

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-00175
Plaintiff,)	
)	
vs.)	
)	
ETHAN NORDEAN, JOSEPH R. BIGGS,)	Washington, D.C.
ZACHARY REHL, ENRIQUE TARRIO and)	March 24, 2023
DOMINIC J. PEZZOLA,)	9:20 a.m.
)	
Defendants.)	
)	
* * * * *)	

TRANSCRIPT OF JURY TRIAL - DAY 54
BEFORE THE HONORABLE TIMOTHY J. KELLY,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JASON B.A. McCULLOUGH, ESQ.
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I N D E XDirectCrossRed.WITNESSES FOR THE GOVERNMENT:

George Mesa

15127

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EXHIBITS RECEIVED IN EVIDENCE

Defendant Tarrío's Exhibit No. 137

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Defendant Tarrío's Exhibit No. 141

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Defendant Tarrío's Exhibit 50-A, Page 189

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Defendant Tarrío's Exhibit No. 148

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Defendant Tarrío's Exhibit No. 151

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Government's Exhibit No. 1507

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Government's Exhibit No. 1501

Page 15244

1 THE COURTROOM DEPUTY: This is Criminal Matter
2 21-175, the United States of America versus Defendant 1,
3 Ethan Nordean; Defendant 2, Joseph R. Biggs; Defendant 3,
4 Zachary Rehl; Defendant 5, Enrique Tarrío; and Defendant 6,
5 Dominic J. Pezzola.

6 Present for the Government are Jason McCullough,
7 Erik Kenerson, Conor Mulroe and Nadia Moore.

8 Present for Defendant 1 is Nicholas Smith.

9 Present for Defendant 2 are John Hull and Norman
10 Pattis.

11 Present for Defendant 3 is Carmen Hernandez.

12 Present for Defendant 5 are Nayib Hassan and
13 Sabino Jauregui.

14 Present for Defendant 6 are Steven Metcalf and
15 Roger Roots.

16 Also present are Defendant 1, Mr. Nordean;
17 Defendant 2, Mr. Biggs; Defendant 3, Mr. Rehl; Defendant 5,
18 Mr. Tarrío; and Defendant 6, Mr. Pezzola.

19 THE COURT: All right. Good morning to everyone.

20 What I think it makes sense to do -- I know Team
21 Tarrío teed up an issue on email that they wanted to talk
22 about, but I think it makes sense to push that issue off
23 until we get through the witness that you have lined up
24 today and we'll take it up after that.

25 Is that acceptable to you all? Again, I'm just

1 trying to get -- make the best use of the jury's time.

2 MR. HASSAN: Judge, so I understand Mr. Jauregui
3 just -- is coming in right now. He was just right now in
4 the attorney room working with one of the witnesses, Judge.

5 He's on the way here now. It's my understanding
6 that he wants to move forward with that witness this
7 morning, Judge.

8 THE COURT: Right. I know that. I know he wants
9 to. But you have another witness lined up you were going to
10 put on anyway. So --

11 MR. HASSAN: That's correct, Judge.

12 THE COURT: -- why don't we get through that
13 witness and then address that issue.

14 MR. HASSAN: However the Court wishes, Judge.

15 It would be in our position -- we lined up the
16 witnesses in a certain way during our presentation of the
17 case. And it was our anticipation to present that witness
18 first. As the Court recalls, that was the witness that we
19 had lined up for Thursday. And then all the issues arose.

20 But we're here on the Court's behalf, Judge --

21 THE COURT: I think --

22 MR. HASSAN: -- representing our client, Judge.

23 THE COURT: I understand.

24 And I'm sure your fellow Defendants will want to
25 be heard on that question of whether we go through with --

1 whether we proceed with the other witness.

2 So I -- you know, and I'm dubious also, given, you
3 know, the trial procedures that we had in place about
4 whether we would proceed with that second witness. So let's
5 just --

6 (Thereupon, Mr. Jauregui entered the courtroom and
7 the following proceedings were had:)

8 THE COURT: Mr. Jauregui is here.

9 MR. JAUREGUI: Yes, your Honor.

10 THE COURT: Sir, what I suggest is that we proceed
11 with the witness for whom there is no -- that we had all
12 expected, when we left court, you would proceed with today,
13 and take up the issues relating to the next witness after
14 that.

15 Mr. Smith, what --

16 MR. JAUREGUI: Judge, I -- Judge, I'd like to call
17 her first. I have concerns that, if we leave her over the
18 weekend -- she's under a lot of pressure. She's being
19 called nonstop. Even when I was prepping her this morning,
20 the phone would not stop ringing.

21 I told the Government of my intention to call her
22 yesterday. And as your Honor knows, I was going to call her
23 yesterday to testify until we had that revelation.

24 I don't think the Government can claim any kind of
25 prejudice, any kind of surprise. I really don't think they

1 have a good-faith basis to do so.

2 I disagree. I'm not providing -- I'm not doing
3 any exhibits through her. I'm not doing anything. I'm
4 asking for her testimony.

5 THE COURT: The problem -- well, do other
6 Defendants want to be heard on that question?

7 All right. Mr. Pattis.

8 MR. PATTIS: Biggs joins in --

9 THE COURT: If you can just speak in generalities.

10 MR. PATTIS: Biggs joins in the request, sir. She
11 was expected to be Thursday. Issues arose. I understand
12 that she's not being -- that exhibits are not being offered
13 through her.

14 I think, given the intense media interest in this
15 topic and inferential identification of her by media
16 sources, I don't know whether she'll stick around for the
17 weekend even if ordered to do so. And I think we'll lose
18 her if we don't get her today.

19 THE COURT: Well, isn't the issue -- aren't
20 there -- well, here's what we're going to do: How long do
21 you expect -- the other witness -- how long do you expect
22 the other witness's testimony to be?

23 MR. HASSAN: Judge, we can anticipate about an
24 hour and a half in testimony. I don't know how long the
25 cross-examination can be. We've seen cross-examination just

1 the other day by Mr. Block that the -- the defense put on
2 testimony for about --

3 THE COURT REPORTER: Block?

4 MR. HASSAN: Mr. Eddie Block. His testimony was
5 up on the stand for about 40, 45 minutes. And the
6 cross-examination lasted for over two hours, Judge. And
7 then we had direct after that.

8 So we can see where that can play out. If I have
9 this witness up there for another 20 minutes and we
10 exponentially multiply that, the cross could last easily two
11 and a half hours. So I don't know how that's going to play,
12 Judge.

13 I know the testimony of the other witness would be
14 relatively short in time. And we should be able to address
15 it, Judge, without any concerns.

16 THE COURT: Well, the problem -- what's the
17 Government's position? I know -- I think I know the
18 Government's general view. But I'm also a little concerned
19 that we wouldn't have the opportunity to address what the
20 contours of a cross-examination would look like. Let's put
21 it that way.

22 But, Mr. McCullough, what's your view?

23 MR. McCULLOUGH: Your Honor, that's exactly right.
24 I mean, we put it in the email. That's a short summary of
25 our view of it.

1 But I think, first and foremost, there are issues
2 that need to be resolved in terms of what is appropriate for
3 the scope of direct, what is appropriate for the scope of
4 cross of this witness, including whether any of these, you
5 know, kind of allegations of Government misconduct are going
6 to be suggested, implied or otherwise introduced through the
7 witness.

8 The witness's status is something that needs to be
9 addressed. So kind of all of those issues that we
10 understood from yesterday when your Honor opened the
11 proceedings and said: Here's what we're going to do. Let's
12 find a different witness today to focus on that is not
13 affected by these issues and we will come back to this after
14 we release the jury tomorrow, and we will work through this
15 and then we will call that witness.

16 So that's kind of Item No. 1.

17 I think, secondly, the kind of -- as we raised,
18 the procedure of this is just -- we disagree with kind of
19 the way that this has come about. And I appreciate what
20 Mr. Jauregui is going to say, that, you know, kind of We put
21 you on notice, you know, as of Tuesday that we were going to
22 call this person on Thursday.

23 But there are a number -- we just don't believe
24 that that kind of -- either in letter or in spirit that the
25 procedures have been complied with here, not the least of

1 which is the disclosure of potential *Jencks* material. We
2 now learn of an earlier meeting with Team Tarrio at which we
3 presume that there is some *Jencks* that's associated with the
4 witness as well which we have -- would ask for and have
5 demanded previously.

6 So to the extent that there are -- there's a
7 statement from that interview, we would be entitled to those
8 as well. And then, you know, your Honor, I just think that
9 the -- just the way that we want to make the best use of the
10 jury's time here is to put the -- you know, the next witness
11 on the stand, proceed there and then release the jury and
12 sort out issues that we need to.

13 Your Honor, if the witness is in the courthouse
14 today, your Honor can admonish the witness and remind the
15 witness that they're expected to return.

16 THE COURT: We're going to proceed the way I --
17 regardless of the trial procedures issue, I do think if
18 we -- let's put it this way: If we plowed ahead right now,
19 there are -- I mean, I can see them -- a million unresolved
20 issues that would make this very slow and difficult. And
21 it's not what I laid out yesterday, how I planned to proceed
22 today.

23 So we're going to -- I understand it's taking the
24 witness out of your preferred order. And I'll do all the
25 admonishing you would like me to do. But the reality is the

1 person -- all of your witnesses are under subpoena. They do
2 not have the ability to absent themselves and not appear.
3 And we're going to proceed as I indicated yesterday we would
4 proceed and -- partly based on the jury's time. If we had
5 the jury a full day today, maybe things would be different.
6 But we don't --

7 MR. JAUREGUI: Judge --

8 THE COURT: -- through no one's fault.

9 MR. JAUREGUI: Your Honor, I respectfully
10 disagree. I think this is a problem of the Government's own
11 making. They've had our witness list since your Honor
12 ordered it -- I think it's back in December.

13 For them to inform me the day before the witness
14 was going to testify that she was a CHS informant threw my
15 case in disarray. Okay? And do I complain? Do I whine
16 about it? No. I plow ahead. I work day and night. I get
17 the witness ready, and she's ready to testify this morning.

18 And now the Government is playing the victim
19 saying, Oh, you know, we're not ready; we don't know what
20 we're going to do.

21 So I don't think it's fair. We want her -- to
22 call her this morning. We're ready to proceed. If there's
23 any Government misconduct -- and I'm not accusing this
24 prosecution team in any way, shape or form. But if there's
25 any misconduct by the FBI, if there's any misconduct by

1 handlers, by people in the middle, it needs to be exposed;
2 it needs to come out. And the way it's exposed and the way
3 it comes out is through the witness, through her testimony
4 here in court.

5 I don't want to keep delaying --

6 THE COURT: You've confirmed how we're going to
7 proceed, Mr. Jauregui. You're going to call the witness we
8 planned to call today and we'll take up the issues with this
9 witness afterwards.

10 Yes, Mr. Hassan.

11 MR. HASSAN: Judge, the only thing I want to add,
12 Judge, is, when we were coming to the tail end of the
13 Government's case -- and I don't know if the Court
14 recalls -- there was an issue as far as addressing witnesses
15 and the order of call at that point in time.

16 And the Court took some time off in order to
17 address the 50 exhibits of Dubrowski rather than the
18 Government placing another witness in anticipation, because
19 that was the structure of the Government's call of how they
20 wanted to present their witnesses.

21 We're caught in the same paradigm as what the
22 Government was placed at that point in time. We had a
23 presentation as far as how we wanted to present our
24 witnesses. We had her first as far as her line of
25 witnesses. And now the defense is being prejudiced, unlike

1 the Government, when -- when they asked for the opportunity,
2 when they asked for time to address it in the way the
3 Government wanted to present their case towards the tail
4 end. We're being prejudiced now as defense, Judge.

5 THE COURT: Mr. Hassan, I don't think -- number
6 one, I don't think you're being prejudiced. But again, what
7 Mr. Jauregui -- in general -- again, I want to give you all
8 the leeway to present your case in the order -- and the
9 witnesses in the order you'd like.

10 I think, number one, we left court yesterday with
11 an expectation of how we were going to proceed today. And I
12 thought that was sound then, and I think it's even more
13 sound now, given that I know you may want to delve into
14 issues that may not be appropriate. And -- or maybe they
15 are.

16 But the point is we're going to sort them out
17 before they come out in front of the jury and we blow all
18 this time, which we are blowing now by continuing to talk
19 about this.

20 MR. JAUREGUI: And just to be clear, Judge, I did
21 provide the Government with a recorded statement, sworn
22 recorded statement that was actually created last night, and
23 I immediately sent it over to the Government and to counsel.

24 THE COURT: Okay. Look, we're going to proceed
25 how we intended yesterday.

1 Mr. Smith.

2 MR. SMITH: One minor point, Judge.

3 When the Court indicated yesterday that
4 Mr. Nordean will -- the Court will instruct the jury that
5 Mr. Nordean is resting, there's just the possibility that
6 some of the Defendants, including Mr. Nordean, might testify
7 at the end.

8 So we would just ask the jury be told that -- not
9 that we're resting, but that the next Defendant will begin
10 presenting witnesses so they don't think that, right now,
11 that there's no possibility of testimony.

12 THE COURT: Maybe I'll just say we'll move to
13 witnesses to be called by the next Defendant.

14 MR. SMITH: Thank you, your Honor.

15 THE COURT: Ms. Hernández.

16 MS. HERNANDEZ: Your Honor, with respect to the
17 CHS witness and -- on behalf of my client, who is a
18 conspirator -- is an alleged conspirator, everything that
19 happens to one of the other counsel happens to me or to my
20 client.

21 Under *Kyles versus Whitley*, the Supreme Court said
22 that it is appropriate to bring out any flaws in the
23 prosecution's investigation of a case. That's relevant
24 evidence that can be presented to the jury.

25 So to the extent the Court is -- the Government is

1 trying to shield problems in their investigation and
2 prosecution of the case from the jury, I believe that's
3 inconsistent with *Kyles versus Whitley*. And they don't get
4 to play out what may or may not be said by a witnesses
5 before the witness gets on the stand.

6 We don't have that privilege. When -- you know,
7 when S.A. Miller gets on the stand and claims that she just
8 found out that Mr. Tarrio opened a document, or didn't open
9 a document, that took us by surprise. We didn't get to
10 preview what happened.

11 We get to walk into it on -- the Government, on
12 the other hand, has had at least since Thursday -- and, by
13 the way, they just produced additional documents from this
14 witness.

15 So I don't -- I don't think that -- we have a
16 Sixth Amendment right not to preview our case. They don't.
17 And yet they're the ones who are getting to preview our
18 witnesses. They get to prepare. I don't know how much
19 longer they're going to prepare.

20 And I can see there's media all over the place.
21 The internet is crazy. This woman is going to be fearful
22 and is not going to -- it just affects our witnesses, and I
23 don't believe it's a fair process.

24 THE COURT: Ms. Hernández, the one -- I'll just
25 say this for the record: The one instance you raised -- as

1 I recall, all the parties agreed -- what the witness said
2 was a surprise to the Government as well. So that was not
3 something that was -- that's my memory.

4 But the point is, we had a game plan for deciding
5 this yesterday. And again, we had a game plan for figuring
6 out the way forward and using the jury's time.

7 I understand -- and I think I've bent over
8 backwards to make sure you all can get your witnesses -- to
9 accommodate you all.

10 But on this, I'm not going to, because there's --
11 well, there's issues we've talked about that we need to
12 address.

13 MS. HERNANDEZ: Just so the Court understands how
14 the defense is scrambling because of the Government's
15 failure, they have known since January 9th -- they said in
16 their pleading yesterday that they've known since January
17 9th -- that -- and that's why they terminated her as a CHS.
18 And they waited until the -- in fact, we were in court that
19 day. They didn't raise it before the Court.

20 We're all scrambling. We are -- we don't have the
21 resources the Government has. Yesterday they brought in the
22 deputy -- the deputy -- acting deputy, the acting chief,
23 this, that and the other thing.

24 Tomorrow I expect to see the U.S. Attorney and the
25 Attorney General. We don't have those resources. We're

1 scrambling.

2 Mr. -- the Tarrío defense team were interviewing
3 this witness until I don't know what time. But we're --
4 they are communicating with us last night past 11:00 p.m.,
5 and with the Government.

6 This is not fair. I'm scrambling with witnesses.
7 I don't have the money to -- or the people that I'm bringing
8 in don't have the time to take off from work and everything
9 like that. This is not fair.

10 They're not entitled to have days and days to
11 prepare when it's their -- in fact, the Court just yesterday
12 told us that if we didn't meet the Court's order, you may
13 prevent us from putting witnesses on next week.

14 THE COURT: I did not say that, actually. I
15 said -- and I've repeatedly said -- that I'm willing to work
16 with you all to make sure that if someone has a witness teed
17 up and they go out of order -- in fact --

18 MS. HERNANDEZ: You said that if we --

19 THE COURT: -- in fact -- Ms. Hernández.

20 MS. HERNANDEZ: Sorry.

21 THE COURT: In fact, I've had one request to take
22 a witness out of order from the defense that was -- you
23 know, that at the time we thought might be a week out of
24 order, and I granted Mr. Smith's motion and took that
25 witness. As it turned out, it wasn't out of order.

1 And so I've expressed that. But I think if we hit
2 a point where we're in -- whether it's Mr. Tarrio, whether
3 it's whatever Defendant, we're in that Defendant's case, and
4 I don't have any -- we're sitting here and it's 10:30 in the
5 morning and I don't have a witness, then, yes, there are
6 going to be consequences for that.

7 MS. HERNANDEZ: I'm referring to the Court's
8 statement yesterday that if we didn't produce whatever
9 exhibits or whatever in time to the Government, you would
10 not let us put that witness on. And again, it's this whole
11 notion that we have to preview everything to the Government.
12 And -- I'm not going to go off on that tangent. I'm just
13 telling the Court it is creating serious problems for the
14 defense.

15 I already think I've lost one witness that's not
16 going to be available. But I just -- I think it's unfair
17 that the Government gets additional time to do whatever it
18 is they want when we have to fly by the seat of our pants
19 without the whole FBI supporting us and 17 other attorneys
20 supporting us.

21 THE COURT: All right. We're going to bring in
22 the witness and I'm going to --

23 I guess, Mr. Smith, I'll ask if the Defendant --
24 what do we think I should say?

25 MR. SMITH: Your Honor, I don't think a question

1 needs to be asked. It's just the next -- another Defendant
2 will begin presenting witnesses.

3 THE COURT: All right. Is that acceptable to the
4 Government? I mean, it's not -- you're right. It's not
5 formally resting. "We'll now hear from witnesses from
6 Mr. Tarrio."

7 MR. SMITH: Thank you, your Honor.

8 THE COURT: All right. Mr. Metcalf.

9 MR. METCALF: Good morning, your Honor.

10 Now that we're talking about scheduling and
11 everything along those --

12 THE COURT: No, no. Can it wait until after this
13 morning? Because we're burning time right now.

14 MR. METCALF: It's kind of a pressing issue for
15 me. If I can ask for just one minute, your Honor.

16 THE COURT: All right.

17 MR. METCALF: Because my office is trying to deal
18 with this right now.

19 I was notified by the Second Circuit that I have
20 the oral -- I have an oral argument on another case on
21 Wednesday, March 29th.

22 I hate to do this, but that's going to be the time
23 where my case, Mr. Pezzola's case -- everything I'm
24 preparing for is going to be for all of next week. So this
25 becomes a pressing issue for me.

1 I guess the only request I can make is for that
2 day off or for your Honor to at least facilitate or allow me
3 to have some sort of a letter to present to the Second
4 Circuit about the importance of me putting on this case next
5 week, Mr. Pezzola's case next week.

6 I know nothing else to do. And I'm notified --
7 and it's the Second Circuit, and things don't change in that
8 courthouse. It's stuck in stone. That's it.

9 THE COURT: Especially in a situation -- well,
10 let's put it this way: We're not going to have the day off
11 for it. And the arguments typically last a very short
12 period of time. I don't know whether you could do it
13 remotely. Mr. Metcalf also has -- I mean, Mr. Pezzola also
14 has other able counsel here. So let's -- as we get close to
15 that time, we'll try to figure out a way around it.

16 MR. METCALF: Your Honor, I have to address this
17 with the Second Circuit today.

18 THE COURT: Well, then, you should tell them that
19 you're in the middle of a trial. That's my first
20 inclination. I don't know what else you want me to say.
21 I'm not going to --

22 MR. METCALF: But what if the Second Circuit says,
23 We take precedence over a district court?

24 THE COURT: Well, that --

25 MS. HERNANDEZ: Here they do.

1 THE COURT: It may. We'll address it -- let's put
2 it this way, Mr. Metcalf: I'm not going to play out all the
3 different possible solutions while we have the jury waiting.
4 We can take it up when the jury is not here and/or you can
5 look at other solutions.

6 For example, again, I don't know whether you can
7 appear remotely and it's something that you can do while
8 Mr. Roots minds the store here. It seems to me there are a
9 host of possible solutions short of we're having the whole
10 day off.

11 MR. METCALF: Not in these circumstances. This is
12 an in-person appearance --

13 THE COURT: Right.

14 MR. METCALF: -- set for 10:00 a.m. on a crucial
15 week that I am not going to not be here because I'm
16 directing these witnesses throughout that week. There may
17 be one or two that I'm not, but I'm not going to not be here
18 for the presentation of Mr. Pezzola's case. I'm just
19 saying --

20 THE COURT: We will take this up when the jury is
21 not waiting.

22 Mr. Pattis.

23 MR. PATTIS: May I be excused to have a
24 teleconference in another court? Mr. Hull is here.

25 THE COURT: You may. You may.

1 Let's bring in the jury.

2 And I guess -- Mr. Jauregui, you can just sort of
3 ready your witness. If you want to call them -- they don't
4 have to be on the stand, I guess, is my point. Or
5 Mr. Hassan.

6 MR. JAUREGUI: Thank you, Judge.

7 THE COURTROOM DEPUTY: Jury panel.

8 (Whereupon, the jury entered the courtroom at 9:45
9 a.m. and the following proceedings were had:)

10 THE COURT: Everyone may be seated.

11 Good morning, ladies and gentlemen. We up until
12 now have heard witnesses called by Defendant Nordean.

13 We will now hear from witnesses called by
14 Defendant Tarrio.

15 Mr. Hassan, you may proceed. I guess we have to
16 swear the witness first and then you may proceed.

17 MR. HASSAN: Thank you, Judge.

18 GEORGE MESA, DEFENSE WITNESS, SWORN.

19 MR. HASSAN: May I proceed, your Honor?

20 THE COURT: You may, sir.

21 DIRECT EXAMINATION

22 BY MR. HASSAN:

23 Q. Good morning, sir.

24 A. Good morning.

25 Q. My name is Nayib Hassan and, along with my colleague,

1 Sabino Jauregui, we represent Mr. Enrique Tarrio.

2 Please state your name for the jury, please.

3 A. My name is George Mesa.

4 Q. Mr. Mesa, is that the only name you go by?

5 A. No.

6 Q. And what is the other name that you commonly go by?

7 A. My name is Asher Mesa.

8 Q. And did there come a time in which you used another
9 name, Asher Barkoziba?

10 A. Asher or Ash Barkoziba.

11 Q. And can you tell us, where -- why do you use two
12 different names?

13 A. Okay. So I'm a convert to Judaism. I converted over 24
14 years ago. When one converts to Judaism, he or she gets
15 another name. So in Israel -- I lived in Israel for five
16 years also -- I'm Asher. In America, I'm George.

17 Barkoziba, it's part of Jewish mythology. It was a failed
18 messianic attempt in and around the destruction of the
19 Second Temple. Someone named Bar Kokhba, when he failed in
20 defeating the Romans, he changed his name to Barkoziba. So
21 I became Ash Barkoziba.

22 THE COURT REPORTER: Sorry. For the record, could
23 you please spell Barkoziba.

24 THE WITNESS: B-A-R-K-O-Z-I-B-A.
25

1 BY MR. HASSAN:

2 Q. And being of the Jewish faith, do you practice the
3 Jewish religion or what is your position in regard to that?

4 A. Yes, I do.

5 Q. And are you considered a rabbi? Do you consider
6 yourself a rabbi?

7 A. Yes. I went to rabbinical school in Israel, Aish
8 HaTorah, and since 2009 I've been a rabbi, yes.

9 Q. And what city do you live in?

10 A. Fort Lauderdale, Florida.

11 Q. Okay. Where are you originally from? Are you
12 originally from South Florida?

13 A. I was born in New Jersey. I grew up in Miami Beach.
14 And I lived different places. I was stationed in Fort
15 Bragg, Fort Benning. And I lived in Israel for five years.

16 Q. Being that you're a rabbi -- and my apologies for going
17 back to this -- but is there issues amongst the Jewish
18 community with you being a rabbi?

19 A. There's a famous saying in the Jewish world: Two Jews,
20 three opinions. Not in terms of me being a rabbi, but
21 there's many people who dislike some of the things I teach
22 regarding mainly proselytizing. I encourage and I help
23 people convert to Judaism.

24 Q. Did at any point in time -- you told us you relocated to
25 Israel. What was the purpose of you relocating to Israel?

1 A. So Jews are given the right of return. Every Jew can
2 move back to Israel, and that's what I did. So I went to
3 Israel to go to rabbinical school, and I also finished my
4 degree there in computer science.

5 Q. Speaking about your degree, what's your educational
6 background?

7 A. I have a bachelor's in computer science, and I spent
8 almost two years in what they call yeshiva. And in terms of
9 what I do for money, I work in computers. I'm a network
10 admin.

11 Q. And where did you obtain your bachelor's degree?

12 A. Bar-Ilan University.

13 Q. Okay. Did you serve in the military? You talked about
14 Fort Bragg and Fort Benning. Did you serve in the military?

15 A. Yes. I was in the U.S. Army.

16 Q. And for how long of a period did you -- were you active
17 in the military?

18 A. About three years.

19 Q. Okay. And what was your designation upon your
20 termination from the military?

21 A. So I received a general discharge because I cut my
22 contract short. I was -- I enlisted Eleven Bravo, and I was
23 a paratrooper as well, and I felt cheated by my recruiter
24 that I couldn't go to college while I was in the military.
25 You could to go to college when you're active duty, but not

1 when you're infantry in the 82nd.

2 Q. Okay. And being a general discharge, is that different
3 from a dishonorable discharge?

4 A. Only that you're not eligible for benefits, either the
5 GI Bill or, I believe, VA benefits.

6 Q. Where do you currently live, Mr. Mesa?

7 A. My exact address?

8 Q. No. As far as the community. We don't want to know --

9 A. Oh. South Florida.

10 Q. Okay. Would this be in the Miami area or
11 Fort Lauderdale area?

12 A. It's in Broward County. It's in Fort Lauderdale.

13 Q. Okay. And apart from your current employment, what do
14 you do for a living?

15 A. I'm a network admin.

16 Q. Okay. And you're a network admin on your own behalf,
17 self-employed, or do you work for a company?

18 A. I have my own company.

19 Q. And is there things that you do towards the Jewish faith
20 that you broadcast out there?

21 A. Sure. I had a synagogue for two and a half years in
22 North Miami Beach. And I teach online, on YouTube, on
23 TikTok. I teach Judaism, Hebrew, Zionist history.

24 Q. And do you receive any funds as regards to what you do
25 with your Jewish faith?

1 A. Not really. Anyone who puts videos up on YouTube, if
2 they're lucky, they may get maybe \$20 a month depending on
3 how many views they get.

4 Q. But you're not receiving any significant funds --

5 A. No.

6 Q. -- from that. Correct?

7 A. Not at all.

8 Q. Basically, you live off what you do for a living.

9 Correct?

10 A. Yes. Yes, I do.

11 Q. As an IT. Correct?

12 A. Yes, sir.

13 Q. Now, before we go any further, you were subpoenaed to
14 testify here today. Correct?

15 A. Yes, I was.

16 Q. And you're not compensated for you being here today.
17 Correct?

18 A. No, I am not.

19 Q. And you flew up here. Correct?

20 A. Yes, I did.

21 Q. And you stayed at a hotel. Correct?

22 A. Yes.

23 Q. Let's talk about your views. Can you talk about your
24 views? Are they liberal? Conservative? What are your
25 views?

1 A. I identify as right of center.

2 Q. What does that mean?

3 A. So right of center means that I believe in the
4 Constitution. I love my country. And just like I
5 volunteered in the military to serve my country, I'll do
6 what I think needs to be done to protect other Americans
7 from harm.

8 Q. And how did you first become involved with Proud Boys?
9 Because you were a Proud Boy. Correct?

10 A. Yes, I was.

11 Q. And how did you first become involved with the Proud
12 Boys?

13 A. The news. The media. During the time of the riots, I
14 saw that the only group that was protecting Americans were
15 the Proud Boys during those instances.

16 And I did a little more research. On YouTube, I
17 found a documentary by Vice that interviewed the leadership
18 at that time of the Proud Boys, and I saw that they were
19 local to where I was. And I did what I had to do to contact
20 them.

21 Q. And around what time period was this, if you can recall?

22 A. Around June or July, I believe, of 2020.

23 Q. Of 2020?

24 A. Yes.

25 Q. So this is pre-November 2020. Correct?

1 A. Yes.

2 Q. And are your views based upon your understanding and
3 your communication -- without telling us the communications,
4 are your views opposed to the views of other Proud Boys?

5 A. Not regarding our love for the Constitution and our love
6 for this country.

7 Q. When -- if you can recall, do you recall approximately
8 when you officially became a Proud Boy?

9 A. I'm sorry. I don't remember exactly.

10 Q. On January 6th, 2021, what degree Proud Boy were you at
11 that point in time?

12 A. I was a third-degree Proud Boy.

13 Q. And what Proud Boy chapter did you belong to?

14 A. At that time, Vice City, which is the chapter of South
15 Florida at that time. I think there was just one.

16 Q. And did Enrique belong to that chapter?

17 A. Yes, he did.

18 Q. Are you still a Proud Boy today?

19 A. No, I am not.

20 Q. And why are you not a Proud Boy today?

21 A. Well, right now, the organization really doesn't exist.
22 For sure it doesn't exist at the capacity that it existed
23 before January 6th.

24 So we in some way turned on each other. And I was
25 booted out of the club.

1 Q. So your views didn't match up with the views of the
2 other Proud Boys?

3 A. Well, not on the reasons they used to get me out of the
4 club. I think many of the Proud Boys tried to distance
5 themselves from anyone that had anything to do with
6 January 6th.

7 Q. And when did your disconnect Proud Boys be -- come?

8 A. Officially, perhaps four months ago.

9 Q. Based upon your understanding of the Proud Boys, do you
10 have to support a certain ideology or certain views?

11 A. Not a specific ideology. First and foremost, you have
12 to love your country and you have to put yourself in the
13 service of others. The Proud Boys have always been, from
14 their inception, a reactionary movement, meaning we don't go
15 out looking for trouble. The Proud Boys were there to
16 protect Americans who were -- who were exercising their
17 right to support a specific candidate but were in some way
18 attacked as they went back to their vehicles.

19 So the only thing that you couldn't really
20 disagree with the Proud Boys on is love for America and in
21 any way aligning ourselves with any type of left-leaning
22 communist-style ideology.

23 Q. And you talk about left-leaning ideology. Can you both
24 be a political -- certain political affiliations and still
25 be a Proud Boy? Can you be either/or political affiliation?

1 A. Absolutely. There were actually Democrats within the
2 Proud Boys.

3 Q. And these are individuals that you associated with and
4 you were aware of?

5 A. Yes, sir.

6 Q. Okay. Has your ideology changed at all since you were a
7 Proud Boy?

8 A. No, it has not.

9 Q. What made you feel like it was a good thing to be a
10 Proud Boy?

11 A. I saw that they were the only ones fighting back. And I
12 don't care what label they had in front of them. Even
13 though I didn't agree with what every Proud Boy did, if I
14 agreed with someone at least 80 percent of the time, I would
15 consider that person, in this climate, an ally.

16 Q. Being a Proud Boy, do you have any governing set of
17 rules within the Proud Boys?

18 A. Yes.

19 Q. Let me show you what's been previously marked as
20 Exhibit 137.

21 MR. HASSAN: Ms. Harris, if we can have it simply
22 for the defense table -- simply for the tables and for
23 Mr. Mesa.

24 THE COURTROOM DEPUTY: Is it Tarrio 137?

25 MR. HASSAN: Yes, ma'am.

1 MR. JAUREGUI: It's on the computer.

2 BY MR. McCULLOUGH:

3 Q. Mr. Mesa, if you can just pretty much review the
4 document I'm showing you. Do you recognize this document?

5 A. Yes, I do.

6 Q. And is this a document that -- being a Proud Boy, that
7 you adopted?

8 A. Yes.

9 Q. And is this a fair and accurate reflection as far as a
10 document that you're aware of?

11 A. Correct.

12 MR. HASSAN: Judge, if we can now enter into
13 evidence Exhibit 137 and publish it to the jury.

14 MR. McCULLOUGH: No objection.

15 THE COURT: It will be admitted. And permission
16 to publish.

17 (Whereupon, Defendant Tarrio's Exhibit No. 137 was
18 entered into evidence.)

19 BY MR. McCULLOUGH:

20 Q. Mr. Mesa, as we scroll down this document, there's a
21 subtitle here that discusses pro-free speech.

22 MR. HASSAN: Mr. Jauregui, if we can go to that
23 portion of it.

24 BY MR. McCULLOUGH:

25 Q. Can you talk to us what the tenets are and what this

1 document means to the Proud Boys?

2 A. The document as a whole or the portion of pro-free
3 speech?

4 Q. Well, let's talk about the document as a whole. What
5 does the document as a whole -- can you explain to the jury
6 what the document --

7 A. So it was understood that these are the tenets of the
8 club.

9 Q. Okay. And what do the tenets mean? What is that?

10 A. The governing body, or what makes up the ideology of the
11 club.

12 Q. And was everybody shared this sort of document?

13 THE COURT REPORTER: I'm sorry?

14 BY MR. HASSAN:

15 Q. Was everyone within the Proud Boys shared this document?

16 A. Everyone had access to this document. Yes.

17 Q. And when we talk about the pro-free speech, what does
18 that mean to you?

19 MR. HASSAN: And if we can scroll down a little.

20 THE WITNESS: The notion, as it's mentioned in the
21 tenets, was on the macro level, that we were against
22 censorship, we were against people being canceled, people
23 not being able to politely express themselves in public.
24 That's what it meant by pro -- I mean, free speech in this
25 document.

1 MR. HASSAN: Now, if we can go to Page 19 of the
2 bylaws.

3 BY MR. HASSAN:

4 Q. And we talk about here eligibility and discrimination.
5 And, more particular, Subsection B. Can you talk to us a
6 little more about that Subsection B?

7 MR. HASSAN: If we can scroll down for the jury to
8 see that, Mr. Jauregui.

9 BY MR. HASSAN:

10 Q. Can you talk to us a little bit about that, what you're
11 seeing there, what you understood that to believe [sic]?

12 A. I was very familiar with this portion of the bylaws.
13 This is one thing that made me want to join. And I'm pretty
14 sure there are many, many Proud Boys who felt the same way,
15 is that, as a group, we did not discriminate based on race,
16 gender, even political ideology as long as that ideology
17 didn't align with any type of left-leaning ideology. In
18 other words, we embrace individuals being liberals, being
19 Democrats. But anyone who in some way tries to burn a flag,
20 burn a government building, put people's lives in danger
21 unjustly, that's what we were against.

22 Q. The document also reads: This includes any person who
23 currently identified as a white nationalist, white
24 supremacist or alt-right --

25 THE COURT REPORTER: I'm sorry. You've got to

1 slow down a little bit, please. I'm not seeing where you're
2 reading from.

3 MR. HASSAN: My apologies, Ms. Edwards.

4 BY MR. HASSAN:

5 Q. This is going to be from Line 4B: This includes any
6 person who currently identified as a white nationalist,
7 white supremacist or alt-right.

8 Are these individuals that were excluded from the
9 Proud Boys?

10 A. If anyone -- according to the tenets, if anyone espoused
11 these views, yes, they were kicked out of the Proud Boys.

12 Q. Okay.

13 A. Or they should have been.

14 Q. Now, based upon the tenets, do the Proud Boys
15 discriminate based upon religious views?

16 A. For the most part, no.

17 Q. And you say for the most part. Why do you say for the
18 most part?

19 A. Because in any large-scale organization, there's always
20 what I call the riff-raff. But those individuals don't
21 speak for the club.

22 Q. And do the Proud Boys discriminate against ethnic
23 backgrounds?

24 A. No, they do not.

25 Q. Do they discriminate against individuals of certain

1 sexual orientation?

2 A. Absolutely not.

3 Q. Were the members that are both of different ethnic
4 backgrounds and/or sexual orientation within the Proud Boys?

5 A. Absolutely. I've met Black individuals, individuals who
6 identify as homosexual as -- and considered them as
7 brothers.

8 Q. Okay. As part of the Proud Boys, you also did
9 independent journalism. Correct?

10 A. Yes, I did.

11 Q. And you're not a licensed journalist. Correct?

12 A. I am not.

13 Q. But yet you did independent journalism. Correct?

14 A. Yes.

15 Q. And as part of journalism, what did you do?

16 A. I was, what I felt, stating the obvious. I would go to
17 rallies, and all I saw was support from people from many
18 different groups and ethnicities. And I just felt like I
19 had to document this and let people know that the
20 representation that the media gave on the whole topic was
21 wrong, that the average minority, the average, you know,
22 foreigner felt very comfortable around the Proud Boys
23 because we put our lives in danger to protect them.

24 Q. Okay. Specifically relating to the individuals here on
25 trial, you stated that you knew Enrique Tarrio. Correct?

1 A. Yes, I did.

2 Q. And you would say that you had a relationship with
3 him -- is it a close relationship? How is that
4 relationship?

5 A. We were friendly. We were friendly. We weren't very
6 close, but we were friends.

7 Q. Okay. I'm going to ask you about a couple of other
8 individuals here in the courtroom, see if you know them.

9 Mr. Biggs. Do you know Mr. Biggs?

10 A. I never met him personally.

11 Q. Okay. Did you know Mr. Nordean?

12 A. I never met the person. I mean, I may have run into
13 them, but not on a one-on-one basis. I wouldn't be able to
14 point them out in a crowd.

15 Q. Would that go as far as Mr. Rehl as well?

16 A. Correct.

17 Q. And that would go as well as Mr. Pezzola. Correct?

18 A. Correct.

19 Q. So the only one that you had a relationship -- close,
20 friendly relationship was with Enrique?

21 A. Correct.

22 Q. You said it's not a close relationship. What do you
23 mean? Can you tell the jury what you mean by that a little
24 bit more?

25 A. Outside of issues not pertaining to the club or to some

1 sort of events, I didn't just talk to him, I mean, like a
2 buddy.

3 We were both what I consider patriots and we
4 worked together in that capacity.

5 Q. Now, Enrique Tarrío was the national chairman to the
6 Proud Boys when you were there. Correct?

7 A. Yes.

8 Q. And how would you describe his leadership as chairman of
9 the Proud Boys?

10 A. I think that he had great leadership skills but, like
11 all leaders, he was essentially a mixed bag, mainly in the
12 area of enforcing the tenets.

13 Q. Enforcing the tenets. What do you mean by that? Can
14 you elaborate on that a little bit more?

15 A. Well, like someone who puts the job first, and the job
16 was essentially protecting Americans, sometimes you have to
17 in some way appease certain segments of what I consider the
18 riff-raff so the effort could move forward. But overall, I
19 think, for the most part, he was a very good leader.

20 Q. Now, you belonged to various Telegram chats related to
21 the Proud Boys. Is that fair to say?

22 A. Yes, sir.

23 Q. And under the Telegram handle, what -- on the Telegram
24 chat, what was your name? What was your handle name under
25 the Telegram --

1 A. Ash Barkoziba.

2 Q. And I'm going to ask you a series of chats here and see
3 if you recognize them, see if you belong to them.

4 Did you belong to the Proud Boys security chat?

5 A. Yes.

6 Q. Okay. Did you belong to the MOSD Telegram chat?

7 A. Yes.

8 Q. And MOSD stands for what?

9 A. Ministry of Self-Defense.

10 Q. Okay. And you also belonged -- did you also belong to
11 Ministry of Self-Defense Ops 2 Telegram chat?

12 A. Yes.

13 Q. Did you also belong to Operation D.C. Street Sweepers
14 chat?

15 A. Yes.

16 Q. Let me ask you this: Were you ever included in a chat
17 called Boots on the Ground chat?

18 A. Yes, I was.

19 Q. Now, did you agree with everything that was in these
20 chats?

21 A. No, I did not.

22 Q. Was there language or positions of certain individuals
23 you didn't agree with within the chats?

24 A. Yes, there was.

25 Q. And can you describe some of those things you observed

1 or read you didn't agree with for the jury?

2 A. Okay. It wasn't very common. But again, when you're
3 dealing with such a large group of men from different parts
4 of the country, there are some people who use some abrasive
5 language that I didn't feel depicted what the average Proud
6 Boy believed.

7 So you did find some racial slurs, some
8 antisemitic posts. And as someone who was a proud Proud
9 Boy, even in my Jewish community -- and there was even a
10 Proud Boy chapter in Israel -- I had to in some way call
11 that out because I think they were misrepresenting the core
12 tenets of the club.

13 Q. I'm going to show you what's been previously introduced
14 into evidence as Exhibits 505-20 and 505-21. I believe we
15 have them already.

16 MR. HASSAN: Can we publish them for the jury,
17 Judge?

18 THE COURTROOM DEPUTY: Can you identify Government
19 or --

20 MR. HASSAN: This is Government's Exhibit 505-20
21 and 505-21.

22 THE COURTROOM DEPUTY: Thank you.

23 MR. HASSAN: You're welcome, Ms. Harris.

24 BY MR. HASSAN:

25 Q. Mr. Mesa, you belonged to the Ministry of Self-Defense

1 Ops. Correct?

2 THE COURT REPORTER: Can you say it again, please?

3 BY MR. HASSAN:

4 Q. Ministry of Self-Defense Ops Telegram chat. Correct?

5 A. Yes.

6 Q. And you've had an opportunity to review this chat.

7 Correct?

8 A. Yes.

9 Q. Now, you see some of the language that you're stating
10 here. Can you describe what's going on in this situation in
11 the Telegram chat?

12 A. Okay. Like I do in many areas of my life as well, I try
13 to call out things that I see as -- as wrong, as incorrect;
14 in this case, racist.

15 So I would say there was really a handful of
16 individuals, not the vast majority of people here, who tried
17 to -- I don't know -- in some way fit in by using language
18 that they shouldn't be using on a chat that was created to
19 protect Proud Boys.

20 Q. And you said the chat was created to protect Proud Boys.
21 Is it -- are you talking about the MOSD chat?

22 A. Yes. I mean, this is why it's called the Ministry of
23 Self-Defense. It was there to in some way protect Proud
24 Boys this time because the two previous times we were in
25 D.C. we had two Proud Boys that were stabbed. They were

1 Proud Boys misbehaving in the sense that they were drinking
2 too much. So it was an attempt to bring some order into the
3 whole rally system of the organization.

4 Q. And we'll touch on that in just a minute.

5 MR. HASSAN: But, Ms. Jauregui, if we can shift to
6 505-21.

7 BY MR. HASSAN:

8 Q. Now, Mr. Tarrio -- and we saw language that was in the
9 earlier page of 505-20. Now we're seeing 505-21 where
10 Noble Lead -- and who is Noble Lead in the chat?

11 A. So Noble Lead is Enrique.

12 Q. Okay. And you see where he makes the statement, Focus.

13 Can you please describe how Tarrio's leadership,
14 as you knew, affected it and why he would make a statement
15 like that, Focus?

16 A. Well, because Enrique's main focus -- his main focus in
17 arranging the MOSD and trying to get everyone on the same
18 page was to protect Proud Boys. He felt very responsible
19 that everyone is there on his watch. And if someone would
20 get hurt --

21 MR. McCULLOUGH: Objection.

22 THE COURT: Sustained.

23 THE WITNESS: If anyone --

24 BY MR. HASSAN:

25 Q. Without telling me -- the judge is sustaining the

1 objection.

2 Without telling me what he told you, what was your
3 belief based upon your understanding of MOSD and what was
4 going on in MOSD as far as why it was created?

5 A. Oh. He never told me any of this. This is -- when we
6 joined the chat, in the beginning, that is what was stated
7 up top, why it was created, so people understood why it was
8 created: to protect other Proud Boys so people wouldn't get
9 stabbed anymore, just to bring some order in the whole rally
10 sector of the chapter.

11 Q. And being that -- you see the language before, in
12 505-20, and you see Mr. Enrique say, Focus. Is there an
13 issue with leadership here as far as not banning certain
14 language within the chats?

15 A. Yes. I mean, he felt that this is something that should
16 have been -- or should be handled on a different chatroom,
17 on a different level, not specifically in this chat that was
18 created for self-defense.

19 Q. Okay.

20 MR. HASSAN: Now, if we can go back to 505-20,
21 please.

22 BY MR. HASSAN:

23 Q. You see here where this individual known as Johnny
24 Blackbeard states --

25 MR. HASSAN: And if we can scroll up to 3:50:02.

1 BY MR. HASSAN:

2 Q. And you can see where it reads here -- and we can play
3 it if you want to hear it -- but, There's nothing to talk
4 about. Okay? This F-ing group has a mission.

5 What was your understanding of what the mission
6 was for MOSD?

7 A. The safety of other Proud Boys.

8 Q. Did it have to do anything regarding January 6th, to
9 your knowledge?

10 A. Well, the event took place on January 6th, but it had
11 nothing to do with some effort to disrupt the -- the vote.

12 Q. Okay. Would you say that although there were
13 individuals, like Mr. Blackbeard here and other individuals,
14 although the tenets didn't support white supremacists, there
15 were white supremacists within the organization?

16 A. Yes. Now -- like, Mr. Blackbeard was not a white
17 supremacist, to my knowledge.

18 Q. Okay. Why wouldn't individuals that expressed white
19 supremacist views not be kicked out of the organization?

20 A. I don't know.

21 Q. Okay. Let's talk about something. The Proud Boys use a
22 symbol. Right?

23 A. Yes.

24 Q. They often use a symbol --

25 MR. HASSAN: And we can take that down,

1 Ms. Harris.

2 BY MR. HASSAN:

3 Q. When I was a kid, it was usually an okay symbol. Right?

4 An okay symbol. But they simply used a symbol sort of like
5 this (indicating). Correct?

6 A. Correct.

7 Q. Did you use that symbol?

8 A. Yes, I did.

9 Q. What was the meaning of this symbol? Did this have any
10 meaning to the Proud Boys?

11 A. No one really knew. It was used as a form of satire.

12 Q. And when you say satire, what do you mean by that? Can
13 you explain that to the ladies and gentlemen of the jury,
14 what you mean by that?

15 A. Every step -- everything the Proud Boys ever did was
16 labeled racist and white supremacist. And I'm pretty sure
17 someone may have used that symbol in a nonracist capacity;
18 and then the media said, Oh, this is a racist symbol. So we
19 did it even more, because of that.

20 Q. It was -- would you say it was sort of antagonizing the
21 media?

22 A. Yes.

23 Q. Being that this symbol, some people believed it's white
24 supremacy, did you use it as a white supremacy symbol?

25 A. Absolutely not.

1 Q. Are you a white supremacist?

2 A. I am not. It's actually a very famous symbol in India.
3 I was in India in January, and it's all over the place.

4 Q. Okay.

5 A. It's a Buddhist symbol as well.

6 Q. Do you consider yourself to have alt-right views or
7 anything of the like?

8 A. No, I do not.

9 Q. So a symbol, as you're aware of it being used in the
10 Proud Boys, has nothing to do with white supremacy or
11 anything related to racism?

12 A. Absolutely -- I mean, as a Jewish person, I wouldn't use
13 such a symbol -- I wouldn't join a club that was racist in
14 any way, especially against Jews.

15 Q. Now, going to Enrique, did he like confrontation within
16 the organization?

17 A. He did not.

18 Q. Explain that a little bit more. Can you explain what
19 you mean by that, he didn't like confrontation?

20 A. Well, I think that's what made him a good leader. He
21 put all that aside, and I'm sure he felt that was important
22 because the objective was more important, which is
23 essentially to protect other Proud Boys in this instance.

24 Q. Now, we're going to fast-forward here. Right? So we've
25 been talking about the Proud Boys in and of itself.

1 You were in the Proud Boys going to November 2020.

2 Correct?

3 A. Yes.

4 Q. And going to November 2020, there was a presidential

5 election. Correct?

6 A. Yes.

7 Q. And how would you say the membership on November 2020 --

8 did it develop? Did it grow? What happened after the

9 debate?

10 A. It grew, mainly because more people were familiar with

11 us. When the name was mentioned during the debate, people

12 Googled them and realized, Wow -- or may have thought, I

13 align with this position.

14 Q. Okay. And did that grow exponentially?

15 A. Yes, it did.

16 Q. Okay. Were you involved with the vetting process as far

17 as members?

18 A. Not at that time I was not.

19 Q. There was a later time when you became involved with

20 vetting. Correct?

21 A. After January 6th.

22 Q. But prior to January 6th --

23 A. No.

24 Q. -- you weren't involved with vetting?

25 A. No, I was not.

1 Q. But yet you saw the membership develop. Correct?

2 A. Absolutely.

3 Q. Okay. Now, did you partake in a rally in November of
4 2020?

5 A. Yes, I did.

6 Q. And was that rally here in D.C.?

7 A. Yes, it was.

8 Q. And can you describe the mood and feeling within the
9 rally in November of 2020?

10 A. There was a bit of disorder amongst the Proud Boys. I
11 believe this was the first major rally in D.C. So there was
12 a way of trying to keep us, again, focused at our task at
13 hand.

14 We also had a mission back then as well, which was
15 the same mission the second and third time, which was, one,
16 to keep Americans safe, first and foremost, and, two, to
17 keep other Proud Boys safe.

18 Q. Now, during the November rally, were Proud Boys actively
19 seeking to go on the offense, like, go out and fight
20 individuals? Or what was sort of, like, the situation
21 within the Proud Boys at that point in time in November?

22 A. No, they were not.

23 Q. And explain that to the jury.

24 A. So the rally occurred in the daytime. We were there
25 supporting our candidate. When everyone was at home, or

1 back at their hotel rooms -- and I would say the vast
2 majority of Proud Boys have left the rally -- then the news
3 started reporting about groups like Antifa antagonizing --
4 targeting conservatives walking back to their cars. I think
5 there was an attack on the Willard where people of all
6 different political spectrums were just eating and they were
7 confronted; they were attacked in that area.

8 So we received a text, with the few Proud Boys
9 that were left, that we were in some way going to go and try
10 to aid the situation.

11 Q. And you were involved with a lady that was eventually
12 stabbed in November? Were you present for that?

13 A. No, I was not.

14 Q. Now, fast-forward to December. Was there a rally in
15 December 2020 that you partook in?

16 A. Yes, I did.

17 Q. And in comparison to the rally in November, how would
18 you describe the amount of individuals or Proud Boys that
19 were present in D.C.?

20 A. There was a lot more Proud Boys, especially because they
21 heard what happened in the previous rally. But I think the
22 main reason there was a lot more Proud Boys is because that
23 was an official -- that was an official Proud Boy event.

24 Q. Okay. Discussing the December rally in comparison to
25 the November rally, was there a real structure or control,

1 the rally in December of 2020, or was it a little bit in
2 disarray?

3 A. Well, there was a lot more Proud Boys. What they were
4 doing there was marching. So they were a little more
5 prepared with gear, protective gear, because they saw that
6 Antifa was carrying knives. There was a lady who attacked a
7 Proud Boy member in the first rally with a knife. And
8 everyone was in some way encouraged to wear some type of --
9 I don't know -- cutting board or something so they wouldn't
10 get stabbed.

11 So there was an attempt to insert some order in
12 the ranks.

13 Q. Were there Proud Boys that moved on and -- moved on from
14 the groups or what happened as the day developed in December
15 2020?

16 A. It was a lot more organized during December. But yes,
17 there were some Proud Boys who went their own way. And what
18 I saw there was Enrique was trying to keep everyone together
19 lest they get cornered. There's video there was over 600 to
20 700 Antifa guys. I think there was only around maybe 300
21 Proud Boys, in the vicinity. In the vicinity.

22 So we were fearful that some Proud Boys would be
23 outnumbered and harmed. So Enrique was trying to keep
24 everybody together.

25 Q. Now, going to the December rally, were the Proud Boys

1 actively seeking to go on the offense against Antifa or any
2 other active group?

3 A. In the December rally?

4 Q. In the December rally.

5 A. Oh. Well, that's the one I'm talking about.

6 Q. Right.

7 A. No. Well, the November rally, there was no order,
8 because it was our first time there.

9 And in December, there was probably three times as
10 many Proud Boys. It was more of a march. And that's the
11 one where Antifa themselves had around -- from 500 to around
12 800 members, and we had maybe, at that time, around 350,
13 maybe, 300 Proud Boys.

14 Q. The Proud Boys still maintained a defensive posture at
15 that point in time?

16 A. A...

17 Q. Defensive posture.

18 A. Oh, absolutely. We were only there for defense. In
19 other words, defending Americans. Other ralliers.

20 Q. And being that you're defending Americans, you're not
21 actively seeking for the --

22 A. Absolutely. I would never chase after Antifa.

23 THE COURT REPORTER: I'm sorry.

24 THE COURT: Sir, if you can wait. We have a court
25 reporter taking down your -- what you're saying, and we need

1 you to wait until the question is fully asked before you
2 answer. And then we need counsel to wait before your answer
3 is complete before he asks his next question.

4 You may proceed, Mr. Hassan.

5 BY MR. HASSAN:

6 Q. Did the Proud Boys actively seek Antifa, go on the
7 offense against Antifa?

8 A. Actively seek Antifa after we were aware of the
9 reporting of them targeting Americans or people who were
10 attending the rallies. At that point, yes. We weren't
11 there looking for Antifa when we got there.

12 Q. Okay. Let me ask you this: In regards to law
13 enforcement, did feelings towards law enforcement change
14 between the November rally and the December rally?

15 A. It did not.

16 Q. Did the feelings towards law enforcement change
17 subsequent to the December 2020 rally?

18 A. It did not. I had my own personal views on the issue,
19 but the standard among the club was always Back the Blue,
20 and every time we exited a rally, we always thanked the
21 officers there for their service.

22 Q. And your views -- can you talk to us regarding your
23 views?

24 A. Yeah. So I think my view on the issue, in my opinion,
25 was a little more sophisticated in the sense that we should

1 always back law enforcement. But in many of these rallies
2 we saw that the cops were in some way many times aiding
3 Antifa, certain cops. So as a blanket rule, we shouldn't
4 just say that every officer is in some way guiltless. But
5 the idea of law enforcement is something that we endorse as
6 a tenet of the club.

7 Q. Moving on to January 6th, was it still the same culture,
8 to support law enforcement?

9 A. Absolutely.

10 Q. Including here in the Metropolitan D.C. area?

11 A. Yes, sir.

12 Q. Okay. Did that ever change, based upon your knowledge
13 and --

14 A. That never changed in the club.

15 THE COURT: Sir, again, if you can just --

16 THE WITNESS: I'm sorry. I'm sorry.

17 BY MR. HASSAN:

18 Q. Now, we're shifting off from the December rally and
19 we're moving on from that time period. That rally was
20 December 12th, the rally in December?

21 A. Yes.

22 Q. And you stated that an individual was stabbed. Correct?

23 A. Two individuals were stabbed.

24 Q. At that point in time, to your knowledge, was there a
25 separate and distinct chapter that was sort of like

1 created -- an entity that was created within the Proud Boys?

2 A. Yes, there was.

3 Q. And what is the name of that distinct entity that was
4 opened within the Proud Boys?

5 A. The Ministry of Self-Defense.

6 Q. And did you belong to the Ministry of Self-Defense?

7 A. Yes, I did.

8 Q. And what was the purpose of the Ministry of
9 Self-Defense?

10 A. To prevent what happened in the previous event to
11 re-occur. That means that Proud Boys should be able to go
12 home safely.

13 Q. And did you partake in the various Zoom meetings that
14 occurred within the MOSD?

15 A. Yes, I did.

16 Q. And was the purpose of MOSD to find real men to confront
17 police?

18 A. That was not the purpose. The purpose was to in some
19 way thin out the individuals who couldn't control their
20 behavior, their alcohol, and only have those who are
21 somewhat upright representing the organization in D.C.

22 Q. Okay. Now, there was an application form for the MOSD.
23 Correct?

24 A. Yes, there was.

25 Q. And --

1 MR. HASSAN: Ms. Harris, if we can pull it up for
2 counsel table and the witness Exhibit 141, Tarrío's
3 Exhibit 141. I don't believe this has been entered into
4 evidence.

5 THE COURTROOM DEPUTY: No, it hasn't.

6 MR. McCULLOUGH: No objection.

7 THE COURT: What's the exhibit number?

8 MR. HASSAN: 141.

9 THE COURT: It will be admitted. And permission
10 to publish.

11 (Whereupon, Defendant Tarrío's Exhibit No. 141 was
12 entered into evidence.)

13 BY MR. HASSAN:

14 Q. And you've had an opportunity to review this form.
15 Correct?

16 A. Yes.

17 Q. Okay.

18 MR. HASSAN: And I'm going to go down to, based
19 upon -- now that it's been published to the jury, if we can
20 go down and increase the size of it a bit, to Question No. 3
21 under Code of Conduct.

22 Scroll down, please.

23 BY MR. HASSAN:

24 Q. And this Question No. 3, can you read it for the jury?

25 A. Do you affirm that you will not be using drugs or

1 alcohol during an event unless it's sanctioned?

2 Q. And that's Question No. 1. Can we move along to
3 Question No. 3. I'll circle it for you.

4 A. This chapter will need your full cooperation with
5 leadership for the safety of your brothers. Is this
6 something you are willing to do?

7 Q. And what did that mean to you?

8 A. Well, the first question just reiterated what I just
9 said, that there was a problem with misbehavior, that we
10 were trying -- we were in some way trying to nip in the bud.
11 And this one, I think, solidifies my whole statement that it
12 was there for the safety of other Proud Boys. So this group
13 was created to protect other Proud Boys.

14 Q. And this is a form that you checked off yourself.
15 Correct?

16 A. Yes.

17 Q. And you executed it. Correct?

18 A. Yes.

19 Q. And other members that were joining MOSD were supposed
20 to complete. Correct?

21 A. They were forced to, yes.

22 Q. Were they forced to complete or were they obligated to
23 complete?

24 A. They were coerced into -- if they wanted to be part of
25 this initiative, they had to fill out this form.

1 Q. Now, if we can go to Question No. 4 on the form. Can
2 you read that out to the jury and explain what it means?
3 And I'll circle it for you.

4 A. I will always act in self-defense and I will never
5 initiate a confrontation. Is this something you can agree
6 on?

7 Q. And what did this mean to you?

8 A. That means that we never start the fights, that we're
9 only there in a reactionary measure.

10 Q. What was the importance of MOSD to you?

11 A. To help Proud Boys attend this event and come back
12 safely to their families.

13 Q. Now, moving forward to January 6th, you were part of the
14 MOSD moving towards January 6th. Correct?

15 A. Yes.

16 Q. And you belonged to some of the chats that partook in --
17 in regards to MOSD. Correct?

18 A. Correct.

19 Q. Were there certain issues that you had disagreements
20 between yourself and other members of MOSD?

21 A. Yes. Yes, there was.

22 Q. And in regards to going in colors or not going in
23 colors, were you in agreement with sort of, like, what the
24 issues were arising?

25 A. I was -- I disagreed on not going in colors.

1 MR. HASSAN: If we can pull up Exhibit No. 50 from
2 Tarrio. And if we can go to Page 189 of 481.

3 BY MR. HASSAN:

4 Q. If you want to read this statement to yourself.

5 Do you recognize -- do you recall these
6 statements? Is that you?

7 A. Yes, it is.

8 Q. And this is from the Ministry of Self-Defense Main 1?

9 A. Yes.

10 Q. And do you recall making those statements?

11 A. Yes, I do.

12 MR. HASSAN: Judge, at this time, we would ask to
13 publish Page 189 of 481 of Ministry of Self-Defense Main 1,
14 Exhibit No. 50-A.

15 MR. McCULLOUGH: Through the Court, is it these
16 two chats on the screen? Or are we going to have more?

17 THE COURT: It's Page 189, I think, is what you
18 asked for.

19 MR. HASSAN: Correct, Judge.

20 THE COURT: I don't know if there's a way to
21 easily tell what Page 189 is.

22 MR. HASSAN: Judge, it says it on the top.

23 THE COURT: Can the Government tell what you're
24 introducing?

25 MR. McCULLOUGH: No objection to 189.

1 THE COURT: So Page 189 will be admitted. And
2 permission to publish.

3 (Whereupon, Page 189 Defendant Tarrío's Exhibit
4 No. 50-A was entered into evidence.)

5 MR. HASSAN: If you can publish it to the jury,
6 Ms. Harris.

7 BY MR. HASSAN:

8 Q. Now, Mr. Mesa, in here you're listed as Mr. Barkoziba.
9 Can you talk to us as far as what your position was here and
10 what was going on?

11 A. Sure. There was mass confusion the two previous times
12 that we went to D.C. in not knowing who was who. And I
13 think this in some way led to two of our members being
14 stabbed. And I felt that if there wasn't some sort of
15 marker to be able to tell a Proud Boy from a non-Proud Boy,
16 the same thing would occur, or re-occur.

17 Q. And based upon your knowledge, what was -- why was the
18 reason that the MOSD was not going in colors to Washington,
19 D.C., on January 6th?

20 A. Because it was an event in Washington, D.C., which was
21 under the jurisdiction of this local chapter. And the
22 policy was that we respect the wishes of that chapter on how
23 we rally, what we wear, and they suggested that we shouldn't
24 be in colors.

25 MR. HASSAN: We can take that down, Ms. Harris,

1 now.

2 BY MR. HASSAN:

3 Q. Is that a position Enrique shared with you?

4 A. Yes.

5 Q. He shared with you the fact of going in colors or, as
6 you stated here, not going in colors?

7 A. Well, he responded to my inquiry on why we're not going
8 in colors that perhaps it doesn't have to be in colors, but
9 to have some sort of distinguishable mark. And he says that
10 this is just the way the club operates. We take the cue
11 from the local chapter.

12 Q. And the local chapter was saying not to wear colors.
13 Correct?

14 A. Correct.

15 Q. Knowing your disagreement, did you still come to
16 Washington, D.C., on January 6th?

17 A. Did I? Yes. Yes, I did.

18 Q. Okay. And what was your involvement leading up to
19 January 6th? What was -- what were you supposed to do on
20 January 6th?

21 A. Provide security for Latinos for Trump.

22 Q. Did you partake in any part of the march towards the
23 Capitol on January 6th?

24 A. No, I did not.

25 Q. Did you partake in the reunion that happened on

1 January 6th at the Washington Monument?

2 A. No, I did not.

3 Q. Now, you mentioned Latinos for Trump. What -- what is
4 that organization? Can you explain that organization a
5 little bit?

6 A. It's exactly as the name states. It's an organization
7 that encourages Latinos to enter the Republican Party and
8 support Trump as a candidate.

9 Q. And you did security on behalf of the Proud Boys or on
10 behalf of Latinos for Trump?

11 A. I did it on behalf of the Proud Boys.

12 Q. Do you have any sort of security license or anything
13 like that?

14 A. No, I do not.

15 Q. Okay. Is this sort of like the same thing that you saw
16 leading you going into the Proud Boys initially?

17 A. Sure. We weren't carrying any weapons. We didn't need
18 a license. We were just escorting them from Point A to
19 Point B.

20 Q. And you were escorting who?

21 A. Bianca and other members of the organization.

22 Q. And who is Bianca, for the members of the jury?

23 A. Bianca is the head of Latinos for Trump currently.

24 Q. And what is her -- it's Bianca. And does she have a
25 last name?

1 A. Gracia.

2 Q. And when did you -- do you recall when you arranged your
3 travel for Washington, D.C.?

4 A. About a week before January 6th.

5 Q. Do you recall where you stayed in Washington, D.C.?

6 A. I stayed at the Phoenix.

7 Q. And when you arrived in Washington, D.C., did you have
8 any communications with Enrique?

9 A. No, I did not.

10 Q. When did you arrive in Washington, D.C.?

11 A. January 5th.

12 Q. To your knowledge, where was Enrique on January 5th when
13 you arrived?

14 A. I think he was in Baltimore.

15 Q. Let's talk about the Latinos for Trump. What was
16 supposed to go on for Latinos for Trump?

17 A. They had acquired a stage where many different people
18 spoke, I think mainly regarding COVID-19 and with the
19 possible tampering with the ballot box. And my job was to
20 escort them there, to in some way offer security while I was
21 on the ground and to escort them back to their hotel.

22 Q. To your knowledge, was Enrique supposed to speak at the
23 Latinos for Trump rally?

24 A. Yes.

25 Q. I'm going to show you Exhibit 148, what has previously

1 been marked Tarrio Exhibit 148.

2 MR. HASSAN: If we can have that for counsel table
3 and the witness.

4 BY MR. HASSAN:

5 Q. Do you recognize the agenda that's before you -- or do
6 you recognize the document that's in front of you?

7 A. This, I believe, is the agenda for the day. Yes.

8 Q. And this agenda that you're showing right now, who is
9 the agenda for?

10 A. This was shared in the Proud Boys security chat for
11 anyone that had to do with either Latinos for Trump or those
12 providing security for that organization.

13 Q. And you're aware of this document. Correct?

14 A. Yes.

15 Q. And you've had the opportunity to review this document.
16 Correct?

17 A. Yes.

18 Q. Has it been altered or changed in any manner?

19 A. No, it has not.

20 MR. HASSAN: Judge, at this time, I would ask to
21 publish Exhibit 148 to the jury -- introduce it and publish
22 it to the jury.

23 MR. McCULLOUGH: No objection.

24 THE COURT: It will be admitted. And permission
25 to publish it.

1 (Whereupon, Defendant Tarrío's Exhibit No. 148 was
2 entered into evidence.)

3 BY MR. HASSAN:

4 Q. Sir, can you --

5 MR. HASSAN: And if we can scroll up here going
6 down to January 6th. And we can stop it there,
7 Mr. Jauregui. Thank you.

8 BY MR. HASSAN:

9 Q. We're here on January 6th. Can you describe a little
10 bit about the agenda that's going on here? Is this the
11 agenda that was supposed to be adopted for January 6th?

12 A. Yes.

13 Q. And to your knowledge, Enrique was supposed to speak at
14 the January 6th event for Latinos for Trump. Correct?

15 A. Correct.

16 Q. And you became aware of that how?

17 A. Because it said it in the Proud Boys security chat.

18 Q. Now, here it talks about Freedom Rally hosted by Latinos
19 for Trump from 10:00 to 12:00. Is that the time period that
20 Mr. Tarrío was supposed to speak at?

21 A. Yes.

22 Q. I'm also going to show you what's been previously marked
23 as Exhibit 151.

24 MR. HASSAN: This has already been introduced and
25 published to the jury previously.

1 THE COURTROOM DEPUTY: 151 hasn't been introduced.

2 MR. HASSAN: It was introduced. We don't have it?
3 Tarrio Exhibit 151?

4 THE COURTROOM DEPUTY: Not introduced, no. It's
5 here, but not introduced.

6 MR. HASSAN: Can we take it down?

7 BY MR. HASSAN:

8 Q. Sir, do you recognize this document?

9 A. Yes, I do.

10 Q. And how do you recognize this document?

11 A. Because it was all over the place where the event was
12 occurring.

13 Q. And all over the place for the Latinos for Trump rally?

14 A. Correct. There were many different stages in that area,
15 and people would advertise for their particular stage.

16 Q. And has this document been altered or changed in any
17 manner since when you saw it on January 6th, 2021?

18 A. No, it has not.

19 MR. HASSAN: Judge, if we can now publish [sic]
20 Document 151 and publish it to the jury.

21 MR. McCULLOUGH: No objection.

22 THE COURT: It will be admitted. And permission
23 to publish.

24 (Whereupon, Defendant Tarrio's Exhibit No. 151 was
25 entered into evidence.)

1 BY MR. HASSAN:

2 Q. Mr. Mesa, you're looking at the document there.

3 Relatively how far away is this staging area away from the
4 Capitol?

5 A. Maybe around 12 minutes, 13-minute walk.

6 Q. And we're seeing a check here where it says, Meet here,
7 if we're looking at the right side of the document. Is that
8 where the event was supposed to take place, the "meet here"?

9 A. Yes.

10 Q. And we're looking at the individuals that are speaking
11 on stage. Is Mr. Tarrío one of the speakers there?

12 A. Not on this particular document.

13 Q. And -- so tell me. You have 15 speakers here. You told
14 us earlier that Mr. Tarrío was supposed to speak at this
15 event?

16 A. Correct.

17 Q. What leads you to believe that Mr. Tarrío was supposed
18 to speak if he's not on this flyer?

19 A. Because Bianca told us in the chats, and Mr. Tarrío
20 speaks always. I mean, him and Bianca are indetachable
21 [sic].

22 Q. Can you read at the bottom of the document where it
23 says, Freedom Rally, and #LoudVoice -- can you read what it
24 says right below that?

25 A. Sure. It says, Special appearances from many other

1 patriots.

2 Q. That reading itself, do you interpret that to mean that
3 not only these 15 individuals, but other speakers are to
4 speak at the event?

5 A. Absolutely.

6 Q. And to your knowledge, somewhere between the time period
7 of 10:00 to 12:00 on January 6th, 2021, it's your
8 understanding that Enrique Tarrio was supposed to speak on
9 the stage?

10 A. Yes.

11 Q. Now skipping over, did there come a time when you
12 independently went to the Capitol on January 6th?

13 A. Yes.

14 Q. And at what time did you approximately go?

15 A. Around maybe 1:45.

16 Q. Okay. Did you run into any Proud Boys present when you
17 went to -- when you went to the Capitol?

18 A. No, I did not.

19 Q. Was there any communication internally within the Proud
20 Boys telling you to head over there, march over there?

21 A. It's interesting that communications -- most people who
22 were there that day knows that cell phones weren't working
23 in the Capitol. After what transpired occurred, cell phones
24 stopped working. So I couldn't call my wife. I couldn't
25 call anyone. So no. I mean, there was no communication.

1 Q. Did you receive any messages from Boots on the Ground
2 Telegram chat with instructions?

3 A. No, I did not.

4 Q. Were you carrying a radio as part of your security?

5 A. No, I was not.

6 Q. You didn't receive any radio instructions that you heard
7 from somebody else?

8 A. No.

9 Q. Did you receive -- you stated already cell phone
10 communication. Any other communication device that alerted
11 you, Hey, Proud Boys are at the Capitol?

12 A. No. The only way I knew about the event, because we
13 walked Bianca and the rest of her staff to the hotel, was
14 that the media was covering it when we walked into the room.
15 And that's the reason we knew what was going on there.

16 Q. Did you go into the Capitol?

17 A. No, I did not.

18 Q. When you showed up to the Capitol at that time, were
19 there any barricades blocking your passage into the Capitol?

20 A. No, there was not.

21 Q. Was there any law enforcement at that point in time
22 blocking the outside of the Capitol?

23 A. No.

24 Q. Were you ever instructed, told that you couldn't
25 approach where you were approaching the Capitol?

1 A. No.

2 Q. There came a time when you left the Capitol. Correct?

3 A. Yes.

4 Q. And approximately what time was that?

5 A. That was around 20 minutes after I got there. So I must
6 have arrived around 2:00. I think I left at 1:45. I got
7 there around 2:00. I was there for around 25, 30 minutes
8 with other individuals of the Latinos for Trump group. We
9 walked them back to the hotel after that.

10 Q. Now, you stated as far as what you observed. When you
11 went to the Capitol, did you observe any trespass signs that
12 were up and posted?

13 A. No, I did not.

14 Q. Did you observe any bike racks that limited where you
15 could walk?

16 A. No.

17 Q. Did you ever return to the Capitol later on after going
18 back to the hotel?

19 A. I did.

20 Q. What did you do when you returned to the Capitol a
21 second time?

22 A. I went to the same spot where I was before. The segment
23 of the Capitol we were at was a door that wasn't breached.
24 And there were news reporters there, and I began to
25 interview people, like I do in all these rallies, and ask

1 them questions like, How do you feel about the Proud Boys?

2 Q. So were you doing sort of like the independent
3 journalism --

4 A. Correct.

5 Q. -- that you had done before in November and December
6 rallies?

7 A. Correct.

8 Q. Is that sort of like the same independent journalism
9 that you posted within the Proud Boy chats themselves?

10 A. Yes. And publicly. There was a website that --

11 Q. And publicly. What do you mean, publicly? By that.

12 A. We had a website called ProudBoy.tv where I would post
13 all these interviews. The reason I made the interviews were
14 for non-Proud Boys, really, to -- people who've never met
15 the Proud Boys, to see what other Americans actually feel
16 about the Proud Boys, or how they feel.

17 Q. During these Proud Boy video sessions, were there
18 individuals of various racial backgrounds and ethnic
19 backgrounds that you --

20 A. Yes. I would say the majority of the videos we made
21 were from mainly people from different ethnicities, also in
22 Spanish. I speak Spanish. And I interviewed many people in
23 Spanish.

24 Q. And you speak Spanish based upon you being Colombian.
25 Correct?

1 A. My family is from Colombia. Yes.

2 Q. Now, let me ask you this: As part of MOSD, was there
3 ever a plan on behalf of the Proud Boys to stop the
4 certification of the election?

5 A. Not at all.

6 Q. Was that ever communicated to you by Enrique or by
7 anybody else?

8 A. Never.

9 Q. Did any Proud Boy reach out to you and tell you, Hey,
10 look, this is what we're thinking, this is the ideology as
11 far as where we're going?

12 A. No.

13 Q. The purpose of the MOSD was to act in self-defense.
14 Correct?

15 A. Correct.

16 Q. Based upon the communications leading up to January 6th,
17 besides not physically seeing a plan to stop the
18 certification of the election, what was your understanding
19 of the objective of MOSD?

20 A. To keep other Proud Boys safe.

21 Q. And what was the purpose of the Proud Boys going on
22 January 6th?

23 A. The same purpose that it was the two previous events:
24 To protect other Americans.

25 Q. And was there an understanding to fight or assault law

1 enforcement on January 6th?

2 A. No, there was not.

3 Q. Was anything to [sic] that sort communicated to you by
4 Enrique?

5 A. No.

6 Q. Did he lead you to believe that you should change the
7 path that the Proud Boys have executed in the past?

8 A. No.

9 Q. Did he communicate with you anything different than what
10 you had done in the past in the November and December
11 rallies?

12 A. Well, there were some measures to insert order in the
13 ranks of the Proud Boys on how we should march, how we
14 should stay together and not let people go on their own and
15 accidentally go into an alley and get ambushed.

16 Q. Is this sort of, like, the issue as far as herding cats,
17 that people would just wander off at times?

18 A. Correct.

19 Q. Was there an understanding of the purpose of January 6th
20 to -- of the January 6th rally to obstruct an official
21 proceeding?

22 A. No.

23 Q. There was no understanding and objective to go on
24 January 6th to stop the certification?

25 MR. McCULLOUGH: Objection to leading.

1 THE WITNESS: No, there was not.

2 MR. McCULLOUGH: Objection to leading.

3 THE COURT: Sustained as to leading.

4 BY MR. HASSAN:

5 Q. Was or was there not an understanding of the MOSD or the
6 purpose of the January 6th to obstruct an official
7 proceeding?

8 A. No, there was not.

9 Q. Was or was there not an understanding of the purpose to
10 January 6th to stop the peaceful transfer of power?

11 A. No, there was not.

12 Q. So to your knowledge, the rally on January 6th was to go
13 there and peacefully demonstrate. Correct?

14 A. Yes, it was.

15 MR. HASSAN: I have no further questions, Judge.

16 THE COURT: All right. We just hit 10:45. We'll
17 take -- well, let me -- actually, let me hear counsel at the
18 phones. It really doesn't matter, but let me hear counsel
19 at the phones just for one moment.

20 (Whereupon, the following proceedings were had at
21 sidebar outside the presence of the jury:)

22 THE COURT: Is there any request for direct from
23 any other Defendant?

24 MR. SMITH: No, your Honor. Not from Nordean.

25 MS. HERNANDEZ: No, your Honor.

1 THE COURT: And I assume also no cross from any
2 other Defendant. So we'd proceed directly to the
3 Government's cross. Correct?

4 MR. SMITH: Yes, your Honor.

5 MS. HERNANDEZ: Well, I guess I thought the rule
6 was, if something happened on cross, we get to do something.

7 THE COURT: No. The rule was at this point you
8 would have to identify any adversity if you wanted to cross.
9 I don't detect any of that. Whether you get redirect is
10 another question.

11 But anyway, we'll proceed with the Government when
12 we come back from the break.

13 (Whereupon, the following proceedings were had in
14 open court:)

15 THE COURT: Ladies and gentlemen, we'll take our
16 ten-minute morning break for the court reporter. So we'll
17 see you in about ten.

18 (Whereupon, the jury exited the courtroom at 10:46
19 a.m. and the following proceedings were had:)

20 THE COURT: You all may be seated.

21 Sir, you may step down just for the moment. And
22 we'll be back in ten minutes.

23 THE COURTROOM DEPUTY: All rise.

24 (Thereupon a recess was taken, after which the
25 following proceedings were had:)

1 THE COURTROOM DEPUTY: Jury panel.

2 (Whereupon, the jury entered the courtroom at
3 11:00 a.m. and the following proceedings were had:)

4 THE COURTROOM DEPUTY: You may be seated.

5 (Thereupon, the Court entered the courtroom and
6 the following proceedings were had:)

7 THE COURTROOM DEPUTY: We are back on the record
8 in Criminal Matter 21-175, United States of America versus
9 Ethan Nordean, et al.

10 THE COURT: Cross-examination from the Government.

11 MR. McCULLOUGH: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. McCULLOUGH:

14 Q. Mr. Mesa, thank you for your testimony.

15 You joined the Proud Boys in 2020. That's right?

16 A. Yes.

17 Q. And you joined the Proud Boys because you are somebody
18 that is interested in doing something about the issues that
19 you saw in America. Right?

20 A. Correct.

21 Q. And I think -- you're somebody that has a religious
22 background?

23 A. Yes, I do.

24 Q. But you're somebody that's not afraid to get their hands
25 dirty. Is that right?

1 A. Yes.

2 Q. And sometimes getting your hands dirty includes physical
3 violence. That's right?

4 A. Correct.

5 Q. The Proud Boys have a concept of rally boys and party
6 boys. Is that right?

7 A. No. There are those -- it's a drinking club, and many
8 people who joined initially this organization joined because
9 it was a drinking club. This is pre the riots. After the
10 riots, the notion of activism grew out of this club.

11 Q. And when you talk about the riots, you're talking about
12 the protests that were happening across America in 2020. Is
13 that right?

14 A. The burning of buildings. Yes.

15 Q. You're talking about some of the reactions to police
16 brutality that were happening throughout the course of 2020.
17 Is that right?

18 A. That's how it was presented. Yes.

19 Q. And you viewed those incidents as being attributable to
20 Antifa. Is that right?

21 A. Yes.

22 Q. And those people that joined after those events in the
23 summer of 2020, those were the rally boys. Is that right?

24 A. Yes.

25 MR. HASSAN: Objection, your Honor. Speculation.

1 THE COURT: Overruled.

2 BY MR. McCULLOUGH:

3 Q. Those people that joined after the summer of 2020, those
4 were the rally boys. Right?

5 A. Those are the activists. Yes.

6 Q. And the activists are those people that were the rally
7 boys. Is that right?

8 A. Yes. Those who would attend the rallies. Yes.

9 Q. And you were part of that group of rally boys. Is that
10 right?

11 A. Correct.

12 Q. And that was a new aspect to the Proud Boys, right? An
13 evolution of the Proud Boys. Right? The rally boys
14 concept?

15 A. I think from the outset the tenets never really changed.
16 We were there to protect Americans. So there were times of
17 peace and there were times that had less peace. So I think
18 even those who joined because it was a drinking club knew
19 that if an American was being harmed just by, in some way,
20 attending an event, it was their duty to stand in between
21 harm's way and that American.

22 Q. And so the time came that it was no longer a drinking
23 club; it was now time to be in a war. Is that right?

24 A. Not necessarily.

25 MR. HASSAN: Objection, your Honor.

1 Argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: Not necessarily. The club was
4 always polarized between people who just wanted it to be a
5 traditional fraternity and just hang out in bars and hang
6 out with other conservatives. However, some Proud Boys were
7 willing to stand in harm's way to do what they felt was
8 right.

9 BY MR. McCULLOUGH:

10 Q. And you were one of those Proud Boys. Is that right?

11 A. Yes.

12 Q. And you were part of the Vice City chapter of the Proud
13 Boys. Is that right?

14 A. Yes. Yes, I was.

15 Q. In 2020 and 2021?

16 A. '21? During January 6th, I was.

17 Q. And the Vice City chapter of the Proud Boys, that was
18 Miami?

19 A. Yes, it was.

20 Q. And that Vice City chapter involved Enrique Tarrío. Is
21 that right?

22 A. Yes, it did.

23 Q. That was Enrique Tarrío's home chapter. Is that right?

24 A. Yes, it was.

25 Q. In addition to his being the chairman of the Proud Boys,

1 he was a member and the leader of the Vice City Proud Boys?

2 A. At that time, he was. Yes.

3 Q. And you were talking about the protests. The Proud Boys
4 saw themselves in a war with Antifa. Is that right?

5 A. Yes. For the most part, yes.

6 Q. You referred to it as a civil war with Antifa. Is that
7 right?

8 A. A -- somewhat of a peaceful civil war. Yes.

9 Q. A peaceful civil war?

10 A. Correct.

11 Q. And I want to just make sure I understand what you mean
12 by that.

13 A. Well --

14 Q. Let me just ask you.

15 A. Sure.

16 Q. You described a lot about reactionary conduct. Right?

17 A. Sure.

18 Q. Reactionary conduct was, in fact, going out and looking
19 for Antifa. Correct?

20 A. Only after the fact, after they started to attack the
21 Americans, did we in some way try to mobilize and stand in
22 between them and other patriots.

23 Q. After the Proud Boys heard reports that Antifa had
24 engaged in an attack, the Proud Boys would take to the
25 streets and seek out violence with Antifa. Correct?

1 MS. HERNANDEZ: Objection, your Honor.

2 THE WITNESS: We --

3 MS. HERNANDEZ: May we be heard?

4 (Whereupon, the following proceedings were had at
5 sidebar outside the presence of the jury:)

6 MS. HERNANDEZ: Your Honor, I understand this has
7 been an issue throughout the case.

8 It is Mr. Rehl's position that a war with Antifa
9 is not relevant to the allegations set forth as far as
10 attacks on the United States. That is the gravamen of the
11 charges.

12 MR. SMITH: Nordean joins.

13 MS. HERNANDEZ: I understand the Government has
14 been given some leeway with respect to motive on the text
15 messages or the Telegram messages.

16 But this particular person being at war with
17 Antifa or civil war or whatever, he's -- as far as I know --
18 I understand he was put on the witness stand by Mr. Tarrío,
19 but he's not a spokesperson for the Proud Boys. And again,
20 we're back to whether this is a fight -- whether this is a
21 prosecution of the Proud Boys or of individual Defendants.

22 So I think all of this is going to a place that is
23 very prejudicial and is not relevant, or barely relevant.

24 THE COURT: Mr. McCullough?

25 MR. McCULLOUGH: Your Honor, we've just heard

1 testimony from this witness as to the idea that they were
2 there strictly to protect patriots, and then we heard of the
3 evolution that they became participants in just protecting
4 Proud Boys.

5 Your Honor, I think that this has been directly
6 raised on the direct examination in terms of what the
7 purpose was, what their value system was, why he joined it,
8 what he felt that they were doing.

9 THE COURT: Look -- can everyone hear me?

10 MS. HERNANDEZ: (Nods head in the affirmative.)

11 THE COURT: Look, I think this is fairly within
12 the scope of this witness's direct. I hear what you're
13 saying, Ms. Hernández. But there weren't objections to
14 these concepts playing out in this witness's direct, so I
15 think this is fairly within the scope of cross.

16 MS. HERNANDEZ: So I would ask the Court to, I
17 guess, police, I mean, our objecting as it continues to go
18 there.

19 THE COURT: You may proceed, Mr. McCullough.

20 MS. HERNANDEZ: Thank you.

21 (Whereupon, the following proceedings were had in
22 open court:)

23 BY MR. McCULLOUGH:

24 Q. Mr. Mesa, the Proud Boys viewed themselves in a war with
25 Antifa. Correct?

1 A. Yes. For the most part, yes.

2 Q. And after the -- you testified as to a growth in
3 membership in November of 2020?

4 A. Yes.

5 Q. You testified as to the reaction to the Proud Boys' name
6 in the news?

7 A. Yes.

8 Q. And the Proud Boys' name got a fair amount of publicity
9 after the president referenced them on the debate stage. Is
10 that right?

11 A. Yes, it did.

12 Q. That exploded membership. Is that right?

13 A. Yes.

14 Q. And in that exchange, Donald Trump indicated that he
15 understood -- he knew who the Proud Boys were. Is that
16 right?

17 A. Yes. I think so. Yes.

18 MS. HERNANDEZ: Objection. Misstates the
19 evidence.

20 THE COURT: Overruled.

21 BY MR. McCULLOUGH:

22 Q. And you viewed Donald Trump as an ally of the Proud
23 Boys. Is that right?

24 MR. HASSAN: Objection, your Honor. Relevance.

25 MR. SMITH: Scope.

1 MR. McCULLOUGH: I'm happy to go to the phones.

2 (Whereupon, the following proceedings were had at
3 sidebar outside the presence of the jury:)

4 THE COURT: As to the scope objection, that's what
5 I'd like to hear you on, Mr. McCullough.

6 MR. McCULLOUGH: Your Honor, I think the
7 fundamental idea here is that they have said, Look, the
8 purpose of MOSD was all about keeping the Proud Boys safe,
9 nothing to do with the election. And this had to do, I
10 think he said, with keeping Trump in power.

11 My next question is going to be about his
12 attendance at the November rally, the December rally, the
13 January rally. He understood that those were all intended
14 to advance the goal of keeping Trump in power. I think it's
15 fairly straightforward, your Honor.

16 THE COURT: I think those remaining questions
17 seem -- I mean, he was at those rallies. He can be asked
18 about the purpose of the rallies.

19 I'll sustain the objection as to the question
20 about the allyship. But you're going to be able to ask him
21 why he was at those other rallies.

22 MS. HERNANDEZ: Your Honor, Mr. McCullough's
23 answer again raises the same issue.

24 If the purpose was to keep Trump in power, that's
25 a completely different reason than war against Antifa.

1 THE COURT: I've --

2 MS. HERNANDEZ: I understand that the --

3 THE COURT: I've sustained the objection as to the
4 allyship. But he's going to be asking him, why are you at
5 these rallies? What was the point of the rallies? All
6 right.

7 (Whereupon, the following proceedings were had in
8 open court:)

9 BY MR. McCULLOUGH:

10 Q. And you and the Vice City Proud Boys were motivated by
11 defending election integrity. Is that right?

12 MR. HASSAN: Objection, your Honor. Scope and
13 speculation. "You and the Proud Boys."

14 THE COURT: Overruled.

15 THE WITNESS: Not defending election integrity.
16 We were there because people believed that perhaps the
17 ballot box may have been tampered with. But we didn't have
18 any plans to alter the conclusion of whatever may have been
19 decided upon.

20 BY MR. McCULLOUGH:

21 Q. You believed that the election had been stolen.
22 Correct?

23 A. Not necessarily. I think that the average person could
24 come to the conclusion that there may have been tampering,
25 but I think decent people could disagree if that tampering

1 actually resulted in Donald Trump losing.

2 Q. Mr. Mesa, you previously said that you -- there was no
3 denying that there was election tampering. Correct?

4 A. Correct.

5 Q. You believed that there was election tampering.
6 Correct?

7 A. I personally believed, yes. However, I don't feel
8 necessarily -- I'm a bit agnostic on the idea that that
9 itself caused Donald Trump to lose.

10 Q. The entire reason for your attendance at the November
11 rally, the December rally and the January rally was
12 motivated by the election tampering?

13 A. Not exactly. We wanted to show support, hoping that
14 Vice President Pence at the time would in some way issue
15 some sort of recount. Yes.

16 Q. You sought to keep Donald Trump in power. Correct?

17 MS. HERNANDEZ: Asked and answered.

18 THE COURT: Overruled.

19 THE WITNESS: No. No.

20 BY MR. McCULLOUGH:

21 Q. You believed that Donald Trump was the rightful winner
22 of the election. Correct?

23 A. I do.

24 MR. HASSAN: Objection, your Honor.

25 Argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: I do.

3 BY MR. McCULLOUGH:

4 Q. You sought to keep him in power. Correct?

5 A. Not directly. We were doing what every patriot was
6 there doing: supporting their candidate. But we were going
7 to abide by whatever was decided upon.

8 Q. You were with Enrique Tarrio when you traveled for the
9 November rally. Is that right?

10 A. Yes.

11 Q. You were on the plane with him when you traveled to
12 Washington, D.C., for the November rally?

13 A. Yes, I was.

14 Q. And that was on a private plane. Is that right?

15 MR. HASSAN: Objection, your Honor. Relevance.

16 THE WITNESS: I believe so.

17 THE COURT: Overruled.

18 MR. McCULLOUGH: Ms. Rohde, if we can bring up
19 600-15. It's already in evidence.

20 BY MR. McCULLOUGH:

21 Q. Focusing your attention on the photograph, Mr. Mesa --

22 A. Yes.

23 Q. -- do you recognize that image?

24 A. I don't recognize the image, but that was where we were
25 at.

1 Q. And that's Enrique Tarrío?

2 A. Oh, correct. Yes.

3 Q. That's Enrique Tarrío on the private --

4 A. I recognize him. Yes.

5 Q. And you followed --

6 THE COURT REPORTER: I didn't get the complete
7 question.

8 BY MR. McCULLOUGH:

9 Q. That's the private plane that you were on?

10 A. Yes. I believe so. Yes.

11 Q. And that's Enrique Tarrío. Correct?

12 A. Yes, it is.

13 Q. And you followed Enrique Tarrío on Parler; is that
14 right?

15 A. I wasn't very active on Parler. So no, I did not. I
16 created an account, but I was rarely on that app.

17 Q. Mr. Mesa, you were -- your account followed Mr. Tarrío's
18 account on Parler --

19 MR. HASSAN: Objection, your Honor. Asked and
20 answered. Vague.

21 THE COURT: Overruled.

22 BY MR. McCULLOUGH:

23 Q. Mr. Mesa, your account followed Mr. Tarrío's on Parler.
24 Correct?

25 A. I don't remember that. I'm sorry.

1 Q. And Mr. Tarrio posted on November 13th to all his
2 followers, "Can of whoopass is en route to D.C." Correct?

3 MR. HASSAN: Judge, objection. He doesn't know
4 this page.

5 THE COURT: Sustained.

6 BY MR. McCULLOUGH:

7 Q. Mr. Mesa, you were on the plane with Mr. Tarrio. There
8 were discussions about whoopass on that plane. Correct?

9 A. No, there was not.

10 Q. There was no discussion about bringing a can of whoopass
11 to D.C.?

12 A. Absolutely --

13 MR. HASSAN: Objection, your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: Absolutely not. As a matter of
16 fact, Enrique was sitting alone in the plane. He didn't
17 speak to anyone. I think he was either sleeping or on a
18 laptop the whole time.

19 BY MR. McCULLOUGH:

20 Q. I'm going to show you Exhibit 1507.

21 MR. McCULLOUGH: Just for the witness, please.

22 (Whereupon, Government's Exhibit No. 1507 was
23 published to the witness.)

24 MR. McCULLOUGH: Pause it there.

25

1 BY MR. McCULLOUGH:

2 Q. Do you recognize this?

3 A. "This" meaning that symbol?

4 Q. Do you see this -- do you believe this is a video?

5 A. Yes. I mean, I see the video.

6 Q. Do you believe this is a video that was taken from the
7 inside of that plane?

8 A. Yes. It looks like it. Yes.

9 Q. A fair and accurate depiction of the events on that
10 plane?

11 A. Yes.

12 MR. McCULLOUGH: Move to admit 1507.

13 THE COURT: It will be admitted. And permission
14 to publish.

15 (Whereupon, Government's Exhibit No. 1507 was
16 entered into evidence.)

17 MR. HASSAN: Judge, the Government hasn't provided
18 this video, so we haven't had an opportunity to review it,
19 Judge.

20 (Whereupon, the following proceedings were had at
21 sidebar outside the presence of the jury:)

22 THE COURT: When you say they haven't provided it,
23 it's on their exhibit list. Correct?

24 MR. McCULLOUGH: This video has been provided in
25 discovery. It has also been provided to defense counsel

1 during the break.

2 THE COURT: He just said it was a fair and
3 accurate depiction of the events on the plane. So --

4 MR. HASSAN: Judge, I had -- I hadn't had an
5 opportunity to review it prior to the individual testifying
6 today. But I understand.

7 (Whereupon, the following proceedings were had in
8 open court:)

9 BY MR. McCULLOUGH:

10 Q. Mr. Mesa --

11 MR. McCULLOUGH: So move to admit 1507 and
12 permission to publish.

13 THE COURT: It will be admitted. And permission
14 to publish.

15 MR. McCULLOUGH: If we can take it back to the
16 beginning, Ms. Rohde, and just play it for a few seconds.

17 (Whereupon, segments of Government's Exhibit No.
18 1507 were published in open court.)

19 MR. McCULLOUGH: Stop.

20 BY MR. McCULLOUGH:

21 Q. Mr. Mesa, that is -- do you recognize that individual?

22 A. Yes, I do.

23 Q. And who is that?

24 A. That is Gilbert.

25 Q. And he's a Proud Boy -- part of the Vice City Proud

1 Boys?

2 A. Yes.

3 Q. And he was part of Enrique's group that was going on the
4 plane to D.C. in November?

5 A. Yes. Yes, he was.

6 MR. McCULLOUGH: Go ahead and play, Ms. Rohde.

7 (Whereupon, segments of Government's Exhibit No.
8 1507 were published in open court.)

9 MR. McCULLOUGH: Pause.

10 BY MR. McCULLOUGH:

11 Q. Mr. Mesa, who is that we have on the screen?

12 A. This is -- he went by the name Captain.

13 Q. And did you know him by any other names?

14 A. Gabriel.

15 Q. Gabriel?

16 A. Uh-huh.

17 Q. He was also on that plane, the private plane that
18 Mr. Tarrio was taking?

19 A. Yes, he was.

20 MR. McCULLOUGH: Play.

21 (Whereupon, segments of Government's Exhibit No.
22 1507 were published in open court.)

23 MR. McCULLOUGH: Pause right there.

24 BY MR. McCULLOUGH:

25 Q. In the red shirt, that's you?

1 A. Yes.

2 MR. McCULLOUGH: Go ahead and play, Ms. Rohde.

3 (Whereupon, segments of Government's Exhibit No.
4 1507 were published in open court.)

5 MR. McCULLOUGH: Pause there.

6 BY MR. McCULLOUGH:

7 Q. On the right-hand side here, do you recognize that
8 individual?

9 A. Yes, I do.

10 Q. Do you recognize -- do you know his name?

11 A. Oh, yes. Pedro.

12 Q. And how did he go on -- how was he known on Telegram?

13 A. I'm not sure. I don't remember his handle.

14 Q. Does Homelander sound familiar to you?

15 A. No.

16 Q. Q-tip sound familiar to you?

17 A. No.

18 MR. McCULLOUGH: Play, Ms. Rohde.

19 (Whereupon, segments of Government's Exhibit No.
20 1507 were published in open court.)

21 MR. McCULLOUGH: Pause there, Ms. Rohde.

22 BY MR. McCULLOUGH:

23 Q. That person that was just on the screen there, do you
24 recognize that individual?

25 A. Yes, I do.

1 Q. What's his name?

2 A. Chris.

3 Q. And do you remember his Telegram handle?

4 A. I think it's Little Chris.

5 Q. And Gabriel, Gilbert, or Captain -- sorry. Gabriel, or
6 Captain, Gilbert, Pedro, and Chris, they were all ultimately
7 members of the Ministry of Self-Defense. Is that right?

8 A. I'm not sure. I'm not sure who was a member -- I'm not
9 sure if they were members in particular.

10 Q. We'll move on.

11 Once you arrived in Washington, D.C., on November
12 14th, you were assigned initially to do security. Is that
13 right?

14 A. Yes.

15 Q. But then, after your security detail ended, you joined
16 other Proud Boys. Is that right?

17 A. When the detail ended, everybody had been -- went back
18 to their hotel rooms. And then we received a text that we
19 were in some way grouping up because of the reporting that
20 stated that people were being harmed. Yes.

21 Q. There were reports that people were being harmed in the
22 streets?

23 A. Yes. There was video.

24 Q. And you and the other Proud Boys rounded up?

25 A. Yes. Yes, we did.

1 Q. Put on gear?

2 A. Well, the same gear we were wearing in the daytime.

3 Q. And you went out into the streets to find Antifa?

4 A. Well, we specifically went out to make sure that more
5 people didn't get hurt. But yes. If we would have ran into
6 Antifa, there probably would have been a scuffle.

7 Q. Mr. Mesa, previously you described chasing Antifa for
8 approximately two hours. Is that correct?

9 A. I described?

10 Q. Mr. Mesa, you previously described chasing Antifa --
11 Proud Boys were running from corner to corner chasing
12 Antifa.

13 A. I don't remember saying that today at all. But the --
14 in the evening, after we located Antifa, the reason we were
15 in some way chasing them is because the cops were blocking
16 our access, not just from us getting to them, but from them
17 getting to us. So we were in some way trying to go around
18 streets and confront these individuals. Yeah.

19 Q. The police were attempting to stop you from getting to
20 Antifa?

21 A. I think, in particular, police was --

22 MR. HASSAN: Objection.

23 THE WITNESS: -- trying to stop them.

24 BY MR. McCULLOUGH:

25 Q. Mr. Mesa, the police were attempting to keep you from

1 Antifa. Correct?

2 A. No. There was more of them --

3 MR. HASSAN: Objection. Mischaracterizes the
4 evidence, Judge.

5 THE COURT: Overruled.

6 THE WITNESS: There was more of them than of us.
7 So I think the police were just as much trying to keep us
8 safe as keep them safe. And being that they were the one
9 with the weapons, I'm pretty sure the police were looking
10 out for us.

11 MR. McCULLOUGH: Ms. Rohde, if you can pull up
12 1500 just for the witness, please. Let's go to Page 82,
13 Line 6.

14 BY MR. McCULLOUGH:

15 Q. Does this refresh your recollection?

16 A. Yes.

17 MR. McCULLOUGH: Take it down.

18 For the record, I identified 82, Lines 2 through
19 9, for the witness.

20 BY MR. McCULLOUGH:

21 Q. Mr. Mesa, the Proud Boys had sought to get at Antifa for
22 approximately two hours?

23 A. We were both trying to get at each other. And we were
24 trying to avoid the police. But they wouldn't let us at
25 each other.

1 Q. And the Proud Boys finally got through the police line?

2 A. Yes, sir.

3 Q. And the Proud Boys engaged in approximately -- what you
4 described as approximately a three-minute fight?

5 A. Correct.

6 Q. That was with multiple members of the Proud Boys?

7 A. No. Well, multiple in the sense of perhaps 25 out of a
8 group of maybe 150.

9 Q. 150 --

10 MS. HERNANDEZ: Objection. Relevance, your Honor,
11 as to Mr. Rehl.

12 THE COURT: Overruled.

13 BY MR. McCULLOUGH:

14 Q. Approximately 125 Proud Boys were there?

15 A. It was a -- the vast majority of Proud Boys did not
16 engage in violence that night.

17 Q. And, Mr. Mesa, after returning from D.C., after the
18 November rally, there were discussions among the Vice City
19 Proud Boys. Correct?

20 A. Sure. Yes.

21 Q. You were part of a Telegram group with the other Vice
22 City Proud Boys. Correct?

23 A. I was in many different groups with them. Yes.

24 Q. And the Vice City Proud Boys discussed the violence that
25 had taken place. Correct?

1 A. Yes.

2 Q. And the Vice City Proud Boys celebrated the violence
3 that had taken place. Correct?

4 MS. HERNANDEZ: Objection. Hearsay.

5 THE COURT: Overruled.

6 THE WITNESS: There was a fair bit of gloating.
7 Yes.

8 BY MR. McCULLOUGH:

9 Q. So there was -- you said a fair bit of emotion. Is that
10 right?

11 A. Of gloating. Of -- they were proud to confront these
12 individuals. Yes.

13 Q. The Proud Boys were proud of the violence that had taken
14 place that night?

15 A. Well, they were proud to inflict a similar type of
16 violence on the individuals that were inflicting violence on
17 other Americans. Yes.

18 Q. And that was in a Telegram group that was among the Vice
19 City Proud Boys. Correct?

20 A. I don't remember exactly what group it was in. But
21 possibly.

22 Q. And that includes Gilbert Fonticoba, Gabriel Garcia,
23 Chris Barsenis, Enrique Tarrío. Correct?

24 MR. HASSAN: Judge, compound. Objection.

25 THE WITNESS: I assume so.

1 THE COURT: Sustained as to compound.

2 BY MR. McCULLOUGH:

3 Q. That includes Captain, or Gabriel García. Correct?

4 A. I believe so.

5 Q. He was a member of the Vice City Proud Boys?

6 A. Yes, he was.

7 Q. And that includes Gilbert?

8 A. Yes.

9 Q. That includes Chris Barsenis?

10 A. We were all in the same chat. Everybody in the chapter
11 was in the chapter main chat, so I assume that's where the
12 discussion may have taken place.

13 Q. And everyone was gloating in that chat. Correct?

14 A. Well, not everyone was involved in the violence. I
15 would say, from the Miami crowd, I think you had a total of
16 six individuals, six or seven individuals, that went. So
17 there was a lot more than six or seven individuals of the
18 South Florida chapter.

19 So yes, amongst those seven individuals, probably
20 two or three of them were publicizing what they did to the
21 other Proud Boys who weren't there.

22 Q. And that was celebrated in that Telegram chat. Correct?

23 A. Oh, when you have a bunch of guys together, I mean,
24 celebrating some sort of achievement, yes. I mean, you're
25 going to get a lot of locker room talk.

1 Q. And you were part of a group that returned to
2 Washington, D.C., in December of 2020. Correct?

3 A. Yes, sir.

4 Q. And there were discussions among Vice City as to how to
5 prepare to return to Washington, D.C.?

6 A. Yes.

7 Q. A discussion of programming radios?

8 A. Yes, there was.

9 Q. Discussion of protective gear?

10 A. Yes.

11 Q. And you described two members of the Proud Boys that got
12 stabbed that evening. Is that right?

13 A. Yes.

14 Q. And you were present when that took place. Correct?

15 A. I was around 50 yards away.

16 Q. And -- so the Proud Boys were -- you understood that the
17 Proud Boys were standing in the street?

18 A. They were standing near Harry's. Yes.

19 Q. And the Proud Boys were beginning to get a little bored?

20 A. Absolutely.

21 Q. And the Proud Boys were beginning to get a little
22 paranoid?

23 A. Yes. There was a report that Antifa sent agents in
24 there to stab Proud Boys and, in particular, to attack
25 Mr. Tarrio.

1 Q. So you're hearing reports that Antifa was going to
2 attack Proud Boys?

3 A. Yes.

4 Q. The Proud Boys were beginning to get very paranoid.
5 Right?

6 A. Yes. I would say that.

7 Q. And there was an individual walking down the street.
8 Correct?

9 A. In -- can you elaborate a little bit? I'm sorry.

10 Q. You understood that an individual began to walk down the
11 street, and he was suspected of being Antifa?

12 A. There was a few people that were suspected of being
13 Antifa. But there were two stabbing events. So you have to
14 be more specific. I'm familiar that somebody got stabbed.
15 I myself didn't see the stabbing. But yes, I mean, that's
16 the understanding, that each stabbing had at least one
17 individual carrying a knife.

18 Q. You described that there was an individual walking down
19 the street and he felt threatened by the Proud Boys?

20 MR. HASSAN: Objection, Judge. Mischaracterizes
21 the evidence.

22 THE COURT: The witness can answer.

23 MR. HASSAN: He's unaware, Judge.

24 THE COURT: I'm sorry?

25 MR. HASSAN: Judge, he earlier stated that he was

1 25 yards away. He didn't see the incident.

2 THE COURT: The witness can --

3 THE WITNESS: 50 yards away.

4 THE COURT: The witness can answer the question if
5 he's able.

6 THE WITNESS: So I didn't see with my own eyes the
7 incident. Okay? But I saw there being alcohol misused.
8 And this is why we took measures that only those that would
9 properly represent the club next time around should be
10 allowed to attend such an event. But yes, they were bored
11 and stabbings occurred.

12 BY MR. McCULLOUGH:

13 Q. The Proud Boys were bored and stabbings occurred?

14 A. Well, that's not necessarily related.

15 Q. They --

16 A. Yes, they may have been bored. Okay? But that had
17 nothing had to do -- or that didn't mean they deserved to be
18 stabbed.

19 Q. Mr. Mesa, I'm going to show you Exhibit 1500, Page 93,
20 Lines 14 through 25.

21 MR. McCULLOUGH: Just for the witness, please.

22 THE COURTROOM DEPUTY: I didn't hear the number.

23 MR. McCULLOUGH: 1500.

24 THE COURTROOM DEPUTY: Okay.

25 MR. McCULLOUGH: Not in evidence.

1 93, Lines 14 through 25.

2 MR. HASSAN: Judge, if the witness can have the
3 opportunity to review the document, Judge, in its entirety.

4 THE COURT: He can ask that --

5 What's the question, Mr. McCullough?

6 BY MR. McCULLOUGH:

7 Q. I'm just going to give you an opportunity to read Lines
8 14 through 25.

9 A. I read it.

10 Q. Did you have a chance to read that?

11 A. Do you want me to read it out loud? I read it.

12 Q. Mr. Mesa, the Proud Boys confronted him. Is that right?

13 A. That's my understanding. Yes.

14 Q. And he was attempting to defend himself?

15 A. That's my understanding.

16 Q. And he felt threatened enough that he pulled out a
17 knife?

18 A. I didn't see the incident. I was 50 yards away, like I
19 just said.

20 MR. HASSAN: Objection. Speculation. The witness
21 did not see the incident.

22 THE COURT: Sustained.

23 BY MR. McCULLOUGH:

24 Q. And you knew -- you understood that the individual who
25 had conducted any kind of stabbing --

1 MR. HASSAN: Objection, Judge. Speculation.

2 THE COURT: Complete the question and then I'll
3 hear the objection.

4 BY MR. McCULLOUGH:

5 Q. It was your understanding that the person who had done
6 the stabbing had been confronted by the Proud Boys.
7 Correct?

8 MR. HASSAN: Objection, your Honor. Speculation.

9 THE COURT: Sustained.

10 MR. McCULLOUGH: At this point, your Honor, I
11 would move 93, Lines 20 through 94 -- Page 94, to Line 2.

12 MR. HASSAN: Judge -- I would object, Judge, once
13 again.

14 THE COURT: I'm going to -- Mr. McCullough, why
15 don't you move on. I'm going to not admit that at the
16 moment, given the objections I've already sustained to
17 that -- those questions.

18 Do you want to --

19 MR. McCULLOUGH: I'm fine, Judge.

20 BY MR. McCULLOUGH:

21 Q. And based on what you had seen, you didn't understand
22 that individual to actually be Antifa. Correct?

23 MS. HERNANDEZ: Objection. Relevance.

24 MR. HASSAN: Speculation. Judge, if we can be
25 heard.

1 THE COURT: It's sustained as to speculation.

2 MR. HASSAN: Judge, may we be heard on the phones?

3 THE COURT: It's sustained as to -- unless you
4 want to move on, Mr. McCullough.

5 (Whereupon, the following proceedings were had at
6 sidebar outside the presence of the jury:)

7 MR. McCULLOUGH: Your Honor, he previously
8 testified as to having a basis of knowledge. This is his
9 previous testimony as to having a basis of knowledge.

10 THE COURT: You're going to have to find out what
11 that basis of knowledge is, because he wasn't there. So I
12 guess we are just left with no reason to understand, other
13 than his speculation, about what the person -- what the
14 person's affiliation was. Isn't that correct?

15 MR. McCULLOUGH: Well, I actually disagree, your
16 Honor. I think his -- he previously testified to having a
17 basis and he testified as to having firsthand knowledge of
18 this event. I mean, this is what he was describing
19 previously. So now he's describing that he doesn't -- he
20 actually wasn't there, didn't see it.

21 THE COURT: But I don't see in the passage you're
22 pointing out what the factual basis is for that conclusion.
23 In other words, counsel, this is a deposition. People
24 didn't have to -- they could just ask anything.

25 My point is, if -- you can ask him now, Well, what

1 was your basis for believing this? Did you come to a --
2 what his foundation for believing that is. Maybe you can
3 lay the foundation for it. But this is just -- there's
4 nothing in what you want to admit that explains that, is
5 there?

6 MR. McCULLOUGH: I'm happy to ask that question,
7 your Honor.

8 THE COURT: In particular because he's already
9 said he was 25 feet away.

10 Mr. Pattis, what is your --

11 MR. PATTIS: My objection is it's a deposition and
12 in deposition -- I realize it's in front of the House
13 Committee, but these were politically loose procedures. But
14 in a deposition, parties can ask anything that might yield
15 discoverable information. It's not in and of itself
16 admissible.

17 THE COURT: Why did you need to be heard,
18 Mr. Pattis? I mean, I --

19 MR. PATTIS: I'm sorry.

20 MS. HERNANDEZ: Your Honor --

21 THE COURT: Mr. McCullough, just -- you have to
22 lay the foundation for why he would have come to this
23 conclusion.

24 MR. McCULLOUGH: All right. Understood.

25 (Whereupon, the following proceedings were had in

1 open court:)

2 BY MR. McCULLOUGH:

3 Q. Mr. Mesa, you were standing in the street that evening
4 when this happened?

5 A. Yes, I was.

6 Q. And when the commotion took place, you focused your
7 attention on it. Is that right?

8 A. Can you repeat the question? I'm sorry.

9 Q. When the commotion took place, you focused your
10 attention on it. Is that right?

11 A. Not necessarily. There was so much commotion that I
12 didn't find out about the stabbing until after the fact.

13 Q. And who did you find out about the stabbing from?

14 MR. HASSAN: Objection, your Honor. Speculation
15 and hearsay.

16 THE COURT: Overruled.

17 THE WITNESS: People were saying that someone got
18 stabbed.

19 BY MR. McCULLOUGH:

20 Q. And --

21 A. I'm not sure who told me in particular.

22 Q. The information that you just reviewed, how did you come
23 to that understanding?

24 MR. HASSAN: Objection, Judge.

25 MR. McCULLOUGH: "How"?

1 THE COURT: How?

2 THE WITNESS: Somebody told me that there was
3 someone stabbed, and I saw someone -- I saw the ambulances
4 treating the stabbed victim.

5 BY MR. McCULLOUGH:

6 Q. And how did you come to learn any of the information
7 about --

8 MR. HASSAN: Judge --

9 BY MR. McCULLOUGH:

10 Q. -- the circumstances --

11 MR. HASSAN: -- I'm going --

12 THE COURT: He can -- sir, just wait until the
13 question is asked.

14 Mr. McCullough.

15 BY MR. McCULLOUGH:

16 Q. How did you come to learn about the circumstances
17 surrounding that fight?

18 MR. HASSAN: Objection, Judge. Hearsay.

19 THE COURT: He's asking how. It's overruled.

20 THE WITNESS: From what people were telling me
21 there --

22 MR. HASSAN: Objection.

23 THE WITNESS: -- of what actually occurred.

24 THE COURT: Let him answer the question. It's not
25 an objectionable question to how.

1 Mr. McCullough.

2 BY MR. McCULLOUGH:

3 Q. From who did you learn that?

4 A. I don't remember who in particular.

5 Q. Was it another Proud Boy?

6 A. Most likely, yes.

7 Q. And, Mr. Mesa, after the December rally, you were
8 selected for the Ministry of Self-Defense. Is that right?

9 A. Yes.

10 Q. And you were invited into the Ministry of Self-Defense.
11 Is that right?

12 A. Yes.

13 Q. And you were invited into a vetting chat. Is that
14 right?

15 A. A vetting chat? No, I was not.

16 Q. Showing you Exhibit 502-2 -- I'm going to show you
17 502-1.

18 You were invited into a vetting chat. Is that
19 right?

20 A. Where do you see vetting chat? It says --

21 Q. Were you invited into a chat where you had to complete
22 an application for the MOSD?

23 A. It says: Welcome. Congratulations. You have been
24 selected to join a new chapter. Please fill out the vetting
25 form and send a screenshot of your end result to proceed.

1 Do not forget to screenshot after your application is
2 complete. Do not tell anyone, even your other chapter
3 members, about this group. It will be grounds for instant
4 removal.

5 I don't see where there was an actual vetting
6 chat.

7 Q. Mr. Mesa, prior to filling out the form and being
8 provided the link to the form, you were told, Do not tell
9 anyone, even other chapter members, about this group.
10 Correct?

11 A. You mean the group that eventually became MOSD?

12 Q. Correct.

13 A. Okay. Yeah, but that wasn't the vetting chat. Because
14 I'm -- I'm just not aware of some vetting chat.

15 Q. Were you told, prior to applying for the MOSD, not to
16 tell anyone, even other chapter members, about the group?

17 A. Yes.

18 Q. And that was something that you were told repeatedly
19 about MOSD. Correct?

20 A. I don't remember that it was repeated. Most of these
21 things, you don't have to repeat it. We're not supposed to
22 share information with other Proud Boys of what occurs
23 within our specific chat rooms of our local chapter. So
24 it's almost common knowledge that they tell you once, and
25 you shouldn't do it. Yeah.

1 Q. Mr. Mesa, you were told repeatedly within MOSD chat
2 groups that you were not to share any information about the
3 MOSD. Correct?

4 MR. HASSAN: Objection, Judge. Asked and
5 answered.

6 THE COURT: Overruled.

7 THE WITNESS: I believe, when we entered the chat,
8 it stated it a second time as one of the rules of this group
9 that we shouldn't share information that's within this
10 group. But no, I in particular wasn't told repeatedly,
11 Don't share information in this group.

12 BY MR. McCULLOUGH:

13 Q. I'm going to show you what was admitted as Tarrio 141.

14 MR. McCULLOUGH: Ms. Rohde, if we can focus in on
15 the section right there, Code of Conduct.

16 BY MR. McCULLOUGH:

17 Q. Part of the application form: Everything that is spoken
18 within this chapter will remain private. Screenshots or
19 forwarding of messages are grounds for instant removal.

20 Do you agree with this?

21 A. Yes.

22 Q. Do you see where it says that?

23 A. Yes, I do.

24 Q. Sharing information outside of the chat was grounds for
25 instant removal. Correct?

1 A. Correct.

2 Q. Showing you 503-1, previously in evidence.

3 This is another Ministry of Self-Defense chat.

4 Correct?

5 A. I believe so. Yes.

6 Q. And the image associated with this chat was the little
7 man with the gas mask on. Do you remember that?

8 A. I don't remember that. But it may have been.

9 Q. And showing you --

10 MR. McCULLOUGH: If you can scroll down,

11 Ms. Rohde.

12 BY MR. McCULLOUGH:

13 Q. -- the message at the bottom, Item No. 3. Again,
14 Enrique Tarrío says -- Item No. 3 there. Can you read that
15 out loud for the jury, please.

16 A. No. 3? It says, Welcome -- welcome to the Ministry of
17 Self-Defense --

18 Q. Item No. 3, please.

19 A. Screenshots or the sharing of information outside of
20 this chat is instant disavowal out of the chapter. No
21 exceptions. What is said here will stay.

22 Q. Mr. Mesa, you were asked about participating in a video
23 chat for the MOSD. Correct?

24 A. Yes.

25 Q. Now, you had been repeatedly told to keep everything

1 secret about the chat. Correct?

2 A. Correct.

3 Q. And you understood that Mr. Tarrio was a secretive
4 person?

5 A. Not necessarily. The Proud Boys is a private
6 organization. It's a fraternity. I mean, it's not about
7 his personal -- you know, in terms of secretive for himself,
8 I wouldn't say that. He's quite open.

9 Q. And you've been told not to share any information about
10 the Ministry of Self-Defense. Correct?

11 A. Yes.

12 MR. HASSAN: Judge, objection. Asked and
13 answered.

14 BY MR. McCULLOUGH:

15 Q. Showing you 503-25 --

16 THE COURT: Overruled on that objection for now.

17 BY MR. McCULLOUGH:

18 Q. -- Mr. Mesa, you were invited to join a video chat with
19 Ministry of Self-Defense members?

20 A. Yes.

21 Q. That's where you would learn more about the chapter?
22 That's what you were told?

23 A. Yes.

24 Q. And the link to that chapter was on to -- YouTube.
25 Correct?

1 A. Not necessarily. Not everyone was welcomed into the
2 StreamYard portion of it. The StreamYard were for the
3 actual participants. And the YouTube portion was just for
4 people to watch who weren't welcomed into the StreamYard.

5 Q. Everything about -- everything that took place during
6 that discussion was streamed over the internet. Correct?

7 A. Yes, it was.

8 Q. That was after you had been repeatedly admonished to
9 keep discussions private. Correct?

10 A. Yes.

11 Q. Now, the continuing discussions in the Ministry of
12 Self-Defense, those were private. Correct?

13 A. Well, that YouTube link was also private, by the way.
14 It wasn't available for people outside of the club. Only
15 people with the link could access that video.

16 Q. Mr. Mesa, are you familiar with the -- have you visited
17 this link since? You watched this video. Correct?

18 A. I saw it via StreamYard because I was an active
19 participant in -- in making the video. But this wasn't
20 available to be searched. This was an exclusive link that
21 only people who had this link -- in other words, it was
22 unlisted. So even what occurred in this video was
23 considered confidential.

24 Q. It was broadcast on YouTube. Correct?

25 A. Correct. But YouTube has a private segment of it that

1 you can only share links without it actually appearing in
2 the live section. I'm an IT guy. This is what I do. It's
3 not open. It's not searchable. I mean, some kid, like,
4 trying to watch a Smurfs cartoon is not going to
5 accidentally stumble across a Proud Boy meeting on YouTube.

6 Q. The video was broadcast on YouTube. Correct?

7 A. Yes.

8 Q. And in continuing discussions within the Ministry of
9 Self-Defense, there were discussions of violence. Correct?

10 A. Can you repeat the question? I'm sorry.

11 Q. This Telegram group that you were involved in, within
12 the Telegram group, after members were invited, there was
13 discussion of violence. Correct?

14 A. Sure. Well, they spoke about a lot of things. Yes.

15 Q. The same kind of celebration of violence you had seen in
16 the Vice City Proud Boys chat. Correct?

17 A. Sure. Yes.

18 Q. And the discussion about violence continued unabated in
19 these chats. Correct?

20 A. Unabated by?

21 Q. No one told anybody to stop talking about violence.
22 Correct?

23 A. Well, you have a bunch of guys together. All right? I
24 mean, guys who have -- who at this point already had put
25 their lives on the line to help Americans, innocent people.

1 Yes, you're going to have a bunch of what I would call
2 locker room talk. Yes.

3 Q. Locker room talk about violence. Correct?

4 A. Oh, yeah. Sure. More reactionary. Because again, as a
5 rule, we don't target these individuals. Only as a
6 reactionary measure do we stand in between harm and the
7 average citizen.

8 Q. Showing you 503-17. This is a discussion among members
9 of the Ministry of Self-Defense. Correct?

10 A. I'm not familiar with these chats. I was in the group,
11 but I was not someone who frequented Telegram much. So I
12 can't verify if this was actually there or not.

13 Q. You know there was discussion about violence. Correct?

14 A. Oh, sure. Yes.

15 Q. 2:17:12, El Chapo saying, "This could break some legs.
16 Just saying."

17 MR. HASSAN: Judge, outside the knowledge of this
18 witness.

19 THE COURT: Sustained.

20 BY MR. McCULLOUGH:

21 Q. Showing you 503-23. This is a discussion by NH Prez
22 Warlock --

23 MR. HASSAN: Judge, I don't know if there's a
24 question, but --

25 THE COURT: Well, you may proceed, Mr. McCullough.

1 BY MR. McCULLOUGH:

2 Q. -- who says, "I want to kick ass when fucking it's time
3 to kick ass."

4 Do you see where it says that?

5 A. I do. I would consider this hyperbole.

6 Q. Mr. Mesa, you understood that the Proud Boys engaged in
7 violent acts. Correct?

8 A. In the past, yes.

9 Q. And when you engage in a violent act, that actually
10 takes place in real life. Right?

11 A. Oh, absolutely. I wouldn't separate this from the same
12 type of talk you would hear in a football locker room when
13 they'll say, We're going to kick the other team's ass. It's
14 just hyperbole. As a rule, we never targeted people. We
15 never went after them. It was always reactionary.

16 But yes, you have a bunch of tough guys feeling
17 like heroes because they just stood up for the innocent.
18 Yes, you're going to have a lot of poetic, symbolic,
19 hyperbolic statements in what I would consider our version
20 of the locker room, which is the chatroom.

21 Q. Do you think being on the other end of violence feels
22 different when it's on the -- when it's hyperbole?

23 A. Well --

24 MR. JAUREGUI: Objection, Judge. Argumentative.

25 THE COURT: Can you repeat the question,

1 Mr. McCullough?

2 BY MR. McCULLOUGH:

3 Q. If you're on the receiving end of violence, do you feel
4 better if it's just hyperbole?

5 MR. SMITH: Objection. Vague.

6 THE COURT: Sustained.

7 MR. McCULLOUGH: Your Honor, if we could go to the
8 phones here.

9 (Whereupon, the following proceedings were had at
10 sidebar outside the presence of the jury:)

11 MR. McCULLOUGH: Your Honor, there were two
12 exhibits related to violence with the Ministry of
13 Self-Defense that I'd like to show this witness. Again, I
14 mean, the discussion of violence within this chat was
15 rampant. He is a participant in this chat.

16 THE COURT: Mr. McCullough, I think you just have
17 to ask him, Do you remember this particular one? And if he
18 says, No, I don't remember it, I don't see what the value of
19 further questioning about it is. I mean, you've asked him
20 the question, Do you remember there was violence there? I
21 think you can ask him the question. But if he's, like, I
22 don't remember that particular thing, I'm not sure what the
23 value is.

24 MR. HASSAN: Judge, the concern is --

25 THE COURT: Just let Mr. McCullough answer.

1 MR. McCULLOUGH: I think, look, the value is that,
2 you know, he's up here as a witness basically saying the
3 Ministry of Self-Defense was all about defending my
4 brothers.

5 I think it actually -- it does actually
6 demonstrate impeachment as to his basis for that knowledge.
7 Right? He is basically saying, Yeah, I believed that this
8 was all about defending my brothers.

9 But then if the jury sees him basically say, I
10 didn't see this, I didn't see this, I didn't see this, I
11 think it's incredibly relevant for the jury to assess that
12 and say, Oh, okay. I mean, if he hadn't answered and said,
13 I know what this is about --

14 THE COURT: Mr. McCullough, keep your voice down.
15 I could hear you on that one.

16 MR. McCULLOUGH: Sorry.

17 THE COURT: Mr. -- whoever -- I think --
18 Mr. Hassan, what's your response to that?

19 MR. HASSAN: Judge, my concern is that
20 Mr. McCullough is going to be presenting this to the witness
21 and everyone is going to be broadcasting it. Even if he
22 doesn't recognize it, it's already been broadcasted to the
23 witness itself and to the jury.

24 So, number one, even if it's objected -- even if
25 we objected and the objection is sustained, then it's

1 already going to be broadcast to the jury itself.

2 And then, number two, Judge, the witness has
3 previously said his statements as far as violence and his
4 position on violence.

5 THE COURT: Mr. McCullough, the other two you're
6 talking about, they're in evidence already?

7 MR. McCULLOUGH: There are not in evidence, your
8 Honor. But again, I just think -- your Honor, he's
9 basically said, Look, I didn't believe there was any
10 violence. I thought this was about defending my brothers.

11 And if the jury basically says, Okay, look, in
12 fact, it's not just a few isolated snippets of violence that
13 they may have said; it's rampant in the discussions that he
14 joins, I think the jury gets to assess that, your Honor.

15 THE COURT: Well, why can't they assess it through
16 all the evidence that you've already admitted?

17 MR. McCULLOUGH: Well, I've shown two chats, your
18 Honor. I'm just looking to show two more with videos of
19 these -- of violent confrontations.

20 Your Honor --

21 THE COURT: Mr. McCullough, I hear you. But my
22 suspicion is, I excluded them for a reason -- or you
23 attempted to introduce them for a reason.

24 And I don't think the -- let's put it this way: I
25 don't think that the value of impeaching him is -- gets you

1 over the 403 hump, is my point. There's -- I've seen all
2 the evidence you had in there that you already have
3 admitted. If you want to ask him, Do you remember this, and
4 if he says, No, you can say, Well -- essentially, you can
5 imply, Well, how could this have been defensive if this
6 particularly -- if you saw this particular thing?

7 I think that is all fair.

8 Or if you -- if this was part of the MOSD for the
9 reasons you're laying out.

10 If you want to -- I mean, if you want to take a
11 break and show me what you're talking about, but I have a
12 sneaking suspicion that for the reasons that we've already
13 been -- the road we've already been down is that just
14 because he gave the testimony he did doesn't make what you
15 want to do with these additional exhibits proper under 403.

16 MR. McCULLOUGH: Your Honor -- your Honor, I mean,
17 I respectfully -- respectfully -- and I mean this -- I think
18 that that is not correct. The reason is because this man
19 just sat up here, wrapped himself in the rabbinical cloth
20 and says, your Honor -- the jury -- you know, clutching
21 pearls, I didn't think that there was any, you know -- this
22 wasn't about violence; this was about getting these men home
23 safe to their families.

24 Your Honor, I mean, I can't think -- that's not a
25 door they opened; they kicked it open, your Honor.

1 THE COURT: Mr. McCullough, let me put it this
2 way: How much more do you have apart from these other two
3 things?

4 MR. McCULLOUGH: Oh, plenty, your Honor.

5 THE COURT: So, look. If you have plenty, I'm
6 happy to have you show me what you're talking about before
7 or after lunch. We'll go from there. Because, you know --
8 look, I've told both sides that, you know, I appreciate you
9 not just launching yourself into it.

10 MR. McCULLOUGH: Fair enough.

11 THE COURT: So let's just put it aside and I'll
12 take it up -- if you want to identify the particular
13 exhibits over lunch, I'll look at it then.

14 MR. McCULLOUGH: Yeah. Your Honor, that's
15 precisely why I did this. I didn't just throw it out there.

16 THE COURT: I appreciate it. But I'm just saying,
17 let's at least table it for now.

18 For the record, for all the Defendants listening,
19 I'm skeptical.

20 Let's proceed.

21 (Whereupon, the following proceedings were had in
22 open court:)

23 BY MR. McCULLOUGH:

24 Q. Mr. Mesa, within the Telegram chats for the Ministry of
25 Self-Defense, there were discussions of the Capitol.

1 Correct?

2 A. About the Capitol, yes.

3 Q. And you knew that some of those people in the Ministry
4 of Self-Defense were Proud Boys from the Vice City chapter.

5 Correct?

6 A. Yes.

7 MR. McCULLOUGH: Ms. Rohde, if we can have up
8 507-10.

9 BY MR. McCULLOUGH:

10 Q. Mr. Mesa, this is a chat within the Ministry of
11 Self-Defense. Correct.

12 A. I believe so. Yes.

13 Q. And look at that first chat, Gabriel PB, "1776 flag
14 flying over the White House last night."

15 That's Gabriel from Vice City. Correct?

16 A. I was kicked out of the MOSD chat, I think, by this
17 time, which means that I didn't have access to what was
18 going on on the 3rd, I believe.

19 Q. Mr. Mesa, you believe that -- you're telling this jury
20 that you believe that you were kicked out by January 3rd?

21 A. I'm pretty sure that, yeah, two days before -- well,
22 three days before January 6th, I don't think -- for sure I
23 wasn't there enough to validate this photo. But I know
24 that, towards the end of this chat, getting closer to
25 January 6th, I wasn't part of the chat. So I can't honestly

1 say if this is a true post or not. I just don't remember
2 it.

3 But I was kicked out of the chat.

4 Q. You were kicked out of the Ministry of Self-Defense
5 chat?

6 A. Correct.

7 Q. So you -- your testimony before this jury is you have no
8 idea what people were saying in the Ministry of Self-Defense
9 chats?

10 A. After I got kicked out.

11 Q. And you believe you got kicked out prior to January 3rd?

12 A. I don't remember exactly when I was kicked out. I'm
13 pretty sure -- you must have the evidence of when -- the
14 precise time of when I was kicked out. But I don't remember
15 exactly when I was kicked out.

16 Q. Okay. And so your testimony as to the purpose of the
17 Ministry of Self-Defense is informed by not reading the
18 earlier chats and then being kicked out of the Ministry of
19 Self-Defense later. Correct?

20 MR. SMITH: Objection. Vague.

21 THE COURT: Overruled.

22 THE WITNESS: I was part of all the video
23 meetings. I read what I signed before I signed it. And
24 that's what transpired. I was involved --

25

1 BY MR. McCULLOUGH:

2 Q. Mr. Mesa, so --

3 MR. HASSAN: Judge -- let the witness answer the
4 question, Judge. He's answering the question.

5 THE COURT: You may complete your answer, sir.

6 THE WITNESS: Thank you.

7 I was involved in, in some way, policing this chat
8 to make sure that there was no inappropriate statements
9 made. But like I do in most of the chats, if I see things
10 that are unbecoming of a conservative to utter in one of
11 these chats, I would call it out. And this is why I was
12 kicked out. But that doesn't mean that I'm an active
13 Telegram user.

14 However, in all the events, i.e. videoconferences,
15 I was part of that. And that really discussed the purpose
16 of not just MOSD, but what we were to do when we landed in
17 the Capitol.

18 BY MR. McCULLOUGH:

19 Q. Mr. Mesa, your understanding of what the MOSD was about
20 was based on -- your testimony before this jury is that your
21 understanding of what the Ministry of Self-Defense was about
22 is based on the application form. Correct?

23 A. Correct.

24 Q. And it's based on your participation in a video chat.
25 Correct?

1 A. Not a video -- okay. Two YouTube StreamYard videos as
2 well as the instructions when --

3 THE COURT: Sir, just answer the question posed.
4 All right?

5 THE WITNESS: Yes.

6 In addition to, when they would post something in
7 the chat -- if Enrique would post something, everyone would
8 get a message. But if people would comment, just like
9 frivolous talk, then, that, people wouldn't be aware of
10 unless they scrolled through the actual chat.

11 BY MR. McCULLOUGH:

12 Q. Mr. Mesa, your understanding of the purpose of the
13 Ministry of Self-Defense was based on the application and
14 the video chat that you participated in. Is that right?

15 MR. HASSAN: Objection, your Honor. Asked and
16 answered.

17 THE COURT: Overruled.

18 THE WITNESS: Not just on those two things. Every
19 time leadership in that chat posted anything, or pinned it
20 to that chat, then everybody knew this was something worth
21 reading. And that's whenever Enrique would post something
22 or some other admin.

23 But when people would just comment, the average --
24 average person does not have time to scroll through hundreds
25 of texts. This is why they have the notion of pinning or,

1 in some way, notifying all the members when admin actually
2 spoke. So this is why I'm not familiar with every single
3 statement that appears there that Enrique didn't say.

4 BY MR. McCULLOUGH:

5 Q. And so your testimony to this jury is that you just
6 didn't see this one. Correct?

7 A. Correct.

8 Q. And your testimony to the jury is that you didn't see
9 this one because you were kicked out of the chat prior to
10 this. Right?

11 A. I don't remember when I was kicked out of the chat. But
12 I know before January 6th I was kicked out. So there are
13 some statements in here that I can't validate because I just
14 didn't see them.

15 Q. You're sure you were kicked out prior to January 6th.
16 Correct?

17 A. I'm not --

18 MR. HASSAN: Objection, your Honor.

19 THE WITNESS: Before January 6th, I'm positive.

20 BY MR. McCULLOUGH:

21 Q. You're positive you were kicked out before January 6th?

22 A. Absolutely.

23 Q. Showing you 507-11, taking you down to the bottom, this
24 exchange between BrotherHunter Jake Phillips and
25 Deplorable51 -- I'll give you a moment to look at that.

1 "So are the normies and other attendees going to
2 push through the police lines and storm the Capitol
3 Buildings?"

4 Do you see where it says that?

5 A. Yes.

6 Q. Your testimony to this jury is you didn't see that?

7 A. I'm sorry?

8 Q. Your testimony to this jury is that you didn't see that?

9 A. What date was this posted?

10 MR. McCULLOUGH: If we can go to the top,
11 Ms. Rohde.

12 THE WITNESS: No. I've never seen that.

13 BY MR. McCULLOUGH:

14 Q. Showing you 507-16. This is a post on January 4th.

15 "What would they do if 1 million patriots stormed and took
16 the Capitol Building? Shoot into the crowd? I think not."

17 Do you see where it says that?

18 A. I see it.

19 Q. Your testimony before this jury is that you didn't see
20 that message either?

21 A. I did not see that message.

22 Q. Now, your participation in this chat, Mr. Mesa -- you
23 said that you policed the chat. Is that right?

24 A. That's what I did. I wasn't brought into the chat to do
25 that. Yes.

1 Q. What you did was police the chat. Correct?

2 A. Correct.

3 Q. And one of the things that you policed the chat for were
4 antisemitic comments?

5 A. Not just antisemitic comments --

6 THE COURT REPORTER: I'm sorry. Can you say that
7 again?

8 BY MR. McCULLOUGH:

9 Q. Antisemitic comments.

10 One of the things that you policed the chat for
11 were antisemitic comments?

12 A. Yes.

13 Q. And another thing that you policed the chat for were
14 racist comments?

15 A. Correct.

16 Q. And I think you testified -- you began an answer with
17 Mr. Hassan about Mr. Tarrío and his responses to some of
18 that. Correct?

19 A. Correct.

20 Q. You took these concerns to Mr. Tarrío. Correct?

21 A. Yes, I did.

22 Q. And you told him that you disagreed with some of these
23 comments. Correct?

24 A. Correct.

25 Q. And he did not stop any of these comments. Correct?

1 A. Correct.

2 Q. And you believed that that was in direct violation of
3 the bylaws. Correct?

4 A. The comments were in direct violation. He sympathized
5 with my sentiments. However, he wanted to deal with this
6 after -- after the event.

7 Q. And your comment was that people were saying things that
8 seemed to be complete- -- directly counter to what the
9 bylaws said. Correct?

10 A. Correct.

11 Q. Because the bylaws say that you're not supposed to be
12 racist?

13 A. Correct.

14 Q. And the bylaws say that you're not supposed to be
15 antisemitic?

16 A. Correct.

17 MS. HERNANDEZ: Objection, your Honor. Relevance.

18 THE COURT: Overruled.

19 BY MR. McCULLOUGH:

20 Q. But that's not what you experienced in the MOSD chats,
21 is it?

22 MS. HERNANDEZ: Objection. Relevance, your Honor.

23 THE COURT: Just go to the phones very briefly.

24 (Whereupon, the following proceedings were had at
25 sidebar outside the presence of the jury:)

1 MS. HERNANDEZ: Your Honor, whether certain
2 people --

3 THE COURT: Ms. Hernández, let me say this: It
4 seems to me that the question of him getting kicked out and
5 the circumstances surrounding that seem quite relevant.

6 Now, I understand the particular reason here -- I
7 mean, it is what it is. But -- and I understand why,
8 standing alone, you would think that was -- would not be
9 relevant.

10 But the fact that he was policing the chats in a
11 particular way and was saying he was kicked out and the
12 circumstances surrounding that and his ability to -- I think
13 that is relevant for that reason.

14 MS. HERNANDEZ: Well, I just think that this whole
15 notion of whether some people were racist or some people
16 were anti-Semites is not relevant to the charges in this
17 case. And we start going off the rail. And he has -- some
18 items have already been read and he said they were
19 hyperbolic and all of that, 403.

20 THE COURT: I understand what you're saying.

21 MS. HERNANDEZ: I just -- as the Court knows, this
22 has been a running theme in this case. Where does the -- in
23 my opinion, we're way off. None of this is relevant.

24 THE COURT: I mean, the man is a rabbi.

25 So anyway, I think the Government -- I mean, I

1 think, Mr. McCullough, there are limits going to be placed
2 on this. But the circumstances surrounding him being kicked
3 out of the MOSD, or taken off or however you want to put it,
4 I think are relevant.

5 MR. SMITH: Your Honor, we would object to the
6 litany of racist and antisemitic statements now coming in.
7 Mr. McCullough just walked through various statements before
8 about violence. And we're objecting if Mr. McCullough is
9 planning on -- the "N" word --

10 THE COURT: Mr. Smith, I've got it.

11 MS. HERNANDEZ: Your Honor, I'm sorry. I
12 understand the Court is saying that how he was kicked out or
13 whatever is somehow relevant. I'm not sure what that
14 relevance is. If he was kicked out, how is that relevant?

15 THE COURT: He's testifying about the MOSD, its
16 purposes and all the rest, and the lead-up to January 6th.
17 So that is relevant.

18 MS. HERNANDEZ: So --

19 THE COURT: I'm sorry. What is it, Ms. Hernández?

20 MS. HERNANDEZ: I'm just saying, the MOSD's
21 relevance as it affected what happened on January 6th,
22 whether individuals in the group were having racist --

23 THE COURT: I've articulated why it's relevant.

24 Mr. McCullough, on Mr. Smith's point, I think that
25 is -- are you planning on doing that?

1 MR. McCULLOUGH: So before I get to that -- and I
2 will address that question. I promise you.

3 And I promise you, Mr. Smith, I will address that
4 question.

5 I just want to note, for the record, that I was
6 surprised, given the amount of discussion --

7 MS. HERNANDEZ: Mr. McCullough -- I'm sorry, your
8 Honor. He has to face this way. When he faces the other
9 way, we can hear it.

10 THE COURT: All right.

11 MR. McCULLOUGH: I was surprised that, on direct
12 examination, that they would elicit there were white
13 nationalists in --

14 MS. HERNANDEZ: I'm sorry, your Honor.

15 THE COURT: What?

16 MS. HERNANDEZ: Mr. McCullough's voice is heard.

17 MR. SMITH: He keeps turning towards the jury and
18 making the statements.

19 THE COURT: I'm sorry. I'm right here and I
20 cannot hear him.

21 Mr. McCullough, if you would just turn towards the
22 defense and speak.

23 Go ahead.

24 MR. McCULLOUGH: Your Honor, I was surprised,
25 given the amount of discussion that we've had about racist

1 language and antisemitic language and Nazis and the like and
2 the amount of -- kind of the line that's been drawn there,
3 that they would elicit on direct examination, according to
4 the tenets, white nationalists should be kicked out for the
5 most part. We don't discriminate. We don't discriminate on
6 religion, sexual orientation, Black, homosexuality. We
7 don't --

8 THE COURT: I get it.

9 MR. McCULLOUGH: They bring out the bylaws and
10 say, Oh, look, that's what we follow. And the reason he's
11 kicked out is because he was complaining about people being
12 racist.

13 And not only that, your Honor. Frankly, he was
14 complaining about Joe Biggs being racist to Enrique Tarrio.

15 MS. HERNANDEZ: So discrimination and talk are two
16 different things, your Honor.

17 THE COURT: Okay.

18 MR. SMITH: Your Honor, the other point is
19 Mr. Nordean and the other Defendants did not conduct direct
20 examination of this. So there's a 403 issue here for the
21 other Defendants. They had no control over what this
22 witness was -- elicited on direct. And then to allow just a
23 slew of toxic, racist --

24 THE COURT: Mr. Smith, I understand your point.

25 Mr. McCullough, I think you get a little -- how

1 many of these do you plan to do?

2 MR. McCULLOUGH: Sorry. I did promise that I
3 would answer this question, and I didn't. I didn't.

4 You know, I actually was not -- I was not planning
5 to show any "N" words or anything else in this sequence.
6 What I was intending to do was simply call his attention to
7 the fact that people were using racist and antisemitic
8 language and that he was complaining about it and that no
9 one did anything about it.

10 THE COURT: But I guess my point is, unless I'm
11 missing something, didn't you already do that?

12 MR. McCULLOUGH: I think I did. I mean, your
13 Honor's got the transcript.

14 THE COURT: It's actually not working. But --

15 MS. HERNANDEZ: Your Honor, the problem with part
16 of this cross-examination is we should have gotten notice of
17 what items he was -- what specific items he was going to use
18 so we could have -- as the Court likes to say, we could have
19 sorted all of this out before the witness was on the stand.
20 It's a problem.

21 THE COURT: Mr. McCullough, look, again, I think
22 you've made this point. We've got ten more minutes until we
23 have to break for lunch. So I just -- you've made the
24 point. I'm not saying you couldn't do it with an exhibit or
25 two. But let's just continue to fill the time. And we can

1 talk about -- if there's any issue about what you can use,
2 we can just take it up on the other side of lunch.

3 MR. McCULLOUGH: I think, your Honor, for the
4 record, I don't think the question was pending when this
5 objection was lodged. I think I had asked the question. I
6 got the answer. Then an objection was raised, which goes to
7 all the things I'm not allowed to do.

8 THE COURT: You may proceed.

9 (Whereupon, the following proceedings were had in
10 open court:)

11 BY MR. McCULLOUGH:

12 Q. And, Mr. Mesa, you did not believe that the racist or
13 antisemitic language was consistent with the bylaws.

14 Correct?

15 A. Correct. Yes.

16 Q. And you raised that issue to Enrique Tarrio?

17 A. One or two times. It wasn't that prevalent.

18 Q. And you also raised that issue directly in some of the
19 chats. Correct?

20 A. Correct.

21 Q. And it was not addressed. Correct?

22 A. It was addressed. It was addressed. The problem is --
23 I'll just explain to give you guys a little bit of context
24 here.

25 Enrique did not have the power to kick people out

1 on the national level. These incidents were always meant to
2 be taken care of on the local level. So he would talk to
3 the presidents of other chapters to take care of the issue.

4 So as much as he sympathized, there was still a
5 procedure that he was limited by.

6 Q. Mr. Mesa, you were kicked out of the Ministry of
7 Self-Defense. Correct?

8 A. Correct.

9 Q. You were kicked out of the Ministry of Self-Defense
10 because you were making these complaints about the
11 antisemitic comments. Correct?

12 A. I'm not sure why I was kicked out. I was just kicked
13 out. That's what I think. But I was never given an
14 explanation.

15 Q. It's your understanding you were kicked out because you
16 were making complaints about the antisemitic comments.
17 Correct?

18 MR. HASSAN: Objection, your Honor. Speculation.
19 The witness is not aware.

20 THE COURT: It's asked and answered.

21 BY MR. McCULLOUGH:

22 Q. And -- Mr. Mesa, you described going to Washington,
23 D.C., for January 6th. Correct?

24 A. Correct.

25 Q. And you described the lack of communication that you

1 had, right, on January 6th?

2 A. Correct.

3 Q. You did not meet with -- on January 5, when you arrived,
4 you went to the Phoenix Hotel. Correct?

5 A. Correct.

6 Q. And you did not see or talk to Enrique Tarrio?

7 A. No, I did not.

8 Q. You didn't see or talk to any of the other Defendants
9 that night?

10 A. No, I did not.

11 Q. You woke up the next morning and you did not go and join
12 these men on the march. Correct?

13 A. No, I did not. I was staying in the penthouse with
14 Bianca the whole time because I was tasked to offer security
15 the whole time I was there. So I never really left her
16 side.

17 Q. And so when you showed up at the Phoenix Hotel, you went
18 directly to Bianca Gracia's penthouse. Correct?

19 A. Correct.

20 Q. And you checked in with her when you got there; you went
21 into her room?

22 A. Yes.

23 Q. And you saw the other people who were there?

24 A. Yes, I did.

25 Q. Now -- and the next day, on January 6th, you did not

1 join any of the Defendants on a walk to the Capitol?

2 A. No, I didn't.

3 Q. You didn't -- you said you didn't have any cell phone
4 communication with them?

5 A. After all the commotion, cell phone service ceased. But
6 I never knew who these individuals really were by face or
7 ever communicated directly with any of them.

8 Q. And you said that you didn't have -- you said you didn't
9 have a radio that day?

10 A. Correct. Correct. As far as I remember, all I had was
11 a camera on me, as far as I remember. Right.

12 Q. I'm going to show you 1501.

13 MR. McCULLOUGH: Just for the witness, please.

14 BY MR. McCULLOUGH:

15 Q. Mr. Mesa, do you recognize this?

16 A. Yes.

17 Q. This is a photo of you and another individual -- another
18 two individuals. Correct?

19 A. Uh-huh.

20 Q. Fair and accurate depiction of where you were on the
21 morning of January 6th?

22 A. It looks accurate. Yes.

23 Q. A fair depiction of what you were wearing on
24 January 6th?

25 A. Yes.

1 Q. A fair depiction of what you were carrying on
2 January 6th?

3 A. Yes.

4 MR. McCULLOUGH: Move to admit 1501.

5 THE COURT: It will be admitted. And permission
6 to publish.

7 (Whereupon, Government's Exhibit No. 1501 was
8 entered into evidence.)

9 BY MR. McCULLOUGH:

10 Q. Mr. Mesa, this is you on the left. Is that right?

11 A. Yes.

12 Q. And what is that on your chest right there?

13 A. That's a radio.

14 Q. The person next to you, who is that?

15 A. That's -- he's called the Greek.

16 Q. He's known as the Greek?

17 A. Yes.

18 Q. What's on his chest? Circling this image.

19 A. That's a radio.

20 Q. And the Greek, he was on the plane with Enrique Tarrío
21 for the November rally. Is that right?

22 A. Yes.

23 Q. Part of the Vice City chapter?

24 A. Yes.

25 Q. Part of Tarrío's close-knit group?

1 A. Yes.

2 Q. You and the Greek were together that day. Correct?

3 A. Yes, we were.

4 Q. You both had radios?

5 A. Yes.

6 Q. Your testimony is that you weren't in contact with
7 anybody?

8 A. I said initially that I don't remember if I had it or
9 not. So, here -- now I remember that this was comm- -- to
10 communicate with Bianca's security, which is me, the Greek
11 and one other Proud Boy.

12 Q. So you had the walkie-talkie so that you could tell --
13 so you could say to the Greek, Hey, I'm here?

14 A. No; because we were guarding the stage.

15 Q. Okay.

16 A. And -- yes.

17 Q. The stage, that's about from here to here?

18 A. No. We were guarding the rally itself. Now, there were
19 many different stages. But we weren't on the stage. But
20 yes, with over 100 or 200 people at that area, we couldn't
21 always verbally communicate. However --

22 Q. You thought -- and you --

23 A. We never used these radios, by the way.

24 Q. You never used the radios?

25 A. Correct. We never --

1 Q. You had the radio just in case you needed to get in
2 touch with the Greek?

3 A. No. These radios were given to us by the third guy.
4 The third guy was an expert in radios, but we never figured
5 out how to use them.

6 Q. Okay. This guy on the right: Who's that?

7 A. That's Josh Macias.

8 Q. Josh Macias was in Bianca Gracia's hotel room at the
9 Phoenix. Correct?

10 A. I think he may have stopped by. Yeah.

11 Q. You saw him there?

12 A. I think so. I don't remember exactly. This is over two
13 years ago. But possibly. They are friends. Yes.

14 MR. McCULLOUGH: Your Honor, I'm about to launch
15 into other stuff, so if we want to break right here, I'm
16 happy to do that.

17 THE COURT: All right. If it's a good time to do
18 it. It's lunchtime.

19 So, ladies and gentlemen, as we said, we're going
20 to break for an hour for lunch, come back for another hour
21 of testimony and then release you for the weekend.

22 (Whereupon, the jury exited the courtroom at 12:28
23 p.m. and the following proceedings were had:)

24 THE COURT: Sir, you may step down.

25 Mr. McCullough, if you would just send what we

1 talked about at the bench. If there are exhibits you had
2 planned to use along -- in the way we described, if you
3 would just send them and I'll take a look at them over
4 lunch.

5 MR. McCULLOUGH: Yes, your Honor.

6 And I want to -- the Court's indulgence, if I may.

7 THE COURT: Yes. Please.

8 MR. McCULLOUGH: (Confers with opposing counsel.)

9 MR. JAUREGUI: Judge, if I may, I did have my
10 witness in here earlier before the jury walked in and before
11 the witness walked in. I wanted your Honor to admonish her
12 that she's still under subpoena. If I may be allowed to
13 quickly grab her and bring her in.

14 THE COURT: Sure.

15 MR. JAUREGUI: Thank you.

16 MS. HERNANDEZ: Judge, could you tell us what the
17 Court intends to do for the rest of the day in terms of
18 whether we're going to discuss this at 2:30 or -- I just
19 wondered if the Court would give us an indication.

20 THE COURT: Well, we may have to -- I think what
21 we'll do is take a quick break and then discuss the matters
22 that we'd been talking about discussing. So there may be a
23 quick break at the end of -- at 2:30. At 2:30 we have to
24 release the jury.

25 MS. HERNANDEZ: I guess I was just wondering

1 whether we're going to be finished with this witness.

2 THE COURT: I don't know whether we will or won't.
3 But we lose the jury. So we'll be done for today with the
4 witness. At that point, we'll break, but then we'll come
5 back and discuss the outstanding matters.

6 MS. HERNANDEZ: Thank you.

7 MR. JAUREGUI: Judge, may I?

8 THE COURT: Yes.

9 (Thereupon, an unidentified individual entered the
10 courtroom and the following proceedings were had:)

11 MR. JAUREGUI: Thank you.

12 Your Honor, I just want to let you know that she's
13 been receiving death threats and phone calls and messaging,
14 and actually even yesterday, when I went to interview her,
15 there were two -- it seemed like Antifa, screaming on a
16 bullhorn, taking photos. So I just wanted to let your Honor
17 know.

18 THE COURT: All right. Ma'am, I just want to make
19 sure you understand, you know you're under subpoena to be a
20 witness in --

21 UNIDENTIFIED INDIVIDUAL: Yes. That's correct.

22 THE COURT: -- in the trial we have right now --
23 in the trial that is going on.

24 And I want to make sure you understand that's a
25 legal obligation to be present to testify on behalf of

1 Mr. Tarrio in this case.

2 For different reasons, we may not get to you
3 today. But that's an ongoing obligation that you have, a
4 legal obligation that you have --

5 UNIDENTIFIED INDIVIDUAL: Okay.

6 THE COURT: -- that I can't release you from until
7 either the party tells me they don't want to call you
8 anymore or you testify and, at the end of your testimony, I
9 will say, You are released.

10 UNIDENTIFIED INDIVIDUAL: Okay.

11 THE COURT: So it's a legal obligation that is --
12 remains in place until I release you.

13 So, you know, you are under a legal obligation to
14 remain available to Mr. Tarrio's counsel until I release
15 you.

16 Do you have any questions about that?

17 UNIDENTIFIED INDIVIDUAL: No, I don't.

18 THE COURT: All right. I mean, and -- you know,
19 unfortunately, we don't -- there are a few hours this
20 afternoon. For other reasons, we don't have the ability to
21 have testimony before the jury. We can't do it over the
22 weekend. So if not today, that obligation carries over into
23 Monday.

24 UNIDENTIFIED INDIVIDUAL: Okay.

25 THE COURT: Any questions?

1 UNIDENTIFIED INDIVIDUAL: No.

2 THE COURT: Anything else you'd like me to advise
3 her of?

4 MR. JAUREGUI: No, your Honor. Is it okay if I
5 release her, then? Do you think she will not testify today?
6 We'll do her Monday? Or just hold on?

7 THE COURT: Look, for reasons we can -- we'll
8 discuss, I think she should remain available today --

9 MR. JAUREGUI: Excellent.

10 THE COURT: -- for reasons we can discuss.

11 MR. JAUREGUI: Okay. I'm going to take her back.

12 THE COURT: All right. Very well.

13 MR. McCULLOUGH: I --

14 THE COURT: Should we just wait for
15 Mr. Jauregui -- let's just wait for Mr. Jauregui to come
16 back in the courtroom, if he's going to.

17 Maybe we don't need to wait for Mr. Jauregui if
18 he's not --

19 MR. McCULLOUGH: Your Honor, I just wanted to put
20 on the record, your Honor, that we will discuss with defense
21 counsel the appropriateness of, you know, having witness
22 assistance in place for the individual.

23 I also wanted to note for the record that we did
24 not file this filing on the public record. And, your Honor,
25 I think -- we would just take this opportunity to note that

1 this is an issue that has been present in the case. And,
2 your Honor, I think this is one of the reasons why we have
3 attempted to file these items under seal.

4 I'm not casting aspersions on anyone. What I'm
5 saying is, this -- this animates the purpose as to why we
6 have intended to put things under seal. And I think, as
7 represented by defense counsel, if -- these things are
8 serious.

9 MS. HERNANDEZ: So since I filed it on the public
10 record, your Honor, I'm not taking that fault. If the
11 Government had done its duty back in January 9th, when they
12 first learned that this witness was a CHS, we could have
13 resolved this the way we resolved all the other CHSs.

14 However, when this pops up in the middle, after
15 the Government has tried its case, and just before one of
16 the defense counsel -- defense witnesses is about to
17 testify, they cannot send this over to us and seek to put it
18 on us.

19 THE COURT: Ms. --

20 MS. HERNANDEZ: I purposely filed it to avoid --
21 you know, so as -- rather than the lawyer who was arguing
22 the case -- you know, whose witness it was. And I didn't
23 identify anyone.

24 THE COURT: All right. We'll -- look, we've
25 been -- I'm not going to say any more right now. Let's

1 reconvene at -- at this point, I'll give you all -- let's
2 say 1:40. I'll give the real hour. We'll get in some
3 additional testimony and then we'll proceed.

4 Mr. Hassan?

5 MR. HASSAN: Judge, my one concern is that the
6 witness, as the Court well knows, he's of a Jewish descent,
7 Judge. So my concern is --

8 THE COURT REPORTER: I didn't get that.

9 MR. HASSAN: My one concern is, Judge -- Nayib
10 Hassan on behalf of Enrique Tarrio, Judge. My one concern
11 is this individual is of Jewish descent, as the Court is
12 well aware. There may be things that are ongoing with him
13 and his religion, going towards Sunday. So there may be
14 concerns as far as this witness returning on Monday in
15 itself.

16 THE COURT: Well, he's under -- also under a legal
17 obligation. So I -- he's under a legal obligation. And
18 Lord knows I didn't shorten -- I didn't curtail the defense
19 cross-examinations.

20 I'll see you all at 1:40.

21 (Thereupon, a luncheon recess was taken, after which the
22 following proceedings were had:)

23 THE COURTROOM DEPUTY: We're back on the record in
24 Criminal Matter 21-175, United States of America versus
25 Ethan Nordean, et al.

1 THE COURT: All right. Is there anything the
2 parties wish to raise before we bring in the -- before we
3 bring in the jury?

4 MR. HASSAN: Judge, there are two matters that the
5 Court -- that the Government presented to us, two pieces of
6 exhibits that the Government wished to introduce through
7 cross-examination.

8 And we would be objecting to that, and I think we
9 should address them now rather than during the testimony.

10 THE COURT: Well, they're just -- they
11 both contain -- they're both about the same issue. Correct?

12 MR. HASSAN: I believe so, Judge. They both are
13 images containing an individual which, for the most part,
14 has been -- we have not allowed images of that individual
15 coming before the Court. So...

16 THE COURT: Okay. I'm misunderstanding what
17 you're objecting to, then.

18 MR. McCULLOUGH: So I think, just to tee this up,
19 your Honor, I think we had gotten stuck in the mud for a
20 moment on violence issues. And I was proposing to put in
21 two additional videos in which there was discussion of
22 violence among the group.

23 I am moving on from that.

24 I think the issue here is with respect to his
25 involvement on the evening of January 5th. He said he went

1 to see Bianca Gracia and went to the Phoenix Hotel.

2 I asked him, prior to the lunch break, whether he
3 went to her hotel room, whether he saw other people in that
4 hotel room.

5 One of the people in that hotel room that
6 evening -- two of the people in that hotel room that
7 evening -- one of them was Stewart Rhodes; one of them was
8 Kellye SoRelle, as well as Josh Macias. So I was going to
9 put that image in front of him and ask him if he saw those
10 individuals there.

11 So that's -- I think that's the image that --
12 that's at least one of the images that Mr. Hassan is talking
13 about.

14 And then, at the speech the following day,
15 Mr. Rhodes and Ms. SoRelle were doing the speech while he
16 was -- while he says he was there the entire day offering
17 protection for -- and security for Bianca Gracia.

18 So I think --

19 THE COURT: He was -- I'm sorry. What's the
20 second part?

21 MR. McCULLOUGH: He says that he was doing
22 security at the stage for Bianca Gracia --

23 THE COURT: Right.

24 MR. McCULLOUGH: -- and so he was present for the
25 entire time. And so I'm going to question him as to whether

1 he saw Stewart Rhodes and Kellye SoRelle there with Bianca
2 and doing -- and providing the speech.

3 I think, you know, it's kind of relevant testimony
4 in terms of his involvement.

5 THE COURT: What's your objection?

6 MR. HASSAN: Judge, any relevance of a photo of
7 Stewart Rhodes or Kellye SoRelle, individuals that have
8 previously been before the Court and have been convicted,
9 Judge, are highly prejudicial. And any sort of probative
10 value is outweighed by the highly prejudicial value by
11 showing images of these individuals before the jury, Judge.

12 THE COURT: Well, isn't it -- isn't it also just
13 beyond the scope of direct? I mean, what is it -- I know
14 you asked him that question: Who was there and do you
15 remember this person?

16 I guess I just don't understand, in the thrust of
17 his direct, why these are within the scope of that direct.

18 MR. McCULLOUGH: I think they're squarely within
19 the scope of that direct because he described what he was
20 doing. He described that everything he was doing was
21 security for Bianca Gracia. And I think that the jury
22 has -- can fairly evaluate whether part of, you know,
23 security is going to the room where Bianca Gracia is and
24 Stewart Rhodes, Kellye SoRelle, Josh Macias -- if his job is
25 security, what is he seeing and hearing in that room? And

1 why is he in that room?

2 THE COURT: But he's already said -- I'm going
3 to -- you know, I think it's beyond -- I think it's,
4 honestly -- I think it's beyond the scope and I'm -- I don't
5 know about 403 -- I'm not sure about relevance and 403. I
6 mean, I know you have -- we've admitted some testimony
7 regarding Mr. Rhodes. I just don't understand -- with this
8 witness, I don't understand how it's within the scope of the
9 direct examination. I really don't.

10 I mean, he did -- you have crossed him on, Well,
11 did you see that person at that time?

12 But I think it's beyond the scope.

13 MR. McCULLOUGH: Your Honor, the defense, which
14 was put on through the direct examination, is that this is
15 all -- and it's broader than this examination, but it is the
16 kind of thread that they are pulling on. This is all First
17 Amendment. This is all First Amendment. This -- all this
18 is is a, you know, kind of opportunity to give speeches and
19 go to a rally. That is the defense.

20 And, your Honor, it is -- and that's his
21 testimony. And he introduced two fliers that were, you
22 know, kind of --

23 THE COURT: Right.

24 MR. McCULLOUGH: -- all we're doing is doing
25 speeches. That's all this is about.

1 Your Honor, it is relevant. It's within the scope
2 of the testimony that Stewart Rhodes is in the hotel room
3 with Bianca Gracia and they're discussing their involvement
4 that evening and the following day. I mean, that -- it is
5 squarely -- your Honor, it's squarely -- it squarely refutes
6 the idea that this is all done for First Amendment purposes.

7 Your Honor, he is -- he is the head of the Oath
8 Keepers who is in the room with the Latinos for Trump folks
9 who has just met with Enrique Tarrio in a garage earlier
10 that evening. And now he is, you know, continuing to engage
11 with Bianca Gracia, who we heard on direct is, you know,
12 thick as thieves with -- and I don't -- strike that, because
13 that's a phrase which I did not, you know, kind of intend --

14 THE COURT: They're close.

15 MR. McCULLOUGH: -- in the pejorative way.

16 They're very close, is what we heard.

17 And I mean, that's relevant, your Honor, that
18 there is a connection with this individual. And this is
19 all supposed to be about -- when this is all supposed to be
20 about Latinos for Trump, we're all going to a rally from
21 10:00 to 12:00. I mean, it just fundamentally is.

22 THE COURT: You know, I -- I don't think -- let's
23 put it this way: I think it's beyond the scope of the
24 direct. And I don't think -- I think it's beyond the scope
25 of the direct for this witness. I think it's beyond the

1 scope of the direct.

2 And I don't understand -- again, given what this
3 witness has testified to, I don't see how this is
4 cross-examining that witness in a meaningful -- in other
5 words, what you're telling me is you think it somehow
6 undermines the story -- this account that this was all First
7 Amendment-protected. And without more, I don't really see
8 how it does that. I don't.

9 I mean, explain to me how you think it does, that
10 certain people were present.

11 MR. McCULLOUGH: Well, I mean, so, your Honor, I
12 mean, I think the following evening, on January 6th, he
13 posts to other Proud Boys that it was planned in our hotel
14 room the night before by Oath Keepers and Three Percenters.

15 THE COURT: Who is "he"?

16 MR. McCULLOUGH: The witness. Those are his
17 words.

18 THE COURT: He posts to other Proud Boys that it
19 was planned in our hotel room the night before -- but what
20 is "it"? You plan to confront him with that?

21 MR. McCULLOUGH: Yeah. I mean --

22 THE COURT: With that statement?

23 MR. McCULLOUGH: Yeah. He's saying that the
24 following day, January 8th at 8:45 a.m., and there's
25 discussion about -- he's saying, I'm thrilled --

1 paraphrasing: I'm thrilled with what happened. I don't
2 know why people keep saying it's Antifa and BLM.

3 There's some discussion. And then he says, It was
4 planned in our hotel room the night before by Oath Keepers
5 and Three Percenters.

6 I mean --

7 THE COURT: Well --

8 MR. McCULLOUGH: -- those are his words.

9 MR. SMITH: Wait a second. Your Honor, can we ask
10 the Government to post that so the courtroom can see it,
11 what Mr. McCullough is referring to? Because the trouble
12 here is that sometimes the Government will read from
13 multiple text messages at the same time. It's not clear
14 whether it's one or multiple. We haven't seen this, your
15 Honor.

16 THE COURT: Okay.

17 MR. SMITH: So -- yeah.

18 And your Honor, if what the text says is what
19 Mr. McCullough just represented, that would be exculpatory,
20 and I hope your Honor sees that: It was planned by Three
21 Percenters and Oath Keepers.

22 This is not a case about the Oath Keepers and
23 Three Percenters.

24 THE COURT: No, no. He said we --

25 MR. SMITH: That's not what he said.

1 THE COURT: It was planned -- let's just see what
2 it says.

3 MR. SMITH: Let's see what the message -- yeah.

4 THE COURT: Right.

5 MR. SMITH: Your Honor, can you see the text
6 messages at issue?

7 THE COURT: I can, although I can't see what
8 preceded all of this.

9 MR. SMITH: Well, it says -- it appears to be one
10 message from Mr. -- from Ash at 1:46 p.m. UTC-zero saying:
11 "It was planned in our hotel room the night before."

12 The next message was: "By Oath Keepers and Three
13 Percenters."

14 THE COURT: And what is the message before this?

15 How do we even know -- I guess I'm -- how do we
16 even know what they're referring to here?

17 MR. McCULLOUGH: So in the middle --

18 THE COURT: I see. Okay.

19 MR. McCULLOUGH: -- speaking on Antifa
20 infiltrating the protest yesterday, Why do people keep
21 mentioning Antifa and BLM? Bullshit. We did that, "we"
22 meaning conservatives.

23 THE COURT: That's why -- okay. Keep going.
24 That's why...

25 And then -- I don't know what that is.

1 MR. SMITH: Which protest are they referring to
2 right there? Are we just assuming it's the Capitol?

3 THE COURT: He says the day before, I think.

4 MR. SMITH: So the protest would be the protest at
5 the Capitol?

6 THE COURT: I mean, I don't know. We'll ask the
7 witness. We'll ask him. I mean, the Government wants to
8 ask him.

9 "Who cares" -- okay. Keep going. Who cares
10 why -- are we not proud? Government officials.

11 Keep going.

12 Keep going. No, it wasn't -- it was in the
13 moment.

14 Well -- I mean, does anybody want to see --

15 MR. SMITH: Your Honor, we would at least ask that
16 the whole -- even the "it was in the moment" messages
17 included under 106, if they do -- this full exchange be
18 included if the Court does --

19 THE COURT: I mean, I think --

20 Yes, Mr. Pattis.

21 MR. PATTIS: To the degree that it proves a
22 conspiracy, if it was probative on that, the Government
23 would have offered it in its case in chief. We would
24 object, Biggs does, on 403 grounds to the degree it
25 impeaches because others were present. We'd still object to

1 the naming of those people because of who they are in the
2 context of this case.

3 But to permit this evidence in I think would
4 confuse the issues, because the Government will say, He was
5 saying Three Percenters and Oath Keepers and leaving his own
6 group out for deniability or Minecraft purposes.

7 And at some point, it's attenuation piled upon
8 attenuation. If it was probative of the Government's case,
9 it would have been offered in its case in chief. It's
10 trying to smuggle in something that's only suggestive and
11 hardly conclusive by way of impeachment on who was present
12 in the room, and that is beyond the scope.

13 THE COURT: Well, this is -- this is different. I
14 mean, this is -- I mean, I don't know why they don't get to
15 ask -- these are his statements, and I don't know why they
16 don't get to ask him about the statements. He'll explain
17 them one way or the other, however he will.

18 But I think -- I guess I've changed my mind. I
19 think this is a fair -- and the way this links with the
20 photos -- I mean, I think he gets to ask the questions. The
21 witness will say whatever the witness says about it.

22 This is from his -- this is his phone or is
23 this -- where -- or some other chat?

24 MR. McCULLOUGH: It's extracted from the phone of
25 Gabriel García.

1 THE COURT: Okay. Some other phone. I thought we
2 were going to be talking about something else. But I think
3 he gets to ask this question.

4 Yes, Ms. Hernández.

5 MS. HERNANDEZ: So again, from Mr. Rehl's point of
6 view, my understanding is this is some sort of chat
7 involving a handful of Florida people, not -- I don't
8 believe the Government has asserted and in fact has set out
9 to claim that this gentleman was not part of the conspiracy.

10 So it's hearsay, unduly prejudicial. My client is
11 never mentioned or involved in this chat. So I would
12 object.

13 THE COURT: Right. I get that. But this is the
14 witness on the stand's statements about January 6th. I
15 don't know why he can't be cross- -- whether it comes into
16 evidence or whether he's just cross-examined about it or
17 whatever you want to say --

18 MS. HERNANDEZ: Well, I guess --

19 THE COURT: -- I think it's fair. And if
20 there's -- there may be a Rule 106 issue if they move to
21 admit something. Fair enough.

22 But I think you can proceed. And I think the
23 photos and the other piece go with this.

24 MS. HERNANDEZ: I will be asking for a limiting
25 instruction.

1 THE COURT: Sure. Depending on what it is, I
2 think that's fair.

3 MR. SMITH: Your Honor, on the point that he's
4 saying that this -- it was planned from our hotel room, it
5 was the Oath Keepers and the Three Percenters, is the
6 relevance point here that -- can your Honor -- what is the
7 relevance to a conspiracy of Proud Boys if he's saying
8 another group of people conspired?

9 THE COURT: Well, I think the insinuation will
10 be -- I mean, just because other people were also involved
11 doesn't mean the alleged conspiracy -- I mean, I know what
12 you're saying. But there's no way for this person to have
13 known -- we have to scroll back. But I think it's at least
14 an implication that we planned it with them.

15 MR. SMITH: But if your Honor looks at the
16 message, he says -- he doesn't say "also," your Honor. It
17 says, "It happened in our room." So if he observed -- if he
18 observed something happening, why would the implication be
19 that --

20 THE COURT: I think they get to ask the question.
21 If he says what you say, okay. But I think it's fair
22 cross-examination.

23 Let's bring in the witness and the jury.

24 Just, again, unfortunately, the issue with -- we
25 have a hard stop at 2:30.

1 Mr. McCullough, do you plan on moving to admit
2 this? I just say because, you know, there would be a 106
3 potential issue there.

4 MR. SMITH: And there's no inconsistency yet. I
5 mean, the -- the 613(b) issue would only be triggered if
6 there's an inconsistent statement on the stand. And I don't
7 know if there is one.

8 The witness didn't testify, "I did not see the
9 planning of the Three Percenters."

10 THE COURT: I understand. I understand.

11 (Thereupon, the witness entered the courtroom and
12 the following proceedings were had:)

13 THE COURT: Oh, can I have counsel pick up the
14 phone for an administrative matter.

15 (Whereupon, the following proceedings were had at
16 sidebar:)

17 MR. SMITH: I apologize. I did not know.

18 (Whereupon, the following proceedings were had in
19 open court:)

20 THE COURT: We don't have the ability to have the
21 husher on now. So we've got to just pause for a moment.

22 That was not what I was going to raise, Mr. Smith.

23 We can take up that matter after -- what I was
24 going to mention -- after 2:30.

25 Mr. McCullough, while we're waiting, do you have

1 the other members of -- the other prosecutors who were at
2 the table the other day?

3 MR. McCULLOUGH: Yeah. I don't know the answer.

4 THE COURT: Okay.

5 MR. McCULLOUGH: But I can find that out.

6 THE COURT: Okay.

7 THE COURTROOM DEPUTY: Jury panel.

8 (Whereupon, the jury entered the courtroom at 2:05
9 p.m. and the following proceedings were had:)

10 THE COURT: Everyone may be seated.

11 And Mr. McCullough, you may proceed.

12 MR. McCULLOUGH: Thank you, your Honor.

13 BY MR. McCULLOUGH:

14 Q. Mr. Mesa, you were describing during this morning's
15 testimony your involvement in rabbinical school and then --
16 as well as a synagogue that you run. Is that right?

17 A. Yes.

18 Q. And you were describing that you are somewhat of a
19 controversial figure. Is that right?

20 A. Yes.

21 Q. And you described that one of the reasons for the
22 controversy is your kind of mass conversion of people to
23 Judaism. Is that what you described?

24 A. Yes.

25 Q. And it's the case that another reason that you are

1 controversial is that, on the home page of your synagogue's
2 website, you offer free vaccine religious exemptions?

3 A. Correct.

4 Q. And a visitor to your website can simply provide their
5 name and their email address?

6 A. Correct.

7 MR. ROOTS: Objection. Relevance.

8 THE COURT REPORTER: Who was that, please?

9 THE COURT: It was Mr. Roots.

10 Mr. McCullough?

11 (Whereupon, the following proceedings were had at
12 sidebar outside the presence of the jury:)

13 THE COURT: What's the relevance to this?

14 MR. McCULLOUGH: I think the relevance is that he
15 engages in handing out COVID relief -- sorry -- COVID
16 vaccination exemptions to people and asks for a donation to
17 his synagogue in exchange. I mean --

18 THE COURT: That's not relevant.

19 (Whereupon, the following proceedings were had in
20 open court:)

21 THE COURT: Sustained.

22 BY MR. McCULLOUGH:

23 Q. Mr. Mesa, you had also described your military service.
24 Is that right?

25 A. Yes. Yes.

1 Q. And you separated from the military under threat of a
2 potential court martial. Is that right?

3 A. Correct.

4 Q. And the threat of court martial was because you had been
5 absent without leave?

6 A. Correct.

7 Q. And you'd been absent without leave for over a year. Is
8 that right?

9 A. Over six months. Yes.

10 Q. Isn't it true that you were absent from March of 2001 to
11 June of 2002?

12 A. I don't recall the exact dates, but --

13 Q. Mr. Mesa, you --

14 MR. HASSAN: Judge, objection. Decorum.

15 THE COURT: Mr. Mesa, you can complete your
16 answer, sir.

17 THE WITNESS: I don't remember the exact dates.
18 However, what I was trying to achieve was a DD2 --

19 THE COURT: Sir, you can -- but you just -- you
20 can complete your answer, but only answer the question
21 posed.

22 Mr. McCullough, you may proceed.

23 THE WITNESS: Sorry, your Honor.

24 BY MR. McCULLOUGH:

25 Q. And so you separated from the military under an

1 other-than-honorable discharge. Is that right?

2 A. Correct.

3 Q. And that was to avoid a court martial. Correct?

4 A. Correct.

5 Q. Now, you testified as to your involvement in the rally
6 itself. Correct?

7 A. Yes.

8 Q. And you said that you went -- on the morning of
9 January 6th, you went over to the stage. Is that right?

10 A. Yes.

11 Q. And that was, as you said, about, I think, 12 or 15
12 minutes from the Capitol? Is that how you described it?

13 A. If I remember correctly, yes.

14 Q. And you spent the entire morning at that location.
15 Correct?

16 A. Correct.

17 Q. And you were providing security for Bianca Gracia and
18 others?

19 A. Yes. And the stage as well. Yes.

20 Q. And while you were there, there were other individuals
21 there as well. Correct?

22 A. There was somewhat of a rally, yes.

23 Q. And there were other attendees at the rally?

24 A. Yes.

25 Q. And you and the Greek and Al were providing security.

1 Is that right?

2 A. Correct.

3 Q. And you said that you understood that Mr. Tarrio was
4 supposed to have showed up between -- sometime between 10:00
5 and 12:00 that morning?

6 A. Correct.

7 Q. But he did not show up. Correct?

8 A. Correct.

9 Q. And the Proud Boys and members of the Ministry of
10 Self-Defense, they were marching in D.C. that day. Correct?

11 A. No. No. There was no official march sanctioned as some
12 sort of Proud Boy march. They were part of the crowd and
13 so, when former President Trump said to march peacefully,
14 they marched, but it wasn't some sort of Proud Boy
15 initiative.

16 Q. So you don't believe that Mr. Nordean or Mr. Biggs led
17 other Proud Boys on a march toward the Capitol. Is that
18 right?

19 A. I'm not familiar with that.

20 Q. Okay. And you're not familiar with that because the
21 Proud Boys, Mr. Nordean, Mr. Biggs, Mr. Rehl, they never
22 showed up at your rally. Is that right?

23 A. Correct.

24 Q. They never came over to see whether the people at your
25 rally needed additional protection?

1 A. If they did, I never saw them.

2 Q. And if there were a need for security, they were not
3 there to provide any of that security to any of the patriots
4 who were there at your rally. Right?

5 A. Correct.

6 Q. And they didn't even come by at any point. Correct?

7 A. I can't really verify if they were there. There was a
8 few hundred people there. No one had color on, so I
9 couldn't tell who was who.

10 THE COURT REPORTER: Can you say it again?

11 THE WITNESS: I couldn't verify who was there. No
12 one identified as a Proud Boy. I never met these
13 individuals in the past, so if they were there, I really
14 couldn't describe them.

15 BY MR. McCULLOUGH:

16 Q. Mr. Mesa, you never saw a large group of Proud Boys come
17 to the rally site, did you?

18 A. Can you repeat that again?

19 Q. You never saw a large group of Proud Boys come to your
20 rally site?

21 A. Not that I remember.

22 Q. And you were just 12 or 15 minutes away from the
23 Capitol. Is that right?

24 A. That's correct.

25 Q. Now, you described having arrived at the Capitol kind of

1 after things had taken place. Is that right?

2 A. After the breach.

3 Q. And you said you didn't see any signs telling you that
4 you couldn't be there?

5 A. Correct.

6 Q. You didn't see any officers telling you to stop?

7 A. Correct.

8 Q. You didn't see any violence with officers?

9 A. What I did see -- I don't know if this constitutes as
10 violence -- this door that I was near was never breached. I
11 saw officers on the other side holding the door. But not
12 outside of the Capitol. I never entered the building. But
13 within the building, there were officers.

14 Q. So you're telling this jury that you were standing
15 outside the building but you could see what was happening
16 inside the building?

17 A. Yes, because the doors had glass panels and most of them
18 by that time had cracks in them.

19 Q. By the time you got there, the glass panels had cracks
20 in them and you could see inside the building?

21 A. Correct.

22 Q. And -- but you couldn't see anybody fighting with those
23 officers?

24 A. Not that I remember. There were officers holding the
25 door, and I believe maybe at one time, like, someone came

1 out with a shield and pushed some people back and then went
2 back inside. But that door was never penetrated. So those
3 officers I did see, but not anyone on the way to the Capitol
4 stopping me or anything like that.

5 Q. You never saw that door penetrated?

6 A. Correct.

7 Q. I'm going to show you Government Exhibit 440B, bravo,
8 previously admitted.

9 Mr. Mesa, I will just ask you if you recall being
10 in this area of the Capitol. Does this look familiar to
11 you?

12 A. It looks familiar. Yes.

13 MR. McCULLOUGH: Let's go ahead and play this
14 video, Ms. Rohde, and pause it at the 1:33 mark.

15 (Whereupon, segments of Government's Exhibit No.
16 440B were published in open court.)

17 BY MR. McCULLOUGH:

18 Q. Do you see yourself in that video, Mr. Mesa?

19 A. Yes, I do.

20 Q. You're right there in the middle of this, aren't you?

21 A. I was there for around 15 minutes.

22 Q. You were there while people were attempting to breach
23 this door. Correct?

24 A. Oh, correct. But that door was never breached.

25 Q. You were there while people were trying to breach this

1 door. Correct?

2 A. This person that you see here, I was offering security
3 for her and the person behind her. So wherever they went, I
4 went. I wasn't there participating in any of these events,
5 and that door was never breached, like I said.

6 Q. So your testimony to the jury is that you were there --
7 and by "these women," you're talking about this woman here?

8 A. Yes. And the person behind her.

9 Q. This woman here?

10 A. Yes.

11 Q. So, Mr. Mesa, your testimony is that the reason that you
12 were in that location at that time was because those women
13 were there?

14 A. Correct.

15 Q. It's their fault you were there?

16 MR. PATTIS: Objection.

17 THE COURT: Sustained.

18 MR. McCULLOUGH: Ms. Rohde, let's go ahead and
19 play this.

20 (Whereupon, segments of Government's Exhibit No.
21 440B were published in open court.)

22 MR. McCULLOUGH: Pause there.

23 BY MR. McCULLOUGH:

24 Q. Mr. Mesa, that was you --

25 A. Escorting them out. Yes.

1 Q. Escorting them out?

2 A. Correct.

3 MR. McCULLOUGH: Ms. Rohde, can you play it.

4 (Whereupon, segments of Government's Exhibit No.
5 440B were published in open court.)

6 MR. McCULLOUGH: Pause right there.

7 BY MR. McCULLOUGH:

8 Q. That door is open right there. Is that right?

9 A. Right. I didn't see that. I walked away before that.

10 Q. You walked away --

11 A. Escorting them out. Because my job was to go everywhere
12 they went. And at that point, we were walking off the
13 grounds.

14 Q. Your job was to walk away from that door once it was
15 opened?

16 A. No.

17 MR. HASSAN: Objection.

18 MR. PATTIS: Objection. Mischaracterizes the
19 testimony.

20 BY MR. McCULLOUGH:

21 Q. Is that correct?

22 A. My job was to --

23 MR. PATTIS: Same objection.

24 THE COURT: The objection is overruled.

25 If the witness wants to correct the question, he

1 can.

2 BY MR. McCULLOUGH:

3 Q. Your job --

4 A. I'll correct the question.

5 Q. Your job was to escort the ladies away --

6 A. Correct.

7 Q. -- after the door was breached?

8 A. My job was --

9 MR. PATTIS: Argumentative.

10 THE WITNESS: -- to never leave their side.

11 BY MR. McCULLOUGH:

12 Q. Mr. Mesa, does seeing this assist you at all in your
13 testimony as to whether this doorway was ever breached?

14 A. I never saw it breached. The video shows clearly that I
15 was walking away. Around three seconds later the door was
16 opened. So I didn't see this door ever be opened.

17 Q. Mr. Mesa, did you see protesters moving into the
18 building?

19 A. Not through this door.

20 Q. But escorting the women to safety, you didn't see any of
21 what then transpired three, ten, 15 minutes after you left?

22 A. Correct. It was so densely populated at that moment
23 that we were just trying to get out.

24 Q. Mr. Mesa, you understood the purpose of going to
25 Washington, D.C., on January 6th. Correct?

1 A. Yes, I did.

2 Q. And you understood that people were flying to
3 Washington, D.C., to make sure that the steal would not go
4 through. Correct?

5 A. Correct.

6 Q. And you think that the people that went inside that
7 building on January 6th are heroes. Correct?

8 MR. PATTIS: Objection. Relevance. Objection.
9 Relevance.

10 THE COURT: Overruled.

11 THE WITNESS: I don't think at that time anyone
12 felt that they were doing anything wrong. So --

13 BY MR. McCULLOUGH:

14 Q. Mr. Mesa --

15 A. Yes. I mean --

16 MR. HASSAN: Objection, Judge. Decorum.

17 THE COURT: Overruled.

18 MR. HASSAN: Judge, the witness is still answering
19 the question.

20 THE COURT: It's overruled.

21 Sir, you can just answer the question posed.

22 Mr. --

23 THE WITNESS: For the most part.

24 THE COURT: -- McCullough --

25 MR. PATTIS: Your Honor --

1 THE COURT: Hold on.

2 Mr. McCullough, repeat the question, please.

3 BY MR. McCULLOUGH:

4 Q. Mr. Mesa, you believe that the people who went inside
5 that building on January 6th are heroes. Correct?

6 A. Yes, I do.

7 Q. In your view, breaking into the Capitol is a legitimate
8 form of political protest?

9 MS. HERNANDEZ: Objection. Relevance as to what
10 his view is, your Honor.

11 MR. METCALF: And as to form.

12 THE COURT: Overruled.

13 THE WITNESS: I believe protesting -- at that
14 moment, the whole country --

15 BY MR. McCULLOUGH:

16 Q. Mr. Mesa, if I can just stop you.

17 MR. PATTIS: Objection. He's not being permitted
18 to finish his answer.

19 THE COURT: Sustained.

20 THE WITNESS: At this point in time, no one knew
21 what was happening anywhere around there. After the fact,
22 yes. I think that what occurred still classifies these
23 individuals in my mind as heroes.

24 BY MR. McCULLOUGH:

25 Q. That's because you distinguish between what might be

1 moral and what might be lawful. Correct?

2 A. Absolutely.

3 MR. PATTIS: Objection. Relevance.

4 THE COURT: Sustained. Sustained.

5 BY MR. McCULLOUGH:

6 Q. Mr. Mesa, you believe that those people are heroes
7 because, in your view, one man's freedom fighter is another
8 man's terrorist?

9 MR. PATTIS: Objection. Relevance.

10 THE COURT: Sustained.

11 BY MR. McCULLOUGH:

12 Q. Mr. Mesa, you posted a statement describing your views
13 following January 6th. Correct?

14 MR. PATTIS: Objection. Relevance. Vague. Not a
15 party.

16 THE COURT: Overruled at the moment.

17 THE WITNESS: I don't remember. I have a podcast
18 and I talk about many different things.

19 BY MR. McCULLOUGH:

20 Q. Do you send videos to Proud Boys from time to time?

21 A. Yes, I do. Or I did.

22 Q. Showing you Exhibit 1523.

23 MR. McCULLOUGH: Just for the witness.

24 MS. HERNANDEZ: Objection. Hearsay.

25 MR. HASSAN: Judge, if we could have an

1 opportunity to be heard on the phones, Judge.

2 THE COURT: All right.

3 (Whereupon, the following proceedings were had at
4 sidebar outside the presence of the jury:)

5 THE COURT: Before we get into this objection,
6 Mr. Pattis, I do think that, you know, he testified as to
7 what -- as to the purpose of showing up there that day and
8 all the rest. I do think it is -- some of what his view --
9 some of what he was asked about in terms of his views is
10 impeaching, along those lines.

11 But anyway, I just wanted to put that on the
12 record.

13 Mr. Pattis, what is it? I know that's not --

14 MR. PATTIS: He hasn't denied saying the things,
15 and he's not a party, so he can't be impeached with a
16 statement of a party opponent. It's hearsay and he hasn't
17 denied it. He was asked about freedom fighter, this, that
18 and the other thing.

19 THE COURT: And I sustained that objection. But
20 my point -- he's talked about the purpose for showing up
21 there and all the rest. And I think -- I didn't admit the
22 statement. I didn't admit a past statement. But I think --
23 I thought the question was valid.

24 MR. PATTIS: The videos are nothing but a
25 compilation of statements. If the objections are

1 sustainable on the grounds of the statements, the video is
2 even more so.

3 THE COURT: I don't know what this is. So let
4 me --

5 MR. PATTIS: It's a highly charged video that is
6 filled with the statements that you just held were
7 irrelevant or sustained objections on.

8 THE COURT: Well, Mr. McCullough, why don't you
9 tell me, who is in it and what is it?

10 MR. McCULLOUGH: This is a statement by the
11 witness who describes his view on January 6th and the fact
12 that they did not go far enough. He describes the fact --
13 he uses a number of phrases that are consistent with, if not
14 identical to, those that are stated within the MOSD chats.

15 THE COURT: Okay. And I guess my question that
16 Mr. Pattis's objection leads me to ask is, why isn't the
17 right thing to do to just ask him about these views? And if
18 he says, Yes, I agree, then you don't have -- then why is
19 the past statement relevant if he says, Yes, I agree with
20 you, whatever the content of this is?

21 MR. McCULLOUGH: I think, your Honor, because this
22 goes -- this demonstrates a level of bias that he has on
23 behalf of the Proud Boys that he was -- he is describing
24 celebrating their accomplishment on January 6th.

25 THE COURT: Right. Well, okay.

1 MR. McCULLOUGH: Your Honor, your Honor, in terms
2 of -- none of this is for the truth. He's not saying, we
3 did this or we did that. He is describing it as -- it
4 indicates to the jury in a way that, frankly, the testimony
5 cannot that this man had a visceral belief that this is what
6 they were there to do and that they did the right thing that
7 day.

8 And, your Honor, on direct examination, he said,
9 you know, Look, we are all about getting our boys home safe.

10 On cross-examination, he initially denied that
11 they wanted to keep Trump in office or that he wanted to --
12 they wanted to stop the proceedings.

13 THE COURT: All right. Look, here's what I'm
14 going to do: Again, because the juror has to leave by 2:30
15 and it's now 2:28, I'm going to release them and we'll pick
16 this up on the other side.

17 (Whereupon, the following proceedings were had in
18 open court:)

19 THE COURT: All right. Ladies and gentlemen, we
20 did as much as we -- we got as far as we could today.

21 So Ms. Harris is going to release you. We'll see
22 you again on Monday. As usual, please avoid all media
23 coverage of this case and January 6th. Please, no
24 independent investigation, and do not discuss the evidence
25 with anyone.

1 Have a good weekend.

2 (Whereupon, the jury exited the courtroom at 2:28
3 p.m. and the following proceedings were had:)

4 THE COURT: Sir, you may step down from the stand.

5 (Witness excused.)

6 THE COURT: Everyone may be seated.

7 We turned the temperature -- we tried to make the
8 temperature less freezing, but apparently there's no middle
9 ground.

10 MR. SMITH: This is Goldilocks, your Honor. This
11 is --

12 THE COURT: At the moment. At the moment. But
13 we'll see where we are in an hour or two.

14 All right. So we are where we are at the moment.
15 I'll consider your arguments.

16 Mr. McCullough, was that -- the video we were
17 going to see, that was on that date? That was on the 6th or
18 the 7th?

19 MR. McCULLOUGH: Your Honor, I would represent to
20 you it's on the 10th of January.

21 THE COURT: All right.

22 MR. McCULLOUGH: I mean, your Honor, as you saw
23 from the initial image, it kind of begins with the sign that
24 says Uhuru. When you get to the end of it --

25 THE COURT REPORTER: Say that again. Uhuru?

1 MR. McCULLOUGH: Umbrella, hotel, umbrella, Romeo,
2 umbrella.

3 So it begins -- the statement is bracketed by, you
4 know, kind of Uhuru. And it -- I said it on the phone. I'm
5 happy to repeat it. But it does -- he -- on direct, he
6 testified to the idea that this was, you know, MOSD and the
7 like, and Mr. Tarrío's view was to get more organized so
8 that people got home safely and this was kind of -- this was
9 the mindset at the time: Make sure that people can march
10 together, stay together, stay safe.

11 And then, in addition to that, he kind of, on
12 cross-examination, fought me a number of times on the idea
13 that they were -- that he, or anyone else for that matter,
14 had any mindset of stopping the certification or keeping
15 Trump in office.

16 And, your Honor, I can go through and get him to
17 admit that. But, I mean, this is -- you know, in terms of
18 what was in his mindset and, frankly, what he felt entirely
19 comfortable sharing back to the group, that we should -- you
20 know, we should have gone further, we didn't do enough --
21 again, some of the same statements we see in the MOSD -- I
22 think that it is properly impeaching of kind of overall
23 testimony in terms of what his understanding was as to what
24 they were there to do and what they were -- when he was
25 asked what the objective was, you know, "Get everyone home

1 safe."

2 THE COURT: Okay.

3 MR. McCULLOUGH: I think it's properly impeaching
4 of those issues. And it also, frankly, goes to -- the
5 primal nature of it, frankly, goes to the kind of bias that
6 this individual has to, at this point, protect these
7 individuals who he views as heroes.

8 THE COURT: Mr. -- I'll hear from you in a moment.
9 But let me -- it's Mr. Tarrio's witness, so, Mr. Hassan,
10 what's your response?

11 MR. HASSAN: Judge, a few things.

12 It's our position that it's -- number one, it's
13 outside the scope of pretty much what his -- what his role
14 in the Proud Boys is as far as -- there's nothing in the
15 video itself, and we had an opportunity to watch it during
16 the lunch break. There was no mention whatsoever of the
17 Proud Boys within it itself.

18 Besides that, it's not an inconsistent statement
19 which the witness makes, so in and of itself, the statement
20 is hearsay.

21 And the other thing, it's tantamount -- I mean,
22 you're talking about four days later after the event, what
23 an individual is expressing. But again, Judge there's no
24 reference whatsoever to the Proud Boys as far as what they
25 did, as far as what these individuals did. This is not a

1 party that's involved in this case, Judge.

2 THE COURT: Although the bias point is something
3 that would sort of supersede all of that. I mean, if I buy
4 that -- I've heard that from somewhere, that bias is always
5 within the scope of cross.

6 Mr. Pattis.

7 MR. PATTIS: As I recall the testimony, he was
8 thrown out of MOSD sometime shortly before January 6th, had
9 no contact with the Defendants in this case on the date of
10 the 6th. Now, four days later, he's characterizing the
11 efforts.

12 To the degree that the Government seeks to offer
13 it as a prior inconsistent statement, it would not come in
14 substantively. But yet there has been no inconsistent
15 statement yet.

16 So the Government then falls back -- and I
17 understand Mr. McCullough's point, having seen the video.
18 The video speaks more powerfully than the Government's
19 cross-examination does. I get that.

20 On the other hand, it becomes 403 at that point
21 because, if it's not coming in substantively, and it's
22 coming in just to show the depths of his feeling, you can't
23 distinguish the substance from the impeachment value.

24 So first, there is no impeachment value absent an
25 inconsistent statement. Second, if there is, there is no

1 nexus to the Defendants in this case given the timeline that
2 the evidence shows today.

3 And, third, bias -- you know, it is being offered
4 for the truth of the matter asserted. And therefore, we
5 think it's improper.

6 THE COURT: What truth is it being offered for?

7 MR. PATTIS: That he didn't think they went far
8 enough, that -- this, that and the other thing. And that's
9 why, you know -- so if he's got a bias, you don't show
10 inadmissible statements to prove the bias. If he's got a
11 bias, first, he's got to be impeached. And then, if the
12 material comes in, it doesn't come in substantively. And so
13 how do you show it absent the words?

14 THE COURT: I'm not -- I'll just say this one
15 thing: I really doubt the Government is intending offering
16 the statement to prove that they didn't go far enough. That
17 doesn't seem a fact that the Government is trying to prove
18 in this case.

19 But I take your point. I mean, I'm not saying you
20 don't have other legit arguments.

21 MR. PATTIS: But they'll argue that that was the
22 statement of -- that was the view of the leadership rather
23 than the view of this witness. And the danger of prejudice,
24 given the timeline that I think we heard in this courtroom
25 today -- while a member of MOSD, he was removed; on the day

1 of the 6th, he was assigned to the García [sic] security
2 detail, for lack of a better term; he had no connection or
3 contact with the guys that day; and therefore -- and on the
4 Government's theory of the case as it's evolved, this is an
5 implicit conspiracy that presumably was formed perhaps by
6 Mr. Biggs and Mr. Nordean when they got to the Peace Circle.

7 And so at some point, the speculative -- the
8 speculation upon speculation upon speculation we would ask
9 the Court to stop.

10 If it wants to argue a case of this sort, let it
11 do so based on admissible evidence. But we don't think,
12 absent an inconsistent statement, it's admissible.

13 THE COURT: Okay.

14 MR. McCULLOUGH: Your Honor, just two things:
15 One, I don't think that there is case law kind of saying
16 that because the video kind of shows bias too well --

17 THE COURT: Right.

18 MR. McCULLOUGH: -- that it's not admissible,
19 which is what Mr. Pattis says this does.

20 THE COURT: No. In fairness to him, he's saying
21 that --

22 MR. PATTIS: There's a foundation.

23 THE COURT: -- it leads into 403 land.

24 MR. PATTIS: Your Honor, there is --

25 THE COURT: Mr. Pattis, let Mr. McCullough speak.

1 MR. McCULLOUGH: Your Honor, I would acknowledge
2 some kind of prejudice if he were, in this video, talking
3 about, you know, some element of, you know, what these guys
4 planned or the like. That is not what he is talking about.

5 He is sharing his view with these -- kind of his
6 fellow brothers, if you will, as to how strongly he believes
7 that these guys are heroes, these guys are freedom fighters,
8 these guys went against the law in a way that was important.

9 And second, your Honor, in terms of the factual --

10 THE COURT: Just to clarify that point, when you
11 say "these guys," he's referring to Proud Boys generally?
12 He's not referring to these particular Defendants, is he?

13 MR. HASSAN: No.

14 MR. JAUREGUI: No Proud Boys.

15 THE COURT: Or just anybody who went in the
16 Capitol?

17 MR. JAUREGUI: Correct.

18 MR. HASSAN: Judge, at no point whatsoever during
19 the video, if my recollection is correct, does he mention
20 Proud Boys.

21 THE COURT: Okay. And your second -- you had
22 another --

23 MR. McCULLOUGH: The second thing is that -- and
24 I'm, frankly, still deciding whether or not I'm going to do
25 it with him or we'll just do it later -- but he was in the

1 MOSD chats through January 6th. He didn't get kicked out
2 until a time after January 6th.

3 So in terms of a factual matter, he was involved
4 in these chats. His statement as to, you know, not having
5 seen all this, I'm determining, you know, kind of where we
6 leave that.

7 THE COURT: Okay. Mr. Pattis, a very brief --

8 MR. PATTIS: In response to Mr. McCullough's
9 argument, neither am I aware of a case that says you get to
10 bootstrap inadmissible hearsay because it shows bias so
11 well. And absent an inconsistent statement, it's simply not
12 admissible for any purpose.

13 MR. MCCULLOUGH: There's no hearsay.

14 THE COURT: Let me -- Ms. Hernández, yes.

15 MS. HERNANDEZ: Your Honor, absolutely the
16 Government is introducing it for the truth of the words that
17 he's -- that the gentleman is saying. The Government wants
18 the jury to -- wants us -- just argued to the Court that the
19 witness's view that they didn't go far enough -- in other
20 words, the words he's using -- is what makes it relevant.

21 But if you take those words for the truth of the
22 matter asserted, that they didn't go far enough, then that's
23 hearsay, very prejudicial hearsay, that doesn't come in
24 against any of us.

25 I'll cite the Court to *U.S. versus Evans* drafted

1 by Judge Garland -- or decided by Judge Garland when he was
2 on the circuit, and he points out this inconsistency where
3 you try to throw in words, and they say, Oh, it's not for
4 the truth of the matter asserted when, in fact, if it's not
5 for the truth of the matter asserted, then what he said is
6 not relevant in any way, shape or form. Because if you
7 don't take those words --

8 THE COURT: All right. I don't need to hear any
9 more from anyone on this matter.

10 The Government is not trying to prove that the
11 crowd that day should have gone further. That much I'm
12 clear of.

13 All right. So regarding the other matters we need
14 to discuss -- I want to take a break before we begin, but
15 before we even take the quick break, here's my question to
16 the parties: Do the parties think we can have a fulsome
17 discussion without sealing the courtroom or do they think we
18 need to seal the courtroom?

19 And I say this because I think it's quite possible
20 that events will overtake our -- I mean, just because we
21 seal the courtroom doesn't mean it's sealed forever. And it
22 may be that, in relatively short order, I can unseal it. So
23 I'm not trying to, you know, do -- do more than we need to.

24 On the other hand, I want to be able to give
25 everyone the freedom to be able to articulate whatever they

1 would like and make sure we don't create more of an issue
2 than we need to.

3 So --

4 MR. JAUREGUI: Judge --

5 THE COURT: -- just to be very clear to everyone
6 who's listening, it may be that it's something I can unseal
7 pretty quickly. But out of an abundance of caution, that's
8 my concern.

9 MR. JAUREGUI: Judge, Jauregui for Tarrío.

10 MS. HERNANDEZ: Can I --

11 THE COURT: I'm sorry. Mr. Jauregui, you may be
12 heard.

13 MR. JAUREGUI: Judge, Jauregui for Tarrío.

14 MS. HERNANDEZ: There's a potential witness in the
15 courtroom. We want to take her out.

16 THE COURT: All right.

17 (Thereupon, Lisa Magee retired from the courtroom
18 and the following proceedings were had:)

19 MR. JAUREGUI: Judge, Jauregui for Tarrío.

20 Judge, we would object to sealing the courtroom.
21 I can tell your Honor that the CHS has already been outed on
22 the media and her name is out there already, so I don't
23 really think it makes a difference.

24 THE COURT: What's the Government's view?

25 MR. McCULLOUGH: So --

1 THE COURT: So let me just say, part of what the
2 basis -- there are other bases to potentially seal the
3 courtroom. Let me hear from Mr. --

4 MR. McCULLOUGH: Correct. So I think, with
5 respect to that, your Honor, to the extent that there is
6 going -- I think some other reporting has been shared, and
7 so if we are going to get into the substance of that other
8 reporting, that could potentially jeopardize other items.

9 So I don't think it's necessary that -- I don't
10 think it's necessary that we would go into those areas. But
11 I just don't know how well we can avoid it. So I think our
12 preference, I think, would be that if we can avoid -- if we
13 can talk about this on the level that we have been --

14 THE COURT: Then we don't need to.

15 MR. McCULLOUGH: -- then we're probably fine.

16 The second thing, your Honor, I did want to flag
17 is that I would ask the defense, through the Court, whether
18 there have been -- whether there is any additional
19 attorney-client material that they intend to put before the
20 Court.

21 We, of course, have made the filter side
22 available, but if they do not need to be available because
23 it's substantively not the issue in terms of -- there will
24 be no substance of attorney-client discussions or any kind
25 of issues surrounding that. I think we'd like to move past

1 it. So I think they're in a better position to answer that
2 than we are. So that was the question.

3 THE COURT: Can you all answer Mr. -- I mean, our
4 first part of our discussion is literally going to be a
5 discussion about how to -- it's, you know, a conversation
6 about how to proceed. So really we are pretty far away from
7 substantive things, hopefully, that would need for us to
8 close the courtroom.

9 Mr. Pattis.

10 MR. PATTIS: The Biggs team met with taint counsel
11 yesterday privately to discuss our concerns and did not file
12 anything with the Court.

13 And the reason for that is we don't know what the
14 Government has. And to completely satisfy any *Messiah*
15 claims, I think we'd need to know that. So we do not intend
16 to address any attorney-client claims or communications.

17 To the first point that we started this colloquy
18 on, Mr. Biggs would request that his Sixth Amendment right
19 to a speedy and public trial be honored. If the Court were
20 inclined to close the courtroom, we saw that a media
21 consortium had an attorney file a motion, and we'd ask that
22 that attorney be heard.

23 THE COURT: The reason I'm teeing this up in the
24 way that I am is because of that motion.

25 And so I would hear them if we were going to do

1 that.

2 But it sounds like everyone is in agreement we
3 don't need to, at least in the first instance. Again, I'd
4 ask everyone to -- the first part of our conversation, it
5 seems to me, is going to be about sort of procedurally where
6 we go.

7 I'll just say, before we break, I had asked the
8 parties to provide me with -- you know, the Government had
9 responded to the initial motion in part with an affidavit,
10 in parts with other representations. In trying to figure
11 out where to go, I had asked the parties, give me -- if you
12 have more facts.

13 I think, depending upon -- and I received some
14 information from at least one Defendant.

15 I do think the nature of our conversation this
16 morning suggested to me, Mr. Jauregui, that there are more
17 facts out there. And so the question then becomes whether
18 you want to just proffer them to me and whether you want to
19 proffer them to me in the presence of the Government and how
20 you wish to proceed that way.

21 So that's just -- I don't know if you've thought
22 about that. It seems like you have.

23 MR. JAUREGUI: I did, your Honor. And I just
24 wanted to inform the Court that yesterday, last night,
25 late -- I don't know if it was around 9:50 -- I did provide

1 a sworn recorded statement from the witness to the
2 Government and all counsel. I debated whether I should send
3 it to your Honor last night or not. I didn't know if it was
4 proper, so I decided to hold off.

5 I am happy to provide that to the Court. I think
6 it would be important for your Honor to listen to that. And
7 I think that recorded statement can answer a lot of
8 questions that the Court may have.

9 THE COURT: Okay. So -- all right. So do you
10 think -- and the Government has heard this? Or I guess it
11 would be the taint -- would it be the taint team or the
12 filter team or the prosecution team?

13 MR. McCULLOUGH: All of the above. It was sent to
14 the prosecution team. It's been shared with the filter side
15 as well.

16 THE COURT: Okay.

17 MR. McCULLOUGH: And I wanted to advise the Court
18 and the parties that we are in the process of getting that
19 transcribed, which we're happy to share once we do, and
20 share it with the Court as well.

21 THE COURT: Okay.

22 MR. McCULLOUGH: So that's it.

23 I do have one other issue, but let's close this
24 one off. Just before you leave, I just want to put one
25 thing on the record.

1 THE COURT: All right. I mean, we may not even
2 need to -- so that -- you all are ahead of me, then, on the
3 facts.

4 In light of that -- I mean, what do -- I guess we
5 do have to take a break for the court reporter, so we will
6 do that. But, I mean, I guess -- again, I'm at a factual
7 disadvantage here. The question is going to be -- you know,
8 I've gotten a motion for an evidentiary hearing. I think --
9 you know, there's two layers here. One is, what do we do
10 about whatever the facts are? And do I need to develop the
11 facts further? Again, you all are ahead of me on this.

12 And then, two, what -- and this was raised by your
13 request this morning -- is what we do outside the presence
14 of the jury and what we do in the presence of the jury.

15 It seems to me this is a pretty good analog to the
16 situation we already found ourselves in in this case one
17 time before with regard to the Sixth Amendment, which is to
18 say, if there is a question about whether there has been a
19 Sixth Amendment violation here in some way, that I have to
20 develop the facts and rule on that outside the presence of
21 the jury.

22 And then the question is -- well, and if there is
23 a violation, then whatever relief is appropriate is
24 appropriate.

25 If there is not, then whatever leftover there is,

1 whether that is properly something that can be before the
2 jury.

3 And given -- and I'll just point out to everyone
4 that at least my understanding of the facts here is that the
5 handlers and the folks who worked with this person are not
6 involved in this trial team or this investigation, which I
7 think is a pretty salient fact and is, again, somewhat
8 analogous to the situation we found ourselves in before.

9 So that's where my head is at. But again, you all
10 at least as to the facts are ahead of me. So we'll --
11 that's what I think we need to discuss is, one, on the first
12 level of this, what you all think I need to do, again,
13 outside the presence of the jury to resolve the claim that
14 there's been a constitutional violation that would warrant
15 some kind of relief; and then, two, how we proceed, again,
16 and whatever relief is appropriate; and then the second
17 layer is what might or might not be appropriate in front of
18 the jury.

19 Mr. McCullough, you wanted -- is your issue
20 something entirely -- something else entirely?

21 MR. McCULLOUGH: Entirely different.

22 THE COURT: Okay.

23 MR. McCULLOUGH: Just before we break.

24 THE COURT: Okay.

25 MR. McCULLOUGH: So just to ask, through the

1 Court, for Ms. Hernández to put on the record the witness
2 who was in the courtroom and when she identified it, just so
3 we can make sure that that's preserved for the record.

4 MS. HERNANDEZ: It's actually not my witness.
5 Someone brought it to my attention -- not my witness.
6 Someone just mentioned there was a witness, so I just
7 thought I'd stop the proceedings as quickly as possible.

8 Maybe someone else could -- I don't know when she
9 came in or --

10 MR. METCALF: Your Honor, at that point in time, I
11 looked in the back and saw that it was one of my potential
12 witnesses for Mr. Pezzola, Lisa Magee. I know that she had
13 a flight this afternoon, so it must have just been a couple
14 of minutes that she popped her head in. And I'm assured
15 that that never happens again.

16 THE COURT: All right. Very well.

17 MR. METCALF: Thank you.

18 THE COURT: And before we break, one further piece
19 of housekeeping.

20 Mr. Metcalf, have you -- where we kind of left off
21 with regard to next week, have you -- I mean, having thought
22 about it a little bit, I mean, I think I need to at least
23 hear that you have asked to continue that argument whenever
24 you receive word that you have the argument scheduled.

25 MR. METCALF: So your Honor, I made the

1 application before you this morning. And then after that, I
2 contacted the case manager. The case manager informed me to
3 do a motion to continue, and/or I can ask to be heard
4 electronically. So my office immediately filed that, based
5 on your Honor's -- that's why I said -- it had me in a
6 difficult spot to even ask for that this morning, but I felt
7 I had no other option than to just make the request, so then
8 I could notify the Court accordingly.

9 THE COURT: Understood. Got it.

10 MR. METCALF: And I appreciate that. And I ask
11 just, if anything does happen with the Second Circuit,
12 meaning if they need more information, for me to just be
13 able to request something further from the Court, maybe in
14 writing, just to reserve that for later.

15 THE COURT: Whatever you need. I've never done
16 that in writing. But whatever you need, sure. Of course.

17 MR. METCALF: Thank you.

18 THE COURT: Finally, there's another little
19 administrative matter Mr. Pattis has been waiting for me to
20 just circle back on.

21 And you needed me to say that you're not going to
22 face any discipline from your photograph that you took in
23 connection with your representation the other -- whenever
24 that was -- last week or the week before. And I just want
25 to put that on the record, so that closes that matter out

1 for you.

2 MR. PATTIS: Thank you.

3 THE COURT: Given the -- given that you had even
4 looked at the rule and given that the -- as you indicated,
5 it was done in the spirit of zealous advocacy.

6 Let's take ten minutes for the court reporter.
7 And we'll come back. Again, that's -- the question will be
8 for you, what you think -- where, procedurally, we should
9 head with this.

10 THE COURTROOM DEPUTY: All rise.

11 (Thereupon a recess was taken, after which the
12 following proceedings were had:)

13 THE COURTROOM DEPUTY: We're back on the record in
14 Criminal Matter 21-175, the United States of America versus
15 Ethan Nordean, et al.

16 THE COURT: All right. So it's been a long week.
17 We're going to have another long week next week.

18 So let me ask, Mr. Jauregui, it's your witness.
19 I'll hear from you. I'll hear from any other Defendant that
20 wants to be heard. I'll hear from the Government on sort of
21 as I framed it how you think we should proceed procedurally
22 and given the fact that you all now have this information
23 that I haven't been provided yet.

24 MR. JAUREGUI: Judge, for purposes of Mr. Tarrio,
25 we're ready to proceed. We're ready to call this witness.

1 We need nothing. We just want to call her on Monday after
2 Mr. Mesa finishes testifying. And that's the only ask that
3 we have.

4 We don't have some of the issues that some other
5 Defendants have in this case. So I don't see from what the
6 Government has sent me so far -- I don't see any kind of
7 intrusion into our defense camp from what I see. So I'd
8 like to just call her on Monday.

9 I'll let other counsel speak for their clients.

10 THE COURT: So I'm going to hear from the other
11 Defendants. But from your perspective, then, the only
12 question is: What is going to be the scope -- I'll just put
13 it on the table -- of her direct and the scope of her cross?

14 MR. JAUREGUI: Correct, your Honor.

15 THE COURT: Mr. Smith?

16 MR. SMITH: Mr. Nordean has no objection to
17 Defendant Tarrio's proposal and believes that the issues
18 that would be explored in an evidentiary hearing that we've
19 requested can be explored for the exact same reasons on
20 relevance grounds and bias grounds and impeachment grounds
21 in the testimony of the witness at trial.

22 The rule is that a witness can be impeached by the
23 party that calls the witness. And so there's no need to
24 have duplicative hearings on the issues. All the issues can
25 be explored at the same time.

1 THE COURT: But that kind of ignores how I had
2 framed this, which is I think it is self-evident that there
3 are things that would be potentially appropriate to explore
4 in an evidentiary hearing that it would not be appropriate
5 to explore at a trial.

6 Now, maybe you would say, Okay, we can put that
7 off or We're not concerned about that or We're willing to
8 just live with the scope of whatever I deem in bounds.

9 But from my perspective, it's very clear if you
10 all think you want to prove up and -- if you all think
11 there's a potential factual basis for some sort of Sixth
12 Amendment violation, okay. The question is: Do we need an
13 evidentiary hearing or not?

14 But exploring that topic is not something we would
15 do in front of the jury.

16 MR. SMITH: Your Honor, if I may, the standard as
17 we pointed out in a filling last night is whether there's an
18 intentional intrusion into the defense camp.

19 The reason that would be within the bounds of
20 ordinary impeachment is because the witness has informed
21 Mr. Tarrio's counsel on multiple occasions that she has not
22 engaged in certain activities that the Government has
23 represented she has. That's very basic impeachment on
24 credibility.

25 And so given that the rule is you can impeach your

1 own witness on credibility grounds, we don't -- we think the
2 issue of whether there's been an intentional intrusion into
3 the defense camp is squarely within that ordinary
4 impeachment realm.

5 So -- but as for other witnesses, your Honor, that
6 could potentially be called in on the intrusion issue, we're
7 willing to proceed right now and have Mr. Tarrio call the
8 witness.

9 THE COURT: Well, let me put it this way: Without
10 knowing more about what you're talking about in terms of the
11 factual basis, it's hard for me to know whether that was in
12 bounds or out of bounds.

13 In theory, you may be right. But I mean, you
14 know, especially given that the witness's direct as I
15 understand how it would -- all right. We'll talk about this
16 in one moment.

17 If you all are willing to proceed, fair enough.

18 Mr. Pattis.

19 MR. PATTIS: From the perspective of Mr. Biggs, I
20 took a look at *Messiah* and related cases to see what I would
21 need to show. And I would need to hear from taint counsel
22 to see if I needed to proceed with an evidentiary hearing
23 based on my interview of Mr. Biggs.

24 So I am prepared to go forward and have no -- see
25 no need for a preliminary hearing. That might change

1 depending on what I'm told. But based on what I know right
2 now, we're ready to roll.

3 THE COURT: I appreciate that the parties are
4 attempting to get at the facts by discussing things between
5 you. That seems to me in part the most productive way to go
6 forward.

7 Ms. Hernández.

8 MS. HERNANDEZ: Your Honor, my only interest --
9 number one, I'm fine with proceeding as Mr. Smith indicated
10 and as Mr. Jauregui indicated.

11 My only interest in this case -- I have a witness
12 who is scheduled to self-surrender to the Bureau of Prisons
13 on Tuesday. We were going to have him appear today. But
14 that didn't work -- anyway, so he's scheduled on Monday.

15 I understand that Mr. McCullough has mercifully
16 given up cross-examination on that witness and turned it
17 over to another prosecutor. So I'm hoping it won't take
18 more than -- it won't take as long as his other
19 cross-examinations. So maybe we can get him in and out on
20 Monday.

21 You don't need to respond to that, Mr. McCullough.

22 THE COURT: In fairness --

23 MS. HERNANDEZ: That's a joke.

24 THE COURT: We --

25 MR. McCULLOUGH: -- it's not --

1 THE COURT: Hold on. Hold on.

2 I understand. We can talk big-picture scheduling
3 in a moment. I want to keep focused on the issue that --
4 why we're here.

5 We'll talk about it. I understand you have a
6 problem. I get it.

7 Mr. Roots.

8 MR. ROOTS: Thank you.

9 With regard to the Sixth Amendment-specific
10 aspect, we don't appear to have much of a problem like the
11 other camps. It does appear from what I can tell this
12 particular witness in controversy has really not had much
13 contact with our camp. We don't believe Mr. Pezzola's ever
14 talked to her. I don't believe I've ever met her and I
15 don't believe Mr. Metcalf has ever met her.

16 We're still looking into this.

17 THE COURT: Okay.

18 MR. ROOTS: But we have other issues with regard
19 to disclosure and *Brady* problems with regard to the late
20 disclosure if you are -- and we would like to address that
21 when you're ready to address that.

22 THE COURT: I'm trying to be practical about
23 making sure we can move ahead here.

24 If there's something this witness -- that is
25 within the knowledge of this witness that you think is

1 Brady, you have it and you're about to try to put it on. If
2 there's some prejudice I'm not aware of -- the witness is
3 going to be called, it sounds like. So whatever -- I
4 couldn't cure it any more than: You have the witness. Ask
5 the questions. Right?

6 MR. ROOTS: Well, there is the big -- it's a big
7 problem in this case in that this information about the CHS
8 is -- it just keeps spilling out week after week after week.

9 THE COURT: But in fairness, again, I don't want
10 to belabor this point. They don't -- the Government is not
11 in a roving -- we've all spent a lot of time -- and in fact,
12 according to what Mr. Pattis was saying the other day,
13 you're spending a lot of time even outside my presence
14 trying to talk to make sure you have -- to the extent there
15 is CHS evidence that is relevant and admissible that you all
16 have it.

17 I don't think -- from everything I know right now,
18 I wouldn't say the Government had an obligation -- I don't
19 know everything. But this whole thing came to light because
20 the defense wanted to call this person. And that's fine.

21 I don't think it's unreasonable that the
22 Government -- and I know it created a jam for you all. But,
23 you know, the Government has equities, too, in the concept
24 of the CHS. And so the idea that they would wait until they
25 really knew the person was being called to disclose it

1 doesn't strike me as improper.

2 And then we've got to deal with it, which is what
3 we are trying to work through now.

4 So hearing all of that from the defense camp, what
5 is the Government's -- my thought is we could -- if the
6 issue of the Sixth Amendment and the sort of evidentiary
7 hearing issues seem to have receded and the issue is we can
8 call this person -- subject to trying to resolve
9 Ms. Hernández's issue, too -- we can call this person. The
10 question then really does become a question of what's in and
11 out of bounds in terms of direct and cross.

12 And is that what the Government's hearing? If
13 that's how we proceed, then that's fine with me. I guess
14 the question would be how best to tee up the issues that you
15 all now have a better understanding of, a far greater
16 understanding of than I do, about what either side might be
17 wanting to do on direct and cross, that you tee that up for
18 me in a way that I can resolve it ahead of time and we go
19 from there.

20 MR. McCULLOUGH: So, your Honor, we agree with the
21 path forward, that the issue before us right now is the
22 scope of direct and the resultant scope of cross. I think
23 that is -- I think we agree with defense that -- or most of
24 the defense counsel that that's where we should be spending
25 our time. We think it's a fruitful exercise this afternoon

1 to do that.

2 I do think it's regrettable that you do not have
3 the audio because I do think that that does tee up as a
4 factual matter kind of what is to a large degree relevant
5 and appropriate. And I think we'll no doubt have a longer
6 conversation about this, so I'll keep this short.

7 We disagree with Mr. Smith's position that
8 invasion of the defense camp is kind of the playing field
9 and then you get to kind of go into anything on that in
10 terms of impeaching.

11 I just -- I think that completely reverses all the
12 analysis. And I don't think you need to -- I'm sure we will
13 hear more about that from both sides. But that's our view.

14 THE COURT: So I guess the question then becomes:
15 What is the most efficient -- I guess, again, I don't know
16 what I don't know here. Again, you all could just lay out
17 for me, I suppose, what you think the controversial areas
18 are. I will go back.

19 And I see, Mr. Jauregui, you've sent me the
20 recording and so I can listen to it over the weekend and
21 today.

22 Mr. McCullough, do you think that's the best way,
23 for just each side to lay out what you think the areas of
24 controversy will be? If you all want to submit authority by
25 a given time -- maybe that's not even that useful. But just

1 maybe -- or you all can just describe to me factually what
2 you think is -- what the defense thinks is in play and what
3 the Government thinks is not in play. I assume those are
4 one-to-one -- flip sides of the same coin and I can just
5 take it under advisement over the weekend.

6 MR. McCULLOUGH: Yeah. So, your Honor, I don't
7 think that -- my view at this point, kind of threshold, I
8 don't think we're dealing with kind of an authority
9 question. Our view -- I mean, I think, writ large, our view
10 is the Federal Rule of Evidence 103(d) kind of addresses
11 this, that kind of impermissible evidence should not come
12 before the jury by any means. We think this would be kind
13 of inappropriate to suggest impropriety on behalf of the
14 prosecutors and the FBI under the facts that are coming out
15 here.

16 I think that -- and, your Honor, you'll have the
17 audio, and I understand from Mr. Pattis shaking his head
18 that you now also have a transcript -- sorry. You now have
19 the audio. We will be providing a transcript as soon as we
20 get it.

21 So I defer to the Court as to what you think the
22 best way to do this would be. But I can sit here and kind
23 of anticipate and draw no boundaries; but I actually think
24 it may be more fruitful to hear from defense, hear the areas
25 we think we need to go into and why, and then I think we

1 could probably tee that up.

2 THE COURT: I agree.

3 So whoever from -- in the defense camp feels --
4 Mr. Pattis, I see your hand up.

5 MR. PATTIS: Just because --

6 THE COURT: Whoever is going to speak, if they can
7 summarize the state of affairs from your side as to things
8 you think you should be able to go into. Why don't you just
9 lay them out.

10 MR. PATTIS: Simply to say on behalf of Mr. Biggs,
11 I have no intention of getting into communications with
12 Mr. Biggs. I don't know what my colleagues say; but I can
13 tell you that from my perspective, I have no intention to do
14 that.

15 THE COURT: What about -- maybe Mr. Smith is the
16 best person, then, to address this. It's things you think
17 the Government will object to if you try to do them on your
18 direct.

19 Mr. Jauregui, I don't know whether it should be
20 you or Mr. Smith. You look like you're raring to go, too.

21 MR. JAUREGUI: Thank you, Judge.

22 Judge, I do want to get into her relationship with
23 her two different handlers and her relationship with the
24 FBI, the times that -- the amount of times she reported to
25 the FBI and the nature of that relationship.

1 This relationship according to her goes back to
2 2018. So -- and I want to get into that and whether or not
3 her information was taken seriously, whether or not it was
4 relayed up to the people in D.C., whether her information
5 given on what she saw on J6 was taken seriously.

6 Basically, Judge, under *Kyles versus Whitley*, we
7 have the right to attack the method of investigation of a
8 federal agency, of the FBI, whether they actually did a
9 thorough investigation, whether or not they actually
10 followed leads, whether or not this person actually gave
11 exculpatory statements and evidence in the case.

12 I was not going to get into any kind of, you know,
13 communications between her and my client. I'm going to stay
14 away from that. But I do think it's important to establish
15 the nature of the relationship like we have done with other
16 CHSs in this case thus far because, as your Honor knows,
17 it's an important element of our defense that the Government
18 had all these CHSs and not a single CHS told the Government
19 that there was a plan for January 6th, that the Proud Boys
20 were involved in a plan to storm the Capitol. So it goes to
21 prove our client's innocence, your Honor.

22 THE COURT: I would say, without even hearing from
23 the Government, a couple of things: I did allow, admit some
24 evidence suggesting that -- folks who would be in a position
25 to know, number one; and, number two, who actually were CHSs

1 at the time, that some of that came in.

2 Here, we have someone who was not -- I understand
3 the relationship goes back further. Maybe that's -- you
4 have some wiggle room there. But the person was not as far
5 as what I've been provided a CHS on January 6th. So that's
6 a distinction.

7 The other distinction is, I'll just say, the
8 person is not similarly situated to the kind of people that
9 I've -- to the positions of the CHSs for which I've allowed
10 admission of the evidence. Right? I mean, it's not someone
11 who we could say, Oh, jeez, even giving all the benefits to
12 the Government as to their theory in the case and how things
13 progressed, that this person would have been someone who
14 would have known anything about that. Right?

15 MR. JAUREGUI: Well, Judge, I can proffer that she
16 would testify that she was at least in 100 different
17 Telegram channels, groups, and in those Telegram channels
18 and groups she was friends with multiple Proud Boys and
19 multiple Proud Boys were in those channels.

20 I can proffer to your Honor that she would testify
21 that she saw no chatter on any of those groups, on any of
22 those channels where Proud Boys were present, of any plans
23 on J6, no plans of storming the Capitol.

24 I can proffer to your Honor that whenever she saw
25 something was amiss, she would pick up the phone and call

1 her handlers and inform them because she thought that was
2 the right thing to do as an American.

3 I can tell you that she would testify that the FBI
4 records we've been given so far are inaccurate and
5 incomplete and that there should be way more records than
6 what we've been provided, that there are not 16 serials, but
7 way more, in excess of 40. And she thinks the records are
8 incorrect. It's not right.

9 THE COURT: Well, again, all of that just
10 doesn't -- okay. I just don't know -- let's put it this
11 way: It seems to me, based on the types of things I've
12 admitted already, that it might be fair if she did have an
13 informal relationship maybe to say: You had this at the
14 time of January 6th and in the time leading up. You did
15 have this informal relationship. And you never called them
16 up about reporting about any plan. Maybe.

17 MR. JAUREGUI: I --

18 THE COURT: But the question of, like, well, this
19 particular document or that particular document is
20 inaccurate, when we are talking about agents who were not
21 involved in this case or this investigation at all, I
22 guess --

23 MR. JAUREGUI: Well, Judge, I mean, this is the
24 government. The FBI in Texas and the FBI in Washington,
25 D.C., still is the FBI. It's a faceless, you know,

1 bureaucrat. And it's implied knowledge from one office to
2 the other. It is the FBI.

3 Whether they're inefficient, negligent or what
4 have you is not our client's fault. So I would make that
5 argument to your Honor.

6 If this person told the FBI certain things, it
7 doesn't matter if it was in Alaska. They need to share that
8 information. You're going to hear in the recording that the
9 relationship she had with her handlers was a very close
10 friendship-type relationship, and that informal nature may
11 not have been reported accurately in the reports that we've
12 been given so far.

13 THE COURT: Okay. Again, any other conceptual
14 area you're going into?

15 MR. JAUREGUI: No, your Honor.

16 THE COURT: I understand.

17 Does any other Defendant have an area --
18 Mr. Smith, it sounded like you did. But maybe not. Maybe
19 I'm just --

20 MR. SMITH: To be very quick, your Honor, I think
21 the Court agrees we're allowed to explore bias and incentive
22 to fabricate generally as -- in impeachment.

23 And if a CHS is tasked with reporting on the
24 Defendants in the case and that is how they earn income,
25 there is of course a possibility that the witness would

1 fabricate their testimony about that subject because they
2 do -- that is inappropriate. There are rules that prohibit
3 CHSs from reporting on defendants after their right to
4 counsel has attached.

5 THE COURT: Right.

6 MR. SMITH: So I don't know whether that happens.
7 The Government has represented, to be clear, many times that
8 has not happened. That is not the issue here.

9 But that is something that we're entitled to
10 explore, given the good-faith basis we have for unusual
11 activity.

12 At the same time that the witness CHS has been --
13 has an informant relationship with the Government, they've
14 made repeated contacts with multiple Defendants and their
15 counsel. So it's an issue at the very least, your Honor, of
16 bias and incentive to fabricate.

17 THE COURT: So you think in summary you have a
18 good-faith basis to ask the question, Did the Government
19 task you with when you were a CHS -- this is after
20 January 6th -- did the Government task you with obtaining
21 information about my client?

22 MR. SMITH: That's one question.

23 I think that a related question, your Honor, is:
24 If the informant has had multiple conversations with the
25 Government, a handler, about the Defendants and their

1 counsel and what they've discussed, even if they weren't
2 tasked specifically in so many words with doing that, if
3 there's a pattern of activity that occurs over a period of
4 time without it being -- without being told to stop, that is
5 kind of what you might call tacit acceptance of what the CHS
6 has been doing.

7 So it's bias, your Honor. And it's incentive to
8 fabricate.

9 THE COURT: All right. I --

10 MR. SMITH: We think just because there might be a
11 Sixth Amendment issue there doesn't mean that that would
12 prevent Defendants from exploring bias because there happens
13 to be a constitutional issue that's floating in the
14 background.

15 THE COURT: Right. Okay.

16 MR. McCULLOUGH: Your Honor?

17 THE COURT: Let me just try to wrap up.

18 Those are the two conceptual -- that's where we
19 are conceptually.

20 Mr. Smith has talked about it in terms of bias and
21 he thinks he has a good-faith basis to ask that question
22 about conduct that would be inappropriate -- let's put it
23 that way -- in terms of the tasking. That's number two.

24 Mr. Jauregui, your issue is, I guess, slightly --
25 it's a slightly different issue. You just want to talk

1 about sort of -- it's almost pre-January 6th sort of, and
2 how you can kind of get kind of closer conceptually to
3 how -- even though I don't think it's one-to-one, but closer
4 conceptually to the way CHS-related information has been
5 admitted so far.

6 MR. JAUREGUI: Your Honor, yes. And just again,
7 another proffer: She did talk to her handlers about
8 previous rallies that she -- Proud Boys rallies that she had
9 personally attended. And in the reports she talks about
10 Joseph Biggs; she talks about my client, Enrique Tarrio.
11 And she talks about those rallies to these handlers. And
12 since the Government in this case has brought up these
13 rallies in the past, I think it's -- she's a percipient
14 witness to what happened in those rallies and she did
15 provide that information to the FBI.

16 THE COURT: Well, if you want to ask her about the
17 rallies, again -- but at that time, she wasn't a CHS.
18 Right?

19 MR. JAUREGUI: She started in 2018. And then --
20 this is where it's confusing. Honestly, I don't know,
21 Judge.

22 THE COURT: Well --

23 MR. JAUREGUI: She starts in 2018; and then the
24 Government tells us, Well, she was officially signed up in
25 April 2021.

1 THE COURT: Right.

2 MR. JAUREGUI: But there's this space missing
3 there that I don't know how to account for, your Honor.

4 THE COURT: It sounds like it wasn't a formalized
5 relationship before then and she came to -- into contact
6 with the FBI for reasons that had nothing to do with being a
7 CHS or providing information.

8 MR. JAUREGUI: Honestly, I don't know.

9 THE COURT: Okay. So I have the scope factually
10 of I think what we're talking about.

11 One of you, I thought, said before -- I can't
12 remember whether it was you, Mr. Jauregui, or Mr. Smith --
13 that she was -- said something like she was -- in the audio,
14 she says something that is contradicted by the records or
15 there's some contradiction. I can't remember. Which of you
16 said that?

17 MR. SMITH: Your Honor, I think I just indicated
18 that she gives some responses in the audio recording that
19 are inconsistent with the content of the records we received
20 from the Government on her reporting.

21 THE COURT: In terms of the number of occasions
22 or --

23 MR. JAUREGUI: That's not in the recording, Judge.
24 That's something that I spoke to her about today. When I
25 showed her the documents, she said that the documents

1 were -- because I had not shown her the documents until this
2 morning.

3 THE COURT: Maybe Mr. Smith is talking about
4 something else, then.

5 MR. SMITH: I think I defer to Mr. Jauregui. I
6 think he understands -- he took -- he made the recording.
7 So I don't --

8 THE COURT: That's what you're referring to --

9 MR. SMITH: Yes, your Honor.

10 THE COURT: -- is the number of contacts, that
11 kind of thing?

12 MR. SMITH: I think so, your Honor. Yes.

13 THE COURT: Look, before I even hear from the
14 Government, I think, Mr. Jauregui, I'll think about whether
15 there's something there, if she had some kind of informal
16 relationship. And you're going to -- it's much more sketchy
17 than the kinds of things I've admitted where somebody was in
18 the MOSD, you know, or much closer to the situation, number
19 one.

20 But I'll look at it conceptually.

21 I think, number two, I've got to say, Mr. Smith, I
22 mean, I think this feels to me like a back-door way -- I
23 don't know whether you do or don't have that factual basis
24 to ask that question. But I'm a little skeptical. And I
25 guess my point is, this is a situation where it's -- I know

1 it's not your witness. But it is a defense witness. This
2 is a knowable -- the question of what she would say to, "Was
3 I tasked to go invade the defense camp," is a knowable thing
4 right now.

5 And so especially given that your request was for
6 an evidentiary hearing, it seems a little strange to say,
7 Well, jeez, we'll forego the evidentiary hearing and you'll
8 ask a question that it would be very easy to figure out
9 whether -- what the answer is and what the contours of that
10 would be.

11 MR. PATTIS: Your Honor --

12 MR. SMITH: Your Honor, how would it be --

13 THE COURT: I've got to hear Mr. Smith because
14 it's his issue, Mr. Pattis.

15 MR. SMITH: Your Honor, how would it be very easy
16 to figure out what her sworn testimony would be? We haven't
17 had the opportunity.

18 THE COURT: Well --

19 MR. SMITH: Mr. Nordean hasn't had the opportunity
20 to elicit sworn testimony from her. So how is it very easy
21 for us to figure out what her sworn testimony would be?

22 THE COURT: Well, you could ask her first in an
23 unsworn situation.

24 MR. SMITH: Well, I thought, your Honor, the
25 question was whether we wanted to hold up trial for

1 something or whether we wanted to proceed.

2 And our response was, we don't want to hold up
3 trial because we believe there's a good-faith basis to ask
4 her about this potential area of bias on cross-examination.

5 And the bias, your Honor, just -- if I can put it
6 as cleanly as I can, because I don't think I did before, but
7 if someone is earning money from a certain area of work,
8 they have an incentive to give the Government what it wants.
9 If the area of work is reporting on Proud Boys and they
10 can't -- they don't want to say something on the stand that
11 would jeopardize their ability to continue that area of
12 work.

13 So if we were to elicit that, yes, you have made
14 money reporting on -- you have made -- earned money as a CHS
15 and you have conversations with your handler reporting on
16 the Proud Boys, that would be a bias, an area of bias.

17 And the good-faith basis, your Honor, is the
18 series of unusual contacts and communications this person
19 has made that we filed under seal.

20 THE COURT: If you're willing to live -- I'm going
21 to hear from the Government. But if you're willing to live
22 with whatever I rule on this, then fair enough.

23 I'll look at it. I'll think about it. But I
24 mean, if you don't want to hold up, if you think you have
25 that good-faith basis, that's fine. But I'm not -- I'm

1 hearing you all now. I'm going to look at this over the
2 weekend. I haven't even heard from the Government yet. But
3 if I don't believe you have that right, we'll just proceed
4 on.

5 Mr. Pattis.

6 MR. PATTIS: Again, I want to reserve as to
7 Mr. Biggs depending on what I hear. I don't want to have a
8 hearing --

9 THE COURT: I totally --

10 MR. PATTIS: -- for no reason. But we're prepared
11 to go forward with examination of the witness.

12 THE COURT: Understood. And I think that's an
13 entirely separate question, and I understand your position.

14 Let me hear from the Government.

15 MR. McCULLOUGH: Your Honor, I just simply think
16 that once you hear the recording, I think that you will have
17 a sense of whether there is any good-faith basis to go into
18 any efforts to invade the defense camp.

19 It's just a 36-minute recording. Mr. Jauregui did
20 what can only be a thorough examination of her, asking her
21 very leading questions -- the Government was not present for
22 this -- and elicited up and down that this person was not
23 reporting on Proud Boys, was not tasked to report on Proud
24 Boys; in fact, as she says, would never report on Proud
25 Boys. She would only report -- I think at one point she

1 says she would never report on our side. She described the
2 fact that she is reporting on what is relevant to that AOR,
3 which in this case is -- in this context at least as she
4 described it is Antifa and the border.

5 And so I think your Honor will hear that. Your
6 Honor will assess it. And if your Honor -- I don't think
7 your Honor needs to hear further from us. Once you hear, I
8 think it's fairly self-explanatory.

9 THE COURT: Okay.

10 MR. McCULLOUGH: In terms of -- I think you'll pay
11 close attention to some of these issues in terms of whether
12 she's fabricating or lying about the number of reports or
13 what kind of reporting or the accuracy of the reports. I
14 think you will make an assessment on that.

15 I think she says in the audio recording, Oh, no.
16 It was way more than 16 serials. It was a lot more. Right?
17 It was a lot more. It was a lot more. It was a lot more.

18 Mr. Jauregui -- she says maybe 25.

19 Right? So she had a couple other phone contacts
20 outside of the 16.

21 So I think your Honor will get a sense of it and
22 you'll hear the colloquy back and forth between -- or kind
23 of the exchange between the parties.

24 I will say, I think that some of the questions
25 that you will hear in the audio recording I think would be

1 inappropriate to come out in front of the jury. There is a
2 suggestion that the Government outed you or that the
3 Government didn't even give you the courtesy of a heads-up
4 before doing this or that.

5 I just think that those kind -- I mean, that's
6 just inappropriate. And I think your Honor will hear it and
7 I think you'll be able to just -- we'll be able to have a
8 more fulsome discussion on that when we are all back
9 together.

10 But there are some questions and innuendo in that
11 which -- and I say this respectfully and with warmth --
12 Mr. Jauregui is very good at insinuating things through his
13 body, his language and the like. We've all been impressed
14 by it. I don't want to be impressed by it with this
15 witness.

16 MR. JAUREGUI: Judge, I can say that I am not as
17 good as the Government when I'm conducting a recorded
18 statement of a potential witness. And I simply don't have
19 ten and 12 chances to get a witness to say what I want them
20 to say.

21 THE COURT: Mr. --

22 MR. McCULLOUGH: No, no.

23 THE COURT: Mr. Jauregui, no.

24 MR. McCULLOUGH: I was saying in front of the
25 jury. I genuinely was. I think he's very good. And I

1 don't want insinuation that the Government's done something
2 improper through a question that's at the margins.

3 THE COURT: I understand.

4 MR. McCULLOUGH: We want to guard that.

5 THE COURT: I'll look at it and I'll be prepared
6 to rule on Monday.

7 One final question that I realize sort of got
8 overlooked in all of this is, Mr. Jauregui, what was the
9 original -- what is going to be her testimony that we
10 haven't discussed? You had a reason for calling her that
11 we're not -- so just give me a sense, please, of what her
12 testimony is going to be apart from everything we've
13 discussed.

14 MR. JAUREGUI: Sure, Judge.

15 She was there on January 6th and she was actually
16 watching the Trump speech. And I think she was going to
17 give a speech for -- in the speech, but Trump went long. At
18 some point in the past she was involved in Latinos for Trump
19 but then she wasn't involved in Latinos for Trump. But
20 that's what I was going to call her for.

21 And then the CHS thing came out.

22 THE COURT: I understand. Okay.

23 I'm going to block off 36 minutes very shortly.

24 I don't think we have anything more to discuss,
25 then. I'll see you all at 9:00 a.m. on Monday.

1 Oh, we do. Yes, we do. Yes, we do. I saw your
2 hand, Ms. Hernández.

3 MS. HERNANDEZ: Thank you.

4 THE COURT: You all may be seated. This is
5 important.

6 MS. HERNANDEZ: Sorry. Sorry.

7 THE COURT: It's all right. It's all right. Yes,
8 we do.

9 So, Ms. Hernández, we've got the witness on the
10 stand now. Is this the witness -- your witness that you had
11 talked to another judge about recently?

12 MS. HERNANDEZ: Correct. He was the subject of
13 one of the motions I filed. But he has in fact been
14 sentenced. So there's no Fifth Amendment. And his
15 self-surrender date was extended to Tuesday.

16 THE COURT: Right.

17 MS. HERNANDEZ: So we got -- and we keep on
18 pushing him back. We thought we were going to bring him in
19 on Thursday, then on Friday.

20 THE COURT: Well, looking at the situation, I
21 think -- and I could see -- I'll hear from you in a second,
22 Mr. McCullough -- we have the witness on the stand we have
23 to complete. I don't know how much longer that will take.
24 It seems -- now, we could take the witness out of order and
25 take your witness next. But also, Mr. Jauregui's witness

1 has been waiting, and I think there are good reasons to try
2 to address that witness.

3 So the question is whether you could get that date
4 bumped one more day, one more day.

5 But, Mr. McCullough, what's your --

6 MS. HERNANDEZ: I defer to the honorable judge
7 sitting at the bench who can probably sign an order.

8 THE COURT: I don't think I can do that.

9 MR. McCULLOUGH: Your Honor --

10 THE COURT: But Mr. McCullough.

11 MR. McCULLOUGH: I agree. I don't think you can
12 do that. And I never like to be in that position to say
13 that. But I think that is -- as it is a Judge Chutkan
14 issue.

15 We may just want to leave here and try to address
16 this with the marshals. The order is to report on Tuesday.
17 But sometimes it is the case that the marshals and the jail
18 may not accept an inbound arrival on that particular date.
19 So we may want to just check that because it may be mooted
20 by just administrative issues.

21 MS. HERNANDEZ: That's correct.

22 So maybe if we had to take him on Tuesday morning,
23 he could still self-surrender on time or maybe it would just
24 be a matter of having -- I think it's the marshals who
25 communicate with BOP, so it might be a matter of extending

1 it by hours. But it would require another court order. And
2 the gentleman had objected -- I originally asked for a
3 month, given how unclear our dates are. But he had actually
4 asked for time off from work. There were a number of
5 factors that impacted his decision that he wanted to go in
6 as quickly as possible.

7 THE COURT: Okay. Look, I cannot enter an order
8 along those lines. I can pick up the phone and call Judge
9 Chutkan. So you all let me know if -- it seems to me we
10 have good reason to take Mr. Jauregui's --

11 MS. HERNANDEZ: Yes.

12 THE COURT: -- witness first. Depending on the
13 timing, we need to -- I need to pick up the phone on
14 you-all's behalf. Let me know and I'll do it.

15 MS. HERNANDEZ: You do have the power to limit
16 Mr. McCullough's cross-examination that's been going on
17 for -- based on his representation to your Honor a week ago
18 that his cross-examinations would be short.

19 THE COURT: Why would I treat him any different
20 than I treated all of you?

21 MR. PATTIS: Because only the defense has a Sixth
22 Amendment right to a cross-examination to confront
23 witnesses. It's a personal right. And the Government
24 doesn't have it.

25 MS. HERNANDEZ: And we didn't represent short

1 cross-examinations.

2 THE COURT: See you all Monday.

3 (Proceedings concluded.)

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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 24th day of March, 2023.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

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