

## UNITED STATES DISTRICT COURT

for the  
District of Columbia

United States of America

v.

Mark K. Ponder

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Defendant)  
)  
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)  
)

Case No. 21-mj-303 (GMH) (ZMF)

## ORDER OF DETENTION PENDING TRIAL

## Part I - Eligibility for Detention

Upon the

- ☒ Motion of the Government attorney pursuant to 18 U.S.C. § 3142(f)(1), or  
☐ Motion of the Government or Court's own motion pursuant to 18 U.S.C. § 3142(f)(2),

the Court held a detention hearing and found that detention is warranted. This order sets forth the Court's findings of fact and conclusions of law, as required by 18 U.S.C. § 3142(i), in addition to any other findings made at the hearing.

## Part II - Findings of Fact and Law as to Presumptions under § 3142(e)

- ☐ **A. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(2)** (*previous violator*): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community because the following conditions have been met:
- ☐ **(1)** the defendant is charged with one of the following crimes described in 18 U.S.C. § 3142(f)(1):
    - ☐ **(a)** a crime of violence, a violation of 18 U.S.C. § 1591, or an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**
    - ☐ **(b)** an offense for which the maximum sentence is life imprisonment or death; **or**
    - ☐ **(c)** an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508); **or**
    - ☐ **(d)** any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph 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 but involves:
      - (i)** a minor victim; **(ii)** the possession of a firearm or destructive device (as defined in 18 U.S.C. § 921);
      - (iii)** any other dangerous weapon; or **(iv)** a failure to register under 18 U.S.C. § 2250; **and**
  - ☐ **(2)** the defendant has previously been convicted of a Federal offense that is described in 18 U.S.C. § 3142(f)(1), or of a State or local offense that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed; **and**
  - ☐ **(3)** the offense described in paragraph (2) above for which the defendant has been convicted was committed while the defendant was on release pending trial for a Federal, State, or local offense; **and**
  - ☐ **(4)** a period of not more than five years has elapsed since the date of conviction, or the release of the defendant from imprisonment, for the offense described in paragraph (2) above, whichever is later.

- ☐ **B. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(3)** (*narcotics, firearm, other offenses*): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because there is probable cause to believe that the defendant committed one or more of the following offenses:
- ☐ (1) an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508);
  - ☐ (2) an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332b;
  - ☐ (3) an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
  - ☐ (4) an offense under Chapter 77 of Title 18, U.S.C. (18 U.S.C. §§ 1581-1597) for which a maximum term of imprisonment of 20 years or more is prescribed; **or**
  - ☐ (5) an offense involving a minor victim under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

☐ **C. Conclusions Regarding Applicability of Any Presumption Established Above**

- ☐ The defendant has not introduced sufficient evidence to rebut the presumption above, and detention is ordered on that basis, with the evidence or argument presented by the defendant summarized in Part III.C.
- ☐ The defendant has presented evidence sufficient to rebut the presumption, but after considering the presumption and the other factors discussed below, detention is warranted for the reasons summarized in Part III.

**OR**

- ☐ The defendant has not presented sufficient evidence to rebut the presumption. Moreover, after considering the presumption and the other factors discussed below, detention is warranted for the reasons summarized in Part III.

**Part III - Analysis and Statement of the Reasons for Detention**

- A. After considering the factors set forth in 18 U.S.C. § 3142(g) and the information presented at the detention hearing, the Court concludes that the defendant must be detained pending trial because the Government has proven:
- ☒ By clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community.
  - ☐ By a preponderance of evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance as required.
- B. In addition to any findings made on the record at the hearing, the reasons for detention include the following:
- ☒ Weight of evidence against the defendant is strong
  - ☐ Subject to lengthy period of incarceration if convicted
  - ☒ Prior criminal history
  - ☐ Participation in criminal activity while on probation, parole, or supervision

- ☒ History of violence or use of weapons
- ☐ History of alcohol or substance abuse
- ☐ Lack of stable employment
- ☐ Lack of stable residence
- ☐ Lack of financially responsible sureties
- ☐ Lack of significant community or family ties to this district
- ☐ Significant family or other ties outside the United States
- ☐ Lack of legal status in the United States
- ☐ Subject to removal or deportation after serving any period of incarceration
- ☐ Prior failure to appear in court as ordered
- ☐ Prior attempt(s) to evade law enforcement
- ☐ Use of alias(es) or false documents
- ☐ Background information unknown or unverified
- ☐ Prior violations of probation, parole, or supervised release

**C. OTHER REASONS OR FURTHER EXPLANATION:**

The defendant's evidence/arguments for release:

Mr. Ponder stated that his mother is a strong family influence and could serve as a third-party custodian. Additionally, he argued that he had not had contact with the criminal justice system in over a year. Mr. Ponder offered to be subject to GPS monitoring so that the Government could know his whereabouts at all times. He further offered to submit to home detention with the exception of searching for employment or meeting with his attorney.

Nature and circumstances of offense(s):

This factor weighs heavily in favor of detention. As Chief Judge Howell noted in *United States v. Barnett*, the title of the offense does not "properly capture the scope of what [Mr. Ponder] is accused of doing here." The alleged offense is associated with an organized attempt to stop lawful, democratic processes. That Mr. Ponder repeatedly initiated multiple incidents of violence against police officers who were trying to protect lawful administration of the democratic process shows his lack of respect for the law. Mr. Ponder's actions were dangerous to the specific officers that he assaulted and to all the people around him. He used two weapons with enough force to seriously harm the officers who were attempting to protect the Capitol. At one point, Mr. Ponder's stick broke on a riot shield because he was going after the officer with the full weight of his body. As to his other alleged offenses, Mr. Ponder, like many of the rioters, committed actions right in front of law enforcement - which shows that Mr. Ponder has a blatant disregard for the law.

The strength of the government's evidence:

This factor weighs heavily in favor of detention. Mr. Ponder was captured on video wearing a distinctive beige sweater that was later found at his home during his arrest. Mr. Ponder also made a number of admissions regarding his participation in the events on January 6, 2020. He stated that he was upset about the social and political circumstances that were happening that day and he knowingly went through the barricades surrounding the Capitol.

**The defendant's history and characteristics, including criminal history:**

Although it has been several years, Mr. Ponder's criminal history is of concern. He has multiple convictions over the course of four decades. Most concerning, in 2007, he was convicted for bank robbery and robbery. Prior to that, he had a conviction for domestic assault. Mr. Ponder's crimes reflect a long standing history of violence and disregard for the law. Thus, this factor weighs in favor of detention.

**The defendant's dangerousness/risk of flight:**

This factor also weighs in favor of detention. Mr. Ponder's act of assaulting multiple police officers with force significant enough to break the stick he was using as his weapon demonstrates a lack of belief in the rule of law. He could have caused grave injuries, and his violent acts were not limited to a single event. The nature of this incident and Mr. Ponder's associated actions show his dangerousness to the broader community and thus warrant detention. If the opportunity presented itself, there is danger that Mr. Ponder would participate in such actions again. Given Mr. Ponder's role in leading one of the first waves of the attack, the Court is concerned about future dangerous riots involving him. Furthermore, his statements on January 6th to law enforcement demonstrate that he has deeply-held false beliefs that the sitting government is illegitimate. Given his passion for this cause, there are no conditions or combination of conditions which could reasonably assure the safety of the community.

**Part IV - Directions Regarding Detention**

The defendant is remanded to the custody of the Attorney General or to the Attorney General's designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant must be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

Date: 03/24/2021



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United States Magistrate Judge