

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)
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)
)
 V.) CR. NO. 21-508(BAH)
)
)
 LUKE BENDER)
 Defendant)

LUKE BENDER’S MOTION FOR REVIEW OF DETENTION ORDER

COMES NOW, LUKE BENDER, defendant, through undersigned counsel Dwight E. Crawley, pursuant to 18 U.S.C. §3145(b) and respectfully requests that this Honorable Court remove the defendant from the High Intensity Supervision Program (H.I.S.P.) and electronic (GPS) monitoring and place him on personal recognizance (PR) bond with certain conditions. As grounds for this motion, Mr. Bender states the following:

BACKGROUND

1. Mr. Bender is charged with multiple crimes concerning his alleged involvement, on January 6, 2021, in protesting the results of the 2020 Presidential election. His charges include one felony and five misdemeanors (Indictment attached).
2. A detention hearing was held on July 30, 2021, before the Honorable Magistrate Judge Harvey. After hearing from both parties, the court released Mr. Bender on personal recognizance bond with certain conditions of release that included, among other things, “location monitoring as directed by the pretrial services or supervising officer.” This later became high

intensity supervision according to Pretrial Services. A copy of the defendant's release conditions is attached to this motion.

FACTORS TO BE CONSIDERED

Title 18 U.S.C. §3142(g) specifies the factors to be considered in determining whether there are conditions of release that will reasonably assure the appearance of the person at trial as well as provide for the safety of the community. Those factors are:

(1) The nature and circumstances of the offense charged including whether the offense is a crime of violence or involves a narcotic drug;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person—

i. The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

ii. Whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release while pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

ARGUMENT

In this case, the government does not have any evidence to assert that Mr. Bender is currently a risk of flight or a danger to the community. At the time of the original hearing, it was

communicated that the defendant had several outstanding warrants for his arrest. This was true; however, since his release he has surrendered on those matters and was released on an unsecured bond in each matter. Moreover, the defendant was not aware of one of the warrants and as to the other he planned to turn himself in with the assistance of his attorney in that matter on the date of his arrest in this case.

Since his release concerning all of his matters, the defendant has been in full compliance with his release conditions. He has received approval from Pretrial Services to travel out of state and has done so without incident. He has not missed one check-in, despite the report submitted by Pretrial Services. The date and time of the alleged infraction seems to be erroneous. At the time of the alleged infraction, he was traveling and the time and date are inconsistent with normal check-in times. Moreover, the defendant appeared for court on August 16th and the court was informed that the defendant was in full compliance.

The defendant has a stable residence and an opportunity for employment. He currently resides at his parents' home and he has an opportunity to work in construction with a family friend. In addition to his stable residence and employment opportunity, the defendant is married. However, his wife suffers from several medical issues that require the defendant to assist with her care.

Mr. Bender's conduct since his release clearly shows that he is not a risk of flight or a danger to the community. Accordingly, the defendant requests that he be removed from the High Intensity Supervision Program (H.I.S.P.) and placed on personal recognizance (PR) bond with the following conditions: routine check-ins with Pretrial Services by phone as directed; substance abuse screening; and, if needed, substance abuse and mental health treatment; surrender his passport; seek and receive permission to travel from Pretrial Services if traveling

domestically; seek and receive permission from this court if traveling internationally; not travel to Washington, DC without approval of the court unless it is to appear in court, meet with Pretrial services or meet with his attorney; not possess a firearm; not possess any illegal substances; not engage in any criminal activity; and report any contact with law enforcement.

WHEREFORE, counsel respectfully requests that this court grant Mr. Bender's motion.

Respectfully submitted
LUKE BENDER

/s/

Dwight E. Crawley, Esq.
DC BAR #472672
Attorney for LUKE BENDER
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1300 I. Street, NW
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Washington, DC 20005
(202) 580-9794 Phone
(202) 722-0246 Fax
vadclawyer@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all attorneys of record.

/s/

Dwight E. Crawley, Esq.
DC BAR #472672
Attorney for LUKE BENDER
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Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

(Obstruction of an Official Proceeding, in violation of Title 18, United States Code, Sections 1512(c)(2))

COUNT II

On or about January 6, 2021, in the District of Columbia, **LUKE WESSLEY BENDER**, did knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily visiting, without lawful authority to do so.

(Entering and Remaining in a Restricted Building or Grounds, in violation of Title 18, United States Code, Section 1752(a)(1))

COUNT III

On or about January 6, 2021, within the District of Columbia, **LUKE WESSLEY BENDER**, did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President and Vice President-elect were temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions.

(Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of Title 18, United States Code, Section 1752(a)(2))

COUNT IV

On or about January 6, 2021, within the District of Columbia, **LUKE WESSLEY BENDER**, willfully and knowingly entered and remained on the floor of a House of Congress and

in any cloakroom and lobby adjacent to that floor, in the Rayburn Room of the House of Representatives, and in the Marble Room of the Senate, without authorization to do so.

(Entering and Remaining on the Floor of Congress, in violation of Title 40, United States Code, Section 5104(e)(2)(A))

COUNT V

On or about January 6, 2021, within the District of Columbia, **LUKE WESSLEY BENDER**, willfully and knowingly engaged in disorderly and disruptive conduct within the United States Capitol Grounds and in any of the Capitol Buildings with the intent to impede, disrupt, and disturb the orderly conduct of a session of Congress and either House of Congress, and the orderly conduct in that building of a hearing before or any deliberation of, a committee of Congress or either House of Congress.

(Disorderly Conduct in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(D))

COUNT VI

On or about January 6, 2021, within the District of Columbia, **LUKE WESSLEY BENDER**, willfully and knowingly paraded, demonstrated, and picketed in any United States Capitol Building.

(Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(G))

A TRUE BILL:

FOREPERSON.

Channing D. Phillips /re

Attorney of the United States in
and for the District of Columbia.

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America)

v.)

LUKE WESSLEY BENDER)

Case No. 21-MJ-542

Defendant)

APPEARANCE BOND

Defendant's Agreement

I, LUKE WESSLEY BENDER (*defendant*), agree to follow every order of this court, or any court that considers this case, and I further agree that this bond may be forfeited if I fail:

- to appear for court proceedings;
- if convicted, to surrender to serve a sentence that the court may impose; or
- to comply with all conditions set forth in the Order Setting Conditions of Release.

Type of Bond

- (1) This is a personal recognizance bond.
- (2) This is an unsecured bond of \$ _____.
- (3) This is a secured bond of \$ _____, secured by:
 - (a) \$ _____, in cash deposited with the court.
 - (b) the agreement of the defendant and each surety to forfeit the following cash or other property (*describe the cash or other property, including claims on it – such as a lien, mortgage, or loan – and attach proof of ownership and value*):

If this bond is secured by real property, documents to protect the secured interest may be filed of record.

- (c) a bail bond with a solvent surety (*attach a copy of the bail bond, or describe it and identify the surety*):

Forfeiture or Release of the Bond

Forfeiture of the Bond. This appearance bond may be forfeited if the defendant does not comply with the above agreement. The court may immediately order the amount of the bond surrendered to the United States, including the security for the bond, if the defendant does not comply with the agreement. At the request of the United States, the court may order a judgment of forfeiture against the defendant and each surety for the entire amount of the bond, including interest and costs.

AO 98 (Rev. 12/11) Appearance Bond

Release of the Bond. The court may order this appearance bond ended at any time. This bond will be satisfied and the security will be released when either: (1) the defendant is found not guilty on all charges, or (2) the defendant reports to serve a sentence.

Declarations

Ownership of the Property. I, the defendant – and each surety – declare under penalty of perjury that:

- (1) all owners of the property securing this appearance bond are included on the bond;
- (2) the property is not subject to claims, except as described above; and
- (3) I will not sell the property, allow further claims to be made against it, or do anything to reduce its value while this appearance bond is in effect.

Acceptance. I, the defendant – and each surety – have read this appearance bond and have either read all the conditions of release set by the court or had them explained to me. I agree to this Appearance Bond.

I, the defendant – and each surety – declare under penalty of perjury that this information is true. (See 28 U.S.C. § 1746.)

Date: _____

unable to sign due to pandemic

Defendant's signature

Surety/property owner – printed name

Surety/property owner – signature and date

Surety/property owner – printed name

Surety/property owner – signature and date

Surety/property owner – printed name

Surety/property owner – signature and date

CLERK OF COURT

Philip Tran

Digitally signed
by Philip Tran

Date: 07/30/2021

Signature of Clerk or Deputy Clerk

Approved.

Date: 07/30/2021



Digitally
signed by G.
Michael Harvey

Judge's signature

UNITED STATES DISTRICT COURT
for the
District of Columbia

United States of America

v.

Luke Wessley Bender

Defendant

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)

Case No. 21-MJ-542

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate federal, state, or local law while on release.
(2) The defendant must cooperate in the collection of a DNA sample if it is authorized by 34 U.S.C. § 40702.
(3) The defendant must advise the court or the pretrial services office or supervising officer in writing before making any change of residence or telephone number.
(4) The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.

The defendant must appear at: U.S. District Court 333 Constitution Ave NW Washington, DC 20001

Place

Control Status Hearing

on 8/16/2021 1:00 pm

Date and Time

If blank, defendant will be notified of next appearance.

- (5) The defendant must sign an Appearance Bond, if ordered.

ADDITIONAL CONDITIONS OF RELEASE

Pursuant to 18 U.S.C. § 3142(c)(1)(B), the court may impose the following least restrictive condition(s) only as necessary to reasonably assure the appearance of the person as required and the safety of any other person and the community.

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

- (6) The defendant is placed in the custody of:
 Person or organization _____
 Address (only if above is an organization) _____
 City and state _____ Tel. No. _____

who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed: _____
Custodian Date

- (7) The defendant must:
 - (a) submit to supervision by and report for supervision to the _____ as directed to PSA _____, telephone number (202)442-1000, no later than _____ immediately upon release from custody.
 - (b) continue or actively seek employment.
 - (c) continue or start an education program.
 - (d) surrender any passport to: _____ Pretrial Services Agency for the District of Columbia
 - (e) not obtain a passport or other international travel document.
 - (f) abide by the following restrictions on personal association, residence, or travel: _____ Stay away from D.C. except for Court proceedings, attorney meetings, and required PSA Business. Def. must notify PSA in advance of travel outside of Virginia. Def. must receive Court approval for travel outside of the Continental United States.
 - (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including: _____
 - (h) get medical or psychiatric treatment: _____ Participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by pretrial office or supervising officer.
 - (i) return to custody each _____ at _____ o'clock after being released at _____ o'clock for employment, schooling, or the following purposes: _____
 - (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.
 - (k) not possess a firearm, destructive device, or other weapon.
 - (l) not use alcohol () at all () excessively.
 - (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.
 - (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.
 - (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.
 - (p) participate in one of the following location restriction programs and comply with its requirements as directed.
 - (i) **Curfew.** You are restricted to your residence every day () from _____ to _____, or () as directed by the pretrial services office or supervising officer; or
 - (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or
 - (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down at your residence except for medical necessities and court appearances or other activities specifically approved by the court; or
 - (iv) **Stand Alone Monitoring.** You have no residential curfew, home detention, or home incarceration restrictions. However, you must comply with the location or travel restrictions as imposed by the court.
Note: Stand Alone Monitoring should be used in conjunction with global positioning system (GPS) technology.

ADDITIONAL CONDITIONS OF RELEASE

- (q) submit to the following location monitoring technology and comply with its requirements as directed:
 - (i) Location monitoring technology as directed by the pretrial services or supervising officer; or
 - (ii) Voice Recognition; or
 - (iii) Radio Frequency; or
 - (iv) GPS.
 - (r) pay all or part of the cost of location monitoring based upon your ability to pay as determined by the pretrial services or supervising officer.
 - (s) report as soon as possible, to the pretrial services or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.
 - (t) Verify Address; Defendant must self-surrender on outstanding warrant; Substance abuse evaluation (including alcohol); Comply with all treatment recommendations and sign all required releases of information to obtain and report treatment compliance to the Court
-

ADVICE OF PENALTIES AND SANCTIONS

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (*i.e.*, in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of the Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.

Acknowledged on the record due to global pandemic COVID-19

Defendant's Signature

City and State

Directions to the United States Marshal

- () The defendant is ORDERED released after processing.
 () The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Date: 7/30/2021



Digitally signed by G. Michael
Harvey

Date: 2021.07.30 18:36:07 -04'00'

Judicial Officer's Signature

G. Michael Harvey, U.S. Magistrate Judge

Printed name and title