

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO. 21-cr-00116 DLF
	:	
WILLIAM McCALL CALHOUN, JR.	:	
	:	
Defendant.	:	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANT’S RULE 41(g)
MOTION FOR RETURN OF PROPERTY**

Defendant William McCall Calhoun, Jr., who is charged in connection with events at the U.S. Capitol on January 6, 2021, has moved for the return of property pursuant to Rule 41(g). For the reasons set forth, this Court should deny his motion.

BACKGROUND

On January 6, 2021, a Joint Session of the United States House of Representatives and the United States Senate convened to certify the vote of the Electoral College of the 2020 U.S. Presidential Election. While the certification proceeding was occurring, a large crowd gathered outside the United States Capitol, entered the restricted grounds, and forced entry into the Capitol building. As a result, the Joint Session and the entire official proceeding of the Congress was halted until law enforcement was able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials.

On January 6, 2021, Calhoun and his co-defendant Verden Andrew Nalley unlawfully entered the United States Capitol as part of the large crowd that had gathered to protest the 2020 election certification. The two had travelled together from Georgia the day prior having known each other from playing in the same local band. They were a part of the first wave of rioters to enter the building, having first broken through the line of officers on the west side of the Capitol

building. As this Court is likely aware, the initial breach of the Capitol building on January 6 was at approximately 2:13 p.m. through the Senate wing doors. It is undisputed that Calhoun and Nalley entered the building approximately six minutes later, at 2:19 p.m. The two men were in the building for approximately 26 minutes. They walked down and through a number of hallways, eventually making their way upstairs to the rotunda. They walked through the rotunda and, although they had access to the east rotunda doors to leave, they walked back into the rotunda again. Finally, the two men returned to the east rotunda doors and left the building at approximately 2:44 p.m.

In the weeks and months leading up to January 6, as well as after, Calhoun was outspoken on social media about the fact that he believed that the 2020 presidential election had been stolen. On November 7, 2020, Calhoun commented on a post from a user of the social media site Facebook:

George, the communists are trying to steal the election- it's obvious. We go to bed and Trump is winning, then wake up to magically find hundreds of thousands of "only Biden" votes. Normally a candidate who is honest wants transparency. We are on the verge of civil war and [sic] the battleground will be ATL. We're going to go door to door and execute the fucking communists. I want to make that clear.

He then included a second comment to the same user, "I'm serious."

Also on November 7, 2020, Calhoun commented on a different Facebook user's comment:

Like good lawyers we will wait for the Supremes to fix this, and then we'll find out whether America is too stupid to exist. It may be. Way too many low information dumbasses out there voting, dead people voting, more than 100% of registered voters voting, etc. Yet we have a solid 5-4 majority no thanks to Chief Justice "Epstein Island" Roberts, but a solid majority nonetheless. If America is too stupid to exist, and the decision becomes final in favor of the communists, then I say we hasten the destruction of our new communist country masquerading as America. We fuck them up every way possible. We refuse to pay taxes. We block the streets. We "peacefully protest" and make it impossible for the government to function. That's what we do. We shut this shit down. And when the communists try to use force against us for "peacefully protesting" we kill the hell out of them until the ones left beg for mercy. That's what we do. And if Americans are too effete and decadent to rise up, then these fat ass, rich republicans who are too afraid to save themselves much less their country, can go die by themselves sitting in their houses

with a gun surrounded by Antifa-BLM - and that is exactly what is coming at Conservatives like a freight train. The fools that allow this to happen are going to lose it all - their wealth, their integrity and their very lives in some cases - the ones that survive will be little better than slaves deserving of punishment from the commie SJW. "Truth and Reconciliation Commissions" will be the first means of erasing conservatives.

On December 21, 2020, Calhoun posted on Parler, "The Supreme Court, Barr, McConnell and the rest of the swamp think we will roll over - instead they have 75 million ungovernable Patriots to face." Five days later, again on Parler, he wrote:

Trump is moving forward with a citizen army of 75,000,000 Patriotic Americans at his back, we're not conceding and we categorically reject Communism and stolen elections.

McConnell and Pelosi have given assurances to the Swamp to ignore the above and that the corruption will continue to fill their coffers.

So who has the most staying power in this epic contest of the Will?

Opportunistic and spineless Politicians for sale to the highest bidder?

Or Patriots fanatically motivated by the reality that anything less than victory means their civilization will be destroyed?

This won't even be close.

Never bet against Trump and never bet against America!

On January 4, 2021, Calhoun posted on Parler about his intentions in traveling to Washington D.C. on January 6, 2021:

Headed to D.C. to give the GOP some back bone - to let them know this is their last chance to Stop the Steal - or they are going to have bigger problems than these coddled Antifa burning down their safe spaces.

DC announced it is "banning guns" when we storm the Capitol tomorrow. LoL - guns are already banned in DC. Very illegal.

Whether the police can enforce their gun laws depends on how many armed Patriots show up.

Ironically, in the long list of firearms and weapons banned by the DC ordinance, tomahawks are not mentioned, meaning there is no prohibition against carrying a tomahawk as long as it is not used offensively!

The tomahawk revolution- real 1776!

On January 6, 2021, Calhoun also messaged Facebook user, “I was there George. We took the Capitol in hostile hand to hand confrontation with the police. I was in the wave that broke through the cops and took it. There were thousands and thousands of us.”

On January 10, 2021, Calhoun wrote on Parler, “This is totalitarianism – we will fight them until we are victorious! We will never surrender!”

Based on his intent evidenced by his social media posts, as well as his actions on January 6, 2021, Calhoun is charged with violations of 18 U.S.C. §§ 1512(c)(2) and 2, Obstruction of an Official Proceeding; 18 U.S.C. § 1752(a)(1), Entering and Remaining in a Restricted Building or Grounds; 18 U.S.C. § 1752(a)(2), Disorderly and Disruptive Conduct in a Restricted Building or Grounds; 40 U.S.C. § 5104(e)(2)(D), Disorderly Conduct in a Capitol Building; and 40 U.S.C. § 5104(e)(2)(G), Parading, Demonstrating, or Picketing in a Capitol Building.

On January 15, 2021, certain evidence including a camouflage hat, a scarf, and nine firearms were seized from Calhoun’s sister’s house where he was staying, ECF 126-1, after Calhoun gave consent to search for such items, ECF 126-2. Calhoun now moves for return of the items seized during the search. For the reasons set forth, his motion should be denied.

ARGUMENT

I. According to Rule 41(g), Defendant Calhoun has filed his motion in the wrong district.

Rule 41(g) provides, “A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return. The motion must be filed in the district where the property was seized...” Fed. R. Crim. P. 41(g); *see also United States v.*

Bailey, 209 F.Supp. 3d. 55, 59 n.1 (D.D.C. 2016). Here, the firearms and items of clothing were seized in Macon, Georgia located in the Middle District of Georgia. Thus, based on the plain reading of the rule, Defendant's motion is properly filed in the Middle District of Georgia and this Court does not have jurisdiction to rule on such a motion.

II. Even if this Court could rule on Defendant's motion, the evidence is subject to retention pending trial.

"[C]ourts may rightfully refuse to return claimed property when it falls into one of three categories: (1) the property involved is contraband; (2) the property involved is forfeit pursuant to statute; or (3) the property involved is subject to government retention pending termination of the trial." *United States v. Farrell*, 606 F.2d 1341, 1347 (D.C. Cir. 1979). Here, the hat, scarf, and firearms are all potentially evidence in the trial of this matter. First, the hat and scarf are similar, if not identical, to the items worn by the defendant while he was at the Capitol on January 6, 2021. Thus, they clearly serve to support identification of Calhoun as the individual present at the Capitol building on January 6, 2021.

Further, in the lead up to January 6, 2021, Calhoun discussed "going door to door" and executing "the fucking communists." He further discussed the fact that whether DC law enforcement could enforce their gun laws would depend on how many "armed patriots show[ed] up." The fact that Calhoun discussed the execution of individuals and the threat of people arriving in DC armed with guns, in addition to the fact that he had nine firearms at his home, combine to support his actual and real intent on January 6 to obstruct the election certification. Whether or not he followed through on literally carrying the firearms with him to Washington, D.C. is not relevant. The fact that he had firearms in his possession when he was making his statements is indicative and supportive of his intent. Therefore, the government should be permitted to retain the firearms pending the final resolution of this case matter.

