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

**UNITED STATES OF AMERICA,**

**v.**

**RICHARD BARNETT,**

***Defendant.***

**Case No. 21-cr-0038 (CRC)**

**DEFENDANT RICHARD BARNETT'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR MODIFICATION OF BAIL**

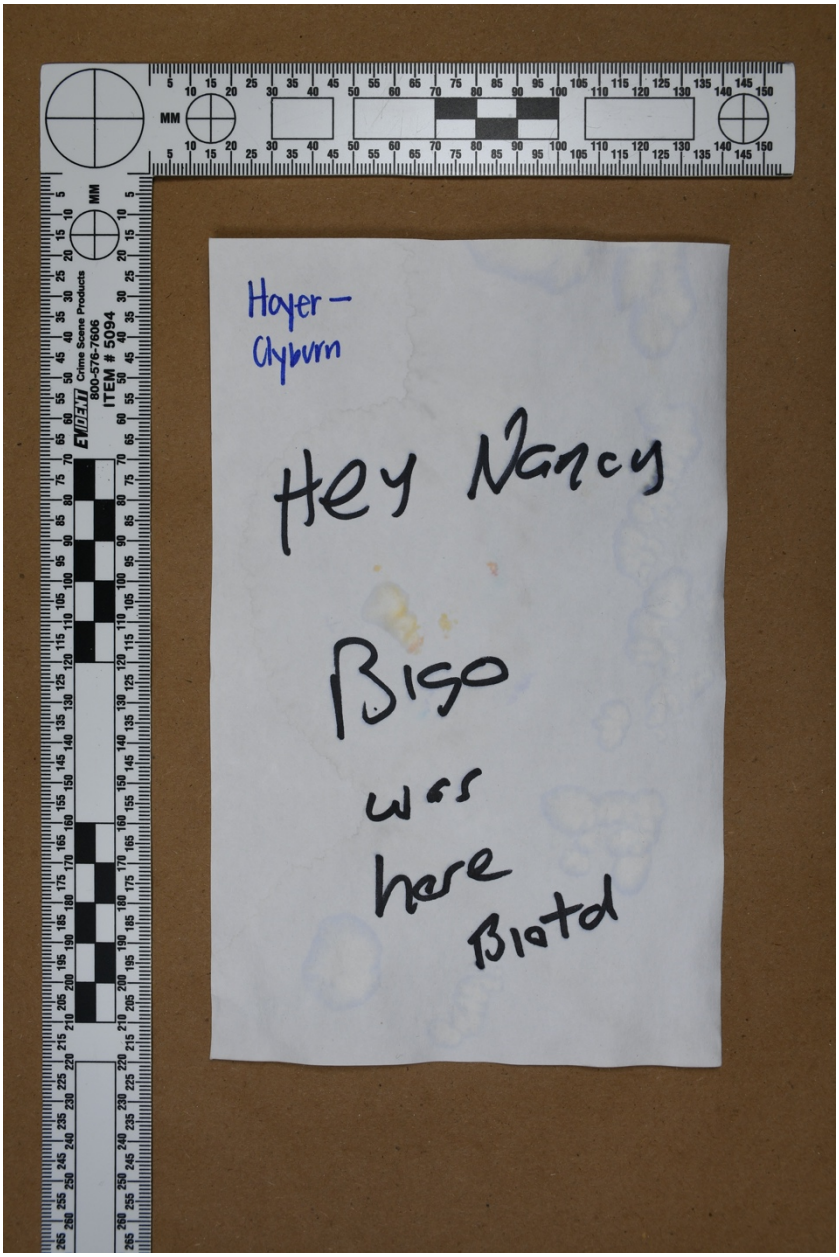
## I. INTRODUCTION

The government's opposition falls far short of showing clear and convincing evidence to support the "dangerousness" component under the meaning of the Bail Reform Act. The government is also unable to prove that Richard Barnett (hereafter referred to as "Richard" or Mr. Barnett") is a flight risk by a preponderance of the evidence. Instead, the government goes to great lengths to distort the truth and misrepresent various facts, in what can only be reasonably concluded as a deliberate effort to compensate for its inability to demonstrate that Richard should be detained pretrial.

Indeed, in the opening sentence of its Opposition Memorandum, that government sets the tone of its distorted recitation of the facts "'Nancy, Bigo was here, you bitch.' Those are the words of the defendant (using his preferred nickname) in his message to Congresswoman and Speaker of the House Nancy Pelosi on January 6, 2021, when he invaded and occupied her office"[1] That is false.

[1] *See* ECF. Doc. No.27, Government's Memorandum in Opposition, at p. 1.

The government is clearly referring to the written note Richard is alleged to have penned while still in the Speaker's office, and such photo was clearly made a part of the government's exhibits to its opposition.[2]




[2] *See* ECF. Doc. No.27, Government Exhibit 7 (Crime Scene Photograph from "Bigo").

This written note, however, says, "Hey Nancy Bigo was here biatd." It does *not* say "you" or "bitch"[3] or have any commas; and the word "Hey" is intentionally omitted. The government's misrepresentation of Exhibit 7 is its latest deliberate attempt to mislead this Court by casting Mr. Barnett in the worst possible light in order to ensure that pretrial release is not granted in this case.

A second example is found in the Government's very same opening paragraph, where the government asserts that Richard ". . . returned to his home in Arkansas, where he hid or destroyed evidence."[4] Richard directly addresses these conclusory allegations on pages 10, 12, 36, and 43 of his Bail Modification Motion, and by doing so demonstrates the fact that these allegations are without merit, unsupported, and should be given zero weight in determining Richard's pretrial fate.

The government does not seriously contend that Barnett poses a "risk of flight." Nor has the government demonstrated that no "reasonable condition, or combination of conditions exist that would ensure Richard's return to court or the safety of all members of the community." As such, Richard now asks this Court to look past and ultimately disregard the government's distorted representations, which do not rise to the level of showing "dangerousness" and grant Richard pretrial release as required by law and recent court decisions.

[3] Instead of writing the accusatory "You bitch" as the government falsely states, it only says "biatd" and without the word "you". On information and belief, the "d" was meant to be two letters, "c" and "h" with the "c" connected to an "h" to spell the word "biatch" which is a slang and less offensive word for "bitch". *See* https://idioms.thefreedictionary.com/biatch (defining "biatch" as "slang… used as a term of endearment or disparagement for another person" last visited on April 23, 2021).

[4] *See* ECF. Doc. No.27, Government's Memorandum in Opposition, at p. 1.

## II. LAW FOR PRETRIAL RELEASE

In the recent case of the *United States v. Klein*, U.S. District Court Judge John D. Bates, granted pretrial release to the Defendant, who was also charged with crimes related to the events of January 6, 2021.[5] The *Klein* Court laid out the legal standard for pretrial release as follows:

> To assess a defendant's dangerousness, the court must "take into account the available information" concerning four statutory factors: (1) "the nature and circumstances of the offense charged," (2) "the weight of the evidence against the person," (3) "the history and characteristics of the person," and (4) "the nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142(g)(1)–(4). As the D.C. Circuit recently stated in United States v. Munchel, "[t]o justify detention on the basis of dangerousness, the government must prove by 'clear and convincing evidence' that 'no condition or combination of conditions will reasonably assure the safety of any other person and the community.' " 2021 WL 1149196, at *4 (D.C. Cir. Mar. 26, 2021) (quoting 18 U.S.C. § 3142(f)). That requires the government to establish that the defendant poses a continued "articulable threat to an individual or the community" that cannot be sufficiently mitigated by release conditions. Id. (quoting Salerno, 481 U.S. at 751); see also id. ("[A] defendant's detention based on dangerousness accords with due process only insofar as the district court determines that the defendant's history, characteristics, and alleged criminal conduct make clear that he or she poses a concrete, prospective threat to public safety."). Furthermore, "[d]etention cannot be based on a finding that defendant is unlikely to comply with conditions of release absent the requisite finding of dangerousness ... [as] otherwise the scope of detention would extend beyond the limits set by Congress." Id. at *7; see also Salerno, 481 U.S. at 746 ("[P]retrial detention under the Bail Reform Act is regulatory, not penal.").[6]

[5] *See United States v Frederico Guillermo Klein,* 2021 WL 1377128 (*citing United States v. Chrestman,* 2021 WL 765662 (D.D.C February 26, 2021)), attached hereto as **Exhibit J.**
[6] *Id.*

As will be demonstrated, the Government has not met its burden of showing that Barnett meets these four Section 3142(g) statutory factors for detention.

## III. ARGUMENT

### POINT ONE: THE NATURE AND CIRCUMSTANCES OF THE DEFENDANT, UNDER 18 U.S.C. 3142(g)(1).

In analyzing this first of the four Section 3142(g) statutory factors, "The Nature and Circumstances of the Defendant" the *Klein* court applied the following six subfactor analysis:

> These considerations include whether a defendant: (1) "has been charged with felony or misdemeanor offenses;" (2) "engaged in prior planning before arriving at the Capitol;" (3) carried or used a dangerous weapon during the riot; (4) "coordinat[ed] with other participants before, during, or after the riot;" or (5) "assumed either a formal or a de facto leadership role in the assault by encouraging other rioters' misconduct;" and (6) the nature of "the defendant's words and movements during the riot," including whether he "damaged federal property," "threatened or confronted federal officials or law enforcement, or otherwise promoted or celebrated efforts to disrupt the certification of the electoral vote count during the riot."

*United States v Frederico Guillermo Klein,* 2021 WL 1377128 at p. 6.

In light of the *Klein* decision, each of these six subfactors will be addressed individually and under its own subsection. Factors four and five are interrelated, so these two factors will be addressed in the same subsection.

#### A. Factor One*: Has Richard Been Charged with Felony or Misdemeanor Offenses*.

Richard Barnett has been charged with two felony offenses; as such, it is that factor number one arguably weighs against him in favor of detention. However, as for the felony offense of carrying a stun gun as a dangerous weapon, Barnett submits that the facts show that it was not "dangerous". *See* Section III(c), *infra.*

As for the second felony offense that Barnett is charged with, one count of violating 18 U.S.C. 1512 (c)(2), that section does not apply to Barnett's conduct. Section 1512 is entitled "Tampering with a witness, victim, or an informant" which suggests that its subsections deal with judicial-type proceedings where a "witness, victim, or informant" is expected to testify.

Under Section 1512, the full subsection (c) states as follows:

> (c) Whoever corruptly—
> (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or
> (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

Mr. Barnett did not destroy documents used in the proceeding. His presence in Speaker Pelosi's office for six minutes and later in the Rotunda where he was directed to go **after** the vote counting was temporarily suspended does not constitute "corruptly…obstruct[ing], influenc[ing], or imped[ing]" the "official proceeding". As such, the government cannot argue that Barnett's and other the protestors' lawful presence outside the Capitol was intended to "influence" the vote counting inside. Senator Schumer was not deemed to have been ". . . corruptly . . . influencing" an official proceeding or protesting outside of the U.S. Supreme Court building in March 2020 before an angry pro-abortion crowd, where he threatened Associate Justices Gorsuch and Kavanaugh while oral argument was taking place during an abortion case.[7] FBI attorney Kevin Clinesmith, received mere probation, after not being charged with violating this provision for altering a CIA email that was subsequently used to improperly obtain a FISA warrant.[8]

[7] *See* https://nlpc.org/2020/03/06/ethics-bar-complaints-filed-against-sen-schumer-on-supreme-court-threats/.
[8] *See also* https://nlpc.org/2021/01/29/miscarriage-of-justice-as-clinesmith-gets-slap-on-the-wrist/.

Based on these above-mentioned examples, and the charges in this matter, as defense counsel for Mr. Barnett, we are duty bound to request discovery from the government to disclose the charging documents against "Code Pink" and other protestors who disrupted confirmation hearings ("official proceedings") for Justice Kavanaugh. *See* DOUG STANGLIN, CAROLINE SIMON, *Rise up, women!: Angry crowds flood Capitol Hill to protest Brett Kavanaugh nomination*, USA Today, available at https://www.usatoday.com/story/news/2018/09/28/brett-kavanaugh-hearing-protesters-christine-blasey-ford/1453524002/ (last visited April 23, 2021).

These individuals also were alleged to have blocked Congressional hallways and offices. *Id.* Discovery requests must be made to determine if those involved in "Code Pink" were charged with violating 18 U.S.C. 1512(c)(2) and their respective dispositions.

At best, this is the only factor which weighs against Richard in favor of pretrial detention, but is outweighed by all the other factors.

**B. Factor Two*: Did Richard Engaged in Prior Planning Before Arriving at the Capitol*.**

Richard is not a member of any of the groups alleged to have organized and participated in violence at the Capitol on January 6, 2021. There is no evidence that he knew of a plan to attack the Capitol, coordinated any attack on the Capitol, or carried a map of the Capitol. Despite this reality, the government continues to unjustly associate the premeditated acts of others with Richard. Since the inception of this case, and yet again in the Opposition Memorandum, the government has repeatedly suggested that the act of Richard traveling from Arkansas to Washington, D.C., to participate in a political rally is problematic. The government is wrong because United States Citizens are free to travel to the District of Columbia at any point in time, especially when they are traveling to protest and petition his government for redress of grievances as protected by the First Amendment.

The government has repeatedly suggested that there is also something inherently dangerous about being a lawful and responsible gun owner from Arkansas. Again, the government is wrong, because Arkansas law and the Second Amendment of the United States Constitution permit sixty-year-old men with no criminal records to own and carry guns in Arkansas. Then the government has suggested that purchasing a walking-stick-stun-gun in Arkansas and then traveling to Washington, D.C. with a said device is evidence of dangerousness. Again, the government is wrong, because it is legal to possess walking sticks and stun guns in Washington, D.C.

More importantly, there is no actual evidence of Richard planning anything nefarious before heading to the Capitol. There is no manifesto, no plans, no maps, no level of organized communication suggesting participation in any violent plot. Stated otherwise, there is no nexus between Richard's perfectly legal Arkansas life to any credible evidence of planning an attack on the Capitol. As such, factor number two weighs in favor of release.

**C. Factor Three*: Did Richard Carry or Use a Dangerous Weapon During the Incident*.**

Richard has been accused of carrying a dangerous weapon during the incident, to wit: a stun gun/walking stick. The government, in its Opposition Memorandum cites Exhibit 1, a January 5, 2021, video clip of Richard demonstrating a shock test to a group of men in a bar in support of its evidence that Richard had a dangerous weapon on January 6, 2021. In the video, the walking stick is extended and Richard activates the stun gun at approximately 1:29 in the video. Activation of this stun gun creates a bright red light emanating from the device. Richard then triggers the stun gun to the amusement of the group, and the video ends. In furtherance of its argument, the government cites Exhibits 8, 9, and 10 as evidence supporting the conclusion that the walking-stick-stun-gun is a dangerous weapon.

However, as Richard argues in his Motion for Bail Modification, the batteries were removed from the device before heading to the January 6th protest, a day after the government's exhibit where Richard demonstrated the ability of the stun gun portion of the device. Upon removing the batteries, this multi-use device, in turn, is converted to a single-use device, which is nothing more than a collapsible walking stick. We respectfully submit to this Court that Richard's behavior on January 6th is consistent with a responsible gun owner with no criminal history.[9] In further support of Richard's claim of being a responsible gun owner, the Government's Exhibits 8, 9, and 10 are vital. Each of these government exhibits corroborate this argument because each show the device up-close in two still shots and one live video. At no point *on January 6th* is there a single instance where the stun gun is visibly armed (demonstrated by the red light) like it was in the *January 5th* video. This is because on January 6th, the only relevant date in question, the device was nothing more than a walking stick.

Moreover, and unlike the cases where people used flag poles and axe handles as weapons against law enforcement, Richard is never shown using the device to hit, poke, stab, or stun anyone; rather, he is simply covering it with his hand so it is not dislodged from his person, and to protect himself from being further injured.

Specifically, the rubber cap which protects the metal prong of the stun gun was lost when Richard fell to the ground after being pushed into the Capitol, which resulted in him being cut and bleeding on an envelope from Speaker Pelosi's office.[10] More importantly, when observed in the full unedited context, at 42:12 in the video, Mr. Barnett adjusts his sweater to cover, *not* uncover

[9] *See* ECF Doc. No 26. Defendant's Motion for Bail Modification at page 29
[10] *See* ECF Doc. No. 27, Government's Opposition Motion at Exhibit 10, (27 seconds)(showing Barnett's lacerated left finger).

the stun gun because he does not want to be cut again by the metal prongs.[11] The metal prongs of the stun gun do not stun Barnett or anyone else at any time.

The notion, therefore, that exhibits 8, 9, and 10 are indicia of violence is utterly ridiculous, and only further serves to corroborate the government's futile attempt to create conditions of dangerousness that do not exist. Instead, the evidence shows that Richard was clearly not carrying a functioning stun gun on January 6th, which in turn means that he was not carrying a dangerous weapon inside the Capitol. As such, factor number 3 weighs in favor of release.

**D. Factors Four and Five*: Whether Richard Coordinated with Other participants; Or, if Richard Assumed a Formal or De Facto Leadership.***

Despite the government's insinuation that Richard is somehow, single handedly, responsible for a crowd becoming violent, there is simply no evidence that Richard coordinated with other participants before, during, or after the incident; additionally, the record is devoid a single piece of evidence that Richard played any leadership role or capacity, whatsoever. Therefore, factor numbers 4 and 5 weighs in favor of release.

**E. Factor Six*: Whether the Nature of Richard's Words and Movements Promoted Efforts to Disrupt the Electoral Vote.***

Once again, the government has made a grand ordeal about Richard's words and movements before the incident. *See* Section I, Introduction, *infra*. Specifically, the government cites Exhibit 2 as evidence of Richard being ready for a fight, where he stated, "We the People. We own this motherfucker. This is our country. This is our District. You wanna fuck with us. Bring it on!". This is a politically protected statement that Richard made ***prior*** *to* his traveling to see President Trump's speech, in anticipation of said speech. Richard does do not even cross the

[11] *See* Video available at 20210106-RIOTOUS_ACTS-US_CAPITOL_COMPLEX-2.mp4.

threshold of the Capitol until hours later at approximately 2:43 PM.[12] Clearly, Richard was talking about the rally, not the future incident at the Capitol which he did not yet know, at the time, was going to be the event it shaped out to be. Richard submits herein **Exhibit K** as evidence contradicting the government's claim that Richard was ready for war because the video, also taken some time before the Capitol incident, clearly shows Richard's peaceful demeanor in the time leading up to the protest.[13]

The government has made another grand ordeal about Richard's words and movements after the incident, specifically, remarks made to a reporter and the crowd after he left the Capitol Building. While unfortunate in content, these remarks are irrelevant as the incident had already subsided. At the time, Richard proffered an envelope from the Speaker's office and explained that he removed said envelope because he bled on it, and did not want to leave his blood in the Speaker's office. On the other hand, Richard voluntarily returned that same envelope unopened to the FBI upon surrendering himself. Therefore, it cannot be said that he intentionally damaged federal property.

Shortly after being photographed at Speaker Pelosi's desk, Capitol police tell protesters to clear out of the Speaker's office. Barnett quickly exits, without incident, leaves his flag behind, and walks into what appears to be a rotunda. The Capitol Police initially prevent anyone from leaving the area, and things get intense. The government cites a verbal exchange between Barnett and a Capitol Police officer, where Barnett while demanding his flag from the Speaker's office appears to say ". . . it's going to get really bad, I'm telling you . . . hey, we're fixing to call them in brother." It is worthy to note that if an act of violence were ever going to happen, this was the

[12] *See* Government's Opposition at FN. 3.
[13] *See* **Exhibit K** attached hereto (encompassing a video of Richard Barnett peacefully interacting with protesters and children).

moment… Barnett, however, is NOT violent. His statement is tantamount to nothing more than braggadocio directed at retrieving his flag, not disputing the electoral process. Moments later, a person who has no relationship to Barnett whatsoever is maced by the police and a shoving match between the Capitol Police and the crowd ensues. Barnett, clearly uninvolved, video records the incident from his cell phone. Because Barnett was argumentative but not violent, factor number six neither weighs in favor of detention or release.

In the case of Richard Barnett, in applying the *Klein* analysis, four of the six factors weigh in favor of release. Only one factor arguably weighs in favor of detention. And one factor is neutral.

As such, and under the analysis implemented by this Court in *Klein,* the nature and circumstances of the offense weigh in favor of release. *United States v Klein,* 2021 WL 1377128. He therefore clearly satisfies the first of the four Section 3142(g) factors.

**POINT TWO:**
**WEIGHT OF THE EVIDENCE, UNDER 18 U.S.C.3142(g)(2)**

The government's contention that the overwhelming weight of the evidence against Mr. Barnett favors detention is an exaggerated conclusion, nothing more. The government has repeatedly comingled the actions of others with those of Richard since the beginning of this case, because the government knows that nature and circumstances of the offense do not warrant pretrial detention. If there is overwhelming evidence of anything, it is that Richard Barnett did indeed enter the Capitol on January 6, 2021.

Richard, however, maintains that his entry was not only non-violent, but also non-voluntary. In our instant application, on page 9, paragraph 14, we explain how the Capitol doors opened, throngs of people pushed, resulting in Barnett being swept inside and unable to turn against the crowd. The Defense's investigation—which is still ongoing— has revealed additional

information that corroborates the aforementioned claims. Namely, a video recording of Richard being pushed into the Capitol, where the listener can hear Richard's very own words, during the moments before he crossed the threshold of the Capitol: "They're pushing. We have no choice. We're going in. They're pushing. We have no choice. We have no choice. We have no choice. We have to go in. Go in. Go in."[14]

Barnett's claim of not being able to go against the crowd is corroborated by the same footage, which shows a throng of tightly packed people pushing past open Capitol doors. Importantly, Barnett actually attempts to turn around at the end of the video, only to be pushed back into the Capitol. This fact is corroborated in the government's Opposition Motion at FN. 3, which states:

> . . .The government continues to investigate the exact manner of the defendant's entry into the Capitol, but has recently identified surveillance video appearing to show him entering through the Rotunda door at approximately 2:43 p.m. The video shows the defendant appearing to stumble upon entry. . .

All of this speaks toward an involuntary entry into the Capitol. None of this is violent. Involuntary entry is an absolute defense against violent entry. Because of this, the weight of evidence clearly favors pretrial release.

**POINT THREE:**
**HISTORY AND CHARACTERISTICS OF THE DEFENDANT, UNDER 18 U.S.C.3142(g)(3)**

Richard is a sixty-year-old United States Citizen with no criminal record. Mr. Barnett has been in a committed relationship with his life partner Tammy Newburn for over twenty years. Richard lives with Tammy and daughter Ashlee, whom both depend on him for financial support. Richard is a gainfully employed retired fire fighter who is beloved in his community. He spent the

[14] *See* attached hereto **Exhibit L**, Video of Richard Barnett being pushed into the Capitol against his will.

first part of his life in Memphis Tennessee and has been living in Western Arkansas for the past twenty-five-years.

Richard's ties to his community are strong. He has personal relationships with members of the local business community, law enforcement, friends, and family. He has no criminal history, no warrant history, and is not on probation or parole. He has never forged or altered his identification. He agreed to surrender his passport to probation after being granted pretrial release by the Western District of Arkansas. Nothing about his past or current history supports the conclusion that he is dangerous to anyone, a risk of flight, and/or incapable of complying with court-imposed restrictions designed to assure his return to court and protect the community from future harm.

In applying 18 U.S.C. Section 3142(g)(3) to the above-mentioned facts to Richard's life, the only reasonably conclusion is that such factors weigh in favor of pretrial release. In order to overcome this reality, the government is asking this Court to: (1) disregard Richard Barnett's lifetime of law-abiding behavior and corresponding lack of criminal history as nothing, and (2) to equivocate uncharged unsubstantiated allegations to an actual criminal history.[15]

The government's request contradicts the legislative intent and overall meaning of the Bail Reform Act, and contravenes relevant caselaw as well. The Government's ask comes from a place of desperation because the government is very much aware that Richard Barnett's history and Characteristics clearly favor pretrial release.

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[15] *See* Government's Opposition Motion at FN. 7 (*stating* "The defendant's lack of actual criminal convictions highlights the common sense underlying the § 3142(g) factors, which make formal criminal history merely a component of one of four factors to be weighed when considering pre-trial detention.").

**POINT FOUR:**
**NATURE AND SERIOUSNESS OF THE DANGER TO ANY PERSON IN THE COMMUNITY, UNDER 18 U.S.C.3142(g)(4)**

Similar to *Klein*, Richard's behavior on January 6, 2021 appears to be an aberration in his life, which in turn ". . . makes his dangerousness challenging to assess. So, too, does his lack of planning." *Id.* Fortuitously, the D.C. Circuit recently gave guidance regarding how to properly assess those were charged with crimes related to the events that took place at the Capitol on January 6, 2021. Specifically, the D.C. Circuit creates two categories of offenders, one whose conduct rises to dangerousness under the meaning of the Bail Reform Act and another whose conduct does not. The first category is comprised of those who "actually assaulted police officers and broke through windows, doors, and barricades, and those who aided, conspired with, planned, or coordinated such actions. . . ". *Id.* The second category is composed of ". . . those who cheered on the violence or entered the capitol after others cleared the way." *Id.* (*quoting United States v Munchel*, No. 1:21-cr-0018-1).

Barnett's actions clearly place him in the former category, and mandate his release. Unlike Richard Barnett, Klein took physical and forceful action against law enforcement when he used a riot shield to wedge open doors to the Capitol and then subsequentially shove officers with the shield in order to break a police line. Similar to Barnett, Klein was not dressed in tactical gear, there was no evidence of a premeditated plan of attack, no evidence of participation in a coordinated attack, no evidence of a leadership role during the attack. Klein was accused of shouting "We need fresh people; we need fresh people." Barnett is accused of saying "Ya'll better get my flag, I'm gonna bring 'em in, etc.. ."[16] The Court described Klein's statements and actions as troubling, but not indicative of leadership, or rising to the level of coordination demonstrated in

[16] Mr. Barnett's flag has not been returned to him. Counsel will be requesting the Government to return his property.

the cases of *United States v. Pezzola*, 2021 WL 1026125 (D.D.C Marc 16, 2021) and *United States v. Chrestman,* 2021 WL 765662 (D.D.C February 26, 2021). Like *Klein*, Barnett's statements could be viewed as troubling, but are similarly not indicative of leadership or coordination.

Richard Barnett's conduct was objectively less severe than the defendant's in *Munchel* and in *Klein.* And the defendants in both *Munchel*, and *Klein* were both released. As such, Richard Barnett should be released as well. Further corroborating the justification for Barnett's release is this the Government's concession in the *Norwood* case. *See USA v. Norwood*, Case No. 21-CR-233 (EGS) (attached hereto as **Exhibit M**). Defendant who stole body armor and vest from the United States Capitol Police, entered and remained in Speaker Pelosi's office, and was accused by the government of engaging in evasive conduct after leaving Washington, D.C., and yet eligible for pretrial detention). The Government conceded in *Norwood* that "Notwithstanding defendant's eligibility for pretrial detention, in light of recent guidance from this Court and the D.C. Circuit Court of Appeals, the government believes that conditions can be imposed that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community." *Id.* And Judge Emmet Sullivan promptly granted Defendant's release and set bail conditions on April 20, 2021.[17]

As argued above, Richard Barnett has no criminal history whatsoever, and a strong personal history in terms of finding favorability under the Bail Reform Act. In order to overcome these objective truths, the government has yet again, conjured up conspiracy and controversy to create conditions of dangerousness where none exist. Specifically, in its Opposition Memorandum, the government cites Exhibits 13, 14, 15, and 16, as evidence of future dangerousness. These

[17] *See* attached hereto **Exhibit N**, April 20, 2021: ORDER SETTING CONDITIONS OF RELEASE in *United States v Norwood*, Case No. 21-CR-233 (EGS).

claims, like many others before it, are meritless, ridiculous, and should be given no weight whatsoever.

Specifically, government Exhibit 13, when viewed in its totality shows Richard peacefully interacting with police and explaining his job as security at a September 20, 2020, march in Fayetteville, Arkansas. Everything about this interaction is legal, respectful, and peaceful. Exhibit 14, shows Richard posing at a photoshoot in his own backyard, with props from a photoshoot that he was asked to participate in. Again peaceful, legal, and friendly. Exhibit 15, shows Richard at that same photoshoot surrounded by family in friends with a sign that says "DEAD PEDOPHILES DONT REOFFEND." This is a perfectly legal exercise of all participants' First Amendment rights to free speech and assembly that is possibly offensive to pedophiles and their supporters, but no one else.

None of these exhibits provide evidence of a specific articulated threat to the community, or a risk of danger to any specific person. All these exhibits do is further demonstrate the weakness of the government's case, along with its disdain for life in Arkansas. As such, government Exhibits 13, 14, 15, and 16 do not amount to evidence of dangerousness under the meaning of the Bail Reform Act.

## IV. CONCLUSION

Richard Barnett respectfully asks this Court to grant him pretrial release under the above cited line of cases in *Munchel, Klein,* and *Norwood,* and other recent precedent out of the D.C. Circuit Court and D.C. District Courts, regarding the release of persons accused of crimes related to the January 6, 2021, incident at the United States Capitol.

The government's argument in favor of pretrial detention is unsupported by facts demonstrative of risk of flight or danger to the community. The government has also utterly failed

in demonstrating a specific articulated future threat of dangerousness, but has instead advanced speculation and conjecture in its absence. Richard Barnett's personal history, community ties, and lack of criminal history are more than sufficient proof to rebut any presumption of detention. Because of this, Richard Barnett should be released from the dangerous conditions of punishment he is experiencing in the DC Central Detention Facility.[18]

WHEREFORE, for the foregoing reasons, any others which may appear at a full hearing on this matter, and any others this Court deems just and proper, defendant, Richard Barnett, through counsel, respectfully requests that he be released on personal recognizance. If that request is denied, defendant requests as an alternative, that he be released on Third Party Custody and placed under the Supervision Pretrial Services under the reasonable conditions of electronic monitoring, work release, out of state travel restrictions and curfew.

[18] *See* Politico's article on the horrific conditions of confinement at the DC Detention Facility where Richard Barnett is being detained, available at, *https*://www.politico.com/amp/news/2021/04/06/capitol-riot-defendant-beating-guards-479413, (last visited April 16, 2021).

Dated: April 23, 2021

Respectfully Submitted,

/s/ ***Joseph D. McBride, Esq.***

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**IN THE UNITED STATES DISTRICT COURT**
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2021, I electronically filed the foregoing DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR MODIFICATION OF BAIL, Exhibit List, and Corresponding Exhibits J-N, with the Clerk of the United States District Court for the District of Columbia by emailing the Criminal Court Clerk at the following email address on April 23, 2021, DCD_CMECF_CR@dcd.uscourts.gov and Judge Cooper's Deputy Lauren_Jenkins@dcd.uscourts.gov, with the understanding that this Court will accept said motion while my admission is pending. I further certify that a copy of the foregoing was served via email to AUSA Mary Dohrmann, at Mary.Dohrmann@usdoj.gov.

Respectfully Submitted,

***/s/ Joseph D. McBride, Esq.***
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**EXHIBIT LIST**

**UNITED STATES V. RICHARD BARNETT 21-CR-0038 (CRC)**

**DEFENDANT RICHARD BARNETT'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR MODIFICATION OF BAIL**

**Exhibit J:** *United States v Klein,* 2021 WL 1377128

**Exhibit K:** January 5, 2021, Video of Richard Barnett Peacefully Attending a D.C. Event

**Exhibit L:** January 6, 2021, Video of Richard Barnett Being Swept into the Capitol

**Exhibit M:** D.C. District Court's Decision in USA v. Norwood. Case No. 21-CR-233 (EGS)

**Exhibit N:** ORDER SETTING CONDITIONS OF RELEASE in USA v. Norwood

2021 WL 1377128
Only the Westlaw citation is currently available.
United States District Court, District of Columbia.

UNITED STATES OF AMERICA,
v.
FEDERICO GUILLERMO KLEIN, also known as "Freddie Klein," Defendant.

Crim. No. 21-236 (JDB)
|
Filed 04/12/2021

## MEMORANDUM OPINION

JOHN D. BATES United States District Judge

***1** Defendant Federico Guillermo Klein, a former employee at the **U.S**. State Department, is charged via indictment with three felony and five misdemeanor offenses based on his participation in the events at the United States Capitol on January 6, 2021. Following his arrest on March 4, 2021, Magistrate Judge Faruqui ordered Klein detained pending trial. Klein now asks this Court to revoke that order of detention and place him on pretrial release. The government also requests, over Klein's objection, to continue this matter and exclude time under the Speedy Trial Act for sixty days.

The detention issue here is close, and this Court respects Magistrate Judge Faruqui's thoughtful assessment. Subsequent guidance from the D.C. Circuit, however, impacts the analysis of whether the government has established, by clear and convincing evidence, that Klein presents an articulable prospective threat to the safety of the community. Pretrial detention is the exception, not the norm, under the Bail Reform Act, see United States v. Salerno, 481 **U.S**. 739, 755 (1987), and the government's burden is thus a heavy one. The Court concludes on the evidence presented that the government has not met its burden. For the following reasons, then, the Court will order Klein's release from custody pending trial subject to strict conditions. The Court will also grant a thirty-day continuance and exclude the intervening time under the Speedy Trial Act in the interests of justice.

## Background

Klein is a forty-two-year-old resident of Annandale, Virginia who served as a political appointee at the **U.S**. State Department under President Trump and held a "top secret" security clearance in that role. Statement of Facts ("SOF") [ECF No. 1-1] at 3. On January 6, 2021, Klein actively participated in the attempt to gain entry into the Capitol Building through the Lower West Terrace doorway while the **U.S**. Congress was meeting inside to certify the vote count of the Electoral College for the 2020 presidential election. Id. at 2, 5–14. Video footage depicts Klein entering the tunnel from the Lower West Terrace at 2:43 p.m., where a mob of individuals had already gathered to confront the line of police officers protecting the entrance to the Capitol. Id. at 5. Klein remained inside the tunnel for approximately thirty-eight minutes—until 3:21 p.m.—when officers were able to expel the first wave of rioters out of the tunnel and back onto the Terrace. Id. at 10.

While inside the tunnel, Klein repeatedly placed himself at the front of the mob and used force against several officers in an effort to breach the Capitol entrance and maintain the mob's position. Id. at 5–10. He ignored several verbal commands by officers to "back up" and "[l]et it go now." Id. at 6. And twice he can be heard calling to the crowd behind him: "We need fresh people, we need fresh people." Id. at 8. Around 2:55 p.m., Klein bent down to pick up a flagpole, which lay at the foot of the police line, and passed it back to other rioters. Id. at 6; Rough Tr. of Hr'g (Apr. 9, 2021) ("Hr'g Tr.") 28:22–24. [1]

***2** Sometime between 2:55 p.m. and 3:00 p.m., Klein came into the possession of a plastic riot shield, which had been taken from the police. SOF at 6. Body-worn camera ("BWC") footage from the Metropolitan Police Department ("MPD") captures Klein and another unidentified individual wedging the shield between the doors to the Capitol at approximately 3:00 p.m. in an apparent effort to prevent the officers from closing the doors. Id. at 6–7; Hr'g Tr. 33:17–20. At 3:15 p.m., another BWC video shows Klein pushing the shield into an officer's body in an attempt to break the police line. SOF at 7. A publicly-sourced video posted to YouTube also depicts Klein shoving the shield against an unidentified officer's body and against the shields of two MPD officers. [2] Id. at 9–10.

At around 3:21 p.m., officers successfully drove the rioters, including Klein, out of the tunnel and back onto the Terrace. Id. at 10. But Klein still lingered near the tunnel entrance. Shortly thereafter, police realized that an MPD officer had been dragged into the crowd. Another officer seeking to rescue his fallen colleague asked Klein to move aside, to which Klein responded, "no way." Id. at 13. Moments later, however, Klein is briefly seen helping to shepherd the fallen officer—who by then had begun extricating himself from the crowd—back toward the police line. Id. at 13–14. To the government's knowledge, Klein is not captured on any footage thereafter, though attempts to breach the tunnel entrance persisted until approximately 5:15 p.m. See Gov't's Opp'n to Def.'s Mot. for Review & Revocation of Detention Order & Reply to Def.'s Opp'n to Mot. for Exclusion of Time ("Gov't's Br.") [ECF No. 25] at 4–5.

On March 4, 2021, Klein was arrested pursuant to a criminal complaint. Arrest Warrant [ECF No. 6]. He appeared before Magistrate Judge Faruqui the following day and was temporarily detained at the government's request. Min. Entry (Mar. 5, 2021). Judge Faruqui held a detention hearing on March 9, 2021 and ordered that Klein be detained pending trial, finding that the government had shown by clear and convincing evidence that no condition or combination of conditions of release could reasonably assure the safety of any other person and the community. Min. Entry (Mar. 9, 2021); Order of Detention Pending Trial (Mar. 16, 2021) [ECF No. 11]. Judge Faruqui also excluded the time between March 9, 2021 and March 22, 2021 under the Speedy Trial Act in the interests of justice, despite Klein's objection. Min. Entry (Mar. 9, 2021).

On March 19, 2021, Klein was indicted by a grand jury on eight counts: Civil Disorder, in violation of 18 U.S.C. § 231(a)(3); Obstruction of an Official Proceeding (Aiding and Abetting), in violation of 18 U.S.C. §§ 1512(c)(2) and 2; Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, in violation of 18 U.S.C. §§ 111(a)(1) and (b); Entering or Remaining in any Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1); Disorderly and Disruptive Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2); Engaging in Physical Violence in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(4); Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and Act of Physical Violence in the Capitol Grounds or Buildings, in violation of 40 U.S.C. § 5104(e)(2)(F). Indictment [ECF No. 12]. The first three counts are felonies; the last five are misdemeanors.

Klein was arraigned on the Indictment on March 25, 2021 and entered a plea of not guilty on all counts. Min. Entry (Mar. 25, 2021). That same day, the government filed a motion to continue and exclude time for sixty days under the Speedy Trial Act. Gov't's Mot. to Continue & to Exclude Time Under the Speedy Trial Act ("Continuance Mot.") [ECF No. 15]. Based on defense counsel's stated intention to file a motion to revoke Magistrate Judge Faruqui's detention order, this Court scheduled a hearing for April 9, 2021 and set a combined briefing schedule on Klein's motion to revoke and the government's motion to continue. Min. Entry (Mar. 25, 2021). The Court also entered a written order granting a limited continuance and excluding the time between March 22, 2021 and April 9, 2021 under the Speedy Trial Act in the interests of justice and in light of Klein's forthcoming motion. Order (Mar. 26, 2021) [ECF No. 18].

***3** Briefing on the motions concluded on April 7, 2021, and the Court conducted a hearing on April 9 at which the government presented some additional evidence of Klein's conduct at the Capitol.[3] Both motions are now ripe for decision.

## Discussion

### I. Defendant's Motion to Revoke Detention Order

Klein has moved to revoke Magistrate Judge Faruqui's detention order, asserting that he is not eligible for pretrial detention based on the offenses charged, that he does not pose a danger to any person or his community if released, and —in the alternative—that any danger he does pose can be mitigated by a combination of conditions. See Def.'s Mot. for Review & Revocation of Detention Order & Opp'n to Mot. for Exclusion of Time ("Def.'s Br.") [ECF No. 22] at 4–5. The Court finds that Klein is eligible for pretrial detention because he is charged in Count 3 of the Indictment with a "crime of violence." See 18 U.S.C. § 3142(f)(1)(A). However, because there is not clear and convincing evidence

that Klein poses a concrete, prospective threat to public safety that cannot be mitigated by pretrial supervision, the Court will order him released on strict conditions pending trial.

### A. Legal Standard

A defendant ordered detained by a magistrate judge may file "a motion for revocation or amendment to the order" with "the court having original jurisdiction over the offense." 18 U.S.C. § 3145(b). Although the D.C. Circuit has not ruled on the matter, every circuit to consider the issue has found that a magistrate judge's detention order is subject to de novo review. See United States v. Hunt, 240 F. Supp. 3d 128, 132 (D.D.C. 2017) (referencing cases from the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits that support this proposition). This Court has adopted this view, see United States v. Louallen, 2019 WL 1003531, at *1 (D.D.C. Feb. 27, 2019) (Bates, J.), and the parties agree that this is the appropriate standard, see Def.'s Br. at 4; Gov't's Br. at 8.

Under the Bail Reform Act ("BRA"), 18 U.S.C. §§ 3141–3156, "Congress limited pretrial detention of persons who are presumed innocent to a subset of defendants charged with crimes that are 'the most serious' compared to other federal offenses." United States v. Singleton, 182 F.3d 7, 13 (D.C. Cir. 1999) (quoting Salerno, 481 U.S. at 747). Hence, a detention hearing must be held only if a case involves certain enumerated categories of offenses, 18 U.S.C. § 3142(f)(1)(A)–(E), or if the defendant poses a serious risk of flight or of trying to obstruct justice or threaten, injure, or intimidate a witness or juror, id. § 3142(f)(2)(A)–(B).

If a defendant is eligible for a detention hearing, the BRA provides that the court "shall" order pretrial detention if it "finds 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." Id. § 3142(e). "In common parlance, the relevant inquiry is whether the defendant is a 'flight risk' or a 'danger to the community.' " United States v. Vasquez-Benitez, 919 F.3d 546, 550 (D.C. Cir. 2019). Here, the government only contends that Klein's detention is appropriate on the basis of dangerousness.

***4** To assess a defendant's dangerousness, the court must "take into account the available information" concerning four statutory factors: (1) "the nature and circumstances of the offense charged," (2) "the weight of the evidence against the person," (3) "the history and characteristics of the person," and (4) "the nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142(g)(1)–(4). As the D.C. Circuit recently stated in United States v. **Munchel**, "[t]o justify detention on the basis of dangerousness, the government must prove by 'clear and convincing evidence' that 'no condition or combination of conditions will reasonably assure the safety of any other person and the community.' " 2021 WL 1149196, at *4 (D.C. Cir. Mar. 26, 2021) (quoting 18 U.S.C. § 3142(f)). That requires the government to establish that the defendant poses a continued "articulable threat to an individual or the community" that cannot be sufficiently mitigated by release conditions. Id. (quoting Salerno, 481 U.S. at 751); see also id. ("[A] defendant's detention based on dangerousness accords with due process only insofar as the district court determines that the defendant's history, characteristics, and alleged criminal conduct make clear that he or she poses a concrete, prospective threat to public safety."). Furthermore, "[d]etention cannot be based on a finding that defendant is unlikely to comply with conditions of release absent the requisite finding of dangerousness ... [as] otherwise the scope of detention would extend beyond the limits set by Congress." Id. at *7; see also Salerno, 481 U.S. at 746 ("[P]retrial detention under the Bail Reform Act is regulatory, not penal.").

### B. Detention Eligibility Analysis

At the outset, the parties dispute whether Klein is eligible for pretrial detention based on the offenses charged. As relevant here, the BRA authorizes pretrial detention "in a case that involves ... a crime of violence" or "any felony that is not otherwise a crime of violence that involves ... the possession

or use of a firearm or destructive device ... or any other dangerous weapon." 18 U.S.C. § 3142(f)(1)(A), (E).

The government argues that Klein is subject to pretrial detention "because he has been charged with both a crime of violence as well as two additional felonies that were committed using a dangerous weapon." Gov't's Br. at 8. Specifically, the government contends that Count 3 of the Indictment—charging Klein with "using a deadly or dangerous weapon, that is, a riot shield," to "forcibly assault, resist, oppose, impede, intimidate, and interfere with an officer and employee of the United States," in violation of 18 U.S.C. §§ 111(a)(1) and (b)—qualifies as a "crime of violence." Id. (quoting Indictment at 2). The government also asserts that Counts 1 and 2—charging Klein with civil disorder, in violation of 18 U.S.C. § 231(a)(3), and obstruction of an official proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) and 2—qualify as felonies involving the use of a dangerous weapon. Id. Klein disputes this analysis wholesale, arguing that Count 3 is not a "crime of violence" and that the riot shield was not used as a dangerous weapon. See Def.'s Br. at 4.

The Court finds that Klein is eligible for pretrial detention based on Count 3. Under the BRA, a "crime of violence" includes "an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 3156(a)(4)(A). The Supreme Court in Johnson v. United States defined "physical force" as "force capable of causing physical pain or injury to another person." 559 U.S. 133, 140 (2010); see also Def.'s Br. at 9. To determine if a charged offense qualifies as a "crime of violence," a court generally applies a categorical approach, meaning that the court assesses "how the law defines the offense and not ... how an individual offender might have committed it on a particular occasion," United States v. Moore, 149 F. Supp. 3d 177, 179 (D.D.C. 2016) (quotations omitted); see also Singleton, 182 F.3d at 12. However, if the statute of offense is "divisible"—i.e., defines multiple separate crimes—then the court employs a "modified categorical approach" by looking at "a limited class of documents," such as the indictment, to "determine what crime, with what elements," the defendant was charged with. Mathis v. United States, 136 S.Ct. 2243, 2249 (2016) (quoting Shephard v. United States, 544 U.S. 13, 26 (2005)).

***5** The first question then is whether 18 U.S.C. § 111 is divisible. That statute provides:

> (a) In general.—Whoever—
>
> (1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated [as a federal officer] while engaged in or on account of the performance of official duties; or
>
> (2) forcibly assaults or intimidates any person who formerly served [as a federal officer] on account of the performance of official duties during such person's term of service,
>
> shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.
>
> (b) Enhanced penalty.—Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon ... or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 111.

At least six circuits have held that 18 U.S.C. § 111 is divisible and "creates three separate offenses." United States v. Bullock, 970 F.3d 210, 214 (3d Cir. 2020) (collecting cases). Klein does not cite any contrary precedent or make any real attempt to dispute this point.[4] Therefore, this Court will apply the modified categorical approach. And because Klein was charged with a "violation of § 111(b) [which] requires more violent conduct than a violation of § 111(a)(1) alone," the Court need only "focus on whether § 111(b) is a crime of violence." See Gray v. United States, 980 F.3d 264, 266 (2d Cir. 2020); Indictment at 3–4. The key question

  

then is whether a defendant can be convicted of violating § 111(b) without "the use, attempted use, or threatened use of physical force against the person or property of another." See 18 U.S.C. § 3156(a)(4)(A).

***6** The D.C. Circuit has not yet weighed in, but every circuit to address the issue has answered that question in the negative, concluding that § 111(b) does constitute a "crime of violence." See Gray, 980 F.3d at 265; Bullock, 970 F.3d at 217; United States v. Bates, 960 F.3d 1278, 1287 (11th Cir. 2020); United States v. Kendall, 876 F.3d 1264, 1270 (10th Cir. 2017); United States v. Taylor, 848 F.3d 476, 494 (1st Cir. 2017); United States v. Rafidi, 829 F.3d 437, 445–46 (6th Cir. 2016); United States v. Hernandez-Hernandez, 817 F.3d 207, 217 (5th Cir. 2016).[5] This Court agrees.

As several courts have observed, to violate § 111(b), a defendant "must have committed one of the acts described in § 111(a), i.e., 'forcibly assault[ed], resist[ed], oppose[d], impede[d], intimidate[d], or interfere[d] with' a [federal officer] in specified circumstances;" and "in committing the act," either (1) " 'use[d] a deadly or dangerous weapon' " or (2) " 'inflict[ed] bodily injury.' " Gray, 980 F.3d at 266 (quoting 18 U.S.C. §§ 111(a)(1), (b)). The Court will consider each scenario.

For starters, a "deadly or dangerous weapon" means "any object which, as used or attempted to be used, may endanger the life of or inflict great bodily harm on a person." Bullock, 970 F.3d at 215 (quotation omitted). This Court agrees with the weight of authority that "[a] defendant who acts 'forcibly' using a deadly or dangerous weapon under § 111(b) must have used force by making physical contact with the federal [officer], or at least threatened the [officer], with an object that, as used, is capable of causing great bodily harm." Taylor, 848 F.3d at 494; see also Bullock, 970 F.3d at 215; Gray, 980 F.3d at 266–67. This first means of violating § 111(b) therefore "necessarily requires the use or threat of force 'capable of causing physical pain or injury to another.' " Taylor, 848 F.3d at 494 (quoting Johnson, 559 U.S. at 140). The second scenario under § 111(b) is even more straightforward given that a defendant who acts "forcibly" and actually "inflicts bodily injury" by definition uses "force capable of causing ... injury" to another. See Bullock, 970 F.3d at 216; Gray, 980 F.3d at 267; Taylor, 848 F.3d at 494. Because both acts in § 111(b)—use of a deadly or dangerous weapon and infliction of bodily injury—necessarily entail "the use, attempted use, or threatened use of physical force," § 111(b) qualifies as a "crime of violence" that renders Klein eligible for pretrial detention under 18 U.S.C. § 3142(f)(1)(A).

Klein does not offer a compelling reason to question this clear consensus view. Indeed, he devotes a substantial portion of his brief to arguing that § 111(a) is not a crime of violence, Def.'s Br. at 8–10, which as explained above is irrelevant because the statute is divisible, and Klein was charged with the more serious violation of the statute in § 111(b). Furthermore, the primary case on which Klein relies to argue that § 111(b) is not a "crime of violence" is readily distinguishable. Klein states that "[t]he Seventh Circuit's decision in United States v. Bennett, 863 F.3d 679 (7th Cir. 2017), is instructive" because there the court concluded that "Indiana's resisting law enforcement statute"—which is similarly worded to § 111(b)—did not qualify as a "crime of violence." See Def.'s Br. at 12–14. In its analysis, however, the Seventh Circuit expressly relied on how Indiana courts had defined the terms "inflict[ing] bodily injury or otherwise caus[ing] bodily injury" to uphold convictions under that statute for nonviolent and accidental conduct. See Bennett, 863 F.3d at 681. That latter—and seemingly broader—term "otherwise caus[ing] bodily injury" is not found in § 111(b). And the Court is not aware of, nor has Klein identified, any case suggesting that such conduct has or hypothetically would be criminalized by § 111(b). See United States v. Redrick, 841 F.3d 478, 485 (D.C. Cir. 2016) (cautioning that the categorical approach requires a focus on "realistic probabilities" not "theoretical possibilities" that the statute "would apply ... to conduct that falls outside the force clause") (quotation omitted). The Court thus sees no reason to depart from the weight of authority concluding that § 111(b) qualifies as a "crime of violence."

***7** Because Klein is eligible for pretrial detention due to the fact that he has been charged under 18 U.S.C. § 111(b) with a "crime of violence," see 18 U.S.C. § 3142(f)(1)(A), the Court need not resolve the parties' dispute over whether Klein is also subject to pretrial detention under 18 U.S.C. § 3142(f)(1)(E) because he has been charged with two felonies that "involve[ ] ... the possession or use of a ... dangerous weapon."[6] Hence, the Court will proceed directly to analyzing the § 3142(g) factors.

### C. Section 3142(g) Factors

#### i. Nature and Circumstances of the Offense

The Court first considers "the nature and circumstances of the offense charged." 18 U.S.C. § 3142(g)(1). Chief Judge Howell has set forth a number of considerations, which this Court finds helpful, to differentiate the severity of the conduct of the hundreds of defendants connected to the events of January 6. See United States v. Chrestman, -- F. Supp. 3d --, 2021 WL 765662, at *7 (D.D.C. Feb. 26, 2021) (Howell, C.J.). These considerations include whether a defendant: (1) "has been charged with felony or misdemeanor offenses;" (2) "engaged in prior planning before arriving at the Capitol;" (3) carried or used a dangerous weapon during the riot; (4) "coordinat[ed] with other participants before, during, or after the riot;" or (5) "assumed either a formal or a de facto leadership role in the assault by encouraging other rioters' misconduct;" and (6) the nature of "the defendant's words and movements during the riot," including whether he "damaged federal property," "threatened or confronted federal officials or law enforcement, or otherwise promoted or celebrated efforts to disrupt the certification of the electoral vote count during the riot." Id. at *7–8.

Klein is charged with three felony and five misdemeanor offenses. None of the offenses gives rise to a rebuttable presumption of dangerousness under the BRA. But the crimes alleged are serious, and both Counts 2 and 3—which charge Klein with obstructing an official proceeding and assaulting, resisting, or impeding certain officers using a dangerous weapon—carry a statutory maximum of twenty years in prison. See 18 U.S.C. §§ 1512(c), 111(b).

***8** The next few considerations, however, weigh against detention. Any evidence that Klein planned his conduct before arriving at the Capitol is noticeably absent. See Chrestman, 2021 WL 765662, at *8 ("[S]teps taken in anticipation of an attack on Congress speak volumes to both the gravity of the charged offense, as a premeditated component of an attempt to halt the operation of our democratic process, and the danger a defendant poses."). A former romantic partner of Klein's told the government that Klein had plans to attend the "Stop the Steal" rally outside the White House earlier that day. Gov't's Br. at 18 & n.8. But that witness was "not aware that Klein had any plans for violence," id., and the government has proffered no evidence that Klein's prolonged confrontation with law enforcement or even his attempt to breach the Capitol building were premeditated. Furthermore, although the parties vehemently dispute whether Klein used a dangerous weapon during the riot—i.e., the stolen riot shield—there is no suggestion that he brought a weapon with him to the Capitol or carried any items that evinced an "expectation that the need to engage in violence against law enforcement or ... the Legislative branch, might arise." See Chrestman, 2021 WL 765662, at *8. Indeed, Klein was dressed in ordinary clothing—namely a "green jacket, dark dress pants, [ ] a blue dress shirt," and a red baseball cap with the "Make America Great Again" ("MAGA") slogan—and not any tactical or military gear. SOF at 2.

There is also no evidence that Klein coordinated with other participants before, during, or after the riot, or assumed any meaningful leadership role during the events of January 6. To be sure, Klein did try to encourage other rioters to hold the mob's position in the tunnel by shouting "We need fresh people, we need fresh people," on two separate occasions. See SOF at 8. Those are, however, the only words of encouragement that he is alleged to have spoken; and viewed in context, those chants—though reprehensible—hardly establish that Klein was a de facto leader of the mob. The first chant, for instance, echoes a similar call for "fresh patriots at the front" made by an adjacent rioter seconds before. See Scenes Captured Inside US Capitol as Crowd Challenges Police, YouTube (Jan. 7, 2021) https://www.youtube.com/watch?v=qc0U755-uiM&t=636s (Mins. 10:29–10:42). And

countless other words of incitement can be heard throughout the tunnel during the time that Klein was inside. [7]

The government does assert that Klein engaged in a coordinated effort when he and another unidentified rioter wedged the riot shield between the Capitol doors to enable a third rioter to push open the closing door. See Hr'g Tr. 55:13–22. But this type of ad hoc, spur-of-the-moment collaboration —while troubling—does not generate nearly the same kind of coordination concerns as other cases. See, e.g., United States v. Pezzola, 2021 WL 1026125, at *9 (Kelly, J.) (ordering pretrial detention for defendant "engaged in planning and coordination with other Proud Boys, including by arranging concealed means of communicating by radio during the riot"); Chrestman, 2021 WL 765662, at *2–3(ordering pretrial detention for defendant who marched with the Proud Boys to the Capitol, urged the crowd to "take" the Capitol, and then "led his [four] co-conspirators in deliberate efforts to prevent Capitol Police from closing the barriers"). Therefore, although Klein occasionally worked in tandem with the mob and contributed to its overall efforts, the Court respectfully disagrees with Magistrate Judge Faruqui that Klein played any real leadership role within the tunnel.

The government's contention that Klein engaged in "what can only be described as hand-to-hand combat" for "approximately thirty minutes" also overstates what occurred. See Gov't's Br. at 6. Klein consistently positioned himself face-to-face with multiple officers and also repeatedly pressed a stolen riot shield against their bodies and shields. His objective, as far as the Court can tell, however, appeared to be to advance, or at times maintain, the mob's position in the tunnel, and not to inflict injury. He is not charged with injuring anyone and, unlike with other defendants, the government does not submit that Klein intended to injure officers. Compare Hr'g Tr. 57:12–18 (government conceding that the evidence does not establish Klein intended to injure anyone, only that "there was a disregard of care whether he would injure anyone or not" in his attempt to enter the Capitol), with Gov't's Opp'n to Def.'s Mot. to Reopen Detention Hearing & For Release on Conditions, ECF No. 30 ("Gov't's Opp'n to McCaughey's Release"), United States v. McCaughey, III, 21-CR-040-1, at 11 (D.D.C. Apr. 7, 2021) (government emphasizing defendant's "intent to injure" an officer who he had pinned against a door using a stolen riot shield as grounds for pretrial detention). And during the time period before Klein obtained the riot shield, he made no attempts to "battle" or "fight" the officers with his bare hands or other objects, such as the flagpole he retrieved. That does not mean that Klein could not have caused serious injury—particularly given the chaotic and cramped atmosphere inside the tunnel. But his actions are distinguishable from other detained defendants charged under § 111(b) who clearly sought to incapacitate and injure members of law enforcement by striking them with fists, batons, baseball bats, poles, or other dangerous weapons. [8]

***9** The record is also strikingly silent as to what—other than "we need fresh people" and "no way"—Klein actually said during his time at the Capitol. It is possible that his words are simply inaudible given the noise inside the tunnel. But, in contrast to many others present that day, he is never shown verbally threatening any officers or even boasting about his confrontations with law enforcement after the fact.

Nonetheless, Klein did act on the front lines of the mob for a significant time period. He can be seen actively advancing himself to the very front of the tunnel on more than one occasion. And he demonstrated a clear and persistent willingness to use force against law enforcement to attempt to gain entry into the Capitol and to stop the certification of the election. [9] That conduct is deeply troubling and reveals some propensity for violence, as well as a blatant disregard for the law. Furthermore, his suggestion that his conduct is somehow less egregious because he never actually entered the Capitol building is nonsensical because, as the government puts it, that "was not for his lack of trying." See Gov't's Br. at 20; Def.'s Br. at 19.

All told then, the Court finds that the nature and circumstances of the charged offense weigh modestly in favor of detention. Klein's conduct was forceful, relentless, and defiant, but his confrontations with law enforcement were considerably less violent than many others that day, and the record does not establish that he intended to injure others.

**ii. The Weight of the Evidence**

There is strong evidence that Klein attempted to gain entry into the Capitol building on January 6 and employed force against multiple officers. Klein is captured on several cameras

inside the Lower West Terrace tunnel, using a riot shield to wedge open the building doors and push back the officers protecting the tunnel entrance. Although Klein has not conceded that the individual depicted on video is him, three separate witnesses—including a former colleague of two years at the State Department and a recent romantic partner—have identified him in the footage. See SOF at 3–4; Gov't's Br. at 23. Cell-site location information is consistent with Klein's presence at the Capitol on January 6, see SOF at 4, and he told his former partner "that he had been pepper sprayed and assaulted" that day, see Gov't's Br. at 23. He also confirmed in a text message exchange with a reporter that he was caught on video at the Capitol on January 6. Hr'g Tr. 48:15–23.

Klein attempts to cast doubt on the evidence against him by arguing that "the individual [the government] purport[s] to be Mr. Klein is apparently captured wearing two different hats" and other tipsters identified the individual in the footage as "someone other than Mr. Klein." Def.'s Br. at 22. Neither argument is convincing. Klein did lose his original red MAGA hat at some point when he exited the tunnel, but he is soon captured on video placing a different red hat on his head. See SOF at 10–13. "The contention that the defendant's hat switch" then somehow diminishes the government's case against him "not only ignores [that] video evidence, but also disregards" the similarity of Klein's "facial features, build, hairstyle, and clothing," which also serve as a basis to identify him. Gov't's Br. at 22–23. Furthermore, the fact that the "FBI received tips during [its] investigation that did not identify Klein" as the individual captured on camera is even less persuasive. The FBI made thorough efforts to follow up on those tips, many of which were vague and none of which could be corroborated. And three separate witnesses—two of whom had extensive and recent interactions with Klein—have confirmed his identity. See SOF at 3–4; Gov't's Br. at 23.

***10** In sum, this factor weighs firmly in favor of detention, although it "is the least important." See United States v. Gebro, 948 F.2d 1118, 1121–22 (9th Cir. 1991).

### iii. History and Characteristics of the Defendant

Klein's history and characteristics are mixed, but tilt slightly in favor of release. As part of this factor, the Court must consider Klein's "character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings." 18 U.S.C. § 3142(g)(3)(A).

Klein is 42 years old and has lived in the Washington, DC area for his entire life. Def.'s Br. at 23. He reports to be "a devout catholic and regular parishioner" at a church in Virginia, and has substantial family in the area, including his mother, step-mother, brother, and sister-in-law. Id. He served "honorably in the Iraq War" as a marine, id. at 24, and spent the past four years as a political appointee in the State Department during the Trump Administration, id. In that role, he possessed a "Top Secret" security clearance. SOF at 3. Klein resigned on January 19, 2021 with the change in administration, at which time he began actively seeking work and occasionally working as a landscaper until the time of his arrest. Def.'s Br. at 24; Hr'g Tr. 64:19–25, 65:1–5. His criminal history—which as far as the Court can tell, consists of one 1998 arrest for failing to appear, another unspecified arrest presumably associated with that charge, and no prior convictions—is very limited. See Pretrial Services Report [ECF No. 5]. And he has no known ties to any extremist groups. These characteristics are all to Klein's credit.

The government nonetheless contends that "this factor weighs substantially in favor of detention" because Klein's conduct on January 6 "demonstrates an utter disregard for the law and the legitimate functions of government." Gov't's Br. at 24. This contention buttresses the government's view that Klein would not comply with any conditions of release. See id. at 25. In light of the D.C. Circuit's recent admonition in **Munchel**, the Court finds that this argument is best considered in the subsequent section examining whether any condition or combination of conditions would reasonably assure the safety of the community. See **Munchel**, 2021 WL 1149196, at *7 ("Detention cannot be based on a finding that the defendant is unlikely to comply with conditions of release absent the requisite finding of dangerousness."). Still, the Court does agree that Klein's decisions on January 6 show that he is willing to allow "his own personal beliefs [to] override the rule of law" which "reflect[s] poorly on his character." Gov't's Br. at 24, 25.

The government also argues that "Klein abdicated his responsibilities to the country and the Constitution" on January 6 by violating his oath of office as a federal employee to "support and defend the Constitution of the United States against all enemies, foreign and domestic." Id. at 24–25 (quoting 5 U.S.C. § 3331). The fact that, as a federal employee, Klein actively participated in an assault on our democracy to thwart the peaceful transfer of power constitutes a substantial and deeply concerning breach of trust. More so, too, because he had been entrusted by this country to handle "top secret" classified information to protect the United States' most sensitive interests. In light of his background, Klein had, as Magistrate Judge Faruqui put it, every "reason to know the acts he committed" on January 6 "were wrong," and yet he took them anyway. Order of Detention Pending Trial at 4. Klein's position as a federal employee thus may render him highly culpable for his conduct on January 6. But it is less clear that his now-former employment at the State Department heightens his "prospective" threat to the community. See **Munchel**, 2021 WL 1149196, at *4. Klein no longer works for or is affiliated with the federal government, and there is no suggestion that he might misuse previously obtained classified information to the detriment of the United States. Nor, importantly, is he alleged to have any contacts—past or present—with individuals who might wish to take action against this country.

***11** Ultimately, Klein's history—including his ability to obtain a top-level security clearance—shows his potential to live a law-abiding life. His actions on January 6, of course, stand in direct conflict with that narrative. Klein has not—unlike some other defendants who have been released pending trial for conduct in connection with the events of January 6—exhibited remorse for his actions. See, e.g., United States v. Cua, 2021 WL 918255, at *7–8 (D.D.C. Mar. 10, 2021) (Moss, J.) (weighing defendant's deep remorse and regret in favor of pretrial release). But nor has he made any public statements celebrating his misconduct or suggesting that he would participate in similar actions again. And it is Klein's constitutional right to challenge the allegations against him and hold the government to its burden of proof without incriminating himself at this stage of the proceedings. See United States v. Lawrence, 662 F.3d 551, 562 (D.C. Cir. 2011) ("[A] district court may not pressure a defendant into expressing remorse such that the failure to express remorse is met with punishment."). Hence, despite his very troubling conduct on January 6, the Court finds on balance that Klein's history and characteristics point slightly toward release.

### iv. Nature and Seriousness of the Danger

The final factor that the Court must consider is "the nature and seriousness of the danger to any person or the community that would be posed by the [defendant's] release." 18 U.S.C. § 3142(g)(4). "Consideration of this factor encompasses much of the analysis set forth above, but it is broader in scope," as it requires the Court to engage in an "open-ended assessment of the 'seriousness' of the risk to public safety." Cua, 2021 WL 918255, at *5 (quoting United States v. Taylor, 289 F. Supp. 3d 55, 70 (D.D.C. 2018)).

As stated above, Klein's conduct on January 6 showed an obvious disregard for the safety of others and for the country. The government has shown by clear and convincing evidence that he employed persistent force against multiple officers, repeatedly pressing a stolen riot shield against them to gain entry into the Capitol building and stop the certification of the election. And the government has likewise established that he chose to position himself at the front lines of the mob for over half an hour, without once appearing to reconsider the propriety or ramifications of his conduct even as officers commanded him to stop. There is no evidence, however, that he injured an officer or anyone else, or that he destroyed any federal property—or that he sought to do either. He also has not, to the government's knowledge, ever verbally threatened others or advocated political violence either before or after January 6. Indeed, Klein's life otherwise has been lawful, and the nearly two months he spent outside of jail between January 6 and his arrest on March 4, when the continued threat to our democracy loomed particularly large, apparently proceeded without incident.

The degree to which Klein's behavior on January 6 appears, at least on paper, to be an aberration in his life makes his dangerousness challenging to assess. So, too, does his lack of planning. The D.C. Circuit recently remarked that "those who actually assaulted police officers and broke through windows, doors, and barricades, and those who aided, conspired with, planned, or coordinated such actions, are in a different category of dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way."

**Munchel**, 2021 WL 1149196, at *8. Klein's actions may place in him in the former category, but just barely—his conduct does not approach the high end of the spectrum of violence that occurred and was threatened that day.

The government seeks to analogize Klein's behavior to that of another rioter alleged to have pressed a stolen riot shield against an officer in the tunnel. But that defendant, after "strik[ing] multiple officers with [a] stolen riot shield," is allegedly depicted on video using the shield to pin an officer against a door for over ten seconds as the officer screams for help, his mouth dripping blood. See Gov't's Opp'n to McCaughey's Release, McCaughey, III, at 3–5. During that incident, that defendant also says to the officer, "come on man, you are going to get squished just go home." Id. at 3. That type of force is of a different magnitude than Klein's. Furthermore, the government decided not to appeal the release of a codefendant in that same case, who is alleged to have used a stolen riot shield in the tunnel "to push against the line of officers" and to have tried to take an officer's baton. See Aff. in Supp. of Crim. Compl. & Arrest Warrant, ECF No. 1-1, United States v. Stevens, 21-CR-040-2, at 8–9, (D.D.C. Feb. 3, 2021); Hr'g Tr. 45:10–11. And the government is not aware of any other individual—besides McCaughey—who, like Klein, was on the front line of the mob in the tunnel and is still detained pending trial. See Hr'g Tr. 45:22–25, 46:1–10.

***12** Of course, any determination of dangerousness must rest on the specific circumstances of each defendant. See **Munchel**, 2021 WL 1149196, at *7 ("[W]hether a defendant poses a particular threat depends on the nature of the threat identified and the resources and capabilities of the defendant."). But where so much of the proffered justification for Klein's detention relies on the type of force he employed, the Court sees some relevance in the fact that several defendants who also face charges under § 111(b) for assaulting officers and did not engage in planning activities were released without objection from the government. See Statement of Facts (Jan. 7, 2021), ECF No. 1-1 & Min. Entry (Jan. 8, 2021), United States v. Leffingwell, 21-CR-5 (D.D.C.) (defendant repeatedly punched officer with closed fist in attempt to push past wall of officers); Statement of Facts (Jan. 18, 2021), ECF No. 1-1 & Min. Entry (Jan. 19, 2021), United States v. Gossjankowski, 21-CR-123 (D.D.C.) (defendant activated taser within tunnel multiple times as he pushed towards the police line); Statement of Facts (Feb. 9, 2021), ECF No. 1-1 & Min. Entry (Feb. 17, 2021), United States v. Blair, No. 21-CR-186 (D.D.C.) (defendant struck an officer in the chest with a lacrosse stick). [10] To be sure, these cases do not entail the same duration of force employed by Klein, but, on the other hand, they do appear to involve actions intended to injure or incapacitate officers.

The broad divisions drawn in **Munchel** offer some parameters for differentiating among participants at the January 6 events. But ultimately the D.C. Circuit's primary holding there is that a finding of dangerousness must be predicated on a concrete determination that the defendant poses a continued, "identified and articulable threat to the community" or to another person. **Munchel**, 2021 WL 1149196, at *4 (quoting Salerno, 481 **U.S.** at 751). As part of that analysis, the D.C. Circuit advised the district court to consider "the specific circumstances that made it possible, on January 6, for [the defendant] to threaten the peaceful transfer of power." Id. at *8. In this respect, this Court finds that "the presence of the group" somewhat impacted Klein's "ability to obstruct the vote and to cause danger to the community." Id. His most forceful conduct was directed to advancing and maintaining the mob's position in the tunnel, not toward inflicting injury, and outside that context, the nature of his actions and the force that he employed would not have had the same effect.

Although the government emphasizes Klein's "choice to use violence as a means to his ends" as evidence that he "poses a threat regardless of the unique circumstances of January 6, 2021," see Gov't's Br. at 27, it does not articulate any concrete "end[ ]" or "threat," now that "the transition [of power] has come and gone." See **Munchel**, 2021 WL 1149196, at *10 (Katsas, J., concurring in part and dissenting in part); see id. at *8 (Wilkins, J.) (explaining that defendants' purported "danger to 'act against Congress' " required additional justification). Indeed, while security threats around the Capitol are always present, the specific concerns in the wake of the January 6 events over future protests and violent attacks on the government—on January 20, March 4, and otherwise—have dissipated to some degree now three months later, even though troops and defenses remain present. See id. As the majority emphasized in **Munchel**, the threat to public safety must be continuing and prospective. Id. at *4.

Therefore, although it is a close call, the Court ultimately does not find that Klein poses a substantial prospective threat

to the community or any other person. He does not pose no continuing danger, as he contends, given his demonstrated willingness to use force to advance his personal beliefs over legitimate government objectives. But what future risk he does present can be mitigated with supervision and other strict conditions on his release.

***13** Klein will, among other things, be restricted to his home —where he is not alleged to have engaged in any unlawful or even threatening conduct before—except for employment, education, religious services, medical treatment, attorney visits, court-ordered obligations, and other pre-approved activities. Cf. Chrestman, 2021 WL 765662, at *16 (rejecting feasibility of home detention where defendant had engaged in planning at his home, harbored weapons there, and destroyed evidence of his involvement in the January 6 events); Pezzola, 2021 WL 1026125, at *9 (similar). He will be prohibited from entering the Capitol grounds, attending any type of political protest, contacting other participants in the events of January 6, and possessing firearms or other weapons. And his compliance with these conditions will be ensured through GPS monitoring.

The government disagrees that Klein can be trusted to follow any court orders in light of his refusal to obey officers' commands at the Capitol and his brazen disrespect for the rule of law in full view of law enforcement. See Gov't's Br. at 24–25. Although certainly relevant to the Court's analysis, those facts are not dispositive because the same rationale applies to virtually every rioter within the tunnel and many other individuals who contributed to the threat at the Capitol that day. And weighed against Klein's lack of past criminal history, lack of efforts to obstruct the FBI's investigation, and law-abiding behavior for the period leading up to his arrest, there is not "clear and convincing evidence" that Klein would violate this Court's orders upon release. See 18 U.S.C. § 3142(f); see also **Munchel**, 2021 WL 1149196, at *7 (" '[T]he law requires reasonable assurance, but does not demand absolute certainty' that a defendant will comply with release conditions because a stricter regime 'would be only a disguised way of compelling commitment in advance of judgment.' ") (quoting United States v. Alston, 420 F.2d 176, 178 (D.C. Cir. 1969)).

This decision is not an easy one, but, in the absence of a concrete, prospective threat to public safety that cannot be mitigated by strict conditions, this Court must apply "the default rule favoring liberty." See Cua, 2021 WL 918255, at *8; see also Salerno, 481 **U.S**. at 755 ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."). Hence, the Court will order Klein released pending trial, subject to the conditions set forth in Attachment A of the accompanying Order issued on this date.

### II. Government's Motion to Continue and Exclude Time Under the Speedy Trial Act

The Court's decision to release Klein pending trial substantially alters the parameters of the parties' dispute regarding the government's request to exclude time under the Speedy Trial Act. The government had moved for a sixty-day continuance and exclusion of time based on the complexity associated with prosecuting the offenses related to the January 6 events and the need for adequate time to prepare. Continuance Mot. at 6. Klein objected to this request primarily, though not exclusively, on the ground that "the combination of insisting" on Klein's indefinite "pretrial detention while not being able [to] afford Mr. Klein a speedy trial constitutes a violation of his due process rights." Def.'s Br. at 28. Those concerns have dissipated given that Klein will no longer be detained. [11]

***14** Nonetheless, the Court must still examine the propriety of continuing this matter and excluding time under the Speedy Trial Act. Klein takes issue with the fact that he has not received discovery and that the government "does not now know when it will be prepared for trial." Def.'s Reply at 11 (emphasis omitted); see also Def.'s Br. at 29. Since the time of Klein's initial filing, however, the Court understands that the government has produced "all of the BWC ... upon which the government has based its case [against Mr. Klein] to date," see Def.'s Reply at 5, and anticipates providing by April 19 all other "specific materials that the government relied on in charging Mr. Klein, as well as related materials such as the data extraction from his cell phone and the search of his vehicle," see Gov't's Br. at 29. Those steps demonstrate substantial forward progress and satisfy this Court that a further continuance is appropriate. However, in light of Klein's concerns about the discovery delays, the Court will continue this proceeding for only thirty days to further

monitor what progress has been made and ensure that the interests of justice remain served.

In its prior Order addressing speedy trial issues in this case, the Court detailed the complexity associated with discovery and now incorporates those findings here. See Order (Mar. 26, 2021) at 1–2. The Court again finds that due to the number of individuals currently charged in connection with the events of January 6, the scope of the ongoing investigation, the volume and nature of potentially discoverable materials, and the reasonable time necessary for effective preparation by all parties taking into account the exercise of due diligence, the failure to grant a continuance in this proceeding would likely make a continuation of this proceeding impossible, or result in a miscarriage of justice. For the same reasons, it is unreasonable to expect adequate preparation for pretrial proceedings or trial itself within the time limits established by the Speedy Trial Act.

Hence, under 18 U.S.C. §§ 3161(h)(7)(B)(i) and (ii), the ends of justice served by granting a thirty-day continuance from April 9, 2021 to May 10, 2021 outweigh the best interest of the public and the defendant in a speedy trial. The time between April 9, 2021 and the date of this Order is likewise excluded from the speedy trial computation under 18 U.S.C. § 3161(h)(1)(H). [12]

## Conclusion

For the reasons explained above, the Court will grant defendant's motion to revoke his detention and order that he be released on conditions, as set forth in Attachment A of the accompanying Order issued on this date. The Court will also continue this matter for thirty days—until a status conference now set for May 10, 2021 at 10:00 a.m.—and exclude the intervening time in the interests of justice under the Speedy Trial Act.

**All Citations**

Slip Copy, 2021 WL 1377128

## Footnotes

1 Citations to the April 9, 2021 hearing transcript are to a rough draft of the transcript. When finalized, the transcript will be posted to the docket. Discrepancies between the rough and final transcripts may exist.

2 The total amount of time that Klein spent pressing the riot shield against different officers is not clear, but the government proffered that at least one of these instances lasted approximately sixty seconds. Hr'g Tr. 37:8–10.

3 The government presented several minutes of BWC footage and some text messages at the hearing. Due to technical difficulties, however, the government was not able to present all of the footage that it had intended to show the Court and instead proceeded by proffer to explain what the remaining footage would have depicted. Because, for the most part, Klein has not contested the accuracy of the government's proffer—only the conclusions to be drawn from it—the Court finds that these technical difficulties did not prejudice the government. See Hr'g Tr. 69:5–10.

4 Klein does argue briefly in a footnote that it is "not clear" that § 111(b) "is its own offense, as opposed to providing for an 'enhanced penalty' as the title of the subjection [sic] provides." Def.'s Br. at 10 n.8. Klein posits that if "Congress [had] intended the Bail Reform Act to provide for pretrial detention in cases where penalty enhancements apply, it could have so specified, but it did not," and therefore, "[o]n this basis alone, Mr. Klein should not be subject to pretrial detention. Id. Klein offers no authority for this theory and does not attempt to reconcile his argument with any case law on the subject. The Supreme Court has made clear that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed

statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Therefore, because the facts underlying a violation of § 111(b)—which raise the statutory maximum from eight to twenty years in prison—must be "submitted to a jury, and proved beyond a reasonable doubt," id., they constitute elements of Klein's offense. See Mathis, 136 S. Ct. at 2248 (defining the "elements" of an offense as "the things the prosecution must prove to sustain a conviction" and "what the jury must find beyond a reasonable doubt to convict the defendant" at trial) (quotation omitted). Klein offers this Court no reason to believe that Congress intended to apply a different definition of an offense "element" when analyzing a crime of violence under the BRA, and therefore the Court finds no merit in the distinction between an "enhanced penalty" and separate "offense" that Klein seeks to draw.

5 Some of these cases addressed the issue in the context of 18 U.S.C. § 924(c)(3), which likewise defines a "crime of violence" to include any offense that "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Others "did so in the context of the substantively similar provisions in the Sentencing Guidelines." Gray, 980 F.3d at 265 n.1. Klein does not argue that either context offers a basis for distinction.

6 The Court has some doubts about whether Klein "used" the stolen riot shield as a dangerous weapon. The BRA does not define the term, but at least for purposes of § 111(b), courts have held that a dangerous weapon is any "object that is either inherently dangerous or is used in a way that is likely to endanger life or inflict great bodily harm." See United States v. Chansley, 2021 WL 861079, at *7 (D.D.C. Mar. 8, 2021) (Lamberth, J.) (collecting cases). A plastic riot shield is not an "inherently dangerous" weapon, and therefore the question is whether Klein used it in a way "that is likely to endanger life or inflict great bodily harm." The standard riot shield "is approximately forty-eight inches tall and twenty-four inches wide," see Gov't's Br. at 13, and the Court disagrees with defense counsel's suggestion that a riot shield might never qualify as a dangerous weapon, even if swung at an officer's head, Hr'g Tr. 18:18–25, 19:1–11. See, e.g., United States v. Johnson, 324 F.2d 264, 266 (4th Cir. 1963) (finding that metal and plastic chair qualified as a dangerous weapon when "wielded from an upright (overhead) position and brought down upon the victim's head"). But it is a close call whether Klein's efforts to press the shield against officers' bodies and shields were "likely to endanger life or inflict great bodily harm." See Chansley, 2021 WL 861079, at *7.

7 At the hearing, the government also referenced a video clip of Klein waving his hand in the air while he was standing on the Capitol grounds. In a text message exchange with a reporter, Klein later described his gesture as motioning for another person "to come here." See Hr'g Tr. 49:4–8. Although the government offered this as further evidence of Klein's role in encouraging others to participate in the riot, see id. at 49:19–24, the Court does not find this incriminating without further context.

8 See, e.g., Statement of Facts, ECF No. 1-1 & Min. Entry (Apr. 1, 2021), United States v. Webster, 21-CR-208 (D.D.C.) (defendant struck officer with flagpole multiple times, tackled officer, and pinned officer to ground while trying to remove officer's shield and gas mask); Statement of Facts, ECF No. 1-1 & Min. Entry (Apr. 8, 2021), United States v. Sabol, 21-CR-35-1 (D.D.C.) (defendant took officer's baton and dragged officer down steps); Statement of Facts, ECF No. 1-1 & Min. Entry (Apr. 5, 2021), United States v. McKellop, 21-CR-268 (D.D.C.) (defendant pushed officers back with his hands, threw a bottle at another officer, and shoved flagpole into officer's face); Statement of Facts, ECF No. 1-1 & Min. Entry (Mar. 10, 2021), United States v. Stager, 21-CR-35-2 (D.D.C.) (defendant struck officer on the ground with flagpole); Statement of Facts, ECF No. 1-1 & Min. Entry (Mar. 15, 2021), United States v. Foy, 21-CR-108-1 (D.D.C.) (defendant lifted hockey stick above his head and struck an officer lying on the ground multiple times); Statement of Facts, ECF No. 1-1 & Rule 5(c)(3) Docs., ECF No. 6, United States v. Jenkins, 21-CR-245 (D.D.C.) (defendant threw nine items at officers, including three stick-like objects, a wooden dresser drawer, and a flagpole); Aff. in Supp. of

Crim. Compl. & Arrest Warrant, ECF No. 1-1 & Min. Entry (Feb. 9, 2021), United States v. Lang, 21-CR-53 (D.D.C.) (defendant swung bat at officers' shields); Statement of Facts, ECF No. 1-1 & Min. Entry (Mar. 9, 2021), United States v. Mellis, 21-CR-206 (D.D.C.) (defendant repeatedly struck or attempted to strike officers' necks between their helmets and body armor).

9 The Court finds completely unconvincing Klein's assertion that he was a "protestor[ ] caught in the middle of the officers and the mob" who was unable to turn around or retreat. See Reply in Supp. of Def.'s Mot. for Review & Revocation of Detention Order ("Def.'s Reply") [ECF No. 27] at 5. Even if Klein did find himself "trapped" for any limited moment in time, he remained in the tunnel for approximately thirty-eight minutes, and many other individuals exited the tunnel during that time. Thus, Klein failed to retreat despite ample opportunity to do so.

10 Other defendants in this category have also been ordered released without further appeal thus far from the government. See, e.g., Statement of Facts (Jan. 13, 2021), ECF No. 1-1 & Min. Entry (Mar. 2, 2021), United States v. Sanford, 21-CR-86 (D.D.C.) (defendant hurled a fire extinguisher that struck one officer and ricocheted off two other officers' helmets); Statement of Facts (Feb. 16, 2021), ECF No. 1-1 & Min. Entry (Apr. 9, 2021), United States v. Coffee, 21-MJ-236 (D.D.C.) (defendant pushed a crutch into an officer's body at the archway to the tunnel and then charged at several officers in the tunnel with the crutch).

11 The Court does not disagree that the speedy trial analysis would be quite different were Klein to remain detained pretrial. But Klein's specific due process argument is not persuasive. In Salerno, the Supreme Court held that the BRA, which permits pretrial detention in certain "carefully limited exception[s]," facially comports with due process because it serves a regulatory purpose, and is not punitive in nature. 481 U.S. at 748, 755. The Supreme Court, however, expressed "no view as to the point at which detention in a particular case might become excessively prolonged, and therefore punitive, in relation to Congress' regulatory goal." Id. at 747 n.4. Even so, the five weeks that Klein has spent in pretrial detention does not remotely approach that threshold. See Sharps v. United States, 2021 WL 922468, at *11 n.89 (D.C. Mar. 11, 2021) (collecting cases holding that twenty to fifty-two months of pretrial detention did not violate due process).

12 Moreover, as Klein recognizes, in light of the "exigent circumstances created by the COVID-19 pandemic," Chief Judge Howell has entered a District-wide Standing Order excluding time through August 31, 2021 under 18 U.S.C. § 3161(h)(7)(B)(i) in all criminal cases "that cannot be tried consistent with [ ] health and safety protocols and limitations." See Standing Order No. 21-10 (BAH) (Mar. 5, 2021); Def.'s Br. at 31 n.12.

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

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| **UNITED STATES OF AMERICA** | : | |
| | : | |
| **v.** | : | **Case No. 21-CR-233 (EGS)** |
| | : | |
| **WILLIAM ROBERT NORWOOD III,** | : | |
| | : | |
| **Defendant.** | : | |
| | : | |

**GOVERNMENT'S RESPONSE TO DEFENDANT'S**
**MOTION FOR PRETRIAL RELEASE**

The United States of America, by and through the United States Attorney for the District of Columbia, respectfully submits this response to defendant's Motion for Bond. ECF No. 13 (hereinafter "Def. Motion"). For the reasons set forth below, the United States agrees that defendant should be released pending trial, with conditions.

**FACTS AND PROCEDURAL POSTURE**

Defendant was charged by criminal complaint on February 25, 2021, with Obstruction of an Official Proceeding, in violation of 18 U.S.C. § 1512(c)(2) and 2; Theft of Government Property, specifically, a United States Capitol Police ("USCP") body armor vest and helmet, in violation of 18 U.S.C. § 641; Knowingly Entering and Remaining in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1) and (2); and Violent Entry and Disorderly Conduct on Capitol Grounds, in violation of 40 U.S.C. § 5104(e)(2)(D) and (G). *See* ECF No. 1 (hereinafter "Complaint").

Defendant was arrested on February 25, 2021, and had his initial appearance in the District of South Carolina on February 26, 2021. *See* ECF No. 5, *United States v. William Robert Norwood III*, 21-cr-58-JDA (D.S.C. Feb. 26, 2021). As reflected in a minute entry on the

District of South Carolina's docket, at the time of defendant's initial appearance, the "District of Columbia consent[ed] to an unsecured bond, but the District of South Carolina request[ed] detention." *Id.*

A detention hearing was held in the District of South Carolina on March 2, 2021. During that hearing, defendant testified under oath regarding his actions on January 6, 2021. *See* Transcript from March 2, 2021 Detention Hearing, Exhibit 1, at 74-128. After hearing testimony and argument, the Magistrate Judge in the District of South Carolina ordered defendant detained based on danger to the community. *See* ECF No. 15, *United States v. William Robert Norwood III*, 21-cr-58-JDA (D.S.C. Mar. 2, 2021) (hereinafter "Detention Order").

On March 19, 2021, a federal grand jury returned a seven-count indictment charging defendant with the aforementioned offenses, as well as Entering and Remaining in Certain Rooms in the Capitol Building -- namely, an office belonging to Speaker Nancy Pelosi -- in violation of 40 U.S.C. § 5104(e)(2)(C). *See* ECF No. 8.

On April 14, 2021, defendant filed the instant motion for pretrial bond. *See* ECF No. 13.

## ARGUMENT

### 1. The Government's Basis for Detention

The District of South Carolina conducted a detention hearing pursuant to 18 U.S.C. § 3142(f)(1). *See* Detention Order at 1. While the government concedes that it likely was not entitled to a detention hearing based on 18 U.S.C. § 3142(f)(1), the government was likely eligible for a detention hearing under 18 U.S.C. § 3142(f)(2) based on the serious risk that the defendant would flee and the serious risk that the defendant would obstruct or attempt to obstruct justice.

Immediately preceding his arrest on February 25, 2021, and upon suspicion that the FBI

may have been surveilling him, defendant engaged in what the Magistrate Judge in the District of South Carolina described as "evasive" conduct. *See* Transcript from March 2, 2021 Detention Hearing, Exhibit 1, at 48. Specifically, instead of parking in his driveway, defendant parked his vehicle outside a business almost a quarter mile away from his residence. *Id.* at 19, 48. Upon entering his home, defendant quickly turned off all the lights and began peering out the window. *Id.* at 20. Eventually, defendant snuck out of his residence and was seen speeding away in a different vehicle. *Id.* During this time, defendant managed to successfully evade surveillance units by making a sharp turn into a gated storage facility. *Id.* When defendant returned to his residence later that evening, he cut off his headlights almost a quarter mile before turning into his driveway. *Id.* at 21.

Defendant also lied to FBI agents over the course of this investigation. During a non-custodial voluntary interview on January 22, 2021, defendant told FBI agents that he left the stolen USCP body armor vest and helmet inside a hotel room before leaving Washington, D.C. However, upon searching defendant's box trailer on February 26, 2021, the FBI recovered the stolen USCP body armor vest and helmet. *Id.* at 24-26, 105.

Notwithstanding defendant's eligibility for pretrial detention, in light of recent guidance from this Court and the D.C. Circuit Court of Appeals, the government believes that conditions can be imposed that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community. Therefore, having conferred with defense counsel, the government would propose the following standard conditions and special conditions of release: (1) electronic monitoring; (2) home detention with a curfew allowing defendant to work; (3) prohibition against leaving the District of South Carolina without approval; (4) random drug testing; (5) removal of all firearms from defendant's residence; and (6) avoid all contact,

directly or indirectly, with any person who is or may become a victim or potential witness in the investigation or the prosecution, including but not limited to: co-conspirators and defendant's estranged wife.

**2. The Government's Analysis of the Bail Reform Act Factors**

There are four factors that a court must analyze when evaluating whether to detain a defendant pending trial: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the defendant's history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by his release. 18 U.S.C. § 3142(g)(1)-(4).

**A. The Nature and Circumstances of the Offense**

The nature and circumstances of the offense weigh in favor of pretrial detention. Aside from participating in the violent breach of the U.S. Capitol in an apparent attempt to subvert a democratic election and prevent the peaceful transition of power, defendant also led a pack of rioters through the inner sanctum of Speaker Pelosi's office space. In fact, defendant kept a souvenir from Speaker Pelosi's office -- a paper coaster with the words "United States Congress" printed on it -- which law enforcement ultimately recovered from defendant's vehicle. *See* Transcript from March 2, 2021 Detention Hearing, Exhibit 1, at 22-23.

The day after the riot, defendant boasted to family members about assaulting law enforcement officers and stealing USCP equipment:

*"It worked . . . I got away with things that others were shot or arrested for."*;

*"The cop shot a female Trump supporter. Then allowed 'ANITFA Trump supporters' to assault him. I was one of them. I was there. I took his shit."*;

*"I fought 4 cops, they did nothing. When I put my red hat on, they pepper balled me."*;

*"I got a nice helmet and body armor off a cop for God's sake and I disarmed him. Tell me how that works."*; and

*"I'm anti shitty cop. The cops who acted shitty, got exactly what they deserved. The ones who were cool, got help."*

Complaint at 2-3. To date, the government has not identified evidence of defendant engaged in any violent or assaultive conduct either inside or outside the U.S. Capitol building. Nevertheless, defendant's arrogance following the January 6 riot -- including lying to FBI agents about leaving the stolen USCP body armor vest and helmet inside a hotel room -- underscores his utter lack of remorse for his actions.

Although the government does not currently believe that defendant was a leader in organizing the attack on the Capitol, the government does have evidence that defendant engaged in prior planning before arriving in Washington D.C. on January 6. In a post-arrest *Mirandized* interview on February 26, 2021, defendant admitted to packing a green tactical vest, bear mace, and a knife in the vehicle he drove to Washington, D.C.[1] Defendant was not seen wearing the green tactical vest inside the Capitol building, nor was he seen wielding a knife or spraying bear mace. Nevertheless, the fact that defendant packed these items in the first place suggests that he was "not just caught up in the frenzy of the crowd, but instead came to Washington, D.C. with the intention of causing mayhem and disrupting the democratic process." *United States v. Chrestman*, No. 21-mj-218 (ZMF), 2021 WL 765662, at *8 (D.D.C. Feb. 26, 2021).

Finally, unlike other individuals charged with unlawfully entering the U.S. Capitol on January 6, 2021, defendant is charged with two felonies -- obstruction of an official proceeding and theft of government property -- and is facing a potential twenty-year prison sentence. *See* 18

[1] The FBI ultimately recovered these items during the February 26, 2021 search of defendant's box trailer.

U.S.C. §§ 1512(c)(2) and 641.

**B. The Weight of the Evidence Against the Defendant**

The weight of the evidence against the defendant is overwhelming, and this factor weighs in favor of pretrial detention. The government's evidence against defendant includes, among other things, surveillance footage of defendant entering one of Speaker Pelosi's offices, open source photographs of defendant wearing a stolen USCP body armor vest and helmet, and the stolen USCP vest and helmet recovered from defendant's box trailer. The government's evidence also includes Facebook messages sent by the defendant to family members boasting of his and others' assaultive conduct inside the U.S. Capitol building, as well as defendant's statements to law enforcement on January 22, 2021 and February 25, 2021, as well as his testimony during his March 2, 2021 detention hearing.

**C. The History and Characteristics of the Defendant**

This factor weighs in favor of pretrial release. In evaluating the history and characteristics of the defendant, the Court considers the defendant's "character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings." 18 U.S.C. § 3142(g)(3)(A). While defendant has admitted to using drugs recreationally, he has no significant criminal history, he has strong ties to the area in which he resides, and he was gainfully employed prior to his arrest in this case. And though defendant's lack of candor with law enforcement is troublesome, the government believes that this risk can be mitigated through close supervision of the defendant, to include electronic monitoring and home detention.

**D. Risk of Danger to the Community**

The fourth factor, the nature and seriousness of the danger to any person or the community posed by a defendant's release, weighs in favor of defendant's release. Defendant's actions, though unlawful, do not warrant pretrial detention. As detailed above, aside from defendant's messages boasting about disarming a law enforcement officer, the government does not have any evidence that defendant engaged in any physically violent or assaultive conduct inside or outside of the U.S. Capitol building on January 6, 2021. *Cf. United States v. Munchel*, No. 21-3011, 2021 WL 1149196 (D.C. Cir. Mar. 26, 2021); *United States v. Sabol*, No. 21-cr-35 (EGS), 2021 WL 1405945 (D.D.C. Apr. 14, 2021). Moreover, the government's proposed special conditions of release tend to mitigate any risk of flight or obstruction of justice by requiring location monitoring and home detention, and by prohibiting interaction with any potential witnesses.

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## CONCLUSION

The government, having conferred with defense counsel, respectfully submits that defendant should be released pending trial on the standard conditions, the following special conditions, and any additional conditions that the Court deems necessary to ensure defendant's appearance and the safety of the community:

1. Electronic monitoring;
2. Home detention with a curfew allowing the defendant to work;
3. Prohibition against leaving the District of South Carolina without Court approval;
4. Random Drug Testing;
5. Removal of all firearms from defendant's residence; and
6. Avoid all contact, directly or indirectly, with any person who is or may become a victim or potential witness in the investigation or the prosecution, including but not limited to: co-conspirators and defendant's estranged wife.

Respectfully submitted,

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By: 

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of this pleading to be served upon defense counsel via the Electronic Case Filing (ECF) system, on April 17, 2021.

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# UNITED STATES DISTRICT COURT

for the

District of Columbia



United States of America
v.
William Norwood

Case No. 21-cr-233-EGS

*Defendant*

## 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 42 U.S.C. § 14135a.

(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: US District Court for the District of Columbia 333 Constitution Ave NW WDC

*Place*

for a status hearing before Judge Sullivan via videoconference

on 6/22/2021 12:30 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

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*

(X) (7) The defendant must:

(X) (a) submit to supervision by and report for supervision to the District of South Carolina as directed, telephone number (864) 438-6218, no later than _____. Contact District of SC immediately upon arrival in SC for reporting instructions

( ) (b) continue or actively seek employment.

( ) (c) continue or start an education program.

( ) (d) surrender any passport to: _____

( ) (e) not obtain a passport or other international travel document.

(X) (f) abide by the following restrictions on personal association, residence, or travel: Stay out DC except for Court/ Pretrial business and meetings with attorney. See (s) for additional travel restrictions

(X) (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: Avoid all contact, with any person who is or may become a victim or potential witness in the investigation or the prosecution, including but not limited to co-conspirators, defendant's estranged wife.

( ) (h) get medical or psychiatric treatment: _____

( ) (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.

(X) (k) not possess a firearm, destructive device, or other weapon.

( ) (l) not use alcohol ( ) at all ( ) excessively.

(X) (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.

(X) (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.

(X) (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.

(X) (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

(X) (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.

(X) (q) submit to location monitoring as directed by the pretrial services office or supervising officer and comply with all of the program requirements and instructions provided.

(X) You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services office or supervising officer.

(X) (r) report as soon as possible, to the pretrial services office or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.

(X) (s) GPS Monitoring. Defendant may also go to the gym and have visitation with his minor child. All firearms to be removed from defendant's home. Any travel requests to be approved by 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

*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: 04/20/2021

*Judicial Officer's Signature*

Emmet G. Sullivan

*Printed name and title*

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL