

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS WEBSTER,

Defendant.

CASE NO. 1:21-CR-208 (APM)

**MOTION TO REVOKE OR
AMEND MAGISTRATE’S ORDER
OF PRE-TRIAL DETENTION**

Defendant Thomas Webster (hereinafter “Webster”), by and through his attorneys, Dupee & Monroe, P.C., submits his Motion to Revoke or Amend Magistrate Andrew E. Krause’s Order of Pre-Trial Detention dated February 23, 2021 pursuant to 18 U.S.C. §3145(b) and in support thereof, states as follows:

I. INTRODUCTION

1. Defendant was indicted on March 12, 2021 upon charges of: Assaulting, Resisting, or Impeding Certain Officers Using A Dangerous Weapon 18 U.S.C. §111(a)(1) & (b); Civil Disorder 18 U.S.C. §231(a)(3); Entering And Remaining In A Restricted Building Or Grounds With A Deadly Or Dangerous Weapon 18 U.S.C. §1752(a)(1) & (b)(1)(A); Disorderly and Destructive Conduct In A Restricted Building Or Grounds With A Deadly Or Dangerous Weapon; 18 U.S.C. §1752(a)(2) & (b)(1)(A); Engaging In Physical Violence 18 U.S.C. §1752(a)(4) & (b)(1)(A); Disorderly Conduct Within The Capitol Grounds Or Buildings 40 U.S.C. §5104(e)(2)(D); and Active Physical Violence Within The Capitol Grounds Or Buildings 40 U.S.C. §5104(e)(2)(F).

II. FACTS

2. A Detention Hearing was held before Magistrate Andrew E. Krause on February 23, 2021. (Exhibit “A”) At hearing, Magistrate Krause denied defendant’s request for pretrial release. Webster now moves pursuant to 18 U.S.C. §3145(b) for his pre-trial release. Although the D.C. Circuit has yet to opine on the question, *See, United States v. Munchel*, 991 F.3d 127, 1280 (D.C. Cir. 2021), substantial precedent supports the view that Magistrate Krause’s February 23rd Detention Order is subject to *de novo* review. *See, United States v. DeGrave*, 2021 WL 1940536 at *7 (D.D.C. May 14, 2021); *United States v. Caldwell*, 2021 WL 2036667 at *5 (D.D.C. May 21, 2021); *United States v. Owens*, 2021 WL 2188144 at *5 (D.D.C. May 28, 2021); *United States v. Glasgow*, 2021 WL 2403136 at *5 (D.D.C. June 11, 2021).

3. Webster is 55 years old having been born in Brooklyn, New York on March 25, 1966. Defendant lived in a stable and loving home in Florida, New York with his wife and three children. Defendant and his wife Michelle Webster were married on July 16, 1999. The Websters are devoted Catholics and are active parishioners of the Church of St. Johns The Evangelist in Goshen, New York. Defendant was raised with his two siblings by his supportive parents John and Yvonne Webster in Suffern, New York. Defendants’ parents are alive and remain residents of Rockland County, New York. Defendant Webster graduated from Suffern High School in 1984 and following a short stint at the Rockland County Community College enlisted in the United States Marine Corps on November 1, 1985.

4. While in the service of our country, Webster received a meritorious promotion to Private First Class on January 2, 1986; was promoted to Lance Corporal on September 1, 1986; and was ultimately promoted to the rank of Corporal on September 1, 1988. (Exhibit “B”). As a Lance

Corporal, defendant received a Letter of Appreciation (Exhibit "B") from his Commanding Officer reciting his outstanding conduct as a Marine for the time period between August 18, 1986 to February 23, 1987. Defendant also received a Certificate of Good Conduct from the United States Marine Corps for the period of November 1, 1985 to October 31, 1988 on November 1, 1988. (Exhibit "B") As a Marine, defendant also received the Sea Service Deployment Ribbon; Good Conduct Medal; Meritorious Unit Recommendation; and Rifle Expert Badge. Webster was Honorably Discharged from the United States Marine Corps on October 31, 1989. (Exhibit "B")

5. Following Webster's exemplary service with the United States Marine Corps, defendant applied to and was accepted by the New York City Police Department's (hereinafter N.Y.P.D.) Academy on April 30, 1991. (Exhibit "C") Webster's law enforcement career started at the New York City Housing Police Department - - which was subsequently merged with the N.Y.P.D. Defendant was tasked with the responsibility of policing some of the City's most dangerous low-income housing projects. As a patrolman, Webster confronted violent/hostile citizens on almost a daily basis. As evidenced by the attached records, Webster consistently demonstrated a high degree of professionalism and restraint in his dealings with the public. At no time during the course of Webster's twenty year career with the N.Y.P.D. did he ever have to resort to using his firearm. As in the Marine Corps, defendant received high marks from his superiors for his integrity and good conduct. Since retiring from the N.Y.P.D. in 2011, defendant has remained self employed as a landscaper under the name Sēmpē Fi Landscaping.

6. Webster's high moral character is exemplified by a private letter to then Mayor Rudolph Giuliani on May 15, 1997 stating:

Dear Mayor:

I am a Resident Patrol Supervisor at Gun Hill Houses located in the

North Bronx. I am writing to let you know what a great job the Residents at Gun Hill think your officers are doing.

Police Officer Webster and Police Officer Morales have demonstrated to us that they are concerned about the quality of life in our community. They are always courteous and ready to respond to any situation.

Just as we speak out when we think there is a problem in our community with the police officers, we are writing to give Police Officer Webster and Police Officer Morales the praise they so richly deserve. (Exhibit "D")

7. With the exception of having accidentally misplaced his police identification card, Webster was never disciplined as a police officer. Only one substantiated complaint for excessive force was filed against the defendant during his twenty years of service. As a product of Webster's high performance ratings, he was assigned as a Firearm Instructor at the KNAPWEED's Academy and subsequently reassigned to Mayor Bloomberg's private security detail. In this role, Webster served in both uniform and non-uniform capacity and was responsible for guarding the Mayor and high ranking city public officials both within the City of New York and abroad.

8. As previously stated by Webster (Exhibit "E") and verified by the Federal Bureau of Investigation, (Exhibit "F") defendant has no prior arrests; no social media presence; is not a member of political organizations; and presents no present or future threat to the United States of America or its citizens. (Exhibit "F" at pgs. 4-6)

9. Webster traveled from his Florida, New York home to Washington D.C. during the early morning hours of January 4, 2021. Defendant checked into the Lombardy Hotel located on N.R. Pennsylvania Avenue in Washington D.C. on January 5, 2021. Webster traveled alone and had no plans of meeting anyone/group during his stay in D.C. On the evening of January 5th, defendant attended the "Freedom Rally" and listened to speeches given by former National Security Advisor Michael Flynn, and long time advisor to Former President Trump Roger Stone. However misguided,

Webster attended the January 5th rally at Freedom Plaza to protest the results of the 2020 presidential election. Webster attended the January 5th rally alone and did not participate in any form of criminal activity.

10. On Wednesday January 6, 2021, Webster attended the rally held at the Ellipse in Washington D.C. where many speakers, including the then - President of the United States, Donald J. Trump, and the President's former private counsel Rudolph Giuliani exhorted attendees to march to the Capitol to protest the Certification of the Electoral College Vote count for the 2020 Presidential election. Again, Webster attended the January 6th rally alone and was generally unfamiliar with the area having not visited Washington D.C. in more than twenty years prior to January 6th. Webster remained at the rally held at the Ellipse until the end of most of the speeches before walking down Pennsylvania Avenue towards the Capitol to exercise his First Amendment right to protest. The temperature outside in Washington D.C. on January 6th at approximately 1:00 P.M. was 43 degrees. Defendant was dressed appropriately for the weather conditions wearing a brightly colored black/white/red winter jacket, blue jeans, brown leather gloves, and work boots. Defendant also wore his bullet proof vest originally issued to him by the N.Y.P.D. under his winter jacket. Given the political climate, defendant was concerned for his personal safety in the event he was to encounter counter-protestors or members of left-wing organizations such as Antifa. As a precautionary measure, defendant left his service revolver -- that he customarily carries -- in his hotel room. After some quiet reflection, Webster also decided to bring a Marine Corps Flag attached to a lightweight half inch hollow aluminum five foot flagpole. The flagpole consists of two sections measuring two and half feet in length each weighing .425 pounds or .68 ounces. (e.g. Exhibit "G") Defendant had never attended a protest or political rally prior to January 5th. Defendant had no intention of disrupting the Congressional proceedings or engaging in any type of assaultive behavior

with any counter protestor or member of law enforcement.

11. A joint session of the United States Congress convened on January 6th to certify the 2020 Presidential Election which had taken place on November 3, 2020. The joint session began at approximately 1:00 P.M., with then - Vice President Michael R. Pence presiding. By 1:30 P.M. the United States House of Representatives and the United States Senate adjourned to separate chambers within the Capitol to resolve an objection raised in the joint session. Shortly after 2:00 P.M., a crowd of protestors were reported to have forcibly entered into the Capitol Building causing members of the Senate and House of Representatives to evacuate the chambers of the Capitol and suspend the certification process of the Presidential Election results. According to the Government's body cam video (Exhibit "H") Webster first appears at the police line in the presence of Officer N. R. at 2:28 P.M. after the Capitol Building had been breached. *See also*, Government's Statement of Facts dated February 19, 2021. (Exhibit "I") Webster ascended the base of the west front of the Capitol's exterior stairs where he confronted Officer N.R. at the bike rack barricade line. As confirmed by subsequent FBI investigations (Exhibit "F"), Mr. Webster never entered the Capitol Building or caused any property damage. For the ten minutes prior to encountering the defendant, Officer N.R. can be seen reaching over the metal barrier and pushing a female protester holding a flag to the ground on two separate occasions. (Exhibit "H" at 14:18:08 and 14:18:22) Notwithstanding what was occurring behind this police line - - (i.e., the breach of the Capitol) - - the protestors assembled in front of Officer N.R. were by and large peaceful. It was only after tear gas and pepper spray were deployed by police upon this group of peaceful protestors that the crowds changed. (Exhibit "H" at 14:18:18)

12. Officer N.R. was equipped with a helmet, shield, gas mask and a full complement of body armor. (Exhibit "H") Officer N.R. loses his right glove in his initial altercation with a female

protestor. (Exhibit "H" at 14:18:11) The remaining glove on Officer N.R.'s left hand was identified as a "tactical glove" manufactured by a company known as Mechanix Wear.

13. The pepper spray and tear gas deployed by police at this police line caused the protestors to dissipate and fall back towards the street. The remaining protestors - - who did not attend the protest with a mask or face shield - - are observed suffering the effects of being gassed and pepper sprayed by the police. By 14:23:21 the Government's body cam video shows that as the gas and pepper spray dissipates, the protestors reassemble in front of Officer N.R. The body cam video also establishes that many of the protestors - - including Webster - - are outside the Capitol holding a variety of flags attached to flagpoles.

14. Showing little regard for the peaceful protestors present, Officer N.R. can be seen reaching over the metal barrier and pushing a peaceful male protestor wearing a maroon sweatshirt who was blinded by pepper spray. (Exhibit "H" at 14:20:45 by 14:23:06) Officer N.R. can also be observed mocking several protestors who were complaining about this Officer's excessive use of force.

15. Late to the protest, Webster observed the retreating protestors gassed and/or pepper sprayed by the police as he made his way up to the base of the front of the Capitol's stairs. Angered by the police use of force, Webster is first seen emerging from the crowd of protestors holding his flagpole with an attached Marine Corps flag in his right hand behind him - - away from the police. Upset by the retreating protestors Webster is heard angrily referring to the police officers as "commie motherfuckers". As a former U.S. Marine and a member of law enforcement, defendant's moral instinct was to protect the innocent. As Webster continues to hold his flagpole and attached flag in his right hand - - in a position furthest away from the police - - the Government video goes on to depict Webster objecting to the Officers "attacking Americans". (Exhibit " H " at 14:28:26) In

keeping with tactics Officer N.R. used against other protestors, the video depict this officer reaching beyond the metal barrier and pushing Webster on the chest with his left glove hand. (Exhibit "H" at 14:28:29) In response, Webster switches the flagpole from his right to his left hand while still keeping the flagpole behind his body and in position furthest away from the police. Webster arrived at the Capitol with his Marine Corps flag to express his patriotism, not to use a weapon or device to intimidate law enforcement.

16. It is at this point (Exhibit "H" at 14:28:28), that Officer N.R. again reaches over the metal barricade and punches Webster on the left side of his face with his left hand that is covered with a black tactical glove. Up until this point in time, Webster had not made any attempt to cross the police barricade or engage in a physical altercation with any member of law enforcement. Provoked by Officer N.R.'s use of force, Webster is observed on the Government's video pushing the metal police barrier with his right hand. (Exhibit "H" at 14:28:36) Webster also responds to being punched by telling the Officers "fuck you". From the video, Webster can also be heard saying after being punched "come on, take your shit off. Take your shit off." By 14:28:38, the Government's body cam video shows the officers' attempt to take the flagpole and flag from Webster. Officer N.R. and an unidentified Officer to his immediate right, grab the top part of the flagpole/flag causing the pole to separate, leaving Webster with only the bottom half of the pole. (Exhibit "H" at 14:28:39) With only the bottom of the pole in his hand, Webster is seen drawing the pole over his head and striking the top of the metal police barrier. (Exhibit "H" at 14:28:40) During the initial brief exchange between Webster and Officer N.R. defendant lost possession of the remaining portion of the flagpole. This first encounter between Webster and Officer N.R. lasts a total of one and a half seconds. (Exhibit "H" at 14:28:46) Webster does not regain possession or control of his flagpole after making physical contact with Officer N.R. After a brief separation of

time and space (Exhibit “H” at 14:28:52), Webster can be seen charging Officer N.R. as the rest of the police line disintegrates. Outside the purview of Officer N.R.’s body cam, Webster alleges that this officer urged the defendant to charge on by using provocative hand gestures. At this point, the video depicts Webster wrestling with Officer N.R. for a period of approximately fourteen seconds. (Exhibit “H” at 14:29:07) The Government’s Statement of Facts (Exhibit “I” at Pgs. 2-3) is devoid of any allegation that Officer N.R. suffered any serious injury as a result of this encounter. Most importantly, the Government’s body cam video demonstrates that Webster never struck Officer N.R. with the flagpole. Following this brief struggle there is no evidence that Webster pursued Officer N.R. or engaged in any other type of assaultive behavior. In fact, a separate video derived from a public source (Exhibit “J”) shows Webster shortly thereafter behind police lines with his hands up acting in a peaceful and compliant manner.

17. Finally, a later video posted on YouTube shows a deflated Webster on the staircase leading to the upper west entrance of the Capitol Building stating sheepishly to the camera, “Send more patriots. We need some help.” Exhibit “K” *Compare*, Exhibit “I”. Defendant never entered the Capitol Building or caused any destruction to property. Webster also did not engage in any other form of aggressive or assaultive behavior towards members of law enforcement.

18. Shortly after appearing on the YouTube video (Exhibit “K”), Webster walked back to his hotel and departed for home the same day. Needless to say, Webster was not the subject of alleged criminal activity since leaving Washington D.C. on January 6th and voluntarily surrendering himself to the FBI on February 22, 2021. After Webster saw that his photo appeared as a person of interest on the FBI website’s most wanted page, he quickly retained the legal services of our office. At the behest of the defendant, contact was made with the FBI’s Hudson Valley office on February 16, 2021. Based upon this contact, together with information already in the possession of the

Federal Authorities, a criminal complaint was filed against Webster with the United States District Court for the District of Columbia on February 19, 2021. (Exhibit “L”) Arrangements were made on February 20th with the FBI for defendant’s peaceful surrender on Monday, February 22nd. Defendant appeared with counsel at the FBI’s Hudson Valley office on the afternoon of February 22nd, consented to be interviewed (Exhibit “E”), and surrendered a laundry list of property relevant to the Government’s investigation, including all of the defendant’s firearms. (Exhibit “M”) At the same time, proof was provided to the FBI that counsel for the defendant was in possession of defendant’s New York State Driver’s License; New York State Pistol Permit; and United States Passport -- all of which currently remain in defense counsel’s possession. During Webster’s initial interview with the FBI, defendant expressed remorse and exhibited a level of candor not often demonstrated by an individual in his situation. (Exhibit “E” at pg. 14 -- pg. 18) Following defendant’s interview (Exhibit “E”) and the surrender of property receipt (Exhibit “M”), defendant was taken into custody without incident.

19. Defendant and his wife Michelle Webster were interviewed by Officer Andrew Abbott from Pre-Trial Services during the late morning of February 23, 2021. (Exhibit “N”) Defendant’s personal history and deep ties to the community as described above are outlined in Pre-Trial Services’ report. *Id.* Ms. Webster advised that she was/is employed as a sales account manager earning the sum of approximately \$260,000.00 and expressed a willingness to co-sign a bond on her husband’s behalf. As reflected by Officer Abbott’s report the defendant and his wife maintain employment and assets commensurate with an upper middle- class family. Defendant was/is in good physical health. Webster has no history of mental health treatment, substance abuse history, alcohol abuse or substance abuse treatment. As stated, Webster has no prior criminal record as confirmed by the Federal Government. (Exhibit “F”) According to Pre-Trial Services’ report, there were no

known factors indicating defendant poses a risk of non-appearance. The only negative finding made were that defendant posed a risk of danger due to the nature of the instant offense. Ultimately, Pretrial Services recommended to Magistrate Krause:

To reasonably ensure the defendant's appearance and the safety of the community, Pretrial Services respectfully recommends the defendant be released on an unsecured bond, co-signed by two financially responsible people with the following additional conditions of release:

1. Pretrial Services supervision as directed.
2. Curfew enforced by Location Monitoring (hours to be set by Pretrial Services) and defendant shall be permitted to self-install the location monitoring equipment.
3. Surrender any travel documents/do not apply for passport.
4. Travel restricted to the Southern and Eastern Districts of New York and the District of Columbia for Court purposes or meetings with counsel only.
5. Not possess a firearm, destructive device, or other weapon.
6. Surrender any firearms located in defendant's residence or in his possession and provide proof to Pretrial Services.
7. Refrain from use or unlawful possession of narcotic drug or other controlled substances defined in 21 U.S.C. 802, unless prescribed by a licensed medical practitioner. (Exhibit "N")

20. In addition to Mrs. Webster, defendant's brother-in-law Robert Catanzaro and long time friend and retired N.Y.P.D. Lieutenant Frank Sialiano are also willing to co-sign a bond on defendant's behalf. Defendant respectfully requests that the Court take judicial notice of the information and recommendations contained in Pretrial Services' report. (Exhibit "N") *See, United States v. Grant*, 2020 WL 7640873 at *4 (D.Colo. Dec. 23, 2020); *United States v. Flores-Bocanegra*, 2021 WL 1215820 at *3 (S.D. Fla. April 1, 2021); *United States v. Dolan*, 2021 WL 2312860 at *5 (S.D. Fla. June 7, 2021).

21. Later the same day, on February 23rd, Webster appeared with counsel via video conference before Magistrate Andrew E. Krause. (Exhibit "A") After hearing arguments from the Government and defense, Magistrate Krause made the following findings:

1. The nature and circumstances of the offense charged here strongly, in my view, strongly support detention. We're talking about an assault on a law enforcement officer first by means of a weapon, later by means of physical confrontation with fists. That is significant, significant violent act that is extremely problematic in a civilized society. The nature and circumstances of the offense charged here certainly support detention, as does the weight of the evidence. (Exhibit "A" at pg. 50 L-17-- L-24)
2. On the other hand, there's no question that Mr. Webster's history and characteristics strongly weigh in favor of release. He has, as Mr. Monroe capably pointed out, extremely deep ties to the community, multiple generations of his family, his spouse, his children, his parents, he's a business owner, he has been a productive, and more than just productive, but a valuable member of society in his prior work as a public servant, and clearly those factors all point very much in favor of release. (Exhibit "A" at pg. 51 L-7 --L-15)
3. [P]retrial Services recommendation is also in favor of release, which I take very seriously, and I respect and appreciate the work of the Pretrial Services office. (Exhibit "A" at pg. 51 L-15--L18)
4. At the end of the day, as you can tell, I think there are a lot of strong arguments on both sides of this case but the final factor in the statute is the nature and seriousness of the danger to any person in the community that would be posed by Mr. Webster's release, and at the end of the day I find that Mr. Webster would pose a danger to the community if released. I believe that the circumstances that lead to Mr. Webster's attack on the law enforcement officer that we see in this video could certainly repeat themselves. There were obviously some unusual circumstances and other outside factors on January 6, 2021, in Washington D.C., but the undercurrent of the political hostility and the other supporting factors that lead a person who has led an exemplary life, had an exemplary career of public service to act in this extraordinary way continue to be

part of our society, and will continue to be part of our society for the foreseeable future. So I cannot sit here today and conclude that the person that I have seen on this video attacking law enforcement does not pose a danger to the community, and I will order detention on that basis. (Exhibit "A" at pg. 51 L-19 -- pg. 52 L-12)

5. I will for the record, find that I do not believe that Mr. Webster poses a risk of flight. I believe that the government has not met its burden even by a preponderance of the evidence that Mr. Webster poses a risk of flight. I think that with the financial resources documents in the Pretrial Services' report, the extremely strong ties in the community that Mr. Monroe has documented and that are also documented in the Pretrial Services' report, that there are conditions of release that could ensure Mr. Webster's appearance for all future proceedings in this criminal matter. (Exhibit "A" at pg. 52 L-13 -- L-22)
6. So my determination in favor of detention today is based solely on the issue of danger to the community. (Exhibit "A" at pg. 52 L-23 -- L-24)

III. LEGAL STANDARD

22. The Bail Reform Act 18 U.S.C. §1841 *et seq.* authorizes the detention of defendant awaiting trial on a Federal offense only under certain limited circumstances. 18 U.S.C. §3142(f) The policy underlying the Bail Reform Act "is to permit release under the least restricted condition compatible with assuring the future appearance of the defendant." *U.S. v. Price*, 773 F.2d 1526, 1527 (11th Cir. 1985) (*per curiam*). "Under the statutory scheme set forth in the Bail Reform Act,, 'it is only a limited group of offenders who should be denied bail pending trial.'" *U.S. v. Munchel*, 991 F.3d 1273, 1279-80 (D.C. Cir. 2021) "In our society liberty is the norm, and detention prior to trial or without trial is the careful limited exception." *U.S.C. v. Salerno*, 481 U.S.. 739, 755 (1987)

23. The Bail Reform Act of 1984 authorizes detention under limited exceptions by providing that the Court "shall order" a defendant detained before trial 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.” 18 U.S.C. §3142(e). “In common parlance, the relevant inquiry is whether the defendant is a ‘flight risk’ or a ‘danger to the community’.” *U.S. v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019). When the basis for pretrial detention is the defendant’s danger to the community, the Government is required to demonstrate the appropriateness of detention by clear and convincing evidence. *See*, 18 U.S.C. §3142(f). When the basis for pretrial detention is the defendant’s risk of flight, the Government is required to demonstrate the appropriateness of detention by a preponderance of the evidence. *See*, 18 U.S.C. §3142(e); *See, also U.S. v. Xulam*, 84 F.3d 441, 442 (D.C. Cir. 1996). First, the Government may seek a defendant’s pre-trial detention if the charged offenses fall into any of five enumerated categories. 18 U.S.C. §3142(f)(1). Those categories include:

- (A) a crime of violence,¹ a violation of §1591, or an offense listed in §2332(b)(g)(5)(B) for which a maximum term of imprisonment of ten years or more is prescribed;
- (B) an offense for which the maximum sentence is life imprisonment or death;
- (C) an offense for which a maximum term of imprisonment of ten years or more prescribed in the Controlled Substances Act . . . the Controlled Substance Import and Export Act . . . or [46 U.S.C. §705];
- (D) any felony [the person charged] has been convicted of two or more offenses described in [§§3142(f)(1)(A-C)] if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or
- (E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device -- or any other dangerous weapon. 18 U.S.C.

¹The Bail Reform Act defines “crime of violence” as (A) “an offense that has an element of the offense the use, attempted use, or threaten use of physical force against the person or property of another,” (B) “any other offense that is a felony and that, by its nature, involve a substantial risk that physical force against the person or property of another may be used in the course of committing the offense,” or (C) “any felony under chapter 77, 109 A, 110, or 117.” 18 U.S.C. §3156(a)(4).

§3142(f)(I)(A-E)

24. Second, the Government may also seek detention -- or the Court *sua sponte* may hold a detention hearing to determine whether pretrial detention is appropriate -- when the case involves “a serious risk” that the defendant willfully or “will attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure or intimidate a perspective witness or juror.” 18 U.S.C. §3142(f)(2). If the Bail Reform Act authorizes pretrial detention, the judicial officer must hold a hearing to determine whether there are conditions of release that would reasonably assure the appearance of the defendant as required and the safety of any other person in the community. 18 U.S.C. §3142(f). If the Court finds that “no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community,” the judicial officer “shall order” the person detained pending trial. 18 U.S.C. §3142(e)(1). A finding that no condition or combination of conditions would reasonably assure the safety of any other person and the community must be supported by *clear and convincing evidence*. 18 U.S.C. §3142(f) (Emphasis added) *See, also U.S. v. Munchel*, 991 F.3d at 1280. Thus, a defendant’s detention based on dangerousness accords with due process only insofar as the Court determines that the defendant’s history, characteristics, and alleged criminal conduct make clear that he or she poses *a concrete, prospective threat* to the public safety. *Id.* (Emphasis added)

25. Webster is charged with, among other crimes, Assaulting, Resisting, or Impeding Certain Officers With a Dangerous Weapon, in violation of 18 U.S.C. §§111(a)(1) and (b). Section 111(a)(1) provides that anyone who “forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any [designated Federal officer, or person assisting a designated Federal officer]²

² *See*, 18 U.S.C. §1114

“while engaged in or on account of the performance of official duties,” is exposed to a maximum term of imprisonment of one year if the violation constitutes simple assault or eight years if the violation involves physical contact with the victim or the intent to commit another felony. *See*, 18 U.S.C. §111(a)(1).

26. The D.C. Circuit has determined that “the adverb ‘forcibly’ in the first element in the offense modifies each of the prohibited acts specified in the second element: that is, a defendant does not violate the statute unless he *forcibly* assaults or *forcibly* resists or *forcibly* opposes, etc.” *U.S. v. Arrington*, 309 F.3d 40, 44 (D.C. Cir. 2002) citing, *U.S. v. Kleinbart*, 27 F.3d 586, 592 (D.C. Cir. 1994). Section 111(b) increases the maximum term of imprisonment to twenty years for anyone who “in the commission of any act described in subsection (a), uses a deadly or dangerous weapon -- or inflicts bodily injury” *Id* When the defendant is charged under the first prong of §111(b)- - for the use of a dangerous weapon - - “intent to use the weapon is a necessary element” of the offense. *See, Arrington*, 309 F.3d at 45. The Courts have observed that to violate §111(b), a defendant “must have committed one of the acts described in §111(a) “i.e., ‘forcibly assault[ed], resisted, 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 v. U.S.* 980 F.3d 264, 266 (2d Cir. 2020) *quoting*, 18 U.S.C. §§111(a)(1),(b).

27. Taking the elements of these offenses into account with 18 U.S.C. §3156(A)(4)’s definition of a crime of violence, defendant having been charged under 18 U.S.C. §§111(a)(1) and (b), the presumption of defendant’s detention applies. *See, U.S. v. Sabol*, 2021 WL 1405945 at *7 (D.D.C. April 14, 2021). On this point, the Government has taken the position in other January 6th cases that defendants charged only under §111(a) are not accused of a crime of violence - - making the distinction that defendant’s charge under §111(a)(1) and (b) (“*the enhanced version of the*

statute”) should be subject to the presumption of detention. *See, U.S. v. Fitzsimmons*, No. Cr. 21-158-KBJ, ECF No. 14 at 2(D.D.C.) At bar, Webster is charged under both §111(a)(1) and (b) which statutorily triggers a detention hearing under the “Crime of Violence” category of 18 U.S.C. §3142(f). On this point, the question is raised whether Webster definitionally possessed a “deadly or dangerous weapon” while assaulting Officer N.R. In the context of Webster’s pretrial motion, defendant enjoys the presumption of innocence as to all elements of the crime(s) charged. *See*, 18 U.S.C. §3142(j); *See also, U.S. v. Dolan*, 2021 WL 2312860 at *3 (S.D. Fla. 2021). Title 18 itself does not provide a general definition of the term “dangerous weapon.”³ The United States Sentencing Guidelines, define a dangerous weapon as “an instrument capable of inflicting death or serious bodily injury.” U.S.S.G. §1(B1.1), commentary 1d. The Supreme Court uses a multi-factored inquiry which emphasizes the capacity of the instrument to instill fear or to inflict harm. *McLaughlin v. United States*, 476 U.S. 16, 17-18 (1986) (holding that unloaded handgun used during bank robbery was a dangerous weapon for purposes of 18 U.S.C. §2113(d), since display of gun would incite fear in the average citizen and thereby create risk of a violent response). Under 18 U.S.C. §3142(f)(1)(E), detention is permitted if the case involves “any felony . . . that involves the possession or use of a . . . dangerous weapon.”

28. By all accounts, Webster attended the January 6th protest in the possession of a United States Marine Corps flag attached to a 5 foot long 1/2 inch diameter hollow aluminum flagpole weighing less than a pound. In its intended form, defendant possessed a First Amendment

³By comparison 18 U.S.C. §930 defines the term dangerous weapon to mean:

A weapon, device, instrument, material or substance, adamant or in adamant, that is used for, or readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

See also, e.g., D.C. Code §§22-3202, 22-3214

right ⁴ to publicly display his flag without taking any steps to fashion it into a dangerous weapon.

29. The bodycam video brought forth by the Government makes it clear that many of the protestors on January 6th possessed a flag or sign. Certainly the first female protestor depicted in the Government's video that was violently thrown to the ground by Officer N.R. had a First Amendment right to display her Trump flag. Notwithstanding this guarded constitutional right, Officer N.R. is observed on two separate occasions reaching over the metal barrier throwing this woman - - thereby unnecessarily inciting peaceful protestors.

30. As for Webster, the bodycam video depicts Webster emerging from the crowd of protestors towards the bike rack barricade line where Officer N.R. is positioned angered by what he perceived as the police "attacking Americans". (Exhibit "H" at 14:48:26) By the time Webster is first seen, various acts of excessive force were employed by the police towards a group of Americans who are peacefully standing around this police line. Notwithstanding the peaceful condition of the protestors present, the general peaceful mood of the protestors was radically changed by law enforcement's decision to deploy pepper spray and tear gas. (Exhibit "H" at 14:25:50 -- 14:26:45) To avoid the perception that Webster was using the flagpole and/or flag to intimidate the officer's presence, defendant deliberately keeps the flagpole and flag positioned behind his body while voicing his intense displeasure with the manner in which Officer N.R. and his fellow officers conducted themselves. Like the Marine Corps flag, Webster's vulgar words directed at police are protected under the First Amendment. *See, Gooding v. Wilson*, 405 U.S. 518, 527-28 (1972); *Lewis v. City of New Orleans*, 415 U.S. 130, 133 (1974). The transformation between a symbol of protected speech (i.e., defendant's Marine Corps flag), to what the Government describes as a "dangerous weapon" occurs as several officers reached to grab the top of Webster's flag causing the

⁴*See, U.S.v Grace*, 461 U.S. 171, 177-78 (1983)

aluminum pole to bend and separate from the lower section of the pole. (Exhibit “H” at 14:28:38 -- 14:28:40) Incensed by the police interaction, Webster can be seen drawing the remaining portion of the 2 1/2 foot long pole -- weighing .425 pounds or 6.8 ounces -- downwards striking the top of the metal police barrier. (Exhibit “H” at 14:28:40 -- 14:28:41). By this point, Webster has already been shoved (Exhibit “H” at 14:28:27) and punched by Officer N.R. with a tactical glove. (Exhibit “H” at 14:28:28). Officer N.R. was equipped with a police riot helmet, face shield, gas mask and a full complement of body armor. By comparison, Webster is wearing his police issued bullet proof vest, winter jacket, blue jeans, work boots and a 2 1/2 foot long hollow aluminum pole weighing approximately .425 pounds.

31. In this context, what constitutes a dangerous weapon depends not on the hollow pole’s intrinsic character but on its capacity, given “the manner of its use,” to endanger life or inflict serious physical injury. *See, U.S. v. Johnson*, 324 F.2d 264, 266 (4th Cir. 1963); *See, also U.S. v. Moore*, 846 F.2d 1163, 1166 (8th Cir. 1988) (“[A]lmost any weapon, as used or attempted to be used, may endanger life or inflict great bodily harm; as such, in appropriate circumstances, it may be a dangerous and deadly weapon.”) The term “dangerous weapon” has been loosely interpreted to include a variety of innocuous objects or instruments which become capable of inflicting serious injury when put to assaultive use. *See, e.g. United States v. Riggins*, 40 F.3d 1055, 1057 (9th Cir. 1994) (belt and shoe could be dangerous weapons when used to beat a two-year-old child); *Johnson* 324 F.2d at 266 (metal and plastic chair can be a dangerous weapon when held overhead and brought down on a victim’s head); *Arthur v. U.S.*, 602 A.2d 174, 177-78 (D.C.App. 1992) (tennis shoes can be dangerous weapon when used to stomp on victim’s head). *See, U.S. v. Chansley*, 2021 WL 861079 at *7-8 (D.D.C. March 8, 2021) (“As used in sections §§111 and 113, Courts have consistently defined “dangerous weapon” as an object that is either inherently dangerous or is used

in a way that is likely to endanger life or inflict great bodily harm.”) *Citing, U.S. v. Anchrum*, 590 F.3d 795, 802 (9th Cir. 2009). Defendant contends that the bottom portion of the flagpole left in his hand did not constitute a “dangerous weapon” nor was it used in a manner likely to cause a bodily harm to Officer N.R. *See. U.S. v. Rocha*, 598 F.3d 1144, 1154 (9th Cir. 2010). In particular, defendant never struck Officer N.R. with the flagpole (i.e., the dangerous weapon). Unlike the defendant in *Chansley*, neither the fully intact flagpole nor its remnant lower section was pre-equipped with any type of spear, sharpened point, or finial capable of remotely penetrating the officer’s helmet, face shield, or body armor. Looking at the Government’s video, Webster’s first physical contact with Officer N.R. lasted less than a second (Exhibit “H” at 14:28:46). The remaining two and a half foot section of the pole is taken from the defendant by the Officer. After this point, defendant never regains possession or control of either section of his flagpole nor does he make any attempt to re-arm himself with any type of object available to him on the ground. In the second alleged assault, defendant does not possess any object in his hands. In fact, the 2 1/2 foot long pole can be seen in Officer N.R.’s possession. (Exhibit “H” at 14:28:52 -14:29:07)

32. The construct of the law as compared with 18 U.S.C. §§111(a)(1) and (b) is an important distinction given the fact that a defendant’s exposure to incarceration swings on whether he is convicted of a “simple assault” exposing him to a maximum term of one year of imprisonment; an assault involving physical contact carrying eight years of imprisonment; or an assault using a deadly or dangerous weapon carrying twenty years of imprisonment.

33. Taking this argument through its logical paces, a broad definition of the term “dangerous weapon” can include just about any inanimate object rendering superfluous the concept of simple assault defined under 18 U.S.C. §111(a)(1) -- *compare, U.S. v. Duran*, 96 F.3d 1495, 1511 (D.C. Cir. 1996) ([A]s relevant here, under §111(b) “the use of a deadly or dangerous weapon [is]

sufficient . . . to boost the crime above the level of ‘simple assault’”)

34. The District of Columbia recognizes some limits on what can be deemed a weapon. In *Edwards v. U.S.*, 583 A.2d 661, 664 (D.C. App. 1990), the Court of Appeals held that a stationary bathroom fixture, against which the defendant had repeatedly slammed his wife’s head, could not be deemed a weapon within D.C. Code § 22-3202. The court recognized that, had *Edwards* detached the fixture and bludgeoned his wife with it, he would surely have been guilty of using a dangerous weapon. “The distinction is a common sense one -- a weapon is something with which one can ‘be armed,’ something one can pick up and use.” *U.S. v. Sturgis*, 48 F.3d 784, 791 (4th Cir. 1995) Certainly, from viewing the video, Webster is not using the flagpole to assault Officer N.R. (Exhibit “H” at 14:28:46) The second encounter between Webster and Officer N.R. shows that defendant is not armed with a weapon. (Exhibit “H” at 14:28:45 -- 14:29:07) Should the Court determine that defendant did not use a “deadly or dangerous weapon,” the rebuttable presumption contained in 18 U.S.C. §3142(e)(2-3) would not apply in determining Webster’s pre-trial release.

35. However, should the Court find that Webster is eligible for pre-trial detention, a determination must be made as to whether any “condition or combination of conditions will reasonably assure the appearance of [Webster] as required and the safety of any person and the community.” 18 U.S.C. §3142(e)(1). With respect to the danger Webster presents to the safety of any other person in the community, the Court “must identify an articulable threat posed by the defendant to an individual or the community,” though “[t]he threat need not be of physical violence, and may extend to ‘non-physical harms such as corrupting a union.’” *Munchel*, 2021 WL 1149196 at *7 quoting *U.S. v. King*, 849 F.2d 485, 487 n.2 (11th Cir. 1988). For the reasons recited by Magistrate Krause (Exhibit “A” at pg. 52) - - together with the recommendations made by Pretrial Services - - defendant comes from a very socially and financially stable household, possesses deep

roots in his community, and cannot be characterized as a flight risk. Following the Magistrate's determination, defendant's current pre-trial detention is based on the prior Court's determination that the defendant represents a "danger to the community." (Exhibit "A" at pg. 52) That being said, 18 U.S.C. §3142(g) factor including: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the [defendant's] release are addressed *seriatim*.

A. NATURE AND CIRCUMSTANCE OF OFFENSE

36. The first factor that the Court must consider is the nature and circumstance of the offense charged, "including whether the offense is a crime of violence." 18 U.S.C. §3142(G)(1) Defendant does not hesitate to concede that the alleged charges are serious. However any evidence that Webster planned his alleged conduct before arriving at the Capitol on January 6th is noticeably absent. *Compare, Chrestman* 2021 WL 765662 at *8; *Sabol*, 2021 WL 1405945 at *10-11. Defendant did not arrive at the Capitol equipped with a "weapon". With the exception of Webster wearing his bullet proof vest that he kept from his retirement with the N.Y.P.D., defendant was normally dressed for the cold weather conditions. Defendant has no social media presence affiliation with any form of militia or organization such as the Proud Boys, Three Percenters, Groyper Army or Oath Keepers. Prior to January 6th Webster never attended or participated in a political rally or protest. Prior to the subject date, defendant had not visited Washington D.C. in over twenty years. Defendant has no social media presence and possesses no strong political beliefs. Given Webster's many years of public service, he possesses a deep devotion to his country and the rule of law. The record contains no evidence that Webster coordinated with any other protester before, during or after January 6th or assumed any meaningful leadership role. The only words of encouragement the

defendant is alleged to have spoken comes from a short YouTube video where a deflated Webster can be heard/seen stating sheepishly “Send more patriots. We need some help.” Such language could hardly qualify defendant as a *de facto* leader of a group of mostly peaceful protestors present at the base of the west side of the Capitol Building.

37. Officer N.R. is not alleged by the Government to have suffered serious injuries from the two altercations with Webster lasting a total of fifteen seconds. Defendant does not enter the Capitol Building or cause any property damage. Although Webster deeply regrets his physical confrontation with Officer N.R. for all the obvious reasons attached to this good man’s character - - the alleged conduct taken together amounts to nothing more than a simple assault *See*, 18 U.S.C. §111(a)(1). That does not mean to say that Webster could not have caused serious injury to Officer N.R. - - particularly given the chaotic and politically charged atmosphere outside the Capitol. But defendant’s actions are distinguishable from other detained defendants charged under 18 U.S.C. §§111(a)(1) and (b) who clearly possessed the intent to injure members of law enforcement by striking them with fists, batons, baseball bats, poles or other dangerous weapons. *See, e.g., U.S. v. Sabol*, 2021 WL 1405945 at *6 – 7. *See, 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); *U.S. v. Lang*, 21-CR-53 (D.D.C.) (defendant swung bat at officer’s shield); *U.S. v. Mellis*, 21-CR-206 (D.D.C.) (defendant repeatedly struck or attempted to strike officers’ necks between their helmets and body armor). Unlike other detained defendants charged under this statute, Webster’s alleged use of force is directed specifically at Officer N.R. and is not perpetrated to gain entry into the Capitol or to stop the certification of the Presidential Election. Given the record placed before the Court, defendant has a very low propensity for violence that is nearly impossible to trigger in the absence of the exceptionally extraordinary circumstances present at the Capitol on January 6th. Taking these

factors into consideration, the nature and circumstances of the charged offense(s) weigh in favor of the defendant's release.

B. WEIGHT OF THE EVIDENCE

38. Adopting an honest and straight forward approach, the alleged conduct perpetrated by Webster is captured on video. Webster does not deny that he is the individual depicted - - a position that a man of this caliber has taken from the moment he sat down with the FBI agents and voluntarily surrendered himself on February 22nd. In the absence of a deadly or dangerous weapon or the infliction of any bodily injury upon Officer N.R. (18 U.S.C. §111 (b)), the defendant is only answerable to the assault charges contained in 18 U.S.C. §111 (a)(1). While common sense would dictate that such a factor weighs in favor of defendant's detention, it is considered "the least important" consideration in the Courts' assessment. *U.S. v. Klein*, 2021 WL 1377128 at *10 (D.D.C. April 12, 2021) *Citing*, *U.S. v. Gebro*, 948 F.2d, 1118, 1121-22 (9th Cir. 1991).

C. HISTORY AND CHARACTERISTICS OF THE DEFENDANT

39. Webster's history and characteristics weigh heavily in favor of release. Defendant is 55 years old and has lived in the State of New York - - absent his time in the United States Marine Corps - - his entire life. He was raised in a stable and loving family environment. After graduating from Suffern High School in 1984, defendant enlisted in the United States Marine Corps and served our country until being honorably discharged in 1989. Webster's love and devotion for his country are aptly noted by his Marine Corps Service records. (Exhibit "B"). Defendant also completed an exemplary twenty year career with the N.Y.P.D. Webster was held in such high regard and esteem by the N.Y.P.D. that he was trusted to be assigned as a Firearms Instructor and to the Mayor's private security staff. (Exhibit "C") Defendant's alleged actions on January 6th, stand in direct conflict with that narrative.

40. Webster has been married to a loving and devoted wife Michelle Webster since January 16, 1999. Together they have raised three beautiful and successful children, one of which is currently enlisted in the United States Marine Corps in the family's great tradition of proudly serving our country. Webster, his wife and family are devoted Catholics and regular parishioners of the Church of St. John The Evangelist in Goshen, New York. Webster has strong ties to his close-knit family and ran a successful landscaping business since his retirement from the N.Y.P.D. Defendant has no history of drug or alcohol abuse.

41. Defendant's time with the United States Marine Corps and N.Y.P.D. over a twenty-five year period was unblemished and filled with superlatives about defendant's good character, peaceful nature, and high moral qualities. Prior to January 6th, defendant had no criminal history. Beyond being a devoted husband and father, Webster has a storied reputation of selflessly helping others in need. The character letters attached collectively as Exhibit "O" are testament to this incredibly decent man's compassionate and peaceful nature. At best, Webster's encounter with Officer N.R. on January 6th is an unfortunate aberration brought about by defendant's spur-of-the-moment response to what he perceived as the officer's misuse of force. Notwithstanding defendant's momentary lack of restraint, this defendant's exemplary history and high morale qualities warrant his release.

D. NATURE AND SERIOUSNESS OF THE DANGER

42. 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." *U.S. v. Cua*, 2021 WL 918255 at *5 (D.D.C.) Unlike

other pre-trial detainees (*e.g.*, *U.S. v. Chrestman*, 2021 WL 765662 at *14) Webster's encounter(s) with Officer N.R. were extremely brief (*i.e.*, fifteen seconds) and ended with Webster seen behind police lines with his hands up and fully complying with police instructions. (Exhibit "J") There is no evidence, however, that defendant injured Officer N.R. or anyone else, entered the Capitol, destroyed any Federal property -- or had any plan or design to such ends. Webster has never verbally threatened others or advocated political violence against the United States government either before, during, or after January 6th. Nor, has defendant made any public statements celebrating the events of January 6th or suggested that he would ever participate in similar actions again.

43. Defendant has led an exemplary and lawful life for the last 55 years and has spent his time incarcerated in the custody of the Federal Government since February 23rd without further violence or incident. Webster's only plan in traveling to D.C. on January 4th was to attend several rallies hosted by prominent public officials including the former President of the United States and to participate in a protest about the results of the 2020 Presidential Election. Nothing about Webster's intentions or decisions leading up to his encounter with Officer N.R. can be described in any way as illegal. As much as Mr. Webster's political views as of January 6th may have been misguided, they were his to peacefully possess. Any determination of dangerousness must rest on the specific circumstances of each defendant. *See, Munchel*, 991 F.3d at 1283 ("[W]hether a defendant possesses a particular threat depends on the nature of the threat identified and the resources and capabilities of the defendant".) On this point, several defendants who faced charges under 18 U.S.C. §111(b) for assaulting officers -- who like Webster did not engage in planning activities -- were released without objection from the Government. *See, U.S. v. Leffingwell*, 21-CR-5 (D.D.C.) (defendant repeatedly punched officer with closed fist in attempt to push past wall of officers); *U.S. v. Gossjankowski*, 21-CR-123 (D.D.C.) (defendant activated Taser within tunnel

multiple times as he pushed towards the police lines); *U.S. v. Blair*, No. 21-CR-186 (D.D.C.) (defendant struck an officer in the chest with a Lacrosse stick); *U.S. v. Sanford*, 21-CR-86 (D.D.C.) (defendant hurled a fire extinguisher that struck one officer and ricocheted off two other officers' helmets) *U.S. v. Coffee*, 21-CR-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).

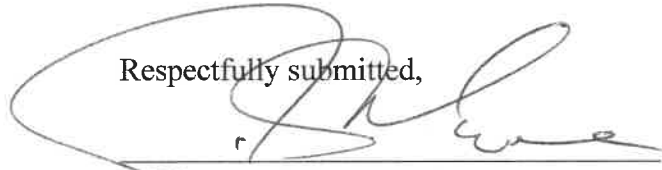
44. By comparison, Webster's encounter with Officer N.R. was of a much shorter duration and was followed by defendant quickly bringing himself back under control and within the bounds of the law. A finding of Webster's dangerousness must be predicated on a "concrete" determination that the defendant poses a "continued, identified and articulable threat to the community" or to another person. *Munchel*, 991 F.3d at 1282 (quoting *Salerno*, 481 U.S. at 751). Only the circumstances present on January 6th made it possible for an exceptionally law abiding and decent individual such as Webster to threaten and/or cause harm to a fellow member of law enforcement. Webster's alleged use of force was not a vehicle to achieve any political objective, but, rather was a response engendered by defendant's perception of Officer N.R.'s misuse of force. Given Webster's lack of any past criminal history, his voluntary surrender to Federal Authorities, and his exceptional and law-abiding behavior for the last fifty-five years leading up to his arrest on February 22nd, there is no "clear and convincing evidence" that Webster would violate this Court's Order(s) upon his release. Absent defendant's "concrete" and "prospective" threat to public safety, which cannot be mitigated by strict pre-trial conditions, the Court must apply "the default rule favoring liberty." *See, Klein*, 2021 WL 1377128 at *13; *Cua*, 2021 WL 918 255 at *8; *U.S. v. Owens*, No. 21-CR-286. For all the reasons stated, Webster should be released pending trial, subject to the conditions set forth in defendant's Pre-Trial Service report dated February 23, 2021. (Exhibit "N")

CONCLUSION

WHEREFORE, counsel requests that this Honorable Court release Mr. Webster subject to the conditions recommended by Pre-Trial Services together with any additional pretrial release conditions the Court believes necessary to satisfy the statutory criteria found in 18 U.S.C. §3142(g)(4).

Dated: Goshen, New York
June 17, 2021

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'J. Monroe', is written over a horizontal line.

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EXHIBIT “A”

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES of AMERICA,

5 -against-

21 mj 2050 (AEK)
Bail Hearing

6 THOMAS WEBSTER,

7 Defendant.
8 -----x

9 United States Courthouse
10 White Plains, New York
11 February 23, 2021

12 (All parties appearing via videoconference and teleconference)

13 THE HONORABLE ANDREW E. KRAUSE,
14 United States Magistrate Judge

15
16 AUDREY STRAUSS
17 United States Attorney for
18 the Southern District of New York
19 BY: BENJAMIN A. GIANFORTI
20 Assistant United States Attorney

21 DUPEE & MONROE PC
22 Attorneys for Thomas Webster
23 BY: JAMES MONROE

24 ALSO PRESENT:
25 ANDREW ABBOTT
Pretrial Services Officer

Special Agent Patrica Norden
Special Agent Michael Callan

1 THE DEPUTY CLERK: This is the matter of USA Versus
2 Webster. The Honorable Andrew Krause presiding.

3 Counsel, please state your name for the record,
4 starting with the government.

5 MR. GIANFORTI: Good afternoon, your Honor. Ben
6 Gianforti for the government.

7 THE COURT: Good afternoon, Mr. Gianforti.

8 MR. MONROE: Good afternoon, your Honor. This is
9 James Monroe from the law firm of Dupee & Monroe, here on
10 behalf of Mr. Webster.

11 THE COURT: Good afternoon, Mr. Monroe. Good
12 afternoon, Mr. Webster.

13 THE DEFENDANT: Good afternoon.

14 THE COURT: Do we also have Pretrial Services on the
15 line?

16 PRETRIAL OFFICER ABBOTT: Good afternoon, your Honor.
17 Andrew Abbott with Pretrial Services.

18 THE COURT: Good afternoon, Mr. Abbott.

19 My name is Magistrate Judge Krause, and we are here
20 for an initial appearance. As everybody knows, we are in the
21 midst of the COVID-19 pandemic. I am conducting this
22 proceeding pursuant to the authority provided by section 15002
23 of the CARES Act and the standing orders issued by our Chief
24 Judge pursuant to the act.

25 Counsel and Mr. Webster are appearing before me today

1 by telephone and video. I will note that the telephone line is
2 open to the public and the press on a listen-only basis, and I
3 will remind those of you who are listening that any recording
4 of this proceeding is strictly prohibited.

5 I'd like to make sure the everybody is able to see
6 and/or hear everybody else who is participating in the
7 proceeding here today.

8 Starting with you, Mr. Gianforti, are you able to see
9 and hear everyone so far?

10 MR. GIANFORTI: Yes, your Honor.

11 THE COURT: Thank you.

12 Mr. Monroe, are you able to hear and see everybody so
13 far?

14 MR. MONROE: I am, sir. Thank you.

15 THE COURT: Mr. Webster, are you able to hear and see
16 everybody so far?

17 THE DEFENDANT: Yes, I am, your Honor.

18 THE COURT: And Mr. Abbott, are you able to hear
19 everybody so far?

20 PRETRIAL OFFICER ABBOTT: Yes, your Honor.

21 THE COURT: Thank you.

22 For everybody participating in the proceeding here
23 today, if at any point you become unable to hear any of the
24 participants, or if you are on video, unable to see any of the
25 participants, please let me know right away. Do whatever it

1 takes to make sure that I am aware of that, even if it involves
2 interrupting me or interrupting someone else who may be
3 speaking. So, if you're on video, you can wave your hand,
4 whatever it might take, or just speak up, so that I know that
5 there's a problem, and we can take a pause to try to address
6 whatever that problem is.

7 Some of you will be speaking at various points during
8 the proceeding here today. For the most part, I will be
9 calling on you when you are to speak. If for some reason there
10 is a need for you to speak as part of the proceeding but I have
11 not specifically called on you, I'll just ask that you identify
12 yourself by name before you speak so that we can have a clear
13 record of what's taking place today and the transcript that we
14 will create of today's proceedings can be as clear as possible.

15 With that in mind, I'll also ask that we all do our
16 best to try not to speak over one another. I know that can be
17 difficult sometimes on the telephone and video, but it's much
18 easier for purposes of creating the transcript if only one
19 person is speaking at a time.

20 I understand, Mr. Gianforti, that Mr. Webster is
21 currently located in the Marshal's area of the courthouse here
22 in White Plains, 300 Quarropas Street; is that correct?

23 MR. GIANFORTI: That's correct, your Honor.

24 THE COURT: And can I have any FBI agents or anyone
25 other than the marshals who are present with Mr. Webster just

1 identify themselves for the record, please.

2 SPECIAL AGENT NORDEN: Patrica Norden from Hudson
3 Valley, New York, FBI.

4 THE COURT: Good afternoon, Agent Norden.

5 SPECIAL AGENT CALLAN: Mike Callan(ph), FBI,
6 New York.

7 THE COURT: Good afternoon.

8 SPECIAL AGENT CALLAN: Good afternoon.

9 THE COURT: Mr. Monroe, has Mr. Webster had an
10 opportunity to consult with you in advance of the proceeding
11 here today?

12 MR. MONROE: He has, sir.

13 THE COURT: And when did the most recent consultation
14 take place and how?

15 MR. MONROE: I had an opportunity to speak with him
16 this morning before he was interviewed by Pretrial Services.

17 THE COURT: Thank you, Mr. Monroe.

18 Mr. Webster, under normal circumstances everyone
19 participating in this proceeding would be physically present in
20 court. Indeed, you have the right to be physically present in
21 court for most proceedings, but pursuant to the CARES Act, to
22 ensure the safety of everyone involved in the proceeding and to
23 limit the spread of COVID-19, we are conducting this proceeding
24 by video and telephone here today. I'm going to ask you a few
25 questions to ensure that you agree to proceed this way.

1 Mr. Webster, have you had an opportunity to discuss
2 with Mr. Monroe the issue of waiving your right to be
3 physically present in court and instead participating in
4 today's proceeding by video and telephone?

5 MR. MONROE: Yes, your Honor.

6 THE COURT: How did that consultation take place, was
7 it by phone, by video, or something else?

8 MR. MONROE: By phone, and a general idea what to
9 expect, a conversation was held in person.

10 THE COURT: Very good. And Mr. Webster, do you, in
11 fact, waive your right to be physically present in court and in
12 instead agree to participate in today's proceeding by video and
13 telephone?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Mr. Monroe, do you also consent to this
16 proceeding going forward by video or telephone here today
17 without being physically present in court?

18 MR. MONROE: Yes, we do, your Honor.

19 THE COURT: Thank you.

20 I find that Mr. Webster has knowingly and voluntarily
21 agreed to waive his right to be present in court and instead to
22 participate in this conference by telephone and video here
23 today. And with that, we will proceed.

24 Mr. Webster, I want to advise you that today's
25 proceedings are not a trial. You will not be called upon to

1 answer or plead to any charges at this time. This proceeding
2 is called an initial appearance, and the purpose of the
3 proceeding is to advise you of your rights, inform you of the
4 charges against you, and determine whether bail should be set
5 that may allow you to be released, and if so, what that bail
6 should be.

7 Pursuant to Rule 5(c) of the Federal Rules of
8 Criminal Procedure, if an individual is arrested in a district
9 other than the district in which the alleged offenses were
10 committed, the initial appearance ordinarily must take place in
11 the district of arrest, which in this case is here in the
12 Southern District of New York, that's why today's proceeding
13 are taking place had here in White Plains rather than in
14 Washington, D.C.

15 Mr. Webster, you have the right to remain silent at
16 this and at every stage of the proceedings. Any statement that
17 you do make may be used against you. You have this right to
18 remain silent even if you have already made any statements to
19 law enforcement officers, and you are not required to answer
20 any questions that law enforcement officers may ask you from
21 this point forward. For that reason I suggest that you consult
22 with Mr. Monroe before you answer any questions that you may be
23 asked.

24 Do you understand all of that so far?

25 THE DEFENDANT: Yes, I do, your Honor.

1 THE COURT: Mr. Webster, you have the right to be
2 represented by an attorney during all court proceedings at this
3 and at every stage of the proceedings against you, including
4 representation during any questioning by authorities or during
5 any line-up. You have the right to consult with your attorney
6 prior to answering any questions. Do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: You have the right to retain an attorney
9 of your own choosing, as you have done here today. But if you
10 should become unable to afford the services of Mr. Monroe, you
11 may be able to -- excuse me, you may apply to the Court for
12 appointment of counsel, and if the Court determines that you
13 are financially unable to afford an attorney, one will be
14 appointed to represent you without cost to you. Do you
15 understand that as well?

16 THE DEFENDANT: Yes, I do, your Honor.

17 THE COURT: Okay, Mr. Webster, if you are not a
18 United States citizen, you have the right to request that a
19 government attorney or a law enforcement official notify a
20 consular officer from your country of origin that you have been
21 arrested. I understand from the Pretrial Services report that
22 you are a citizen of the United States; is that correct?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you a citizen of any country other
25 than the United States?

1 THE DEFENDANT: No.

2 THE COURT: In that case we will move on.

3 Ms. Brown, will you please place Mr. Webster under
4 oath or affirmation?

5 (Thomas Webster sworn)

6 THE COURT: Mr. Webster, you are under oath now, and
7 it is important for you to understand that if you knowingly
8 make a false statement during these proceedings, you could be
9 subject to prosecution for perjury or for making a false
10 statement to the Court, and you could face a punishment of up
11 to five years in prison and a \$250,000 fine, if you are
12 convicted of those offenses. That punishment would be separate
13 and apart from any sentence you may be facing on the crimes
14 charged in the complaint that we are here on today. Do you
15 understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: It is also important for you to
18 understand that any false statement that you make during this
19 proceeding, as well as any false statement that you may have
20 made already to Pretrial Services, may be used against you at
21 trial if you decide to testify at trial. Do you understand
22 that as well?

23 THE DEFENDANT: Yes, I do, your Honor.

24 THE COURT: Mr. Webster, would you please state your
25 full name for the record.

1 THE DEFENDANT: My name is Thomas Webster.

2 THE COURT: How old are you?

3 THE DEFENDANT: Fifty-four.

4 THE COURT: Do you have any difficulty reading,
5 writing, speaking, or understanding English, Mr. Webster?

6 THE DEFENDANT: No, I don't.

7 THE COURT: How far did you go in formal school?

8 THE DEFENDANT: I have some college. Pretty much a
9 few credits short of an associate's degree.

10 THE COURT: Have you taken or used any drugs,
11 alcohol, or medication within the last 24 hours?

12 THE DEFENDANT: No.

13 THE COURT: Are you sufficiently clear in your mind
14 today, Mr. Webster, to be able to understand these proceedings?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Gianforti, does the government have
17 any objection or concern with respect to Mr. Webster's
18 competency to proceed at this time?

19 MR. GIANFORTI: I do not, your Honor.

20 THE COURT: Mr. Monroe, any objection or concern with
21 respect to Mr. Webster's competency to proceed at this time?

22 MR. MONROE: No, sir.

23 THE COURT: The Court also has no concerns about
24 Mr. Webster's competence to proceed at this time. He's been
25 able to understand and follow everything that is happening in

1 these proceedings and respond to my questions without any
2 difficulty. So in view of that, we will proceed.

3 Mr. Webster, if you have made any statements to
4 Pretrial Services that you would like to correct or add to in
5 any way, you should discuss that with your attorney so that the
6 record can be corrected. Do you understand that?

7 THE DEFENDANT: Yes, I do. I don't see any need to
8 do that.

9 THE COURT: Mr. Monroe, any corrections or additions
10 to be made to the Pretrial Services report from your
11 perspective?

12 MR. MONROE: None to offer the Court, sir. Thank
13 you.

14 THE COURT: Mr. Gianforti, may I have the time and
15 date of the arrest?

16 MR. GIANFORTI: Yes, your Honor. Mr. Webster
17 surrendered to the FBI yesterday, February 22nd, 2021, at
18 approximately 2:35 p.m. in New Windsor, New York.

19 THE COURT: Thank you, Mr. Gianforti.

20 Mr. Webster, I'm now going to review the charges
21 against you. First, though, I have before me an affidavit
22 which attaches the arrest warrant in this case and the
23 underlying documents.

24 Mr. Monroe, do you have a copy of the Rule 5(c)(3)
25 affidavit?

1 MR. MONROE: Yes, your Honor.

2 THE COURT: The version that I have, the copy that I
3 have is unsworn, so I will ask Agent Norden if you please come
4 into the video screen.

5 Good afternoon, Agent Norden. Are you, in fact,
6 Patricia Norden?

7 SPECIAL AGENT NORDEN: Yes, I am.

8 THE COURT: Please raise your right hand. Agent
9 Norden, do you swear or affirm that the information contained
10 in the Rule 5(c)(3) affidavit is true and correct to the best
11 of your knowledge and belief?

12 SPECIAL AGENT NORDEN: Yes.

13 THE COURT: And Agent Norden, the version of this --
14 you can put your hand down. The version of the document I have
15 before me is not signed. Do I have your permission to sign the
16 affidavit on your behalf?

17 SPECIAL AGENT NORDEN: Yes, you do.

18 THE COURT: Okay, I'll go ahead and do that. Thank
19 you. You can step aside.

20 SPECIAL AGENT NORDEN: Okay.

21 THE COURT: Mr. Webster, you've been arrested on a
22 warrant from the United States District Court for the District
23 of Columbia. For ease of reference during today's proceedings,
24 I will refer to that as the District of D.C.

25 The underlying charges against you in that district

1 are based on a criminal complaint that asserts a total of six
2 separate statutory violations, allegations of statutory
3 violations. I will list those briefly here. These allegations
4 are set forth in much greater detail in the supporting
5 documents that were provided with the criminal complaint,
6 including a statement of facts prepared by an FBI agent out of
7 the District of D.C.

8 The charges against you in the criminal complaint are
9 as follows:

10 You are charged with a violation of Title 18, United
11 States Code Sections 111(a)(1) and 111(b) for assaulting,
12 resisting, or impeding certain officers with a deadly or
13 dangerous weapon;

14 You are charged with a violation of Title 18, United
15 States Code Section 231(a)(3) for obstruction of law
16 enforcements during civil disorder;

17 You are charged with a violation of Title 18, U.S.C.,
18 United States Code, Section of 1752(a)(1) and 1752(b)(1)(A) for
19 knowingly entering or remaining in any restricted building or
20 grounds without lawful authority with a deadly or dangerous
21 weapon;

22 You are also charged with a violation of Title 18,
23 United States Code Section 1752(a)(2) and 1752(b)(1)(A) for
24 disorderly and disruptive conduct in a restricted building or
25 grounds with a deadly or dangerous weapon;

1 You are also charged with a violation of Title 18
2 United States Code Section 1752(a)(4), and Section
3 1752(b)(1)(A) for engaging in physical violence in a restricted
4 building or grounds with a deadly or dangerous weapon; and

5 Finally, you are charged with a violation of Title
6 40, United States Code Section 5104(e)(2)(D) and (F) for
7 violent entry and disorderly conduct on Capitol grounds. And
8 as I said, much more detail is provided with respect to each of
9 those charges in the supporting documentation.

10 Mr. Webster, have you seen a copy of the criminal
11 complaint, the warrant, the underlying documents in this case?

12 THE DEFENDANT: No, I haven't.

13 THE COURT: Okay. It's not unusual that you would
14 not have received an actual copy of it at this early stage of
15 the proceedings. I'm sure that Mr. Monroe will get you a copy
16 of all of the relevant documents as soon as he is able to do
17 that.

18 Mr. Monroe, have you received a copy of the
19 affidavit, the warrant, the criminal complaint, and all of the
20 underlying documents?

21 MR. MONROE: Judge, right before we got on I did get
22 a flurry of emails. It may be in there. I certainly have the
23 warrant and I have a full understanding of the charges that
24 have been filed against my client.

25 THE COURT: Okay, in particular, I do want to make

1 sure that you have a copy of the statement of facts from
2 Special Agent Riley Palmertree of the FBI. That's the
3 narrative document that lists out the charges and contains a
4 number of video screenshots from a police officer, the body cam
5 video, as well as screenshots that are purportedly taken from
6 open source media that allegedly depict Mr. Webster.

7 Do you have that set of materials?

8 MR. MONROE: The US Attorney's office has done an
9 excellent job making sure that I have seen all those videos
10 referenced by the Court, and in my meeting with the FBI did go
11 over some of the still photos from the body cam, but the
12 affidavit, your Honor, that you're referring to, it does not
13 appear I have a copy as of yet, but I expect to have it.

14 THE COURT: Okay.

15 Mr. Gianforti, if you have not provided that to
16 Mr. Monroe, please make sure you do that at your earliest
17 convenience.

18 MR. GIANFORTI: Absolutely.

19 THE COURT: Mr. Monroe, let me ask you specifically
20 with respect to that statement of fact, would you like to have
21 an opportunity to review it before we proceed here today?

22 MR. MONROE: No, your Honor, we can proceed.

23 THE COURT: Okay.

24 Have you reviewed the materials that you have and
25 have discussed with the government with Mr. Webster at this

1 time?

2 MR. MONROE: Yes, your Honor. We're prepared to
3 proceed.

4 THE COURT: Are you satisfied that Mr. Webster
5 understands the charges against him?

6 MR. MONROE: We went over them with the FBI last
7 night, and he understands the charges that are pending against
8 him.

9 THE COURT: And does Mr. Webster waive a public
10 reading of the complaint at this time?

11 MR. MONROE: He does, sir.

12 THE COURT: Thank you.

13 MR. MONROE: At this time we would enter a plea of
14 not guilty on his behalf.

15 THE COURT: Okay you don't actually have to enter a
16 plea at this point because we're just dealing with the
17 complaint, we don't have an indictment or an information here.

18 MR. MONROE: Understood.

19 THE COURT: It's satisfactory for now that you've
20 waived a public reading of the complaint, and we can proceed.

21 Mr. Webster, you'll have an opportunity to enter a
22 plea at a later stage of the proceeding.

23 Let me first -- well, let me next turn to the issue
24 of the identity hearing.

25 Mr. Webster, because of the nature of your arrest,

1 that you were arrested here in the Southern District of New
2 York for offenses allegedly committed in the District of D.C.,
3 you have the right to what's called an identity hearing, which
4 is a hearing on the issue of whether you are the person named
5 in the warrant and the underlying documents. You also have a
6 right to waive that hearing.

7 Mr. Monroe, what's Mr. Webster's position with
8 respect to the identity hearing?

9 MR. MONROE: We would waive such a hearing, your
10 Honor.

11 THE COURT: Thank you, Mr. Monroe.

12 I'll note for the record the identity hearing has
13 been waived, so there is no need to set a date for that
14 hearing.

15 Mr. Webster, you also have the right to a hearing in
16 this district or in the District of D.C. at which the
17 government will have the burden of establishing that there is
18 probable cause to believe that the crime for which you are
19 being charged has been committed and that you are the person
20 who committed it. That hearing is called a preliminary hearing
21 under the Federal Rules of Criminal Procedure. At that hearing
22 you or your counsel would be entitled to cross examine any
23 witnesses and introduce evidence. If you are in custody,
24 Mr. Webster, you would have the right to have that hearing
25 within 14 days. If you are not in custody, you would have the

1 right to have that hearing within 21 days; however, such a
2 hearing will not be held if before the date it is scheduled you
3 are indicted by a Grand Jury or an information is filed against
4 you by the government. You also have the right to waive a
5 preliminary hearing.

6 Mr. Monroe, what is Mr. Webster's position with
7 respect to setting a preliminary hearing at this time?

8 MR. MONROE: Judge, we would waive the preliminary
9 hearing at this point in time.

10 THE COURT: All right. Well, I think what we will do
11 is for purposes of the federal rules, we should still set a
12 preliminary hearing date. You certainly can waive that hearing
13 to the -- in the common parlance, waive that to the 30th day.
14 So we can pick a date 30 days from today as a control date for
15 a preliminary hearing as the case progresses, and as you have
16 further opportunity to consult with Mr. Webster, if you choose
17 to waive that hearing completely, that is certainly
18 Mr. Webster's right, and you may make that decision. But since
19 this matter is ultimately going to be adjudicated in the
20 District of D.C., I think it's prudent for me as an
21 administrative matter to set a date for the preliminary
22 hearing, and then, if you are going to fully and finally waive
23 that hearing, that's something that you can address in the
24 appropriate court in Washington.

25 So with that in mind, I will set as a control date

1 for the preliminary hearing as March 25, 2021, which is 30 days
2 from today.

3 Now, Mr. Webster, I am also required to tell you that
4 under certain circumstances pursuant to Rule 20 of the Federal
5 Rules of Criminal Procedure, you may choose to be prosecuted in
6 this district, that is, the Southern District of New York, if
7 you wish to plead guilty or *nolo contendere* here in the SDNY
8 and waive trial in the District of D.C. But in order for that
9 to happen, the US Attorneys for both the Southern District of
10 New York and the District of D.C. will have to approve the
11 transfer.

12 From prior experience with other cases arising out of
13 the events of January 6th, it is my understanding from the
14 government that the respective United States Attorneys at this
15 time are not prepared to approve the transfer of any of these
16 cases to adjudication in the Southern District of New York even
17 if Mr. Webster were willing to plead guilty or *nolo contendere*
18 here in the SDNY.

19 Is that still the case, Mr. Gianforti, as far as you
20 understand?

21 MR. GIANFORTI: As far as I know, your Honor, yes.

22 THE COURT: So I will just note for the record that
23 Mr. Webster has been advised of his Rule 20 rights.

24 Mr. Webster, you can discuss that issue further with
25 Mr. Monroe as the case progresses. To the extent the

1 government changes its position at all and would potentially
2 consent to have the case transferred to the Southern District
3 of New York and you were inclined to plead guilty or *nolo*
4 *contendere*, that's something that can be addressed at a future
5 point.

6 Okay, I think our next matter is the question of
7 bail, and I will hear from both parties on that.

8 Mr. Gianforti, without going into your full argument,
9 what is the government's position with respect to bail,
10 detention, or release at this time?

11 MR. GIANFORTI: Your Honor, the government is seeking
12 detention in this matter.

13 THE COURT: And Mr. Monroe, will you be making a bail
14 application at this time?

15 MR. MONROE: Yes, your Honor. We will.

16 THE COURT: Let me just get my papers shuffled around
17 here for one moment and I will hear first from Mr. Gianforti
18 and then also from Mr. Monroe. I will give both counsel plenty
19 of opportunity to be heard on these matters.

20 Mr. Monroe, I'm not sure I've had a proceeding with
21 you yet, but as Mr. Gianforti knows, I will hear from the
22 parties and make sure everybody has an opportunity to say
23 whatever it is they want to convey to me before I make a
24 determination.

25 I will say that I have reviewed certain videos that

1 are referenced in the underlying documents. I was provided
2 with an opportunity to view those videos by the government, and
3 that is something I would have requested had they not offered
4 it anyway. I reviewed a total of three videos.

5 One is the body cam footage from the officer who was
6 identified by his or her initials in the statement of facts. I
7 reviewed that video or a portion of that video that relates to
8 the offenses charged against Mr. Webster.

9 I also reviewed another video that is referenced in
10 that statement of facts, specifically, a video is on page 8 of
11 the statement of facts. That video apparently is available on
12 YouTube. The URL for that video is included in the paperwork,
13 the statement of facts paperwork. That is a video that shows
14 briefly Mr. Webster, or allegedly shows Mr. Webster briefly in
15 that video. He is not the subject of that video, he is sort of
16 in the background, but he is speaking at various points briefly
17 in that video.

18 I also reviewed a video which I understand from the
19 government was provided to Mr. Gianforti by you, Mr. Monroe.
20 I'm not sure exactly what the source was of that video. I
21 understand generally that it was some sort of public source,
22 open source material from the internet; is that correct?

23 MR. MONROE: Yes, sir.

24 THE COURT: Okay. I did review that video as well.
25 So to the extent you want to make any reference to that video

1 during the course of your presentation, you should know that I
2 have viewed it one time earlier today.

3 Okay, with that said, Mr. Gianforti, let me hear from
4 you with respect to the government's application for detention.

5 MR. GIANFORTI: Thank you, your Honor.

6 As you know, this is yet another Criminal Prosecution
7 stemming from the attempted insurrection at the U.S. Capitol on
8 January 6, 2021. This one involves the defendant, Thomas
9 Webster, who is a former Marine and a former member of the
10 NYPD. And Mr. Webster, like so many other people that day, was
11 caught on video engaging in an assault against a police officer
12 with a dangerous weapon. In this case it was an aluminum pole
13 that had been holding a -- what I believe is a Marine Corps
14 flag.

15 As you noted, your Honor, I had shared three videos
16 with you earlier today, two of which the government generated
17 in the course of its investigation, or found in the course of
18 its investigation, another one that Mr. Monroe provided to the
19 government earlier today.

20 The first of those, as you indicated, is the body
21 camera footage from the officer that Mr. Webster assaulted, and
22 the second one, at least as I understand it, chronologically,
23 is the one that Mr. Monroe provided, which I believe shows just
24 a slightly different angle of the incident in question. It's
25 sort of taken from behind where Mr. Webster was standing, and

1 you can kind of see how it picks up from when he sort of busts
2 through the barricade, that he can be seen in the first video.

3 And then the third video, it's not exactly clear when
4 that video was taken, but I think you can surmise that it was
5 taken after those first two videos because he is sort of
6 leaning against the wall, which appears to be sort of the outer
7 of -- right near the outer arches of the Capitol, so he's
8 nearer to the Capitol at that point than he was in the earlier
9 video where he's still behind some crowd control, crowd control
10 barriers.

11 So it's important here to know what we see in those
12 videos. In those first two that I mentioned, we see the
13 defendant clear as day, especially in the body cam footage,
14 because it's sort of -- the police officer was facing him
15 directly, so you can see the defendant's face very, very
16 clearly. You see the defendant attacking a police officer,
17 first with that aluminum pole that I mentioned, and then with
18 his bare hands, and you can see him ripping the officer's
19 protective gear off, the gas mask or the helmet that he was
20 wearing at the time, which, as reflected in the complaint,
21 caused the police officer to choke. It cut off his air, at
22 least for a short period of time.

23 And what else do we see in that video? We see what I
24 would describe, your Honor, is a look of pure rage on the
25 defendant's face. His teeth are gritted. This is a man who is

1 about to unleash some kind of violence on somebody. And in
2 fact, he did, on that poor police officer.

3 And, your Honor, we also can hear the defendant in
4 that body cam footage. And this is a former police officer,
5 the defendant. And what do we hear the police officer
6 saying -- I'm sorry. What do we hear Mr. Webster saying to
7 that police officer, your Honor? We hear him calling him a
8 fucking piece of shit, and a commie motherfucker. This is a
9 cop calling another cop that.

10 Shortly thereafter we see the defendant closer to the
11 Capitol, as I mentioned. He's calm. He's collected. And he
12 turns to the camera that guy is holding and asks for more
13 patriots to come to the Capitol to help.

14 So, your Honor, I would submit that this cuts against
15 an argument that I anticipate the defense will make that
16 Mr. Webster was simply caught up in the moment, that he got a
17 little ahead of himself. The truth is, your Honor, he seemed
18 pretty collected to me, and at that point, when he's closer to
19 the Capitol, he says that he's ready for more action.

20 Your Honor, these videos shock the conscience, and
21 sadly, they're consistent with other videos that we've seen
22 from January 6th. And, your Honor, as you know, you and I,
23 just by sheer happenstance, were both on duty when a number of
24 these other rioters were presented in this district. And I
25 think what we see here is worse than what we saw there. And

1 the two prosecutions I'm about to mention I referenced to
2 Mr. Monroe earlier so he has a sense of what I was about to
3 speak about.

4 First, your Honor, there was Patrick McCoy who was
5 accused of using a riot shield to pin and injure a police
6 officer against the door in one of the Capitol arches. That
7 video was widely circulated in the media. It shows the officer
8 screaming out in pain.

9 I would submit that the videos of Webster here are no
10 less vivid, certainly no less clear. You can clearly make out
11 the defendant's face, as I mentioned.

12 And even though you detained Mr. McCoy, your Honor, I
13 recall you noting Mr. McCoy's brief moment of compassion for
14 that pinned officer. I forget exactly what was said by
15 Mr. McCoy in the course of that incident, but something
16 indicated that he showed some modicum of concern for the police
17 officer.

18 I think what's striking about the videos here, your
19 Honor, is the utter lack of compassion from the defendant.
20 Frankly, your Honor, he goes after that cop like a junkyard
21 dog. As I said, teeth bared, fists clenched.

22 And then, your Honor, later in the week you and I had
23 the pleasure of dealing with Jeffrey Sabel, who is accused of
24 dragging a police officer down the Capitol steps which allowed
25 another man to beat that cop with a pole that had been holding

1 an American flag.

2 Well, here, your Honor, Webster is the guy holding
3 the pole, and in a no less ironic twist, that pole held a
4 Marine flag.

5 What we can also see in the videos and still images,
6 your Honor, is that the defendant was wearing a bulletproof
7 vest. And I believe the defendant's going to say something
8 like he wore it for his own protection. But either way it
9 suggested the defendant was ready for some kind of a violent
10 conflict on that day.

11 And I can proffer, your Honor, that we learned last
12 night that the defendant told the FBI that he brought a gun
13 with him when he went to Washington. Now he's going to claim
14 that he left it in his hotel room, he didn't have it when he
15 actually went to the Capitol. Now I think that statement is
16 plainly self-serving. The defendant was wearing bulky
17 clothing, including a winter coat, and easily could have been
18 concealing a weapon, which would likely be in violation of D.C.
19 law. And even if he wasn't carrying it that day, my
20 understanding is it's unlawful to simply transport and possess
21 a gun in the district without a permit. I don't understand
22 Mr. Thomas to have a permit.

23 And I think taken together with the bulletproof vest,
24 your Honor, there's just one logical inference here, the
25 defendant was not only prepared for violence, he was prepared

1 for armed violence. And this is a man who obviously knows how
2 to use weapons as a former Marine and as a former NYPD officer.

3 Although he apparently surrendered the guns that he
4 has registered to his name to the FBI either last night or
5 earlier today, this is a man who has access to guns, and
6 plainly a fondness for guns, which I think is concerning and
7 also demonstrates the danger he poses here. I suspect that the
8 crux of the defense's argument here is going to be that
9 Mr. Thomas turned himself in --

10 THE COURT: You just said Mr. Thomas, but you mean
11 Mr. Webster.

12 MR. GIANFORTI: I'm sorry. I'm sorry. I suspect the
13 crux of Mr. Webster's argument is that he surrendered
14 voluntarily today and that therefore he doesn't pose a danger
15 and he's no longer a flight risk. I think there are several
16 reasons why the Court should not credit that.

17 First, I think it's important to note the timing
18 here. He turned himself in almost seven weeks after the
19 incident. The FBI's first wanted notices of a BOLO, be on the
20 lookout I believe is what that stands for, notices for this
21 particular defendant went out on January 23rd. So he was on
22 notice that he was wanted personally for a month. Of course
23 the other Capitol rioters started getting arrested much sooner
24 than that, which has been all over the press. And this
25 defendant knew what he did, and he could have come in much,

1 much sooner, but here we are, almost two months later, before
2 your Honor.

3 Another important thing here, your Honor, is I
4 suspect the defense may argue that now that the election has
5 been certified and President Biden is in office, that the
6 danger is somehow dissipated, and I just think that's not so.

7 Whatever brought the defendant to the Capitol on
8 January 6 and caused him to snap is not the kind of thing that
9 just gets wiped from the mind overnight. This kind of violent
10 extremism that fueled in riot is still very much alive in
11 America today as evidenced by the hearing that is going on in
12 the Senate, as we speak.

13 And the Marine motto, your Honor, of course is Semper
14 Fi, which we all know means forever loyal, and indeed, the
15 defendant named his landscaping business after that very motto.
16 And you know, I did a little research, your Honor, and marines
17 take an oath when they enlist that's codified at 10 U.S.C. 502,
18 and each marine swears to support and defend the Constitution
19 of the United States against all enemies foreign and domestic.
20 Here, your Honor, the defendant was trying to subvert the very
21 Constitution he swore to protect, which begs the question to
22 what or to whom is this defendant forever loyal, and if
23 summoned to take action against the government again, would he
24 do it? I would submit the risk to that answer is just too
25 high.

1 And your Honor, there's other arguments with respect
2 to flight. I mean, the evidence here is overwhelming. We have
3 him on video, clear as day. He also identified himself to the
4 FBI in the various videos and stills that are reflected in the
5 complaint. And I believe we now have his phone in custody, and
6 I suspect there will be incriminating information there.

7 He's facing very serious exposure given the violence
8 that he exhibited towards a police officer. Our conservative
9 estimate is that, if he goes to trial, he could face anywhere
10 from 87 to 108 months in jail. And if he pleads, it's 63 to
11 78, which is a long time. That's a minimum of five years. And
12 as reflected in the pretrial report, this defendant appears to
13 have some means, so he may have the resources to run.

14 And frankly, your Honor, there's also an obstruction
15 risk here. We asked him to voluntarily surrender a number of
16 items when he came in to the FBI, including his phone, and the
17 clothes that he wore to the Capitol, and he said he'd do that.
18 He didn't show up with his phone. We have it now, but he
19 didn't show up with it.

20 And you know the most notable clothing item that we
21 asked for was this winter jacket which you could see in the
22 videos, and he said that he lost the jacket. You know, with
23 all due respect, kindergarteners lose their winter coats, not
24 full-grown adults. Particularly not full-grown adults who wore
25 a distinctive jacket to a criminal event.

1 All of this suggests to me, your Honor, a lack of
2 trustworthiness, and a potential for the destruction or other
3 tampering of evidence if he is allowed to stay out on pretrial
4 release.

5 So with that, your Honor, unless you have any
6 questions for me, I will turn it over to Mr. Monroe.

7 THE COURT: Okay, thank you, Mr. Gianforti.

8 I do have a few question, but I'm actually going to
9 reserve my questions until after I've heard from Mr. Monroe,
10 because there may be some further things that I want to ask you
11 about after I've heard Mr. Monroe's presentation.

12 MR. GIANFORTI: Of course.

13 THE COURT: So let me turn to Mr. Monroe, and I'll
14 turn back to you, Mr. Gianforti.

15 Mr. Monroe.

16 MR. MONROE: Judge, thanks so much. We know that
17 Title 18 guides the Court towards the least restrictive means
18 to assure Mr. Webster's return to court. The government knows
19 that, your Honor knows that, defense counsel knows that.

20 We searched the record to make sure that someone like
21 Mr. Webster has adequate contacts with our community. This is
22 a gentleman who's spent the last 54 years, absent his several
23 years in the Marine Corps, living entirely here in the State of
24 New York. His parents come from the State of New York. His
25 siblings live in the State of New York. His wife, where he

1 lives with here in the Village of Florida, New York, in Orange
2 County, from New York. He's raised his three children here in
3 New York. He owns his home in New York. His business is here
4 in New York. Every contact, every person, every relationship
5 he's ever had is right here in the State of New York.

6 The government speaks a story about Mr. Webster being
7 a danger to the community because that's the only way they can
8 convince this Court not to follow the recommendations offered
9 by Pretrial Services.

10 Mr. Webster has spent the last 54 years up until
11 today, your Honor, free from contact with law enforcement. No
12 prior arrests. This man served in the United States Marines
13 and distinguished himself by being honorably discharged. I
14 know a lot of civilians, people -- the government will scoff at
15 that, but that means something, Judge, that means something to
16 people like me that someone like Mr. Webster is willing to
17 sacrifice his own time and his own life for the service of his
18 country.

19 I understand the US Attorney's remarks about the --
20 about his commitment to the Constitution. But Mr. Webster went
21 to the Capitol on January 6 to participate in a protest, Judge.
22 He's not part of any group. The government's not going to find
23 anything on the internet about Mr. Webster. He's not a leader
24 of any organization. He went there as an American citizen to
25 protest, to protest an event that was urged on by our former

1 president, to protest an issue that Tom felt very strongly
2 about. That's protecting the Constitution.

3 Now we understand what we see in the video, Judge. I
4 don't fail to appreciate what the US Attorney is talking about
5 in terms of Mr. Webster's conduct. But at this proceeding,
6 Judge, we have to understand two elements. We want to know
7 whether Mr. Webster poses a risk to the public, this gentleman
8 right here before the Court, and whether or not there are
9 enough indicia to lead this Court to believe that he's not a
10 flight risk.

11 If you take a careful look at what Pretrial Services
12 advises the Court, Mr. Webster, within the day of hiring this
13 law firm, Judge, was in the -- was in communication with the
14 FBI and making arrangements to surrender himself. When he
15 learned from a mutual friend that his face was being circulated
16 on the FBI wanted list, he came to a lawyer, he did what he was
17 supposed to do and got legal counsel. And we told him the best
18 course of action was to reach out to the FBI, and in a
19 peaceful, organized way, surrender himself. And you know, when
20 you deal with the government in good faith, you would think
21 that they would get behind it and support the notion that
22 someone like Mr. Webster who has to deal with these types of
23 serious charges should be allowed to come to their local FBI
24 agent to be processed.

25 You know the first thing we did, Judge, is at my --

1 Mr. Webster turned over all the weapons he had. He didn't have
2 a court order. He didn't have the US Attorney office telling
3 him that. He did that on his own volition. At the advice of
4 his attorney, he handed me all of his IDs, including his pistol
5 permit, his driver's license, his passport. He did this
6 because he wanted to be dealt with fairly the same way the
7 government should be dealing fairly with him. They didn't have
8 to chase him around. They didn't have to -- the government
9 didn't have to this expend time and resources finding out who
10 Tom Webster was.

11 And after we went through the process of turning over
12 the guns voluntarily and getting a property receipt for that,
13 Mr. Webster sat down in front of the agents who showed him
14 several photographs which your Honor has seen yourself, and
15 they said, Mr. Webster, is this you? And he said, yes, that's
16 me. I'm the man in the red jacket. I'm the man that you're
17 looking for. That's why we waived the whole ID hearing. It
18 wasn't necessary. Mr. Webster's not denying that the person in
19 that video isn't him.

20 So you know, I take offense to the government mocking
21 my client about the loss of the red jacket. If this was an ID
22 case, the jacket would be of some significance.

23 Thomas Webster is not denying to anyone that he's not
24 the man in the red jacket. Tom is not familiar with
25 Washington, D.C. He's been there very infrequently. In fact,

1 the last time he was there he said it was sometime in the
2 mid-90s with someone that he was dating before he was married.
3 So this is not someone who was a political activist. This is a
4 regular citizen, Judge. He did 20 years with the New York City
5 Police Department and successfully retired. But you know the
6 government scoffs at that, gives the man no credit for that
7 time of service in this proceeding.

8 Judge, what we want to know is does Mr. Webster pose
9 a threat to the community based upon what we view all by itself
10 as to what happened on January 6. He hasn't reoffended.
11 There's no evidence that he has any issue with the government,
12 or with the Capitol Police. There's no evidence the government
13 is telling you that he's circulated the somewhere on the
14 internet and was planning or part of any type of organization.

15 This is an individual, aside from what we see in the
16 video, poses no, absolutely no danger to the community. This
17 man has done a terrific job as a husband and as a father. He's
18 raised three great kids who are -- two them are still dependent
19 upon him, and if we do what the government asks, we will make a
20 mockery of people like Mr. Webster who has the courage to come
21 forward under their own power and deal with these serious
22 offenses.

23 If everyone is dealt with of the like the
24 US Attorney's office suggests, it would be under the threat
25 that no one would be willing to surrender themselves because

1 you're dealing with terms of automatic remand.

2 The Pretrial Services have recommended that
3 Mr. Webster be released on an unsecured bond for a good reason
4 because this man has lived a good life. He's financially
5 stable. He's in a terrific marriage, Judge. He's got terrific
6 people around him in the community that will sign an unsecured
7 bond to the satisfactory of Pretrial Services, and this man can
8 remain in the community and invoke -- like we banter around
9 about the Constitution, but this man has an Eighth Amendment
10 and due process right to fair bail. And for the government to
11 stand up and point to one incident in this guy's entire life
12 and say that's why he should sit down in a D.C. lockup until we
13 get this guy a trial is much more than what the Constitution
14 would permit.

15 We can offer all types of abilities to make sure that
16 this man attends to this case, which is, we can -- he will
17 consent to the monitoring, he will consent to supervision by
18 Pretrial Services, he will abide by all the traveling
19 restrictions. All the other suggestions offered by Pretrial
20 Services are things that Tom does as a matter of course or what
21 he's already accomplished at the advice of counsel.

22 Judge, this case speaks out for Mr. Webster to be
23 released on an unsecured bond.

24 THE COURT: Thank you, Mr. Monroe.

25 I am going to have some questions for both of you,

1 but let me just start by saying I wanted to give you an
2 opportunity to respond, Mr. Monroe, because Mr. Gianforti made
3 some colorful arguments in his presentation, you made some
4 colorful arguments in response.

5 In response to my questions, we can dispense with the
6 hyperbole and the rhetoric and the color. I get it. I get the
7 basic argument on both sides, and I don't need the florid
8 language any further.

9 Mr. Gianforti, adults lose things all time. I do.
10 So I don't think that it's necessarily the case the possibility
11 that he may have lost a jacket is beyond crediting.

12 You know, the Monroe, you know, the notion that
13 Mr. Webster should automatically be entitled to bail because he
14 happened to have received good advice from counsel to surrender
15 himself and not put the government to further paces to try to
16 locate him, that's not the standard either. I mean, of course
17 there are people who surrender who still get detained. That
18 happens all the time.

19 So, those two things, there's a bit of disconnect in
20 that argument, as far as I'm concerned. The things that we
21 have to evaluate to decide whether a person is entitled to
22 bail, I mean, it's all well and good that he surrendered, and
23 I'm glad that he did that, but that does not put a huge thumb
24 on the scale, and it certainly doesn't suggest that everybody
25 who surrenders -- I tried to take notes as you were saying this

1 particular part -- but that everybody who surrenders would be
2 subjected to automatic remand. That's completely untrue also.

3 So listen, you both said your piece and made your
4 arguments in the way that you made them, and that's fine. I
5 wanted to make sure you both had an opportunity to say what you
6 wanted to say, but the case is more complicated than that. I
7 think you both understand that. And there are complicated
8 factors here that make this not an easy decision. You both
9 identified them in broad strokes the nature of the offense from
10 the government's perspective and the defendant's history and
11 characteristics from the defendant's perspective to quote from
12 the specific requirements under the Bail Reform Act.

13 So I understand all of that, and I think from this
14 point forward, to the extent you have anything else to add, we
15 can just dial it down a notch or two.

16 Mr. Gianforti -- and let me also add just one
17 additional point I wanted to make. Mr. Gianforti referred to a
18 number of other cases that were present before me several weeks
19 ago. Every case is different because every case involves
20 different defendants and the defendants in those cases have
21 different circumstances and characteristics that weigh on the
22 Court's determination with respect to bail. So, while it is
23 instructive to understand how some of these other cases have
24 turned out, no one case is exactly the same as any other case
25 and so I need to consider of the unique factors that are

1 present in each individual circumstance to make a determination
2 with respect to bail in that case.

3 So I don't think we need to spend a whole heck of a
4 lot of time talking about the other cases and the outcome of
5 those cases. I certainly am aware of the outcome of those
6 cases.

7 Mr. Gianforti, at one point you referred to the
8 bulletproof vest and there's a reference to that in the
9 statement of facts that is also captured or allegedly captured
10 at least in one of the still videos. You made some points
11 about what that may or may not have suggested with respect to
12 Mr. Webster's expectations that day, but setting aside what you
13 might try to extrapolate from his decision to allegedly -- his
14 alleged decision to wear a bulletproof vest, I just want to
15 make sure I understand for purposes of the charges, is that a
16 component of any of the charges that are set forth in the
17 criminal complaint?

18 MR. GIANFORTI: Not as our understanding, your Honor.
19 It's not like a firearms charge where a firearm would be a
20 necessary element.

21 THE COURT: Right. That's basically what I was
22 getting at, and I was wondering if -- there are a lot of
23 charges here and they all implicate different statutes. I was
24 trying to understand if this issue with the bulletproof vest
25 was an element of any of those offenses. But not to your

1 knowledge?

2 MR. GIANFORTI: No, purely raised for the purposes of
3 demonstrating his danger to the community.

4 THE COURT: Okay. Mr. Gianforti, let me turn to you.
5 I don't know that I have too many more questions, actually, in
6 light of the presentation from Mr. Monroe, but let me turn back
7 to you to see if you have anything further that you'd like to
8 add.

9 MR. GIANFORTI: Your Honor, I think that some of the
10 points that Mr. Monroe raised were fair ones, obviously, in
11 terms of the defendant's public service, both as a Marine and
12 as a member of the NYPD. I think it was fair for him to note
13 as well. Of course, his family ties in Orange County. But,
14 your Honor, I think that those things cut both ways in an
15 argument like this. I think somebody who has spent as much
16 time in public service, and particularly as a police officer,
17 should have known better, and I think that Mr. Monroe was sort
18 of suggesting that a member, a veteran of the armed forces
19 should somehow get a break in a situation like this. But of
20 course, it's been widely reported in the press, most of the
21 most violent ring leaders of the riot were people with military
22 backgrounds. So I think that that cuts both ways. Certainly
23 being a family man, you know, it makes you wonder why he was
24 there at all and why he took the actions that he did. So I
25 think that those are mitigators in some sense and aggravators

1 in other senses.

2 And your Honor, I think Mr. Monroe alluded to the
3 Eighth Amendment in the course of his argument, which might
4 have been a moment of hyperbole on his part, but there's
5 certainly nothing cruel and unusual about pretrial detention.

6 THE COURT: Well, I agree with that, Mr. Gianforti.
7 I will say in response to your earlier point, so that
8 Mr. Monroe doesn't have to respond to it, I did not take
9 Mr. Monroe to be saying that just because Mr. Webster was a
10 military veteran that he should somehow not be subject to the
11 laws of the United States or subject to the analysis of the
12 bail reform statute. I took that to just mean that he was
13 making a point about Mr. Webster's history and characteristics.

14 I took that for what it was, Mr. Monroe, so there's
15 no need for you to address that.

16 Is there anything you'd like to add, Mr. Monroe,
17 before I make my determination?

18 MR. MONROE: Judge, you're spot on as far as a
19 determination and the remarks made about Mr. Webster was to
20 speak to this gentleman's character. A former Marine,
21 honorably discharged, exemplary service with the NYPD. More
22 importantly, a terrific father, a devoted husband with very,
23 very deep roots in the community. That's within the purview of
24 Title 18, as far as what the Court has to consider in terms of
25 how to set bail in this case. And that's why they were offered

1 to your Honor, and that's why they're outlined in the Pretrial
2 Service report, because they all militate towards allowing this
3 man to be released under the terms recommended.

4 THE COURT: Okay. Thank you, Mr. Monroe.

5 MR. GIANFORTI: Your Honor, if I may. I apologize.
6 I don't mean to make anymore arguments on dangerousness or
7 flight or to respond to anything that Mr. Monroe said. I just
8 wanted to lay out, if I might, if you are going to, if you are
9 minded to grant bail, there's an alternative set of conditions
10 I would want to propose for your Honor's consideration before
11 you make a determination, if that's all right.

12 THE COURT: Okay, thank you, Mr. Gianforti.

13 MR. GIANFORTI: So, your Honor, the government would
14 recommend a \$200,000 bond secured by the defendant's home in
15 Florida, New York. The government would also ask for a
16 so-called stay away order from the District of Colombia unless
17 for court proceedings or he's summoned by Pretrial or he's
18 consulting with a D.C. based lawyer. The government would ask
19 for him to call Pretrial Services once a week and advise
20 Pretrial Services of any travel outside of whatever geographic
21 jurisdiction he is limited to, which I would suggest be the
22 SDNY and the EDNY, maybe the District of New Jersey because
23 it's adjacent to Orange County. No travel outside the U.S.
24 without Court approval. And he's already surrendered his
25 firearms but an additional condition he not acquire any new

1 ones, and the surrender of his passport, which I believe has
2 already been accomplished.

3 MR. MONROE: Your Honor, as an officer of the court,
4 I can represent I'm in physical custody of Mr. Webster's
5 passport.

6 THE COURT: Okay. Thank you, Mr. Monroe.

7 Thank you, counsel for your arguments on this matter,
8 and as I said at one point during my remarks, I find this to be
9 a difficult case, as some of these other cases have been
10 arising out of the events of January 6, 2021.

11 On the one hand, one of the hyperbolic statements
12 that Mr. Gianforti made that I absolutely agree with is that
13 the conduct on the video does shock the conscience. And a part
14 of the reason that it does for me is precisely because of
15 Mr. Webster's proud and impressive track record as a public
16 servant.

17 Mr. Monroe at one point said that some people don't
18 value that type of public service. That may be true, but I'm
19 not one of those people. I greatly value the public service
20 that is provided by members of our armed forces and members of
21 our domestic law enforcement. As a public servant myself, I
22 have deep respect and appreciation for public service rendered
23 by people like Mr. Webster, and I'm appreciative of all of that
24 service. But it makes it particularly troubling and upsetting
25 and perplexing to me to weigh that impressive resumé of public

1 service against what we see in this video. And what we see in
2 this video is a person who flat out attacks a law enforcement
3 officer verbally, which is not a crime, but then with a metal
4 pole that he swings repeatedly at the officer, hits the metal
5 barricade in front of the officer multiple times to the point
6 where in the video that pole is bent beyond recognition. Now I
7 don't know how flimsy or sturdy the pole was, but it's a pole,
8 and it doesn't resemble a flag pole by the time Mr. Webster is
9 done swinging it and contacting whatever it was he contacted.

10 And then when he is disarmed of the pole, he doesn't
11 take a step back. The barricade opens up, and he charges
12 through it at the officer, and they're wrestling on the ground.
13 I don't, I just don't understand it. And I'm quite sure that
14 if this same thing happened to Mr. Webster while he was an NYPD
15 officer and someone in swung a pole -- and maybe it did, I
16 don't know -- if someone swung a flag pole at him repeatedly,
17 charged at him, tackled him to the ground, I imagine he would
18 have wanted that person to be detained without bail.

19 So I find it to be a difficult situation because I
20 do --

21 THE DEFENDANT: Your Honor, can I say something,
22 please?

23 THE COURT: Mr. Webster, it's generally not a good
24 idea for a defendant to speak during a proceeding of this
25 nature, but if you'd like an opportunity to consult with

1 Mr. Monroe for you to assess whether you think that's
2 advisable, I will give you an opportunity to do that. I will
3 say that it's generally not a good idea, but I'm not here to
4 give you legal advice, that's not my role in this matter,
5 that's Mr. Monroe's role.

6 So we can make arrangements through the video system
7 for you to have a private conversation with Mr. Monroe and then
8 we can reconvene. Would you like to do that?

9 Mr. Webster?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. Let us set that up for you right
12 now. We're going to take a --

13 THE DEFENDANT: Okay.

14 THE COURT: Just hold on, Mr. Webster.

15 We're going to take a recess of a total of ten
16 minutes, and what I'm going to do is set up so that Mr. Monroe
17 and Mr. Webster can be moved into a breakout room on the
18 teleconference system. Nobody else will be present in that
19 room other than Mr. Monroe and Mr. Webster.

20 Mr. Monroe, you should -- Mr. Webster is wearing a
21 mask, so we won't be able to hear him and we won't be able to
22 see his mouth moving, we won't have any idea what he's saying.

23 Mr. Monroe, you should either turn off your video or
24 just turn the around so no one on the screen, which really
25 would just be me or Mr. Gianforti, can see you either. Okay?

1 MR. MONROE: Yes, your Honor.

2 THE COURT: Hold on one second. You'll hear a beep
3 or two when you're transferred into the breakout room, and then
4 I will come back in approximately ten minutes. If you're done,
5 Mr. Monroe, if you're done before that, you can come back on
6 the screen, give me the thumbs up or whatever it is, and we'll
7 end the breakout session. Okay?

8 MR. MONROE: Yes, sir.

9 THE COURT: Hold on one second.

10 (Recess)

11 MR. MONROE: Magistrate Krause, can you hear me, sir?

12 THE COURT: I can.

13 MR. MONROE: So --

14 THE COURT: Just hold on one second, Mr. Monroe, I
15 just want to make sure we have Mr. Webster back first. My
16 camera is not really moving.

17 (Pause)

18 THE COURT: Thanks, everybody, for your patience as
19 we work through the technical issues. It's now 2:46, we've
20 taken approximately a ten-minute recess.

21 Mr. Monroe has had an opportunity to consult with
22 Mr. Webster and we are ready to resume the proceedings.

23 Mr. Monroe, you wanted to be heard?

24 MR. MONROE: Yes, I'd like to. Thank you, Judge.

25 Appearing virtually has some downside. As a defense

1 lawyer, you can't confer with your client as you normally would
2 if you were appearing in person. I appreciate the Judge's
3 indulgence in allowing me to confer with my client.

4 Mr. Webster does bring up a couple of good points I'd
5 like to share with your Honor before a decision is rendered,
6 and they speak to the issue of Mr. Webster not posing a risk of
7 danger.

8 Number one, Mr. Webster states that during his career
9 with the United States Marine Corps and with the NYPD he's
10 never fired his weapon in connection with his service towards
11 another human being, which is, you know, given the years of
12 service with the NYPD not ever using your service revolver
13 shows, even to a common person, that this man is of great
14 restraint and is not someone prone to violence. He's never
15 been in a shooting incident in his career. This was his one
16 and only protest that he's ever been a part of. One and only.
17 He has a total unfamiliarity with, you know, this type of
18 political strife.

19 And the video exchange between him and the officer,
20 according to Mr. Webster, was precipitated by Mr. Webster being
21 punched by this officer. So this was, this was Mr. Webster
22 responding to the officer having punched him. Again, speaking
23 to the issue of whether or not Mr. Webster really poses the
24 type of risk of danger that the government would suggest. No
25 other, no other event, no other factor, as the government

1 pointed out today, other than what transpired on January 6.

2 That's all we wanted to add, Judge. Thanks so much
3 for your indulgence.

4 THE COURT: Thank you, Mr. Monroe, and thank you
5 Mr. Webster for that additional information. I'm going to give
6 Mr. Gianforti an opportunity to respond.

7 MR. GIANFORTI: Thank you, your Honor. Let me start
8 with the last point. Mr. Monroe had told me prior to the
9 proceeding that Mr. Webster asserts that he was struck by the
10 officer that he assaulted before the assault took place. We
11 have acquired the full body camera footage from that officer.
12 We acquired it today in response to that specific allegation.
13 We weren't able to review all of it, but we were able to review
14 the footage from approximately ten minutes prior to the
15 incident, ten minutes worth of footage before the assault of
16 the officer, and there's just nothing in there that suggests
17 that Mr. Webster was struck by this officer or any other
18 officer.

19 Your Honor, I think that is an incredibly
20 self-serving statement and likely a fabrication. Even if he
21 was struck 15 minutes before that footage, I don't know, it
22 just doesn't hold up to me that he could have gotten punched 15
23 minutes before, held on to that anger for a full 15 minutes and
24 was still that angry 15 minutes later and then charged the
25 officer.

1 With respect to Mr. Monroe's argument that
2 Mr. Webster has never fired a shot at a human being while in
3 the Marine Corps or with the NYPD, I commend him for his
4 restraint in that context but, your Honor, I think we have
5 every reason to believe that Mr. Webster had a gun on him when
6 he was at the Capitol and that could have been the first day
7 that he fired a shot at a human being. Thank God it wasn't,
8 but he seemed prepared in case that had to happen.

9 And, your Honor, the fact that this is his first
10 protest, I'm not arguing that Mr. Webster didn't have the right
11 to be there, to be in Washington to make his views, however
12 misguided, known loudly and proudly, but I think, something
13 that I meant to respond to earlier, to suggest that somehow
14 Mr. Webster was protecting the Constitution by taking his First
15 Amendment rights and then, you know, and then turning them into
16 a violent protest, I just don't think that that holds water.
17 He may have gone there with good intentions to protest the
18 largely ceremonial functioning of the Constitution, but at some
19 point that took a turn. It broke bad, and it broke very bad,
20 and that is why Mr. Webster is before your Honor.

21 So unless you have further questions for me, your
22 Honor, that's how I would respond.

23 THE COURT: Thank you both. I do not have any
24 further questions at this time, and I appreciate the additional
25 arguments.

1 I will say with respect to Mr. Webster's claim that
2 he was punched at some point previously, look, I only reviewed
3 approximately 30 to 45 seconds of the body cam video prior to
4 the incident that is depicted in the statement of facts and for
5 which we are largely here today, at least on the most serious
6 charges against Mr. Webster. I will note that in that brief
7 period of time Mr. Webster was not even on the screen because
8 he appears to come running up from some location behind the
9 group of protestors who are standing directly in front of the
10 officer who is ultimately the subject of Mr. Webster's attack.
11 I cannot say for sure what happened or didn't happen before
12 that or whether Mr. Webster may have been punched by a
13 different law enforcement officer, maybe not this particular
14 officer, because obviously body cam footage is from the
15 perspective of the one officer who's wearing the body cam.

16 That said, I don't really know what to do with that
17 piece of information in the context of all of this. Certainly
18 I have not seen any evidence to support that assertion by
19 Mr. Webster. I haven't seen anything to conclusively refute
20 it, but I also don't have anything before me to support that
21 assertion.

22 You know, I was in the middle of speaking earlier
23 when we took that pause. I will say that with respect to this
24 issue of the protest, as a judge, I certainly have the utmost
25 respect for people's constitutional rights to assert -- to

1 protest and speak out in whatever way they see fit, regardless
2 of whether I agree with them or other members of law
3 enforcement agree with them or whatever. The point is, as an
4 American, you have the right to free speech and people should
5 exercise that right, absolutely. But what we see in this
6 video, the events that give rise to the most serious charges in
7 this complaint goes well beyond First Amendment speech and
8 moves into criminal activity. So the notion that this was
9 somehow protest activity, and I don't actually take Mr. Monroe
10 or Mr. Webster to be saying that the assault on the law
11 enforcement officer was part of a lawful protest. Understood
12 that Mr. Webster was there for a lawful means to begin with to
13 assert his First Amendment right to protest, but it went far
14 beyond that in a most unfortunate and disturbing way.

15 So, on balance, let me review the various statutory
16 factors.

17 The nature and circumstances of the offense charged
18 here strongly, in my view, strongly support detention. We're
19 talking about an assault on a law enforcement officer first by
20 means of a weapon, later by means of a physical confrontation
21 with fists. That is a significant, significant violent act
22 that is extremely problematic in a civilized society. The
23 nature and circumstances of the offense charged here certainly
24 support detention, as does the weight of the evidence.

25 I understand that Mr. Webster has raised this point

1 about a prior involvement with this officer. Again, I have not
2 seen any evidence to support that, and the evidence, video
3 evidence provided by the government, both in the still photos
4 that are included in the supporting documents and the video
5 that I've reviewed, suggest that the weight of the evidence
6 against Mr. Webster here is extremely strong.

7 On the other hand, there's no question that
8 Mr. Webster's history and characteristics strongly weigh in
9 favor of release. He has, as Mr. Monroe capably pointed out,
10 extremely deep ties to the community, multiple generations of
11 his family, his spouse, his children, his parents, he's a
12 business owner, he has been a productive, and more than just
13 productive, but a valuable member of society in his prior work
14 as a public servant, and clearly those factors all point very
15 much in favor of release. And the Pretrial Services
16 recommendation is also in favor of release, which I take very
17 seriously, and I respect and appreciate the work of the
18 Pretrial Services office.

19 At the end of the day, as you can tell, I think there
20 are a lot of strong arguments on both sides in this case but
21 the final factor in the statute is the nature and seriousness
22 of the danger to any person in the community that would be
23 posed by Mr. Webster's release, and at the end of the day I
24 find that Mr. Webster would pose a danger to the community if
25 released. I believe that the circumstances that led to

1 Mr. Webster's attack on the law enforcement officer that we see
2 in this video could certainly repeat themselves. There were
3 obviously some unusual circumstances and other outside factors
4 on January 6, 2021, in Washington, D.C., but the undercurrent
5 of political hostility and other supporting factors that led a
6 person who has led an exemplary life, had an exemplary career
7 of public service to act in this extraordinary way continue to
8 be part of our society, and will continue to be part of our
9 society for the foreseeable future. So I cannot sit here today
10 and conclude that the person that I have seen on this video
11 attacking a law enforcement officer does not pose a danger to
12 the community, and I will order detention on that basis.

13 I will, for the record, find that I do not believe
14 that Mr. Webster poses a risk of flight. I believe that the
15 government has not met its burden even by a preponderance of
16 the evidence that Mr. Webster poses a risk of flight. I think
17 that with the financial resources documented in the Pretrial
18 Services report, the extremely strong ties to the community
19 that Mr. Monroe has documented and that are also documented in
20 the Pretrial Services report, that there are conditions of
21 release that could be set that could ensure Mr. Webster's
22 appearance for all future proceedings in this criminal matter.
23 So my determination in favor of detention today is based solely
24 on the issue of danger to the community.

25 And so, with that, Mr. Webster will be remanded to

1 the custody of the Attorney General for confinement in a
2 correctional facility separate to the extent practicable from
3 persons awaiting or serving sentences or being held in custody
4 pending appeal.

5 Mr. Webster must be afforded a reasonable opportunity
6 for private consultation with defense counsel. On order of the
7 court of the United States or on request of an attorney for the
8 government, the person in charge of the corrections facility
9 must deliver Mr. Webster to United States Marshals for purpose
10 of an appearance in connection with a court proceeding.

11 And I will state for the record that of course
12 Mr. Webster has the right to appeal my determination to a
13 District Judge at some further point in this case as the case
14 proceeds.

15 Mr. Monroe, are there any medical needs I should
16 include in the detention order?

17 MR. MONROE: No, Judge.

18 THE COURT: Mr. Gianforti, what is the government's
19 position or current information with respect to setting a date
20 for Mr. Webster's next appearance in the District of D.C.?

21 MR. GIANFORTI: Your Honor, they're still following
22 the same policy in Washington where they ask that you pick a
23 date at least three business days from today for an initial
24 appearance, which would be virtual, I think even from wherever
25 Mr. Webster will be held. So really just my understanding is

1 pick any weekday at 1:00 p.m. three days or more from today and
2 the US Attorney's office in D.C. will communicate that to the
3 Court and the appropriate arrangements will be made.

4 THE COURT: All right. Well, with that in mind, as
5 unusual as it is, Mr. Monroe, for me to be in a position of
6 setting a conference date for a different judicial officer in a
7 different judicial district, my understanding from prior
8 matters is that that is the way in which the US Attorney's
9 office in the District of D.C. and the courts, my colleagues in
10 the District of D.C. have asked that these proceedings be
11 scheduled.

12 So with that in mind, I will set a date one week from
13 tomorrow, that would be Wednesday March 3rd, 2021, for a next
14 appearance in the District of D.C. I understand that it is
15 likely that appearance will take place virtually. That would
16 be true if Mr. Webster had been released from custody today as
17 well. I understand that it is unlikely that Mr. Webster will
18 be transferred to the District of D.C. by the Marshal Service
19 at any time between now and next Wednesday, but the
20 US Attorney's office both here in the Southern District of New
21 York and the US Attorney's office in the District of D.C. will
22 be in further contact with you, Mr. Monroe, I'm sure, to let
23 you know about further plans with respect to Mr. Webster's
24 custody situation.

25 Mr. Gianforti, is there anything further that we

1 should discuss today from the government's perspective?

2 MR. GIANFORTI: No, your Honor. Thank you.

3 THE COURT: Thank you, Mr. Gianforti.

4 Mr. Monroe, is there anything further we should
5 discuss today from Mr. Webster's perspective?

6 MR. MONROE: No, Judge. That's all we have for
7 today.

8 THE COURT: Thank you, counsel. Thank you,
9 Mr. Webster. Thank you, Mr. Abbot.

10 We're adjourned for today.

11 (Proceedings concluded)

12 Certified to be a true and accurate
13 transcript of the digital electronic
14 recording to the best of my ability.

15 _____

16 U.S. District Court

17 Official Court Reporter

18

19

20

21

22

23

24

25

EXHIBIT “D”

Commendo

Mr. Russell Ancrum
Supervisor
Gun Hill Resident Patrol
711 Magenta Street, #12B
Bronx, New York, 10467

April 15, 1997

Mayor Rudolph Giuliani
City Hall
New York, New York 10007

Dear Mr. Mayor:

I am Resident Patrol Supervisor at Gun Hill Houses located in the North Bronx.

I am writing to let you know what a great job the Residents at Gun Hill think your officers are doing.

Police Officer Webster and Police Officer Morales have demonstrated to us that they are concerned about the quality of life in our community. They are always courteous and ready to respond to any situation.

Just as we speak out when we think there is a problem in our community with the police officers, we are writing to give Police Officer Webster and Police Officer Morales the praise that they so richly deserve.

☒ PRECINCT/COMMAND BULLETIN BOARD
☐ PRECINCT/COMMAND PERSONNEL FOLDER
(Note: Original Documents Have Been
Placed in Personnel Folder at
Performance Evaluation Section)

Thank you for your attention.

Sincerely,

Russell Ancrum

Russell Ancrum
Resident Patrol Supervisor

cc: Mr. Howard Safir
Police Commissioner
NYC Police Department
1 Police Plaza
New York, New York 10038

Howard Safir

Daniel H. Hogan, Jr.

Ruth W. Ward

Evelyn D. King-Peters

John J. Moran

Mike Ruffe

Dorothy Powell

Clelie Johnson

Ruth Chapman

Exhibit “G”

6/17/2021

Valley Forge Flag 5 ft. Brushed Aluminum Flagpole with Anti-Wrap Sleeve-60731 - The Home Depot

#1 Home Improvement Retailer



You're shopping

Walkill

OPEN until 10 pm

Delivery to

10940

Search



Cart | 0 items

Home
Decor

Furniture

Wall
Decor

Small Kitchen
Appliances

Kitchenware &
Tableware

Bedding &
Bath

Lighting

Window
Treatments

Shop By
Room

Home / Outdoors / Garden Center / Outdoor Decor / Flags / Flagpoles

Internet #100664390 Model #60731 Store SKU #394828 Store SO SKU #1004729266



Hover Image to Zoom

Live Chat

Feedback

6/17/2021

Valley Forge Flag 5 ft. Brushed Aluminum Flagpole with Anti-Wrap Sleeve-60731 - The Home Depot

5 ft. Brushed Aluminum Flagpole with Anti-Wrap Sleeve

by **Valley Forge Flag** >★★★★★ (11)  Write a Review Questions & Answers (2)**\$15⁴⁴**

Save up to \$100 on your qualifying purchase.
Apply for a Home Depot Consumer Card

How To Get it

This item is unavailable at Walkill
Check nearby stores

Delivery is unavailable for this product

 Live Chat Feedback

Easy Returns In Store and Online
Read our Return Policy

Specifications

Dimensions

Assembled Depth (in.)	1 in
Assembled Height (in.)	60 in
Assembled Width (in.)	1 in

Details

Outdoor Living Product Type Flagpole

6/17/2021

Valley Forge Flag 5 ft. Brushed Aluminum Flagpole with Anti-Wrap Sleeve-60731 - The Home Depot

Product Weight (lb.)

0.85 lb

Warranty / Certifications

Manufacturer Warranty

None

How can we improve our product information? Provide feedback.

Product Overview

This 1-piece 5 ft. Brushed Aluminum Flagpole has a 1 in. Dia that will work with most brackets. A 2.5 ft. x 4 ft. sleeved flag is ideal for display on this flagpole. An anti-wrap sleeve and anti-wrap clip are included to make flying your flag easy. This brushed aluminum flagpole offers an attractive way to display your flag.

Info & Guides

You will need Adobe® Acrobat® Reader to view PDF documents. Download a free copy from the Adobe Web site.

Live Chat

Feedback

Sponsored Products



Manor Brook Marta Tiered Outdoor Floor Fountain

★★★★★ (1)



Scotts 20 lbs. EZ Seed Patch and Repair Sun and Shade

★★★★★ (924)



Roundup 0.5 Gal. Weed and Grass Killer Super Concentrate

★★★★★ (482)

Exhibit “H”

EXHIBIT H

**GOVERNMENT'S
BODYCAM VIDEO
FROM OFFICER
N.R.**

EXHIBIT “J”

EXHIBIT J

PUBLIC SOURCE VIDEO

EXHIBIT “K”

EXHIBIT K

YOUTUBE VIDEO

Exhibit “L”

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America

v.

Thomas Webster

DOB: XXXXXX

Case: 1:21-mj-00244

Assigned to: Judge Harvey, G. Michael

Assign Date: 2/19/2021

Description: COMPLAINT W/ARREST WARRANT

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of _____ in the
 _____ in the District of Columbia, the defendant(s) violated:

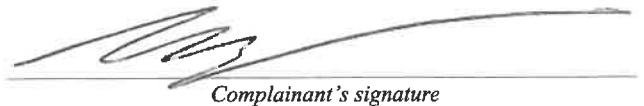
Code Section

Offense Description

18 U.S.C. § 111(a)(1), (b) - Assaulting, Resisting, or Impeding Certain Officers with a Deadly or Dangerous Weapon,
 18 U.S.C. § 231(a)(3) - Obstruction of Law Enforcement During Civil Disorder,
 18 U.S.C. § 1752(a)(1), (b)(1)(A) - Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority
 With a Deadly or Dangerous Weapon,
 18 U.S.C. § 1752(a)(2), (b)(1)(A) - Disorderly and Disruptive Conduct in a Restricted Building or Grounds, with a Deadly or Dangerous
 Weapon,
 18 U.S.C. § 1752(a)(4), (b)(1)(A) - Engaging in Physical Violence in a Restricted Building or Grounds, with a Deadly or Dangerous
 Weapon,
 40 U.S.C. § 5104(e)(2)(D), (F) - Violent Entry and Disorderly Conduct on Capitol Grounds.

This criminal complaint is based on these facts:

See attached statement of facts.

☒ Continued on the attached sheet.


Complainant's signature

Riley Palmertree, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
 by telephone.

Date: February 19, 2021


Digitally signed by G. Michael
 Harvey
 Date: 2021.02.19 21:23:54 -05'00'

Judge's signature

City and state: Washington, D.C.

G. Michael Harvey, U.S. Magistrate Judge

Printed name and title

CERTIFICATE OF SERVICE

I hereby certify that on this day, June 17, 2021 a copy of the foregoing was served on all parties via ECF.



JAMES E. MONROE, ESQ.