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**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

United States of America,)	CR1:21 mj-94 ZMF
)	
Plaintiff,)	
)	Motion to Amend Detention Order
vs.)	
)	
Jon Ryan Schaffer,)	
)	
Defendant.)	

Jon Schaffer, pursuant to 18 U.S.C. § 3145(b), moves to amend the detention ordered entered by Magistrate Judge Faruqui on March 19, 2021. (Doc xx).

MEMORANDUM OF POINTS AND AUTHORITIES

Facts:

On January 16, 2021, a Criminal Complaint was filed alleging Mr. Schaffer violated sections 1, 2, and 4 of 18 U.S.C. 1752(a) and sections A, F and G of 40 U.S.C. 5104(e) on January 6, 2021. (Doc 1).

Mr. Schaffer, a long-time resident of Indiana, became aware of the Complaint and retained counsel. On January 17, 2021, Mr. Schaffer voluntarily presented himself to federal authorities in Indiana. On January 19, 2021, the Southern District of Indiana conducted a Rule 5 Initial Hearing. (1:21-mj-0049 Doc. 1). At the hearing, Mr. Schaffer waived his right to both an identity hearing and a preliminary hearing. (1:21-mj-0049 Doc 1 & 2). Because the Government sought pretrial detention, Magistrate Judge Mark J. Dinsmore scheduled a detention hearing for January 22, 2021. (1:21-mj-0049 Doc 1).

Instead of proceeding with his January 22, 2021 Detention Hearing, Mr. Schaffer waived the hearing but reserved his “right to request a detention hearing in the prosecuting district at a time set by that Court.” (1:21-mj-0049 Doc. 6).

Magistrate Judge Dinsmore ordered the U.S. Marshal to transport Mr. Schaffer to this District to appear in this case. (1:21-mj-0049 Doc 7).

Although the parties anticipated the U.S. Marshal would transport Mr. Schaffer within a few weeks, Mr. Schaffer was not transported to this District until March 17, 2021.

Pretrial Services investigated Mr. Schaffer and recommended his release with conditions including Pretrial Services Supervision, GPS monitoring, and home detention.

On March 19, 2021, the Government presented exhibits at Mr. Schaffer's detention hearing. The exhibits consisted of a video interview of Mr. Schaffer in November of 2020 expressing his political views and a video and still photos taken on January 6, 2021 showing him inside the United States Capitol holding spray.

On March 19, 2021, Magistrate Judge Faruqi ordered Mr. Schaffer detained based on a finding the Government had proven by clear and convincing evidence that Mr. Schaffer was a danger to the community and that no condition or combination of conditions would reasonably assure the safety of any other person or the community if Mr. Schaffer was released. (Doc xx).

Law and Argument:

The Bail Reform Act provides three basic options regarding release or detention pending trial. The Act permits the Court to release a defendant on his own recognizance (an unsecured bond is optional); release on conditions; or detain. 18 U.S.C. § 3142 (a).

Pretrial detention is only permitted upon a finding “that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142 (e)(1)¹ *See also* U.S. v. Xulam, 84 F.3d 441, 442 (D.C. Cir. 1996) (per curiam).

¹ 18 U.S.C. § 3142(e) also permits detention for particular offenses. Mr. Schaffer has not been charged with any of those offenses.

“A detention decision based upon the defendant's dangerousness to the community must be supported by ‘clear and convincing evidence.’” 18 U.S.C. § 3142(e)(1), (f); *see also United States v. Smith*, 79 F.3d 1208, 1209 (D.C. Cir. 1996).

The Government failed to establish Mr. Schaffer’s dangerous to the community by clear and convincing evidence. Additionally, assuming arguendo, even if dangerousness was established, the Government failed to establish that there no condition or combination of conditions exist to reasonably assure the safety of the community if Mr. Schaffer is released. Thus, Mr. Schaffer requests an amendment of Magistrate Judge Faruqui’s detention order to order Mr. Schaffer released.

Mr. Schaffer is 53 years old. He has no criminal convictions. He does not have a substance abuse or mental health issue. He has no history of violence and was not violent on January 6, 2021. He entered the capitol with pepper spray. He did not threaten anyone with or discharge the spray. He left the capitol after approximately sixty seconds and returned home to Indiana.

RESPECTFULLY SUBMITTED March 19, 2021.

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/s/ Marc J. Victor
Marc J. Victor
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2021, I filed the Original with the Clerk of the Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/CEF registrants:

Ahmed M. Baset
James B. Nelson
Louis J. Manzo
Assistant U.S. Attorneys

By: /s/ Carmen Smith