

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

UNITED STATES OF AMERICA)
)
 v.) **No. 1:21-cr-28 (APM)**
)
THOMAS EDWARD CALDWELL)

**GOVERNMENT’S OPPOSITION TO
DEFENDANT’S MOTION FOR RELEASE**

The United States respectfully files this memorandum in opposition of Defendant Thomas Edward Caldwell’s Motion for Review of Detention Order and Motion for Release. A grand jury of this Court has found probable cause to return an indictment charging Caldwell with, inter alia, helping to organize and coordinate an attack on the U.S. Capitol on January 6, 2021, by a team of militia members from several different states, for the express purpose of stopping the U.S. Congress’ certification of the results of the 2020 U.S. presidential election. After this attack, Caldwell actively concealed evidence of his and others’ involvement in such activity. Caldwell’s statements and actions leading up to, on the day of, and after January 6, 2021, all demonstrate that there are no conditions of release that would reasonably assure the safety of the community or Caldwell’s compliance with Court orders.

I. Factual Background

A. The Oath Keepers Militia

The Oath Keepers are a large but loosely-organized collection of various militia that believe that the federal government has been coopted by a shadowy conspiracy that is trying to strip American citizens of their rights. Though the Oath Keepers will accept anyone as members, what differentiates them from other anti-government groups is their explicit focus on recruiting current and former military, law enforcement, and first-responder personnel. The organization’s

name alludes to the oath sworn by members of the military and police to defend the Constitution “from all enemies, foreign and domestic.”

On January 4, 2021, the founder and leader of the Oath Keepers, Person One, issued a call for action, stating, “It is CRITICAL that all patriots who can be in DC get to DC to stand tall in support of President Trump’s fight to defeat the enemies foreign and domestic who are attempting a coup, through the massive vote fraud and related attacks on our Republic. We Oath Keepers are both honor-bound and eager to be there in strength to do our part,” including “prepar[ing] to do whatever must be done to honor our oaths[.]”¹

B. Oath Keepers Attack the Capitol

On the afternoon of January 6, 2021, as a crowd amassed on the central eastern steps of the U.S. Capitol, a troop of camouflaged-clad individuals, many of whom were also wearing combat boots, military grade helmets, and tactical vests emblazoned with Oath Keepers patches, began to assertively and methodically make their way through the crowd and up the steps. This group included co-defendants Jessica Marie Watkins and Donovan Ray Cowl.

The crowd engaged in several rounds of tug of war with law enforcement, yanking open the doors, only to have law enforcement pull them shut again, until finally breaking through. Moments later, Watkins, Cowl, and their troop pushed into the Capitol and headed towards the Rotunda. The doors at that entrance sustained significant damage: several glass panels on the doors were shattered, and a handle was ripped off.

¹ See <https://oathkeepers.org/2021/01/oath-keepers-deploying-to-dc-to-protect-events-speakers-attendees-on-jan-5-6-time-to-stand/> (last accessed on February 11, 2021).

As Watkins told co-conspirators and sympathizers in real time, over the encrypted “Stop the Steal J6” Zello² app channel, “We have a good group. We have about 30-40 of us. We are sticking together and sticking to the plan.” Moments after the Vice President of the United States, Senators, and staff were hurriedly evacuated in the midst of certifying the results of the 2020 Presidential election, that plan became chillingly clear when an unknown male instructed over the channel, “You are executing citizen’s arrest. Arrest this assembly, we have probable cause for acts of treason, election fraud.”

The investigation to date suggests that Caldwell shared those sentiments, and that as early as the days after the 2020 election, he began plotting to undo its results.

C. Caldwell’s November and December 2020 Operations at Washington D.C. Rallies with Oath Keepers and Others

Caldwell helped to organize an Oath Keepers presence at the “Million MAGA March,” which occurred on November 14, 2020. Caldwell invited Other Keepers from Ohio and other locations to meet at his Virginia residence as a rendezvous point, attended the rally with them, and communicated with them afterward. On November 16, for example, co-defendant Crowl sent the following message to Caldwell: “Howdy Tom ... I just wanted to thank [Person Two] and yourself, for opening your home and hearts to us. True Patriots. You have My utmost respect Sir. ... A good leader knows how to handle people, take charge, and take care of them.... I truly treasure your Friendship. Brother. War is on the Horizon. Until We go to ground...Semper Fidelis.”

Caldwell accepted that leadership role and, on November 17, responded to Crowl:

Thank you for your kind words, brother. In retrospect, I probably overstepped my bounds during our op. I know you could tell how committed I was to it and I tend to step up. Maybe one of my major flaws. However, who knew if we would have to do serious battle that day. I figure you have to plan for the worst. Thankfully, their fear of conflict with those who can dish out the violence kept their numbers

² Zello is an application that emulates push-to-talk walkie-talkies over cellular telephone networks. Zello can be used on electronic communication devices, like cellular telephones and two-way radios.

down and made up for our shortfalls. I truly believe that like it ALWAYS happens, the success was due to the professionalism, dedication and adaptability of the men and women who have to execute the plan and adapt as they go. I saw it in all of you and it made me proud and even more grateful that you accepted me to play a part. Next time (and there WILL be a next time) we will have learned and we will be stronger. I think there will be real violence for all of us next time. I know its not my place but I'm sure you have seen enough to know I am already working on the next D.C. op. We either WILL have a country and we'll be battling antifa-like bugs to keep it or we will have lost our country/freedom and we will be fighting to regain it. I know I can count on you. Hope you feel the same....

On November 17, Crowl replied to Caldwell: "Thank you for that Sir.... We...nay... I need a Commander. Then we can do what must be done Sir."

On November 23, Caldwell sent a similar text message to Watkins about the November 2020 rally. By then, Caldwell was already planning an operation for the next "Million Maga" rally in Washington, D.C., scheduled for December 12. Specifically, Caldwell messaged:

Hi, CAP! Wanted to tell you it was great to have you here in Virginia. Don't know what [Person One] is cooking up but I am hearing rumblings of another Maga March 12 December. I don't know what will happen but like you I am very worried about the future of our country. Once lawyers get involved all of us normal people get screwed. I believe we will have to get violent to stop this, especially the antifa maggots who are sure to come out en masse even if we get the Prez for 4 more years. Stay sharp and we will meet again. You are my kinda person and we may have to fight next time. I have my own gear, I like to be ON TIME and go where the enemy is, especially after dark. Keep the faith! Spy.

Ensuring others knew Caldwell was interested in the next event, he reached out to another individual on November 26, stating, "Tom Caldwell here in Virginia. Yes I did give a call the other day primarily to tell you it was a memorable experience with you and the other Oath Keepers in d.c. Another Maga march is scheduled for Saturday 12 December. Not sure what if anything [Person One] has in mind but I will be there" That same day, Caldwell texted another contact saved in his phone with the word "Oath," laying out a plan he had devised for Oath Keepers and others to prepare for violence:

I was thinking. Regardless of what popeye does, maybe we should get, ideally, 3 four man teams with a 2 man quick reaction force and 2 drivers/extractors to double as snipers/stallers (I'll explain those later) and go hunting after dark for those cockroaches who prey on the weak. This could be done even after a day of protection duty downtown if a safe house was located nearby for short rest and refit. Easy. 2 x 8 man vans would be needed for dependable transport, redeploy and/or extract. Easy. Just sayin'. It could be done. Do you have a shemagh for a head wrap? Do your troopers? I have shared this wild thought with only Donovan from Ohio and yourself. I don't know how many of the oath keepers are near to and trusted by you. Some might ask what is to be gained by this type of sortie. I believe you know without its being stated here. I will trust you to tell me if I am being imprudent in these thoughts.

Around this same time, Caldwell also sent messages suggesting that he was researching weapons. On December 1, for example, Caldwell sent website links advertising the sale of weapons on the bidding-site Ebay.com. He added, "Above are 2 links to weapons I have found and am mentioning on the T O & E of the draft Oorder." One of the referenced weapons was a "Surgical Steel Tomahawk Axe," and is depicted below as advertised in Caldwell's link³:



³ See <https://www.ebay.com/itm/Zombie-Killer-Tactical-Camping-Hiking-3cr13-Surgical-Steel-Tomahawk-Axe/171036499814> (last accessed February 11, 2021).

Caldwell harbored even more “imprudent” thoughts later. On December 5, Caldwell texted another contact saved in his phone with the word “Oath,” stating, “Ranger made me think, though he didn't say it in so many words, that maybe I should be planning a MUCH bigger op, for like when we have to roll into town to actually save the Republic.”

D. Caldwell’s Plans for January 6 Operation with Oath Keepers and others

In December 2020, Caldwell started focusing his coordination efforts on a rally in Washington, D.C. scheduled for January 6, 2021. On December 30, Caldwell wrote in a Facebook post: “THIS IS OUR CALL TO ACTION, FREINDS! SEE YOU ON THE 6TH IN WASHINGTON, D.C. ALONG WITH 2 MILLION OTHER LIKE-MINDED PATRIOTS.” The next day, he replied to a comment on Facebook, “It begins for real Jan 5 and 6 on Washington D.C. when we mobilize in the streets. Let them try to certify some crud on capitol hill with a million or more patriots in the streets. This kettle is set to boil...” On January 1, 2021, Caldwell replied to a Facebook comment, writing, “I accept that assignment! I swore to support and defend the Constitution of the United States against all enemies foreign and domestic. I did the former, I have done the latter peacefully but they have morphed into pure evil even blatantly rigging an election and paying off the political caste. We must smite them now and drive them down.”

By late December, Caldwell made it clear to individuals affiliated with the Oath Keepers and other militias that he was interested in attending the January 6 rally in Washington, D.C., and had plans for the operation. On December 23, 2020, Caldwell texted another contact, attempting to coordinate various groups attending the rally and to securely communicate with them:

Okay. I got your msg that maybe a whole bunch of you will be going to the rally which is great. [Person Two] and I are going for sure and as of now a bunch of the Oathkeepers from North Carolina whowe hosted here on the farm for the Million Maga march are coming up on one or two buses so that will be neat. I am expecting a big turn out of the Proud Boys (didn't know until the last march that they had a chapter in Charlestown) and of course the local Vietnamese will probably have at

least 2 bus loads like last time. We will keep in touch. I gotta get off my ass and get on parler. I picked up Signal which is a free app that is encrypted talk and text. Thats how I do some secure comms with the Oathkeepers.

On December 30, 2020, Caldwell followed up with the same individual: “[A]re you and any of your fellow 3-percenters⁴ having any kind of meetings coming up to discuss the 6th of Jan in d.c. or just getting together? I would like to meet some of the guys if you think I 'm cool enough.” That individual responded, “You can join our group if you want but you have to be veted before you can attend any training events or zoom meetings. Ill get with ya this evening.” In part, Caldwell replied, “Outstanding!”

That month, Caldwell began arranging logistical details for the January 6 operation. He made plans to stay at a hotel in Arlington, Virginia, for the days surrounding January 6, and started communicating these logistics to Oath Keepers including Watkins and Crowl, who specifically reached out to him for assistance. Specifically, on December 30, Caldwell and Watkins exchanged the following text messages:

WATKINS: Looks like we are greenlight to come to DC on the 6th. The Rally Point still at your place?

CALDWELL, in part: Here’s the rub: [PERSON TWO] and I will be in a hotel within striking distance of the city starting on the 4th so we won’t even BE here. There will be some stuff going on during the 5th and we want to be a part of that whenever it shakes out. Also we want to be in D.C. very early on the 6th, hence closer/virtually no commute time.

WATKINS: We planned on arriving on the 5th. We want to be in DC by 9am on the 6th. I will reach out to [Person Three], and see if NC boys are coming. If

⁴ A number of the rioters who stormed the United States Capitol on January 6, 2021, appear to be associated, as least in part, with various “III%” (or “Three Percent”) groups, which are far-right anti-government militias. The name “Three Percenters” derives from an (incorrect) belief that only three percent of the American colonists actively fought against the British during the American Revolution. Three percent groups exist all over the country and are often organized by state; the degree of organization and activity of these groups varies. In media taken during the riot, a number of individuals can be seen wearing clothing or other gear marked with a “III%” logo.

[Person One] isn't making plans, I'll take charge myself, and get the ball rolling. I think the Metro is smarter than convoy/parking issues. Do you want us to stage ourselves vehicles elsewhere, seeing how you're going to be gone? We can go to a KOA Campground or something...

...

CALDWELL (about two hours later):

Talked to [Person Three]. At least one full bus 40+ people coming from N.C. Another group (unclear if Mississippi guys) also a bus. Busses have their own lane on the 14th street bridge so they will be able to get in and out. [Person Three] is driving plus 1 and arriving nite before. As we speak he is trying to book a room at Comfort Inn Ballston/Arlington because of its close-in location and easy access to downtown because he feels 1) he's too broken down to be on the ground all day and 2) he is committed to being the quick reaction force and bringing the tools if something goes to hell. That way the boys don't have to try to schlep weps on the bus. He'll bring them in his truck day before. Just got a text from him he WAS able to book a room in that hotel I recommended which is on Glebe Road in Arlington. However it goes it will be great to see you again! I sure hope your arm is getting better!

And, on January 1, 2021, Crowl sent Caldwell a Facebook message stating, "Happy New year, to you Sir!! Guess I'll be seeing you soon. Will probably call you tomorrow...mainly because...I like to know wtf plan is. You are the man Commander." That day, Caldwell responded, "Check with Cap. I recommended the following hotel to her which STILL has rooms (unbelievable)." Caldwell then sent a link to the Comfort Inn Ballston, the same hotel that he recommended to Watkins on January 1. Caldwell continued, "[Person Two] and I are setting up shop there. [Person Three] has a room and is bringing someone. He will be the quick reaction force. Its going to be cold. We need a place to spend the night before minimum. [Person One] never contacted me so [Person Two] and I are going our way. I will probably do pre-strike on the 5th though there are things going on that day. Maybe can do some night hunting. Oathkeeper friends from North Carolina are taking commercial buses up early in the morning on the 6th and back same night. [Person Three] will have the goodies in case things go bad and we need to get

heavy.” On January 2, 2021, Caldwell and Crowl continued to exchanged messages about the hotel where they planned to stay in Arlington, Virginia, and Caldwell told Crowl: “This is a good location and would allow us to hunt at night if we wanted to. I don’t know if [Person One] has even gotten out his call to arms but its a little friggin late. This is one we are doing on our own. We will link up with the north carolina crew.”

Similar to the operations Caldwell developed in November and December 2020, he started finalizing detailed plans to disseminate to others in the days leading up to the scheduled event. On January 3, 2021, Caldwell sent the following text message to the same individual he associated with the Three Percenters and had previously texted in late December 2020:

Can’t believe I just thought of this: how many people either in the militia or not (who are still supportive of our efforts to save the Republic) have a boat on a trailer that could handle a Potomac crossing? If we had someone standing by at a dock ramp (one near the Pentagon for sure) we could have our Quick Response Team with the heavy weapons standing by, quickly load them and ferry them across the river to our waiting arms. I’m not talking about a bass boat. Anyone who would be interested in supporting the team this way? I will buy the fuel. More or less be hanging around sipping coffee and maybe scooting on the river a bit and pretending to fish, then if it all went to shit, our guy loads our weps AND Blue Ridge Militia weps and ferries them across. Dude! If we had 2 boats, we could ferry across and never drive into D.C. at all!!!! Then get picked up. Is there a way to PLEASE pass the word among folks you know and see if someone would jump in the middle of this to help. I am spreading the word, too. Genius if someone is willing and hasn't put their boat away for the winter.

On January 4, 2021, Caldwell sent a series of maps to one of the individuals who had agreed to serve as the “quick reaction force.” In an email with the subject line “NEW MAPS RELATIVE TO HOTEL AND INGRESS FOR QRF,” for example, Caldwell sent some maps which, he advised his co-conspirator, “walk you from the hotel into D.C. and east toward the target[.]”

E. The Attack at the U.S. Capitol on January 6, 2021

On January 6, 2021, thousands of rioters stormed the U.S. Capitol Building. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the U.S. Capitol. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the U.S. Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Michael R. Pence was present and presiding, first in the joint session, and then in the Senate chamber.

A large crowd began to gather outside the Capitol perimeter as the Joint Session got underway. Crowd members eventually forced their way through, up, and over Capitol Police barricades and advanced to the building's exterior façade. Capitol Police officers attempted to maintain order and stop the crowd from entering the Capitol building, to which the doors and windows were locked or otherwise secured. Nonetheless, shortly after 2:00 p.m., crowd members forced entry into the Capitol building by breaking windows, ramming open doors, and assaulting Capitol Police officers. Other crowd members encouraged and otherwise assisted the forced entry.

The crowd was not lawfully authorized to enter or remain inside the Capitol, and no crowd member submitted to security screenings or weapons checks by Capitol Police or other security officials.

Shortly thereafter, at approximately 2:20 p.m., members of the House and Senate (including Vice President Pence)—who had withdrawn to separate chambers to resolve an objection—were evacuated from their respective chambers. The Joint Session and the entire official proceeding of the Congress was halted while Capitol Police and other law-enforcement officers worked to restore order and clear the Capitol of the unlawful occupants.

Later that night, law enforcement regained control of the Capitol. At approximately 8:00 p.m., the Joint Session reconvened, presided over by Vice President Pence, who had remained hidden within the Capitol building throughout these events.

In the course of these events, approximately 81 members of the Capitol Police and 58 members of the Metropolitan Police Department were assaulted, and one Capitol Police officer died. Additionally, four citizens died; many media members were assaulted and had cameras and other news-gathering equipment destroyed; and the Capitol suffered millions of dollars in damage—including broken windows and doors, graffiti, and residue of various pepper sprays, tear gas, and fire extinguishers deployed both by crowd members who stormed the Capitol and by Capitol Police officers trying to restore order.

F. Caldwell at the Capitol Engaging with Oath Keepers and Others During the Capitol Attack

On January 6, 2021, Caldwell and others entered Washington, D.C. and traveled to the Capitol. During the riots, in which Oath Keepers and others engaged in a collective assault on the Capitol Building, Caldwell disseminated information in real time to the public and across a team of individuals he had coordinated with for months “boiling” up to January 6, and who were actively obstructing the Certification of the 2020 Presidential Election from inside the Capitol.

His words in a YouTube video recording the events of the day present a clear window into his mindset at the time. In it, Caldwell motions to the Capitol building and shouts, “Every single [expletive beeped in original] in there is a traitor. Every single one!”⁵



Later that afternoon, while positioned on the west side of the Capitol, Caldwell joined with Person Two and others in storming past barricades and climbing stairs up to a balcony on the west side of the Capitol building. At 2:06 p.m., Caldwell sent Watkins a text message stating: “Where are you? Pence has punked out. We are screwed. Teargassing peaceful protesters at capital steps. Getting rowdy here... I am here at the dry fountain to the left of the Capitol[.]” At 2:48 p.m., Caldwell sent a message on Facebook, writing, “We are surging forward. Doors breached[.]” At 3:05 p.m., Caldwell wrote in a Facebook message, “Inside.” At 3:38 p.m., Mr. Caldwell sent some photographs along with the message, “Post em up, pls. [Person Two] and I assaulted the Capitol[.]”

Later in the evening of January 6, 2021, Caldwell sent a photograph that seemed to depict the view from the west terrace of the U.S. Capitol building, with the message, “Us storming the

⁵ See https://www.youtube.com/watch?v=L5hksM_R59M (last accessed February 11, 2021).

castle. Please share. [Person Two] was right with me! I am such an instigator! She was ready for it man! Didn't even mind the tear gas." Two minutes later, Mr. Caldwell continued, "Proud boys scuffled with cops and drove them inside to hide. Breached the doors. One guy made it all the way to the house floor, another to Pelosi's office. A good time." On the morning of January 7, 2021, Caldwell texted Crowl some photographs along with the message, "These next ones are sequence moving toward capitol and fighting our way up through the construction and scaffolding to the top. Hell of a climb." Caldwell also sent a text message to another contact stating, "So true. I have to say it was exhilarating being up there on the parapet with so many real Americans. Most people talk a lot of shit, few are up for the moment. We were THERE, man! So it begins." He continued, "They murdered at least one of us. This is OUR Boston Massacre."

G. Caldwell's Efforts to Conceal Evidence after the Capitol Attack

Not long after January 6, 2021, Caldwell began taking steps to destroy or conceal evidence of his and others' involvement in the attack on the Capitol. On January 8, for example, Caldwell deleted or "unsent" Facebook messages containing evidence. Previously, Caldwell had sent Crowl a video and added, "We stormed the gates of corruption together (although on opposite sides of the building) so between that and our first meeting and getting to know you since I can say we will always be brothers!" Subsequently, however, Caldwell unsent the message containing the video. On January 11, another individual texted Caldwell, asking if he was on Facebook, because the individual did not want to provide certain materials over text message to Caldwell. He responded: "Yes I am. I am in the process of pulling off all my pix etc."

Caldwell's obstructive efforts also extended to physical evidence. After January 6, Watkins and Crowl returned to Ohio, but after the media identified them as participants in the attack on the Capitol, they both traveled from Ohio to Virginia and stayed at Caldwell's residence

in Virginia. In texts on January 14, 2021, Caldwell directed Crowl to conceal his travel to Caldwell's home and invited him to hide evidence of his involvement in the Capitol incursion, writing, "No need to call me again. Will expect you even if you are running late." Caldwell continued, "Don't forget to double back an exit or two at least twice to make sure not followed," and "Bring full battle rattle to stash here if you want."⁶

On January 21, 2021, Person One, an Oath Keepers national leader, issued a "Warning" to Oath Keepers, calling "[w]hat is now being installed [] not a constitutional government" but instead "an illegitimate regime." He further implored Oath Keepers to "follow the Founders' game plan, using their strategies and methods, which focused first on declarations of illegitimacy, [and] nullification (declaring unconstitutional acts to be null and void from inception, and refusing to obey them)." And while he noted "we are not calling for the initiation of violence," he emphasized defending against "the communist and deep state traitors who have stolen the White House and stole a false majority in the US Senate, along with their street level terrorist allies, all of whom have already expressed their intent to trample on our rights." On the night of the planned January 6 operation, Caldwell had already begun thinking about the next operation, messaging Crowl, "We need to do this at the local level. Lets storm the capitol in Ohio. Tell me when!"

H. Caldwell, Crowl, and Watkins are Arrested

On January 19, 2021, law enforcement arrested Caldwell pursuant to a warrant issued by U.S. Magistrate Judge Zia M. Faruqui, while his co-defendants Donovan Crowl and Jessica Watkins in Ohio were arrested on January 17.

On January 17, FBI agents executed a search warrant of Watkins's residence. Inside, they located protective equipment and battle gear of the sort worn during the offenses of January 6,

⁶ The term "battle rattle" is believed to be a reference to the camouflaged combat fatigues worn by members of the "stack," among others, during the assault on the Capitol.

2021 (to include a camouflage hat and jackets; a backpack with medical/PPE supplies; a black tactical kit with medical supplies, radio, mini drone, and pepper spray; a bag containing a helmet and respirators; and a bag containing a helmet, radio, and belt); cellular telephones; numerous firearms; a paintball gun with rubber-steel balls and a cylinder; pool cues cut down to baton size; zip/cable ties; recipe for making a destructive device; and other items.

On January 19, law enforcement searched Caldwell's residence pursuant to a search warrant issued in the Western District of Virginia. One record law enforcement recovered was a document entitled, "Death List." Handwritten on the document was the name of an election official from another state. In Caldwell's red barn, law enforcement recovered a flag that resembles the American flag in the upper left corner with the rest of the flag resembling the Christopher Gadsden flag—a coiled rattle snake on a yellow background over the words "DON'T TREAD ON ME." On the flag are a number of signatures written in black marker. Included in the group of signatures are what appear to be "DON CROWL" and "Jessica M. Watkins" under the words "OHIO Regulars."

Finally, law enforcement discovered sales invoices for over \$750 worth of various types of live ammunition and what appears to be a concealed firearm intentionally built to look like a cell phone, sold by "Ideal Conceal Cellphone Pistol."

II. Procedural Background

The complaint charged Caldwell and his co-defendants with conspiracy, in violation of 18 U.S.C. § 371 (a felony); conspiracy to impede or injure an officer, in violation of 18 U.S.C. § 372 (a felony); destruction of government property, in violation of 18 U.S.C. § 1361 (a felony); obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2) (a felony); entering a restricted building without lawful authority, in violation of 18 U.S.C. § 1752(a) (a misdemeanor),

and; violent entry on Capitol grounds, in violation of 40 U.S.C. § 5104(e)(2) (a felony). Caldwell made his initial appearance in the Western District of Virginia on January 19, and he was detained pursuant to 18 U.S.C § 3142(f)(2)(B).

On January 27, 2021, a federal grand jury in Washington, D.C., indicted Caldwell, Crowl, and Watkins on counts of conspiracy, in violation of 18 U.S.C. § 371; obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2); destruction of government property and aiding and abetting, in violation of 18 U.S.C. §§ 1361, 2; and restricted building without lawful authority, in violation of 18 U.S.C. § 1752(a)-(b).

ARGUMENT

The burden of persuasion on the issue of pretrial detention falls on the government. *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010). This burden has been met. The Court must consider four factors in making this determination: (1) the nature and circumstances of the offense charged, including whether, for example, the offense is a crime of violence; (2) the weight of the evidence against the defendant; (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. 18 U.S.C. § 3142(g). A judicial officer's finding of dangerousness must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f)(2)(b); *Stone*, 608 F.3d at 945. When "risk of flight" is the basis for detention, however, the government must only satisfy a preponderance of the evidence standard. *United States v. Xulam*, 84 F.3d 441, 442 (D.C. Cir. 1996); *United States v. Chimurenga*, 760 F.2d 400, 405-06 (2d Cir. 1985); *United States v. Fortna*, 769 F.2d 243, 250 (5th Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 (8th Cir. 1985); *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). An analysis of these four factors heavily weighs in favor of Caldwell's continued detention given the clear and convincing evidence that

his release presents a particular danger to the community as well as the preponderance of evidence that he poses a serious risk of flight.

I. Caldwell's Criminal Involvement was Extreme and Serious

The detailed and organized nature of Caldwell's planning for the January 6 operation and Capitol assault was uniquely dangerous and continues to impact security in the District and beyond. Everything he did, he did in concert with an anti-government militia. Specifically, Caldwell helped organize a tactical unit of trained fighters that stormed and breached the Capitol on January 6, 2021.

Caldwell's operational development and logistical preparation made all of this possible. His text and social media messages reveal that Caldwell was involved from beginning to end in minute details such as arranging hotels and transportation to more substantive plans such as weapons discussions and pre-strike reviews of the targeted area of operation. Caldwell developed plans, issued them to Oath Keepers who digested them and thanked him, and even took overt steps himself. There is evidence, too, that Caldwell attempted to broaden beyond just the Oath Keepers, reaching out to an individual he believed to be affiliated with the Three Percenters and discussing plans to transport weapons across the Potomac by boat. Far from an ancillary player who became swept up in the moment, Caldwell was a key figure who put into motion the violence that overwhelmed the Capitol. And, had all of Caldwell's plans come to life, he appeared ready and willing to wreak even more havoc.

Critically, Caldwell knew his coordination and planning efforts may lead to violence. After the November 2020 Million Maga rally, he confirmed to Crowl, "there will be real violence for all of us next time." Doubling down, he messaged Watkins, "I believe we will have to get violent to stop this," apparently referring to losing his country. And Caldwell left no doubt as to who he

believed was taking his country, warranting violence: individuals he disagreed with. Whether it was an “enemy,” “socialists,” “savages,” “antifa-like bugs,” “maggots,” or “cockroaches,” Caldwell dehumanized those who held opposing worldviews and discussed killing them, shooting them, and mutilating their corpses to use them as shields. He admitted himself, that he has his own gear, and likes to “go where the enemy is, especially after dark.”

It is of no matter that Caldwell was not physically part of the “stack” of Oath Keepers that stormed the Capitol January 6. Like any coach on the sideline, Caldwell was just as responsible as his players on the field for achieving what he viewed as victory that day. In fact, refusing to be relegated to the sidelines entirely, he breached perimeters and stormed to a Capitol balcony. As a trophy of sorts, he then snapped a photograph and posted it publicly, asking others to share. It was a day where the U.S. Capitol was breached by rioters, millions of dollars of damage was done to our seat of government, the certification of a presidential election was delayed, and human beings lost their lives. But to Caldwell, it was “[a] good time.”

As extreme as Caldwell’s actions were in the days leading up to and the day of January 6, his obstructive actions afterward should also give the Court pause. Not only did Caldwell repeatedly note the importance of communicating using secure channels to avoid getting caught, he also took steps to conceal or destroy evidence of his and others’ actions. Deleting Facebook messages, removing pictures from social media platforms, and instructing Oath Keepers to “stash” evidence at his property only after performing counter-surveillance—Caldwell has proven he is willing to do what it takes to go dark, removing himself from law enforcement’s, and arguably the Court’s, radar.

Finally, in considering the nature and circumstances of the offense, the Court should also weigh the possible penalty Caldwell faces upon conviction. *See United States v. Townsend*, 897

F.2d 989, 995 (9th Cir. 1990). Here, he faces a statutory maximum term of imprisonment of 20 years, if convicted of the charges for which he has been indicted. These offenses carry substantial penalties, which incentivizes flight and evading law enforcement. In addition, the evidence amassed so far possibly subjects Caldwell to felonies beyond that with which he has been charged so far, which further incentivizes flight and evasion.

II. The Weight of Evidence Against Caldwell is Strong⁷

Second, the weight of the evidence against Caldwell is immense: electronic communications detail his extremist motivations for attending past rallies and coming to Washington D.C. on January 6, 2021, as well as the recruitment, planning, and coordination he undertook to carry out agreed upon plans; photographs and videos capture him at the Capitol calling legislators “traitors;” social media posts in which he admits to storming the Capitol by force; and physical evidence of items worn and used that day, a “death list” at his residence including the name of an election official from another state, and a flag with signatures that include at least some of the individuals who stormed the Capitol on January 6. Put simply, the defendant’s inability to hide from the weight of this evidence—despite his apparent efforts to do so before arrest—creates the acute risk that he will attempt to hide from this Court.

III. History and Characteristics of Caldwell

Third, Caldwell’s history and characteristics animate the conclusions drawn from the facts above. He has no known criminal convictions and has previously served in the military and in law enforcement. Those experiences highlight that Caldwell was far from leading blind. Rather, he was likely familiar with the art of operational tactics and used that skillset to the detriment of the citizens he at one time swore to serve. Indeed, he not only maintains, but has exhibited an extremist

⁷ “This factor goes to the weight of the evidence of dangerousness, not the weight of the evidence of the defendant’s guilt.” *Stone*, 608 F.3d at 948 (citation omitted).

anti-government ideology that this Court has no reason to believe will abate if released. The defendant is also known to possess firearms, is willing to incite and lead others, and harbors a doomsday mindset that, if anything, risks greater radicalization if released into a community of like-minded individuals whom he has been known to primarily associate with and that this Court cannot fashion a condition to prevent. His deeply-held beliefs motivated him to literally try to take power into his own hands, and releasing him would allow him to try again.

IV. Danger to the Community and Risk of Flight Posed by Caldwell's Release

It is difficult to fathom a more serious danger to the community—to the District of Columbia, to the country, or to the fabric of American Democracy—than the one posed by someone who organized insurrectionists to occupy the United States Capitol. Every person who was present without authority in the Capitol on January 6 contributed to the chaos of that day and the danger posed to law enforcement, the United States Vice President, Members of Congress, and the peaceful transfer of power. The defendant's specific conduct aggravated the chaos and danger. It was designed to intimidate Members of Congress and instigate fear across the country.

Moreover, the defendant has stated in his own words an intent to continue this type of conduct. Hours after the attack on the Capitol, he messaged co-defendant Crowl, "We need to do this at the local level. Lets storm the capitol in Ohio. Tell me when!" He texted another individual, "So it begins," and, "They murdered at least one of us. This is OUR Boston Massacre." Accordingly, no combination of conditions—any of which may be dismissed by Caldwell as invalid—could reasonably assure the safety of the community and Caldwell's compliance with Court orders. Only detention mitigates such grave dangers.

CONCLUSION

For the foregoing reasons, the government thus requests that the Court deny the defendant's Motion for Review of Detention Order and Motion for Release and detain him pending trial.

Respectfully submitted,

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By:  _____

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Dated: February 11, 2021

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2021, I sent a copy of the foregoing via the Court's electronic filing system.



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