
14 Jeremy, and YutYut, correct?

15 A. Yes.

16 Q. Okay. Any messages from Enrique on this?

17 A. No.

18 Q. Any words of encouragement from Enrique?

19 A. No.

20 Q. Okay. We can go to 510-34.

21 Do you see this exhibit?

22 A. I do.

23 Q. Okay. Let me ask you something before I get into this  
24 exhibit.

25 Did you verify the metadata? Did you look at the actual

1 database information of what these exhibits were based on?

2 A. What do you mean?

3 Q. Okay. Were you just shown these exhibits by the government  
4 and said: Learn them?

5 A. I was shown what they were going to ask me, yes.

6 Q. Okay. So, somebody from the government -- I'm not going to  
7 put anybody on the spot -- shows you these exhibits, correct?

8 A. Yes.

9 Q. And they say: Learn these exhibits. I'm going to be  
10 asking you about them, correct?

11 A. Yes.

12 Q. And you did a little, you know, show-and-tell, and you  
13 practiced before the defense attorneys got to ask you  
14 questions, correct?

15 A. Sure.

16 Q. Okay. And -- but, you never looked behind the exhibit.  
17 You never looked at the actual metadata to verify that they're  
18 correct, did you?

19 A. So, members of our team -- our investigative team did --

20 Q. Okay.

21 A. -- verify all of that, yes.

22 Q. Does that mean that you did not?

23 A. Not every single slide, correct.

24 Q. Okay. So this one, for example, do you find anything funny  
25 with this slide -- with this Exhibit 510-34?

1 MR. KENERSON: Your Honor, may we be heard?

2 (Bench discussion:)

3 MR. KENERSON: I'm not sure what Mr. Jauregui is  
4 getting at with this, but I would note that this is not the  
5 version that we actually introduced.

6 THE COURT: Right. So, this is actually not in  
7 evidence?

8 MR. KENERSON: There's a later version of this, yeah.

9 THE COURT: Okay. Well, regardless, if --

10 MR. JAUREGUI: It's no problem, Judge. If you want,  
11 I can come forward from 30 seconds.

12 THE COURT: Okay. But putting that issue aside, the  
13 question was: Do you notice anything funny about this?

14 So what are you getting at here?

15 MR. JAUREGUI: What I'm getting at is that these are  
16 actually forwarded messages, that the government did not put  
17 them as forwarded messages. They're passing them off as actual  
18 messages from Aaron Kitchell.

19 THE COURT: I mean, if you have a good faith basis to  
20 ask that question, I would just ask the question, whether she  
21 knows the answer. She's probably going to say no, but you can  
22 ask the question.

23 And, Mr. Kenerson, why don't you all confer about --  
24 so we're using something that's actually in evidence. And,  
25 Mr. Kenerson, I don't think you would have an objection to that

1 question; is that fair? I mean, if he has a good faith basis  
2 to ask that question, she likely will say, you know, I don't  
3 know, I didn't do that. But, fine.

4 MR. KENERSON: I agree with the Court on the question  
5 Mr. Jauregui said now.

6 THE COURT: Okay. All right. All right.

7 (Open court:)

8 BY MR. JAUREGUI:

9 Q. Okay. Agent Miller, apparently I had an old exhibit. This  
10 is the new, revised one that the government did.

11 Can you switch it?

12 THE COURT: It's the same exhibit number, though?

13 MR. JAUREGUI: Yes.

14 BY MR. JAUREGUI:

15 Q. Do you see the message here from Aaron of the Bloody East?

16 A. I do.

17 Q. Okay. Would it be fair to say, agent, that that message is  
18 not a message from Aaron of the Bloody East? This is actually  
19 a forwarded message from multiple other chats?

20 A. I'm not sure. Possibly the second message because of the  
21 "#signalboost."

22 Q. Right.

23 A. Yes.

24 Q. So it is a forwarded message?

25 A. I'm not certain.

1 Q. Okay.

2 A. But it could be.

3 Q. Okay. And you would know for sure if you had looked at the  
4 metadata, correct?

5 A. Possibly.

6 Q. Well, in Cellebrite -- you would agree with me that in  
7 Cellebrite, it will tell you if a message was forwarded or not,  
8 correct?

9 A. It depends how the phone was extracted and what program was  
10 used, which I don't have the knowledge to speak on.

11 Q. Okay. I agree with you. It's all about the extraction.  
12 You're right. You're right. Thank you.

13 Okay. I would like to show you 512-9. This should also  
14 be in evidence.

15 Do you see that exhibit, Agent?

16 A. I do.

17 Q. Any messages or encouragement from Enrique?

18 A. No.

19 Q. His face is still there on the top?

20 A. It is.

21 Q. I would like to show you now 509-33, also in evidence.

22 (Off-the-record discussion between Mr. Kenerson and Mr.  
23 Jauregui.)

24 BY MR. JAUREGUI:

25 Q. Now, on this one, YutYut is bragging that he got a riot

1 shield, correct?

2 A. He is.

3 Q. Okay. Did Enrique encourage him or tell him: Proud of  
4 Your Boy for grabbing that riot shield?

5 A. There's not a response from Enrique.

6 Q. No encouragement at all, huh?

7 A. Not on this one, no.

8 Q. And his little face is there anyway, right?

9 A. Correct.

10 Q. We can go to 510-36.

11 Do you remember this exhibit?

12 A. I do.

13 Q. Okay. And, again, any encouragement or any messages from  
14 Enrique on this one?

15 A. No.

16 Q. Let's go to Parler. You testified as to some Parler posts  
17 that my client did, correct?

18 A. I did.

19 Q. Let's start with 600-58. Should be in evidence.

20 Would it be fair to say that Parler is like Facebook?

21 A. Yes.

22 Q. That's, like, the right-wing version of Facebook, for  
23 people that get kicked out of Facebook; would that be fair?

24 A. Sure.

25 Q. Okay. And like Facebook, you do posts -- public posts,

1 correct?

2 A. You do.

3 Q. Would it be fair to say that this exhibit, 600-58, is a  
4 public post by my client Enrique?

5 A. Yes.

6 Q. Okay. So, this time, his little face on top actually  
7 belongs there, correct?

8 A. It's his messages, yes.

9 Q. And as you testified before, Enrique is quite a Star Wars  
10 nerd, correct?

11 A. I don't know how much he likes Star Wars, but this is what  
12 this picture is from.

13 Q. Okay. This is Emperor Palpatine from The Empire Strike  
14 Back, right?

15 A. Yes.

16 Q. And he says: Do what must be done.

17 That's what Emperor Palpatine says in one of the Star  
18 Wars movies, right?

19 A. Yes.

20 Q. Yeah. And he's saying: After I finish watching this, I'll  
21 make a statement of my arrest. Do what must be done.  
22 Wethepeople.

23 Correct?

24 A. Correct.

25 Q. And that is a public post that anybody can see on Parler,

1 correct?

2 A. Correct.

3 Q. He's not communicating in secret with his Proud Boys  
4 followers underground on January 6, correct?

5 A. Not that I know of.

6 Q. And you've seen no evidence to that effect, correct?

7 A. Correct.

8 Q. Let's go to 600-59, the next one.

9 This is also another Parler post, correct?

10 A. It is.

11 Q. Again, public. Anybody can see it, correct?

12 A. Yes.

13 Q. Okay. And in this one he says: Don't f'ing leave. Proud  
14 of my boys and my country, correct?

15 A. He does.

16 Q. Okay. Not a secret text message to people on the ground,  
17 right?

18 A. Correct.

19 Q. Okay. Not a secret text message to anybody on the ground?

20 A. Nope.

21 Q. Okay. Let's go to 500-84.

22 MR. JAUREGUI: Let me find it, Ms. Harris, please.

23 THE COURTROOM DEPUTY: You said 500-84?

24 MR. JAUREGUI: 500-84.

25 THE COURTROOM DEPUTY: -84?



1 MR. JAUREGUI: Yes. I'm sorry.

2 BY MR. JAUREGUI:

3 Q. Do you remember this exhibit, Agent?

4 A. I do.

5 Q. Okay. Now, this one he's actually sending a message,  
6 correct?

7 A. He is.

8 Q. So his little face does belong there at the top, correct?

9 MR. KENERSON: Objection. Characterization of  
10 whether it belongs there.

11 THE COURT: Sustained.

12 BY MR. JAUREGUI:

13 Q. Okay. He actually sends a message to Chris Cannon when  
14 Chris Cannon writes him, correct?

15 A. He does.

16 Q. And the gist of this is that people were saying it was  
17 antifa that attacked the Capitol on January 6, correct?

18 A. I'm not aware of the gist of it, as far as antifa is  
19 concerned.

20 Q. Okay. Are you aware that there has been all these theories  
21 that antifa took part on the attack on the Capitol on  
22 January 6?

23 MR. KENERSON: Objection. Relevance to theories.  
24 Speculation.

25 MR. JAUREGUI: It goes to this exhibit specifically.

1 A. Can you ask your question? I'm sorry.

2 BY MR. JAUREGUI:

3 Q. Sure. No problem.

4 Have you seen, heard any evidence, or seen any reporting  
5 that there are allegations that antifa, maybe with members of  
6 BLM, who knows, took part on the attack of the Capitol to try  
7 to pin it on right-wing groups? Have you heard of something  
8 like that?

9 A. I have not. But, there was discussions of antifa during  
10 the day.

11 Q. Okay. And what Enrique is saying here is: Make no  
12 mistake, antifa didn't do this. American patriots did this.

13 Isn't that right?

14 A. I don't know what he means by his statements.

15 Q. Okay. So, you don't know what he means?

16 A. By his statements, correct.

17 Q. Okay. I would like to talk to you now about 653-1. And  
18 that's already in evidence.

19 THE COURTROOM DEPUTY: 653-1?

20 MR. JAUREGUI: 653-1. Sorry.

21 BY MR. JAUREGUI:

22 Q. Do you remember this exhibit?

23 A. I do.

24 Q. Okay. This is of a purported phone record of my client's  
25 phone; is that correct?

1 A. Yes.

2 Q. Okay. Like the other exhibits, did you actually look at  
3 the metadata for this exhibit?

4 A. I did.

5 Q. Okay. What did you look at?

6 A. So, I looked at the certified records that were provided by  
7 the subscriber.

8 Q. Would it be fair to say that those certified phone records  
9 are from AT&T?

10 A. Yes.

11 Q. Okay. Now, AT&T, you send a subpoena over there to AT&T?

12 MR. KENERSON: Objection. Relevance as to how they  
13 get the records.

14 MR. JAUREGUI: Goes to certification, reliability.

15 THE COURT: Overruled.

16 BY MR. JAUREGUI:

17 Q. Did you send the subpoena to AT&T?

18 A. Subpoena or a search warrant, but legal process was served.

19 Q. Okay. And they complied with that legal process; would  
20 that be fair?

21 A. Yes.

22 Q. And they provided you with a folder of different reports  
23 from AT&T, correct?

24 A. Yes.

25 Q. And they send you a certification saying: Hey, these are

1 the phone records pertaining to your request, correct?

2 A. They do.

3 Q. Okay. And in that folder, there's at least seven different  
4 reports; would that be fair?

5 A. A variety of reports, yes.

6 Q. And they actually have multiple reports for the same  
7 telephone number, correct?

8 A. They do.

9 Q. Okay. And in this specific case, I've been looking for  
10 this phone call on the Tarrío phone records and I can't find it.

11 If I show you the phone records, would you be able to  
12 find it?

13 A. Sure.

14 Q. Okay. One second.

15 MR. JAUREGUI: I think just for the witness,  
16 Ms. Harris. This is going to be Government's Exhibit 651.

17 THE COURTROOM DEPUTY: It hasn't been IDed yet.

18 (Off-the-record discussion between Mr. Jauregui and  
19 courtroom deputy.)

20 THE COURTROOM DEPUTY: I have 653.

21 MR. JAUREGUI: 653.

22 THE COURTROOM DEPUTY: Yes.

23 MR. JAUREGUI: Let me bring that one up.

24 You said 653?

25 THE COURTROOM DEPUTY: 653 and 653A are records that

1 have been IDed and entered into evidence.

2 MR. JAUREGUI: Okay. Got it.

3 BY MR. JAUREGUI:

4 Q. Okay. Would it be fair to say that these records are  
5 extremely voluminous, agent?

6 A. Yes.

7 THE COURTROOM DEPUTY: Is this 653 or --

8 MR. JAUREGUI: This is 653.

9 THE COURTROOM DEPUTY: Okay.

10 BY MR. JAUREGUI:

11 Q. Okay. This is Government Exhibit 653. This is the  
12 production from AT&T, and I've got that it's 6,653 pages; is  
13 that fair, Agent?

14 A. Yes.

15 Q. And the phone call that we're talking about happened,  
16 allegedly, on January 6, correct?

17 A. Correct.

18 Q. So let me get there.

19 Do you need me to zoom in so it's easier to see?

20 A. No. But, you're on the wrong day.

21 Q. No, I know. I was going to start going down.

22 A. Okay.

23 Q. Okay. Tell me when to stop. I'll go nice and slow.

24 I think we passed the time already.

25 Do you want me to go back up?

1 A. Go up, yes.

2 All right. Hold on.

3 (Pause.)

4 Q. Do you need me to go up or down?

5 A. Hold on a second.

6 Q. Okay. Is that better or --

7 A. (Pause.)

8 Go down.

9 Q. Sure.

10 A. Down.

11 Q. Down?

12 A. Um-hum.

13 Q. Okay.

14 (Pause.)

15 A. Hold on. Now, can you also go to the CDR file? Because  
16 you're in the one with cell site location. There's also a call  
17 detail records.

18 Q. Okay. I'll go to that one.

19 What I'm showing you right there, that's all the reports  
20 AT&T sends you, right?

21 A. Yes.

22 Q. Okay. Which was the one you want me to look at?

23 A. CDR. This guy (indicating).

24 Q. This one right here (indicating)?

25 A. Yep.

1 Q. Let's do it. You guide me. Let me know what to do.

2 THE COURT: And can we get -- is this all the same  
3 exhibit or is this a different exhibit number?

4 MR. JAUREGUI: It all came in one folder from the  
5 government, Your Honor.

6 THE COURT: Is it --

7 MR. JAUREGUI: 653CDR -- we can make it 653CDR?

8 MR. KENERSON: Can we go to the phones?

9 (Bench discussion:)

10 MR. KENERSON: I don't know what -- first, on  
11 authenticity, I don't think this was technically moved in, but  
12 it was part of the same business records certification. I  
13 mean, we're not going to object on authenticity grounds.

14 But, that aside, I think Mr. Jauregui, on the  
15 previous exhibit, was scrolling through times which, it seems  
16 like, he thought were Eastern. They're actually in UTC.  
17 Mr. McCullough, I think, he just whispered the page that the  
18 call is on in my ear, I'm happy to provide it to Mr. Jauregui.  
19 I don't know how much longer we're going to spend scrolling  
20 through.

21 THE COURT: Is -- well, Mr. Jauregui, how do you want  
22 to handle this? They can clean it up on their end. But, I  
23 mean -- you know, you're just going to be walking into this.

24 MR. JAUREGUI: Yeah. The thing is, Judge, it's --  
25 she either knows or she doesn't know.

1 THE COURT: I understand. But, like, you know, if  
2 you don't want to go -- if you don't want to go back, that's  
3 fine. The government will clean it up on redirect.

4 MR. JAUREGUI: Yeah. Yeah. Let me see what I do,  
5 Judge.

6 THE COURT: All right. Very well.

7 MR. METCALF: Just for curiosity, what time are we  
8 stopping today, so I can plan my cross accordingly, if counsel  
9 finishes?

10 THE COURT: I understand. 5. We have to stop at  
11 5 o'clock today.

12 MR. METCALF: Thank you, Your Honor.

13 THE COURT: All right.

14 (Open court:)

15 MR. JAUREGUI: Give me one second, Your Honor,  
16 please.

17 BY MR. JAUREGUI:

18 Q. Okay, agent.

19 If we can publish to the witness.

20 THE COURTROOM DEPUTY: You're still on 653?

21 MR. JAUREGUI: Yes.

22 BY MR. JAUREGUI:

23 Q. Agent, the government has helped me --

24 THE COURT: Hold on. Are we publishing this to the  
25 witness only?



1 MR. JAUREGUI: No. It can go to the jury, too,  
2 Judge. I want them to see it.

3 THE COURT: All right. Very well.

4 BY MR. JAUREGUI:

5 Q. Apparently, the reason we can't find it is because of the  
6 time.

7 Do you see it there (indicating)?

8 A. I do. They're right here (indicating). 0207 is Nordean.  
9 5450 is Biggs.

10 Q. And the exhibit --

11 And we go back to the actual exhibit by the government  
12 now, 653-1.

13 There's three phone calls at, what, .02 milliseconds?

14 Is that what that means or --

15 A. Yes. Two seconds, yes.

16 Q. Two seconds. Okay. And it says: Connect. No. No.

17 Right?

18 A. Correct.

19 Q. And then it says: Yes, 42.

20 A. Correct.

21 Q. If we go back to the AT&T records, if I can find that now.

22 Do you see it there now (indicating) ?

23 A. I do.

24 Q. Would it be fair that it's this line that I'm circling --  
25 or, actually, that I'm actually underlying right there

1 (indicating)?

2 A. Yes.

3 Q. Where does it say here that it connected?

4 A. So you would have to pull up, kind of, what else AT&T  
5 includes, which is what these things mean, like, the NIOP,  
6 VCORR, and it will tell you.

7 Q. Okay. So, you're just basing it on what the paper says?  
8 You have no personal knowledge whether it actually connected or  
9 not, right?

10 A. Again, if we pull up this thing here (indicating) and  
11 compare, then, yes.

12 Q. Okay. Let me get to it there.

13 Do you see what's on your screen right now?

14 A. I do.

15 Q. Would it be fair to say that AT&T has -- when they send you  
16 these reports, they have multiple different reports, correct?

17 A. They do.

18 Q. And they'll have a report for Enrique's phone and they'll  
19 have a report for Biggs's phone, correct?

20 A. If they're both on AT&T.

21 Q. And they're both on AT&T. But, if Biggs' phone is not on  
22 AT&T, they'll have a T-Mobile report, a Verizon report,  
23 correct?

24 A. I don't know exactly how the inner workings work, so,  
25 possibly.

1 Q. Could you please read for me this right here (indicating)?

2 A. "A call may show up on one or more report; however, AT&T  
3 has no ability to definitively state or correlate calls as  
4 being the same transaction. You may infer any conclusions  
5 based on your own analysis of the records."

6 Q. Okay. Did the FBI use a telephonic expert to determine  
7 whether or not the phone call was actually made --

8 A. We did not.

9 Q. -- in this case?

10 You did not. So, as you sit here right now, you have no  
11 personal knowledge whether that phone call actually connected,  
12 and whether or not there was any actual communication, do you?

13 A. That's correct.

14 Q. Would it be fair to say that on January 6, all the mobile  
15 networks were overwhelmed, and they could not keep up with the  
16 amount of cell phones on the ground on January 6?

17 A. I can't speak for the providers. I don't know what their  
18 networks had, but there was a lot of cell traffic.

19 Q. Thank you.

20 Now, would it be fair to say that a new MoSD chat group  
21 was created when Enrique was arrested?

22 A. Yes.

23 Q. And Enrique did not participate in that chat group until  
24 after January 6, correct?

25 A. The morning of January 6.

1 Q. Okay. Midnight?

2 A. Midnight. And then I think there's another message at,  
3 like, 8 or 9:30 in the morning, but that's it.

4 Q. That's it.

5 And were any of those instructions or messages or  
6 encouragement on what to do on January 6?

7 A. So some of them are blank, but from the ones I do have, not  
8 that I've seen.

9 Q. Okay. And you don't know why those messages are blank, do  
10 you?

11 A. Why they're blank? I don't know why they're blank.

12 Q. You don't know if it was because of the extraction or how  
13 Cellebrite converts the data, do you?

14 A. I just know the messages were not recovered from the  
15 phones.

16 Q. Got it.

17 Let me show you what's been marked as Government  
18 Exhibit 530-6.

19 All right. Do you remember that message?

20 A. I do. It's between Tarrío and Bertino, and it's a Parler  
21 screenshot.

22 Q. It's text messages between them?

23 A. It is.

24 Q. Okay. And in that Parler screenshot -- let me just zoom in  
25 a little bit -- Tarrío wrote: Proud of my boys and my country.

1           This is the same Parler post we had seen before,  
2       correct?

3       A.    Could be, yes.

4       Q.    On that other exhibit that I brought up a few minutes ago.  
5       Do you remember?

6       A.    Yes.

7       Q.    And he got 4.6000 (sic) views on that?

8       A.    That's correct.

9       Q.    Okay. And then "Don't f'ing leave."

10           And he got 16,000 views on that one?

11       A.    Correct.

12       Q.    Do you know how many Twitter followers Trump had at that  
13       time?

14       A.    I imagine a ton, but I don't know.

15       Q.    Would 88.9 million sound reasonable to you?

16       A.    That's a lot. I mean, yeah. Sure.

17       Q.    Okay. Do you think the people on the ground were following  
18       Enrique or Trump?

19           MR. KENERSON: Objection to speculation.

20           THE COURT: Sustained.

21       BY MR. JAUREGUI:

22       Q.    Okay. I would like to show you Government Exhibit 600-63.

23           THE COURTROOM DEPUTY: 663 or 600-63?

24       MR. JAUREGUI: I'm sorry?

25       BY MR. JAUREGUI:

1 Q. Again, this is a Parler post?

2 A. It is.

3 Q. Okay. It's one Parler post, then a second one, I guess,  
4 3 minutes later?

5 A. Yes.

6 Q. Again, this is public, like Facebook?

7 A. Yes.

8 Q. Not communicating secretly with his guys on the ground,  
9 correct?

10 A. Correct.

11 Q. Do you know who Thomas Jefferson is?

12 A. I do.

13 Q. Who is he?

14 A. He was a President.

15 Q. Okay. And do we still like him, or has he been canceled,  
16 Thomas Jefferson?

17 A. Different people have different opinions.

18 Q. "And when the people fear the government, there's tyranny."

19 Would you agree with that?

20 MR. KENERSON: Objection to whether she agrees with  
21 it.

22 THE COURT: Sustained.

23 BY MR. JAUREGUI:

24 Q. "When the government fears the people, there is liberty."

25 Do you disagree with that?

1 MR. KENERSON: Objection to her opinion.

2 THE COURT: Sustained.

3 BY MR. JAUREGUI:

4 Q. The New MoSD was created on January 4th, correct?

5 A. Not 100 percent certain of the date, but that sounds  
6 correct.

7 Q. Okay. Now, there are no messages of any kind that you know  
8 of in your extensive investigation between Enrique and anybody  
9 on the ground on January 6, correct?

10 A. (Pause.)

11 Sorry. I'm thinking.

12 Q. Take your time.

13 A. Not that I can recall.

14 Q. So that would be "no"?

15 A. Not that I can recall.

16 Q. Right. There are no text messages between Enrique and  
17 anybody on the ground on January 6; isn't that true?

18 A. Not that I can recall.

19 Q. Does that mean "no" or --

20 A. Not that I'm aware of.

21 Q. Not that you're aware of.

22 And to be clear for the members of the jury, you've been  
23 investigating this case since January 6, correct?

24 A. I have.

25 Q. You've dedicated probably hundreds, if not thousands, of

1 hours to this investigation, correct?

2 A. I have.

3 Q. And you've worked with a team of, what, at least six other  
4 FBI agents, correct?

5 A. I have.

6 Q. You've worked with a bunch of very talented, very smart  
7 prosecutors in this case, correct?

8 A. I believe so.

9 Q. Okay. And nobody has been able to come up with any  
10 messages from Enrique to anybody on the ground on January 6,  
11 correct?

12 A. Not that I've seen.

13 Q. Okay. And I'm sure if they existed, you would tell the  
14 jury about it, correct?

15 MR. KENERSON: Objection.

16 THE COURT: Sustained.

17 BY MR. JAUREGUI:

18 Q. Let me show you 509-15.

19 (Off-the-record discussion between Mr. Jauregui and Mr.  
20 Kenerson.)

21 MR. KENERSON: I don't see it, but it's coming up.

22 MR. JAUREGUI: What do you think?

23 MR. KENERSON: Objection. Scope.

24 THE COURT: Sustained.

25 MR. JAUREGUI: All right.



1                   We can bring that down, Ms. Harris.

2           BY MR. JAUREGUI:

3           Q.   Agent, would it be fair to say that people were listening  
4           to Agent Trump (sic) as they walked around the National Mall  
5           and the Capitol and the Ellipse?

6           A.   I don't know who they were listening to.

7           Q.   Okay. In some of the videos that you reviewed, did you not  
8           see people playing Trump's speech on their phone?

9           A.   I've seen them in some videos, yes.

10          Q.   And people were being informed in realtime what Trump  
11          wanted --

12                   THE COURT: I'm sorry. Counsel, if you can just  
13          pause for one moment.

14                   Because I just have to ask, again, counsel who are  
15          not conducting an examination, I need everyone to not chat  
16          loudly enough for me to hear it while an examination is going  
17          on.

18                   You may proceed, sir.

19                   MR. JAUREGUI: Thank you, Your Honor.

20          BY MR. JAUREGUI:

21          Q.   Agent, people were being -- people were learning in  
22          realtime, through various multimedia, what Trump wanted in  
23          realtime, correct?

24          A.   If they were listening to his speech.

25          Q.   Right. And the videos that you saw, you saw multiple

1 groups of people with his speech blaring on either speakers,  
2 Bluetooth speakers, telephones. Actually, even these rioters  
3 were telling each other what Trump was saying, correct?

4 A. Some of them.

5 Q. I understand not all of them, but a large number; would  
6 that be fair?

7 A. I can think of a few.

8 Q. Okay. These huge groups of people that we've seen in these  
9 videos, would it be fair to say that most of them are not Proud  
10 Boys?

11 A. The large crowd?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. Most of them are just regular Trump supporters,  
15 correct?

16 A. Again, I don't know who a lot of them are, so I don't know  
17 what they are or aren't. But, I can say from what I know, that  
18 they're not Proud Boys.

19 Q. Thank you.

20 Agent, did you guys use facial recognition on these  
21 videos?

22 A. We did have a facial recognition program that was used for  
23 January 6 investigations, but I'm not sure if it was used  
24 specifically on these videos.

25 Q. And could you please explain to the members of the jury

1       what facial recognition is?

2       A.   So, I don't know the details of it.  I just know the FBI  
3       offers it -- well -- or, they offered it for this investigation.

4       Q.   Because you're not a computer or phone expert, you can't  
5       testify to those things?

6       A.   Correct.

7       Q.   But generally, facial recognition is a computer program  
8       that maps people's faces and then compares them to databases of  
9       driver's licenses and identifications, correct?

10      A.   That sounds right.

11      Q.   And that's how you were able to identify most of the people  
12      in these videos, correct?

13      A.   I don't believe so.

14      Q.   But you did use it?

15      A.   Again, I don't know what was done on the videos, but it  
16      could have been used.

17      Q.   Because you have no personal knowledge as to the videos  
18      that you testified to.

19      A.   As far as if they were sent to the facial viewing software,  
20      correct.

21      Q.   Got it.

22                 Did you ever receive facial recognition reports as to  
23      the people on the videos?

24      A.   Not that I can recall.

25      Q.   Isn't a report generated when you get a facial recognition

1 hit by the software?

2 A. I believe so, yes.

3 Q. And you didn't follow up that lead as to the hits from the  
4 facial recognition software?

5 A. I don't think I got any.

6 Q. You don't think that you got any?

7 A. Not that I can recall.

8 Q. Who sent the videos off to facial recognition?

9 MR. KENERSON: Objection. Foundation.

10 THE COURT: Sustained.

11 BY MR. JAUREGUI:

12 Q. Did you use facial recognition to identify any Proud Boys  
13 in this case?

14 A. I did not.

15 Q. Did you use facial recognition to identify any CHSs in this  
16 case?

17 A. I did not.

18 Q. As part of your investigation, did you learn who Lieutenant  
19 Shane Lamond was?

20 A. I did.

21 Q. Could you please tell the members of the jury who Shane  
22 Lamond is?

23 MR. KENERSON: Objection. Relevance. Scope.

24 THE COURT: Sustained as to scope.

25 BY MR. JAUREGUI:

1 Q. Are there messages from Shane Lamond on January 6?

2 A. Not that I've seen.

3 Q. If I showed you the messages, would that refresh your  
4 recollection?

5 MR. KENERSON: Objection. Foundation.

6 THE COURT: Sustained.

7 BY MR. JAUREGUI:

8 Q. Was Lieutenant Shane Lamond an FBI Joint Task Force  
9 officer?

10 MR. KENERSON: Objection. Foundation. Scope.  
11 Relevance.

12 MR. JAUREGUI: If she knows.

13 THE COURT: Sustained as to foundation and scope.

14 BY MR. JAUREGUI:

15 Q. Did you review the phone extraction for Lieutenant Shane  
16 Lamond?

17 MR. KENERSON: Objection. Foundation. Scope.

18 THE COURT: She can answer the question.

19 A. I did not.

20 BY MR. JAUREGUI:

21 Q. You didn't. Okay.

22 So you don't know anything about messages, nothing like  
23 that?

24 A. No.

25 Q. Okay. Do you know who Jack Donohue is?

1 A. I want to say Charles's brother, but, no, I don't know.

2 Q. How about Jeffrey Carroll? Do you know who Jeffrey Carroll  
3 is?

4 A. No.

5 Q. And you never reviewed any messages between Lieutenant  
6 Shane Lamond and Enrique Tarrío?

7 A. No.

8 Q. Do you know whether Enrique Tarrío ever met with agents of  
9 the FBI?

10 MR. KENERSON: Objection. Relevance. Scope.

11 THE COURT: Sustained as to scope.

12 BY MR. JAUREGUI:

13 Q. Let's talk about that Marching Group. In that Marching  
14 Group, there was a bunch of media there and journalists,  
15 correct?

16 A. Yes.

17 Q. Nicholas Quested was there?

18 A. Yes.

19 Q. He's a British guy?

20 A. Yes.

21 Q. Amy Harris was there?

22 A. Yes.

23 Q. A bunch of other photographers and videographers, correct?

24 A. Yes.

25 Q. Eddie Block was there, Fast Eddie on his chair, correct?

1 A. Yes.

2 Q. How many journalists and videographers were there in total  
3 in the Proud Boys group?

4 A. I don't know an exact number.

5 Q. More or less, ballpark?

6 A. I would say maybe five to seven.

7 Q. And they were recording audio, video, taking photographs,  
8 correct?

9 A. Yes.

10 Q. Now, you said you were on standby on January 6 in case  
11 something was going to happen, correct?

12 A. Correct.

13 Q. You never received advance warning of what was going to  
14 happen at the Capitol?

15 A. No.

16 Q. You guys had no clue. You were caught, you know,  
17 flatfooted there?

18 A. I don't know about "you guys," but I did not.

19 Q. Well, the FBI did not.

20 A. I don't know what the FBI knew, but I did not know.

21 Q. Oh. So maybe the FBI did know something?

22 A. I can't speak for them.

23 Q. Okay. Now, you've already testified that the FBI had  
24 multiple informants in the Proud Boys, correct?

25 A. I know of an informant, yes.

1 Q. You know just one?

2 A. I know of two.

3 Q. Two informants?

4 A. Yes.

5 Q. The number keeps growing. So it's you know two informants  
6 now?

7 A. But one was not there January 6.

8 Q. Okay. So, just to be specific, there was only one  
9 informant on January 6?

10 A. On the ground with the group, yes.

11 Q. Okay. All right. Let me show you something.

12 And none of these informants ever told the FBI of their  
13 plans at the Capitol, correct?

14 MR. KENERSON: Objection. Hearsay.

15 THE COURT: Sustained.

16 BY MR. JAUREGUI:

17 Q. The one informant you know is the one that Ms. Hernandez  
18 was -- showed you, and there was a little circle around his  
19 face, correct, on January 6?

20 A. Correct.

21 Q. Give me one second, Agent.

22 A. Um-hum.

23 Q. Thank you. I just have a lot of files.

24 Okay. I'm going to show you what's been previously  
25 marked as Government's 490A, starting at the timestamp of 1:05



1 to 1:18.

2 MR. KENERSON: Objection. Scope.

3 MR. JAUREGUI: Permission to publish? I'm going to  
4 lay the foundation now.

5 THE COURT: Hold on. Let me hear you at sidebar.

6 (Bench discussion:)

7 THE COURT: This is not a January 6 video, is it?

8 MR. JAUREGUI: Your Honor, this is a video that  
9 depicts Kenny Lizardo, who I've been trying to get into the  
10 case from the very beginning. She knows Kenny Lizardo  
11 personally. Kenny Lizardo was there on January 6. I'm now  
12 impeaching her.

13 THE COURT: She can -- no. No. No. There's no  
14 impeachment. She said she knows who the person is. You can  
15 ask her about video on January 6, not about other videos.

16 MR. JAUREGUI: But, Judge, I need to lay the  
17 foundation, because Kenny Lizardo was with my client the day he  
18 gets in, on the 5th, all the way to the nighttime, drives him  
19 to the hotel, is there when he meets Stewart Rhodes --

20 THE COURT: I'm aware of all those things. The  
21 foundation has already been laid. You can ask her -- I've  
22 already -- you can ask her about the video on January 6  
23 depicting Lizardo, and you can ask -- and I've already said the  
24 name is in play. And all that other stuff you can connect up  
25 however you're going to connect it up, but you're not going to

1 do it through her. There's no foundation to be laid.

2 MR. JAUREGUI: Judge, I tried to do it through  
3 Dubrowski. Your Honor did not allow me. I tried to get to  
4 Kenny Lizardo when Dubrowski said that he had interviewed him.  
5 I'm just trying to show the proximity of Lizardo to my client.

6 THE COURT: I understand that point you're making,  
7 and you can make it in your case or in other ways. And I've  
8 said, you can ask -- you can identify him as a CHS and point  
9 out that he was there on January 6. But this is beyond the  
10 scope of her testimony. But you're going to be able to do  
11 those other things.

12 Mr. Pattis has his hand up.

13 MR. PATTIS: I think she testified that she  
14 interviewed Lizardo in her testimony before the jury, and I  
15 think that would give Mr. Jauregui an additional nexus. I'm  
16 trying to locate in my notes where that was. But I recall her  
17 saying she did interview him.

18 MR. SMITH: Your Honor, I can explain Mr. Pattis's  
19 point. She just testified that she knows one CHS was on the  
20 ground. Your Honor, she just -- she's identified two. That's  
21 why it's impeachment, Your Honor. She just said one was on the  
22 ground. She identified one through us, which was James  
23 Knowles. The second one is Lizardo, and she knows that because  
24 she interviewed Lizardo, who told her he was on the ground.

25 THE COURT: Okay. Let's -- let me refocus with the

1 attorney actually conducting the examination.

2 So it would impeach her, if that's really what you  
3 want to do. But I'm not sure it's really impeachment. You can  
4 discuss the -- there are -- there's already video of Lizardo  
5 right there at the food trucks. I've said you can do that, and  
6 you can do it.

7 The rest of this connecting up is for your case. Her  
8 scope is the videos on that day, and I've said you can get into  
9 it, but only with video on that day. And you can ask the  
10 questions: Wasn't he a CHS?

11 Again, I don't know exactly what she knows about it,  
12 but you can get into his status as a CHS and end of story,  
13 depending on what else she knows.

14 MR. JAUREGUI: Your Honor, if I may just proffer what  
15 I wanted to do. I wasn't even going to play audio. I was  
16 going to show a screenshot of Lizardo with my client here,  
17 getting out of the jail. I was going to show another  
18 screenshot of my client -- a screenshot of my client meeting  
19 with the Oath Keepers, and then I was going to tie it up with a  
20 screenshot of Lizardo on January 6.

21 THE COURT: It's within the scope to do him on that  
22 day. The rest of the stuff, again, I'm not even sure you need  
23 to tie it up because I think we already know his name. But, I  
24 think you can go into identifying, again, what -- his presence  
25 that day.

1 MR. JAUREGUI: I understand, Your Honor.

2 THE COURT: So just skip ahead to that.

3 MR. JAUREGUI: Yes, sir.

4 THE COURT: And let me just -- just so we don't have  
5 any -- just because I don't want to have to go back.

6 Mr. Kenerson, you don't object to that, I presume?

7 MR. KENERSON: Only the previously -- not other than  
8 what we previously stated.

9 THE COURT: All right. Very well.

10 (Open court:)

11 BY MR. JAUREGUI:

12 Q. Agent, you first said that there was only one CHS on  
13 January 6, correct?

14 A. Correct.

15 Q. Then, you amended your answer and said there was a second  
16 CHS on January 6, correct?

17 A. Not on January 6. You were asking me about within the  
18 Proud Boys, that I'm aware of.

19 Q. Okay. Would it be fair to say that there's a lot of  
20 CHSs --

21 MR. KENERSON: Objection. Objection. Objection.

22 THE COURT: Well, you can complete your question.

23 MR. JAUREGUI: Sure.

24 BY MR. JAUREGUI:

25 Q. Would it be fair to say that there's a lot of CHSs in the

1 Proud Boys?

2 Well, who you looking at, Agent? Are you looking --  
3 this is the third time --

4 THE COURT: Just -- there wasn't an objection. You  
5 may proceed.

6 MR. JAUREGUI: Yeah.

7 A. I don't know.

8 BY MR. JAUREGUI:

9 Q. Multiple times now, when I've asked you a question, you  
10 look at the government's table. Why are you looking at the  
11 government's table?

12 A. Well, he just said "objection" when you were asking your  
13 question, and he said to let you finish.

14 Q. Right. And then you looked at them.

15 A. So I was waiting to see if he was going to say anything  
16 before I answered your question.

17 Q. Uh-huh. All right.

18 A. Okay.

19 Q. Working as a team, I take it, correct?

20 MR. KENERSON: Objection.

21 THE COURT: Sustained.

22 BY MR. JAUREGUI:

23 Q. There's a bunch of CHSs in the Proud Boys, correct.

24 MR. KENERSON: Objection. Asked and answered.

25 THE COURT: Sustained.

1 BY MR. JAUREGUI:

2 Q. How many CHSs are in the Proud Boys, Agent?

3 MR. KENERSON: Asked and answered.

4 THE COURT: It was asked and answered. Sustained.

5 BY MR. JAUREGUI:

6 Q. Is there a third CHS on January 6, Agent?

7 A. Not that I know of.

8 Q. Okay. I would like to show you an exhibit. It's  
9 Nordean 301.

10 MR. JAUREGUI: And the timestamp for the government  
11 is 03:05.

12 Actually, it's a little further down. Now I missed  
13 it.

14 Okay. I'm going to start playing, actually, at  
15 3:05:50, Your Honor.

16 THE COURT: All right. And it's whose exhibit, 301,  
17 just to be clear?

18 MR. JAUREGUI: It's Nordean, Your Honor.

19 THE COURT: All right.

20 MR. JAUREGUI: Thank you.

21 BY MR. JAUREGUI:

22 Q. Now, Agent, do you know a Kenny Lizardo from Long Island?

23 A. I do.

24 Q. Okay. And Ken Lizardo picked up Enrique Tarrio on  
25 January 5th from the jail, correct?

1 A. Yes.

2 Q. And he was with Enrique all day on the 5th, right?

3 A. I don't know.

4 Q. Okay. Have you seen videos of him with Enrique all day on  
5 the 5th?

6 MR. KENERSON: Objection. Scope.

7 THE COURT: Sustained.

8 BY MR. JAUREGUI:

9 Q. Did Kenny Lizardo drive Enrique Tarrio to a hotel in  
10 Baltimore?

11 A. I believe so, yes.

12 Q. Okay. I'm going to play this video now, and please let me  
13 know when you see Kenny Lizardo from Long Island.

14 (Video played.)

15 A. I see Kenny Lizardo from Long Island.

16 Q. Okay. He's going to come in closer here, and get a real  
17 good look at him. And then I'll have you circle him for the  
18 jury.

19 (Video played.)

20 Can you please circle Kenny Lizardo for the jury?

21 A. (Indicating.)

22 Q. Okay. Kenny Lizardo is, in fact, a CHS, correct?

23 A. He is.

24 Q. So now there's three CHSs on January 6, correct?

25 A. That's the second one I was talking about.

1 Q. That's the second one?

2 A. Yeah. But he didn't march with the group at all during the  
3 day.

4 Q. Okay.

5 MR. JAUREGUI: Judge, I need the phones for this one.

6 (Bench discussion:)

7 MR. JAUREGUI: Judge, I don't want to go contrary to  
8 your order, but there is a third one, and I don't want to say  
9 his name because I don't want to get in trouble.

10 THE COURT: Okay. She obviously doesn't know it, so  
11 it doesn't really matter.

12 MR. JAUREGUI: I think she does. We just haven't  
13 been able to ask her.

14 THE COURT: No. No. No. You have been able to ask  
15 her, and she said -- now, who's the -- I guess I don't -- she  
16 hasn't indicated -- the third person was someone you injected,  
17 so -- first of all, so, there's no reason to use a name.

18 If you want to ask her: Do you know of any other CHS  
19 that was there that day, she'll say whatever she says. But I  
20 think she is going to say "no," based on everything I've heard  
21 so far.

22 MR. JAUREGUI: Okay, Your Honor. Could I have  
23 5 seconds?

24 THE COURT: Sure.

25 MR. JAUREGUI: Thank you.



1 (Open court:)

2 MR. JAUREGUI: Your Honor, just one minute, please.

3 (Pause.)

4 Thank you for that. I'm ready. I won't do anything  
5 until --

6 THE COURT: All right.

7 BY MR. JAUREGUI:

8 Q. Are you distinguishing the CHSs that marched to the Capitol  
9 from the ones that were simply present on January 6?

10 A. I'm only aware of two, of which now you know.

11 Q. Okay. Of the two. Okay.

12 Was there a third CHS that did not march to the Capitol?

13 A. Not that I know of.

14 Q. Not that you know of. Okay.

15 Now, Kenny Lizardo is a Fourth Degree Proud Boy,  
16 correct?

17 A. I don't know what degree he is, but he is a Proud Boy.

18 Q. Okay. And Kenny Lizardo is a paid informant?

19 MR. KENERSON: Objection. Relevance.

20 BY MR. JAUREGUI:

21 Q. If you know.

22 THE COURT: Overruled.

23 A. I don't know.

24 BY MR. JAUREGUI:

25 Q. Has he ever been paid for travel?

1 A. I think so. I think they refunded his costs.

2 Q. Okay. And actually, you personally interviewed Lizardo,  
3 correct?

4 A. I did.

5 Q. And the reason you interviewed Lizardo is to find out what  
6 the actual plan on January 6 was, correct?

7 MR. KENERSON: Objection to reason.

8 THE COURT: Let me -- let's go to the phone.

9 (Bench discussion:)

10 THE COURT: We're now wading into an area where, I  
11 guess, I'm totally -- you all know far more than I do about the  
12 facts here and where this all leads and what you intend to do.  
13 What I'm going to do is just -- I have to let the jury go by 5,  
14 and we're only ten minutes short of that. So, I'm going to let  
15 them go, and then we can talk about this, if we need to talk  
16 about it.

17 I mean, I think, actually, given where we are with  
18 this particular person, we can have this conversation in open  
19 court. But we may as well flesh out where this all leads with  
20 regard to this individual.

21 All right. So, I'm going to release them for the day  
22 and then we can talk about. All right?

23 MR. JAUREGUI: All right.

24 (Open court:)

25 THE COURT: Ladies and gentlemen, I'm going to

1 release you for the day. And see you back here at 9 o'clock  
2 tomorrow. And, ladies and gentlemen, two scheduling notes I  
3 should have mentioned earlier. I don't think I mentioned to  
4 you all, we will -- this Friday, we will sit a half day. Half  
5 day. So, the first half of the day plan on being here.

6 And then, as always, no independent investigation,  
7 please avoid all press-related January 6, and no discussion of  
8 the evidence with anyone.

9 Thank you for your service. See you tomorrow.

10 (Whereupon the jurors leave the courtroom.)

11 THE COURT: All right.

12 And, Agent, you may step down.

13 MR. PATTIS: May we be seated, Judge?

14 THE COURT: You may.

15 All right. So, in the few minutes we have here,  
16 let's just chat about what Mr. Jauregui -- what you -- I guess,  
17 I want to be sensitive to what's not necessarily public at this  
18 point because I may not -- I'm not sure what the line I'll  
19 eventually draw is here. But, to the extent we can talk around  
20 maybe any sensitive information, what do you intend to do here?

21 And then I'll just hear the government's response.

22 MR. JAUREGUI: Sure, Judge. Judge, I was going to --  
23 my next line of questioning was I was going to highlight that  
24 he was a member of various chats -- MoSD, Boots on the  
25 Ground -- to tie him into, you know, the Proud Boys. I was

1       trying to -- if I may proffer, I was trying to establish  
2       proximity to my client on the 5th, and, basically, what the  
3       information was. What the information was is that Kenny  
4       Lizardo told him that they were just going to the rally and the  
5       protest.

6               That's hearsay, I understand that, but that's why I  
7       was -- it's a present sense impression, but I was trying to  
8       contour around that and let the agent answer her own question.  
9       You know what I mean? But --

10              THE COURT: One thing I'm sure of, it's not a present  
11       sense impression. All right --

12              MR. JAUREGUI: Judge, there are other CHSs on January  
13       6. There are. Which I'm going to be working on tonight. I  
14       will preclear with Your Honor tomorrow, of course.

15              THE COURT: Great. But, clearly, it's not something  
16       she knows anything about. You're going to have to lay the  
17       foundation with her about that. And not just that.

18              What I asked the parties to do yesterday was to tee  
19       this up with the government, if there was someone else. So, I  
20       mean, if you're going to do something else along these lines,  
21       you're going to have to talk --

22              MR. JAUREGUI: Judge, I promise to email the  
23       government and tell them whatever I intend on doing tomorrow.  
24       It's no problem.

25              THE COURT: Okay. So, assuming the content of any

1       communications is out -- because I don't know of a way it would  
2       be in -- let me just pivot to the government.

3               I mean, everything else Mr. Jauregui has laid out  
4       there seems within the bounds; is that fair?

5               MR. KENERSON: In chat groups and proximity to  
6       Mr. Tarrio?

7               THE COURT: Yeah.

8               MR. KENERSON: I think within the bounds of scope.  
9       But -- yes. And I think chat groups are within this scope.  
10      I'm not arguing they're not.

11              The thing I would say is aside from the content of  
12      communications, the last question that drew the objection was:  
13      You went to interview him to find out what really happened.

14              I mean, that's --

15              THE COURT: Right. Right. Yes. That -- we don't  
16      have to talk about that question. I just -- I didn't know  
17      because I don't know -- these facts are not teed up for me at  
18      all. I don't know them. They haven't been in anything, I  
19      don't think, I've read. So that's why I -- I didn't -- I agree  
20      with you. I sustained the objection that it -- and we don't  
21      have to circle back on that.

22              Fair enough. All right. So, I think we kind of know  
23      where this is headed.

24              Ms. Hernandez, you have your hand up.

25              MS. HERNANDEZ: So in terms of teeing up for the

1 Court, I believe that the Dubrowski exhibits include 50  
2 Telegram exhibits. Remember the chart we had early on?

3 THE COURT: Uh-huh.

4 MS. HERNANDEZ: So we've got 50 more. I don't know  
5 whether some of them have already been admitted or whether  
6 they're -- I just --

7 THE COURT: Those are the exhibits that you're going  
8 to be giving your objections to --

9 MS. HERNANDEZ: Right. So, that's coming up.

10 THE COURT: -- to the government and to me.

11 MS. HERNANDEZ: And the other thing, Your Honor, I  
12 understand this is the practice, this notion of putting FBI  
13 agents on for narrow direct testimony which hampers our ability  
14 to cross. But, given what's happening -- and, again, I know  
15 they do -- this is the modern way to try cases. I think I  
16 would -- I think the defense -- or, I am going to ask the  
17 government to have available during the defense case in chief,  
18 every handler for every CHS that has been identified to us.

19 And when I say "identified to us," the Court, earlier  
20 this -- late last year, I guess, said: I'm going to identify  
21 these -- or, they have to identify these, and they don't have  
22 to identify those.

23 So with respect to those that the Court found should  
24 be identified, the only way for us to be able to examine and  
25 get to the bottom of this is to have their handlers present,

1       because otherwise, we're handicapped.

2               THE COURT: I guess I would just say: Yes, some I  
3       found had -- needed to be disclosed. Others, the government  
4       disclosed on its own, before I had a chance to rule, as I  
5       recall. If that's a discovery request, essentially, you can  
6       make it to the government and -- or if it's other --

7               MS. HERNANDEZ: It's a trial witness request.

8               THE COURT: Right. I think there's probably -- you  
9       can make that request. We'll see what the response is. My --  
10      but, of course, there's a relevance threshold that you would  
11      have to cross. And if a dispute between the parties along  
12      these lines -- let me put it this way: The fact that I ordered  
13      something disclosed in discovery does not necessarily mean that  
14      it's something that the government would be entitled to make  
15      available to you at trial. So, I'm not going to --

16              MS. HERNANDEZ: Well, here's the problem --

17              THE COURT: No. Ms. Hernandez, just wait.

18              MS. HERNANDEZ: I'm sorry.

19              THE COURT: I'm just not going to address a dispute  
20      that hasn't been teed up for me. So if you want to make that  
21      request, they'll process it and get back to you and say what  
22      their response is and then we can go from there.

23              MS. HERNANDEZ: Okay. Time is of the essence.

24              THE COURT: It is.

25              MS. HERNANDEZ: And the problem is, I thought the

1 Court had been persuaded by Mr. Pattis's powers of persuasion  
2 that because of the tool theory, this notion of CHSs, on the  
3 ground or otherwise, was relevant. And because of the issues  
4 of scope, we -- the only way we can get into it is by having  
5 the handlers here.

6 And then the third part of that is, we have -- in the  
7 discovery that has been produced regarding the CHSs, it's  
8 redacted and very limited. So we don't even know the CHS  
9 handler -- we don't even know the FBI handlers for any of them,  
10 so there's no ability for the defense to reach out or subpoena  
11 or otherwise get these people here.

12 All this information is in the hands of the  
13 government, and the government alone.

14 THE COURT: So I guess there's a lot of responses to  
15 that, but let me just say this: With regard to the relevant --  
16 the CHS relevance, I'm not sure how much of it is the flip side  
17 of the -- I hate to maybe be more measured about Mr. Pattis's  
18 persuasion -- in the sense that I don't know how much the  
19 argument, that it's the flip side of the tools theory, is the  
20 driving factor here.

21 But, I have, as is evidenced by our proceeding today,  
22 been convinced that there are some -- and I think the  
23 government has conceded in a variety of ways, that the CHS  
24 issue is relevant in some form or fashion. That does not mean  
25 that the request you just made is one that I would uphold.



1           So, again, I think we've -- I've tried to carefully  
2       delineate where I think CHS issues -- put it that way -- are  
3       relevant to the case, and they are now a part of the case in  
4       various ways, but I think there's a gap between that and the  
5       request you articulated.

6           So, you can make your -- I understand time is of the  
7       essence, all the rest. You can make your request to the  
8       government, but I wouldn't want anyone to interpret what I've  
9       ruled so far as, sort of, it's open season on every bit of  
10      information that I've ordered disclosed to the defense.

11          MS. HERNANDEZ: I may have said this before, but the  
12      manner in which the defense is being handicapped in introducing  
13      evidence, in obtaining discovery about the CHSs, and  
14      introducing evidence about the CHSs at trial, in my opinion,  
15      impacts and diminishes our Sixth Amendment rights and due  
16      process rights to present a complete defense.

17          Every time we go into anything having to do with  
18      CHSs, it's like -- it's worse than pulling teeth. Sidebars,  
19      this, that, and the other thing. I don't know what the jury  
20      thinks of it, what the jury knows, what the jury has been able  
21      to understand, but we have been unable to put on a cohesive --  
22      a cohesive --

23          THE COURT: You haven't been able to put on a case  
24      about it because it hasn't been your case yet.

25          MS. HERNANDEZ: Well, Your Honor, we -- you know, the

1 classic answer to that is: The defense puts on its case  
2 through cross-examination, and we often don't even put on a  
3 witness because we feel we've fully aired our case.

4 I'm just telling the Court, I'm pretty certain that  
5 in every case involving CHSs, there isn't this kind of  
6 handicapping of the defense. I just -- I'm not familiar with  
7 this notion. I mean --

8 THE COURT: All right. Ms. Hernandez, I understand.  
9 You've made the point before. Let me just say, with regard to  
10 discovery, all I can do is rule on requests that come to me.  
11 I've ruled on several of them, and I haven't had one come  
12 before me since then.

13 And, number two, with regard to your use of the  
14 information at trial, as we've hit every -- as we've hit the  
15 way this has come up in various contexts, I've ruled.  
16 Sometimes for you all, sometimes for the government. All I can  
17 do is take up the disputes as they come to me.

18 Mr. Smith?

19 MR. SMITH: Your Honor, a scheduling point.

20 We just conferred with the government during the  
21 afternoon break, and I think the parties could agree to the  
22 following:

23 Mr. Nordean would give his exhibit -- his witness  
24 list for next week, beginning Monday, to the government  
25 tomorrow, you know, in a timely fashion. I think "At a

1 reasonable hour," Mr. McCullough said.

2 And then the government, in exchange, would agree to  
3 just set a date certain for the beginning of the defense case  
4 after -- so, at no date prior to Monday.

5 So Travis Nugent is scheduled to testify, hell or  
6 high water, Monday. But they're -- if somehow the government  
7 were to rest Thursday -- late Thursday afternoon or early  
8 Friday morning, the defense case would begin Monday, rather  
9 than beginning at an uncertain time or date Thursday or Friday,  
10 if that makes sense.

11 THE COURT: If that's an arrangement that's  
12 satisfactory to both parties, I'll --

13 And, Mr. McCullough, do you want to be heard any  
14 further on that?

15 But, I'm generally in the business of when the  
16 parties agree that something would be efficient and manageable,  
17 of not standing in the way of an agreement between the parties.

18 Mr. McCullough?

19 MR. McCULLOUGH: I'm not going to touch the --

20 THE COURT: All right.

21 MR. McCULLOUGH: -- Court, so --

22 THE COURT: Fair enough. So, I will then order that.

23 Mr. Smith, if you'll provide the government your --  
24 well, to be very clear, what exactly are you agreeing to  
25 provide the government, so that there's no dispute as we go

1 forward?

2 MR. SMITH: So Mr. McCullough referenced the proposed  
3 pretrial order -- amended pretrial -- excuse me -- trial  
4 procedures order, and I think my understanding is that we would  
5 provide the list -- the defense list for Nordean that's  
6 contemplated in the order that the government proposed. So  
7 it's the list of witnesses that Mr. Nordean would present next  
8 week. And we don't expect them to go longer than one week, so  
9 it would be one week's witnesses.

10 THE COURT: Right. Okay. So all your anticipated  
11 witnesses you would provide by tomorrow at a reasonable hour?

12 MR. SMITH: Mr. McCullough jokingly said, I think,  
13 7 a.m., which I think is ambitious. But, you know, around  
14 lunch time, I think? I mean --

15 THE COURT: All right. See, this is why --  
16 Mr. McCullough is lunchtime acceptable?

17 MR. McCULLOUGH: Lunchtime is acceptable.

18 We would also -- we would like the names on that  
19 schedule.

20 We would also request that the *Jencks* and exhibits be  
21 provided, just so we avoid any kind of issues. And I  
22 appreciate that -- before -- this is not -- this doesn't need  
23 to be contentious. We would ask that those be provided, and we  
24 can work with Mr. Smith to understand on what schedule those  
25 will be provided.

1 But, I think our first step is understanding kind of  
2 what this group of witnesses would look like for next week.  
3 We're -- everybody is working towards the same goal: To make  
4 this as efficient as possible.

5 THE COURT: Mr. Smith, your response to that?

6 MR. SMITH: I think the defense case with the  
7 exhibits is going to need to be shaped a little bit over the  
8 few -- over the next coming days, because we've been defending  
9 the case and kind of working around the clock to do that. So,  
10 we can get -- we can absolutely get the witness list to the  
11 government tomorrow. We'll have to be identifying exhibits  
12 over the coming days because -- you know, I think when the  
13 government has the witness list, it's going to be fairly  
14 obvious what the exhibits are because they're going to follow  
15 the government's case, but --

16 THE COURT: So let's just -- for the moment, we'll  
17 deal with the exhibit list. We'll take up the other issues the  
18 government is interested in, as I said I would, once you've had  
19 a chance to respond to that.

20 So, in exchange for identifying the witnesses by  
21 lunchtime, I will not -- what you've bargained for is that we  
22 will not start -- the defense case will start no earlier than  
23 Monday. That's agreeable to the government?

24 MR. McCULLOUGH: That is, Your Honor. And --

25 MR. SMITH: And we can make a disclosure right now

1       that Travis Nugent will be the first witness. Assuming he  
2       doesn't dodge, skip town, he will be the first.

3               THE COURT: All right.

4               MR. McCULLOUGH: We -- and Mr. Kenerson has something  
5       to add. But, we do -- genuinely, Your Honor, we do expect that  
6       the *Jencks* and the exhibits will be produced ahead of time. I  
7       mean, that's --

8               THE COURT: They're going to be produced ahead of  
9       time.

10              MR. McCULLOUGH: And, so -- yeah. And then that's  
11       it. I have nothing more to say on that.

12              THE COURT: All right.

13              Ms. Hernandez?

14              MS. HERNANDEZ: Can we go --

15              THE COURT: All right. Sure.

16              (Bench discussion:)

17              MS. HERNANDEZ: This is just a personal  
18       inconvenience. I just got a message from the power company in  
19       my home that we've lost power, and they don't have -- I think  
20       there's a windstorm out there, and we -- they're not telling us  
21       when power will be resumed. So, I guess, unless I spend the  
22       night at the courthouse and use the computers here, I may be a  
23       little bit handicapped in responding to the government's  
24       objections and that type of thing.

25              THE COURT: Well, let's just see how it plays out in

1 terms -- I mean, I'm -- again, I'm not -- I'm not in the  
2 business, necessarily, of trying to address things before they  
3 become problems, and it may be that it's restored before you  
4 even get home.

5 But, I mean, the other issue is, of course, you  
6 have -- you do have an attorney lounge here. I'm not  
7 suggesting you should spend the night there, Ms. Hernandez,  
8 but --

9 MS. HERNANDEZ: I may. I may have to.

10 THE COURT: -- but you do have an attorney lounge.

11 MS. HERNANDEZ: Yeah.

12 THE COURT: You have an office for which you should  
13 be able to respond to their request for objections.

14 MS. HERNANDEZ: Maybe the marshals will let me use  
15 the showers in the gym.

16 THE COURT: Again, presumably, you have an office  
17 that hasn't lost power down here.

18 All right very well.

19 (Open court:)

20 THE COURT: Oh, Mr. Kenerson, you had one more thing.

21 MR. KENERSON: Yes. It's not a scheduling, but  
22 related a couple topics back.

23 I think the Court had directed Mr. Jauregui to let us  
24 know if there was any additional individuals they want to go  
25 into on the CHS front. I would just ask that the Court roll

1       that into the same 8 p.m. deadline that exists with the --

2               THE COURT: 8 p.m., absolutely. Absolutely.

3               MR. KENERSON: And same thing, if Mr. -- I don't know  
4       if he intends to, but if Mr. Metcalf intends to --

5               THE COURT: Absolutely. Look, there's really not  
6       necessarily a basis to believe this witness has any further  
7       information along these lines. But, if you're going to go into  
8       something, yes, 8 o'clock to the government.

9               MS. HERNANDEZ: Your Honor, there's referenced a  
10      CHS -- the linked messages referenced a CHS, her linked  
11      messages.

12              THE COURT: Right. But, sure, but it could have  
13      been --

14              MS. HERNANDEZ: Because she knows of at least one  
15      CHS.

16              THE COURT: Right. But she --

17              MS. HERNANDEZ: This is different from the ones that  
18      had been identified.

19              THE COURT: Sure. I guess my point is, even assuming  
20      it is related to this case in some way, her testimony was the  
21      person wasn't there on the 6th, and that's --

22              MS. HERNANDEZ: We have -- we have reason to believe  
23      that he was here.

24              THE COURT: -- she might be wrong. But if she's  
25      wrong, she's wrong.



1           MR. SMITH: Your Honor, on the deadline for tomorrow  
2           at noon, since we're providing our witnesses, we need the  
3           Court's ruling on the motion to quash for the CHS. There's  
4           a --

5           THE COURT: Well, look, at this point, you have to --  
6           well, you don't need my ruling on that. You can list the  
7           person.

8           MR. SMITH: Well, Your Honor, if we're deciding when  
9           to call witnesses, I think the Court's ruling on whether we can  
10          call that witness might --

11          THE COURT: Sure. Look, let me put it this way: You  
12          can -- those are two separate questions.

13          I think you should list that person until I quash the  
14          subpoena.

15          The question of how you arrange your witnesses is a  
16          different issue. And, yes, I need to get you an answer.

17          MR. SMITH: Okay. Thank you, Your Honor.

18          THE COURT: All right. See you tomorrow morning at  
19          9 o'clock.

20                   \*   \*   \*

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 15th day of March, 2023

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Janice E. Dickman, CRR, CMR, CCR  
Official Court Reporter  
Room 6523  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

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