

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

UNITED STATES OF AMERICA :
 :
 v. : **Crim. No. 21-CR-127 (ABJ)**
 :
JOSHUA BLACK, :
 : *Defendant.* :

**UNITED STATES’ OPPOSITION TO DEFENDANT’S
MOTION TO RECONSIDER AND VACATE ORDER OF DETENTION**

The United States of America, by and through the United States Attorney for the District of Columbia, respectfully opposes defendant Joshua Black’s Motion to Reconsider and Vacate Order of Detention (“Motion,” ECF No. 15), filed on March 24, 2021. In support of this Opposition, the government relies on the following factual and legal authorities, as well as any that may be offered at a hearing on this motion.

BACKGROUND

Procedural Background

Black now stands charged by indictment, filed February 17, 2021, with eight counts related to the Capitol riot on January 6, 2021: (1) Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(c)(2), 2; (2) Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(1), (b)(1)(A); (3) Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. §§ 1752(a)(2), 1752(b)(1)(A); (4) Impeding Ingress and Egress in a Restricted Building or Grounds with a Deadly or Dangerous Weapon and Aiding and Abetting, in violation of 18 U.S.C. §§ 1752(a)(3), 1752 (b)(1)(A), and 2;

(5) Unlawful Possession of a Dangerous Weapon on Capitol Grounds or Buildings, in violation of 40 U.S.C. §§ 5104(e)(1)(A); (6) Entering and Remaining on the Floor of Congress, in violation of 40 U.S.C. § 5104(e)(2)(A); (7) Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and (8) Impeding Passage through the Capitol Grounds or Buildings and Aiding and Abetting, in violation of 40 U.S.C. §§ 5104(e)(2)(E), 2.

Black was initially charged by criminal complaint in Washington, D.C., on January 13, 2021, with violations of 18 U.S.C. § 1752(a), (b) (Restricted Building or Grounds Authority) and 40 U.S.C. § 5104(e)(2) (Violent Entry and Disorderly Conduct), and a warrant was issued for his arrest. He was arrested on January 17, 2021.

At Black's detention and preliminary hearing before Magistrate Judge John H. England III in the Northern District of Alabama on January 20, 2021, the government orally moved to detain Black before trial, pursuant to 18 U.S.C. §§ 3142(f)(1)(E) and (f)(2).

Following the hearing, Magistrate Judge England concluded there was probable cause to support the charges in the complaint and that Black "is a danger to the community" but not a flight risk. Applying the factors under 18 U.S.C. § 3142(g), Magistrate Judge England acknowledged the defense's arguments that similarly situated defendants who engaged in the Capitol riot were released, Black has no record of violent or criminal conduct, he did not engage in any violence at the Capitol despite being armed with a knife, and he tried to protect a Capitol police officer from harm. But Magistrate Judge England found Black's "participation in the forcible unauthorized entry in this nation's [Capitol] while armed with a knife, [and] his statements suggesting future violent acts combined with his using God as a justification for his actions" weighed in favor of detention. (ECF No. 6 at 17-18.)

Factual Background

The charges in the indictment stem from Black's conduct on January 6, 2021, at the United States Capitol, located at First Street, S.E., Washington, D.C.

On January 6, 2021, a joint session of the United States Congress convened at the 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 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. Vice President Mike Pence was present and presiding in the Senate chamber.

With the joint session underway and with Vice President Pence presiding, a large crowd gathered outside the Capitol. Temporary and permanent barricades surround the exterior of the Capitol, and United States Capitol Police ("USCP") were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades and officers of the USCP, and the crowd advanced to the exterior façade of the building. At such time, the joint session was still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the building, including by breaking windows. Shortly thereafter, at approximately 2:20 p.m., members of the House of Representatives and Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the Congress was effectively suspended until shortly after 8:00 p.m. Vice President

Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

Photos and videos of several of the individuals involved in the events at and inside the Capitol on January 6, 2021, were disseminated via social media and other open-source online platforms. One such image depicted a man – later confirmed to be Black, a resident of Leeds, Alabama – wearing a red hat, green camouflage jacket, and yellow gloves, who appeared to be bleeding from his left cheek, on the floor of the Senate Chamber.

Recorded video surveillance shows Black on the west side of the Capitol at the very front of a large, loud crowd.¹ At times, he appears he may be talking to officers. As the camera pans across other sectors of the crowd, an officer can be heard shouting, “Hey, over here – scuffle, right there,” and the camera pans to and zooms in on the sector where Black stands. The video shows Black standing within arm’s length of a defensive line of officers, relatively still, while other individuals on either side of him appear to gesture and yell at the officers.² USCP officers can be heard firing less-than-lethal munitions into the unruly crowd. At one point, Black is at the very front of a group that thrusts him into a defensive line of officers, causing the line to bow back several feet.³ Black eventually backs away from that line. About a half-minute later, the video shows Black standing relatively isolated from the other rioters, with about an arm-length perimeter of space nearly all around him, when he appears to get struck in the face with a less-than-lethal

¹ Screen captures from the video of the west side of the Capitol have been provided to defense counsel in preliminary discovery and are attached to this Opposition as Attachment A. A yellow circle is drawn around Black in these photos and he can be distinguished by the brim of a red hat protruding from the hood of a green camouflage jacket and the yellow gloves he is wearing. The video itself has not yet been provided to defense counsel, but will be provided once a protective order is entered in this case.

² As captured in Attachment A-1.

³ As captured in Attachments A-2 and A-3.

plastic projectile. Black recoils, with his yellow-gloved hand to his left cheek, and another individual in a blue top tends to his face.⁴ As discussed below, Black claims that at the moment he was shot he was leaning over a fallen officer to provide assistance, but the video does not show any officer on the ground near Black nor Black helping or attempting to help any fallen officer at the moment he was shot.

After he was shot, and despite suffering from a bleeding wound to his face, Black persisted and made his way to the east side of the Capitol. Capitol surveillance video, taken from interior cameras, depicts Black's entry at the East Rotunda entrance.⁵ The video shows at approximately 2:38 p.m., three USCP officers form a defensive line at that doorway as rioters from the outside try to force their way in. By then, rioters had shattered two panes of glass on the exterior doors. Other rioters who had already made their way into the building from another point of entry begin surrounding the officers inside the doorway, quickly outnumbering them. The interior rioters push through the officers and force open the doors, which opened to the outside. Other video evidence the government obtained from an exterior rioter's cellphone depicts rioters yelling, swarming the officers from both inside and outside the building, and shoving and grabbing at them from both sides once the doors opened.⁶

⁴ As captured in Attachments A-4 and A-5.

⁵ As with the video pertaining to the west side of the Capitol, screen captures from videos of the east side have been provided to defense counsel in preliminary discovery and are attached to this Opposition as Attachment B. A yellow circle is drawn around Black in these photos and he can be distinguished by the black skull cap, sunglasses, and green camouflage jacket he is wearing. Positions of police officers in the screen captures are indicated with green arrows outlined in red. The videos themselves have not yet been provided to defense counsel, but will be provided once a protective order is entered in this case.

⁶ Currently, Black has not been identified in the cellphone video.

The Capitol surveillance interior video shows rioters push and pull one officer away from the doorway, and isolating and surrounding that officer. At approximately 2:39 p.m., exterior rioters began streaming in. At approximately 2:40 p.m., Black – who was wearing sunglasses, a black skull cap, a green camouflage jacket, and yellow gloves, and carried his red hat in his hands – pushed his way through the doorway threshold and purposely forced his way between two officers who could not prevent him or others from entering.⁷ A few seconds later, Black walked up the Capitol Rotunda east stairs, still bearing a wound on his left cheek. The video evidence the government has reviewed so far does not depict Black protecting or trying to protect any officer on the east side of the building, and is currently unaware of any such evidence.

A contributor to the *New Yorker* followed supporters of President Donald Trump into the Capitol and captured video footage of individuals, including Black, inside the Senate Chamber on January 6, 2021.⁸ At several points in the video, Black – wearing his camouflage green jacket, red hat, and yellow gloves – can be seen engaging in a variety of activity on the Senate floor:

- At 00:14 in the video, Black can be seen for the first time in the video, standing on the Chamber floor next to an individual clad in military-style clothing and a green helmet.
- At 00:24, Black and others rummage through papers on a Senator’s desk. Black then takes one of the papers and walks away. During a consent search of Black’s cellphone that the Federal Bureau of Investigation (“FBI”) conducted, FBI recovered multiple photos of a paper related to a Congressman and Senator’s objection to the certification of one state’s Electoral College votes. FBI also recovered multiple photos of Black appearing to pose in the Chamber, apparently while someone else took the picture.⁹

⁷ As captured in Attachments B-1 and B-2.

⁸ The entire video, over 12 minutes long, is available on the *New Yorker*’s website at <https://www.newyorker.com/video/watch/a-reporters-footage-from-inside-the-capitol-siege>.

⁹ These photos have been provided to the defense as part of preliminary discovery.

- At 04:27, Black tells someone to get out of the chair of the presiding officer of the Senate and not to be disrespectful.
- At 05:20, Black, along with several other people, looks through papers on a Senator's desk.
- At 06:28, Black sits on the floor with his back against the large marble desk in front of the Chamber, calmly talking on his cellphone. At one point during the apparent call, he says, "I got shot in the face with some kind of plastic bullet." A USCP officer asks Black and others, "Any chance I could get you guys to leave the Senate wing?" Black responds, "We will. I been makin' sure they ain't disrespecting the place." Despite the request to leave, Black continues sitting on the floor, talking on his phone. After the officer makes another request to leave, Black gets up from the floor.
- At 08:30, Black joins in a prayer, led by an individual, now identified as Jacob Anthony Chansley,¹⁰ standing on the dais of the presiding officer's chair.

The same *New Yorker* contributor was interviewed in a podcast from National Public Radio. He observed Black "keeping order" in the Senate Chamber. Due to the wound in his left cheek, Black had an "authoritative and intimidating" presence to others inclined to ransack the chamber. He also saw Black tell Chansley, "Stop acting a fool, cut it out," and Black prevent vandalism. Others left the chamber because they did not want Black telling them "what they could or could not do."¹¹

On January 8, 2021, Black posted two videos on YouTube in which he discussed entering the Capitol and the floor of the Senate Chamber on January 6, 2021.¹² He explained, "Once we found out Pence turned on us and that they had stolen the election, like officially, the crowd went

¹⁰ Chansley is a defendant in Case No. 21-CR-3 (RCL), now pending before this Court.

¹¹ The link to podcast, which was previously provided to defense counsel, is at <https://podcasts.apple.com/us/podcast/behind-the-scenes-of-the-capitol-insurrection-video/id214089682?i=1000510672843>. The account pertinent to Black begins at about 25:05 in the audio file.

¹² The two videos Black posted are available at <https://www.youtube.com/channel/UCyemPV8BDYoDGgHNuxX0vTQ>.

crazy. I mean, it became a mob. We crossed the gate.” He later said, “We just wanted to get inside the building. I wanted to get inside the building so I could plead the blood of Jesus over it. That was my goal.”

In the YouTube videos, Black emphasized he did not want to harm police officers and had admonished others not to destroy property or disrespect the Capitol. But he placed himself at the forefront of the mob’s confrontation with officers. “When we got up there, the cops had formed a line, and they were outnumbered, probably 1,000:1,” he said. “The only way they were going to stop the crowd was with lead bullets. . . . The crowd had pushed and . . . the cop’s line got pushed back, I don’t know, 4-8 feet. . . . And there was like a step where I was, and the cop right in front of me fell down.” He claimed he tried to protect that officer from being assaulted and “boot-stomped” from other rioters. Black was then shot in the face with what he described as a plastic projectile, and that blow turned him back from the police line. As noted above, Capitol surveillance video does not depict an officer on the ground, nor Black attempting to help a fallen officer right at or before that moment.

Black discussed how, after getting shot in the face, he walked “to the other side of the building” – the east side – and saw demonstrators sitting on the steps. He prayed and, despite the steps being “packed” and some rioters coming down them after getting “mace[d]” or “pepper spray[ed],” believed the Lord told him to climb the steps, so he did. Black made it to the front of that crowd, “at the door” to that part of the Capitol. Black described that moment as a “mob rule situation,” and “the patriots were pissed.” “The next thing you know, I’m up there at the police” in the doorway, Black recounted.

Black recalled “five or six” police in riot gear at the doorway when another rioter sprayed them with pepper spray, spraying “all of them but two, and they were trying to get out, and one of them fell down, and people started, like, bum-rushing him.” Black claimed he tried to protect this officer, and told other rioters, “Let him out, he’s done.” As noted above, the surveillance video the government has reviewed does not confirm, and is currently unaware of any video showing Black was attempting to shield or protect an officer at this entranceway. Black described another officer as “walking like a blind man” because he had gotten pepper-sprayed “right in the face.” Rioters pulled the officers who had been pepper-sprayed away from the doorway.

Black stated there were two officers remaining in the doorway. Black found himself pushed up against one of them while others were yelling and screaming. He told him, “Hey, man, we don’t want to hurt you. . . . I appreciate your service, but, you know, we’ve got to show these politicians that we mean business.” Additional officers appeared at the doorway. But with the mob clearly outnumbering the officers trying to prevent the incursion, Black told one officer, “Hey look, man, your mission is over. You’ve done your job. The halls have been breached. You might need to retreat.” The door to that entranceway eventually opened. Black recounted, “The mob behind me – the crowd, the angry patriots – started pushing,” causing himself and the officer to be pinned against a wall at a door that opened out. Black advised the mob to let the officer out because “if we don’t let him out of here, we’re never getting in.” Black said he was pushed inside – he did not mention walking through a line of two officers at the doorway – and he decided to “walk around and plead the blood of Jesus on this thing.”

Black stated that once inside the Capitol, he “found a little spot, and there was a glass door, and it said ‘U.S. Senate’ on it. I said, ‘I need to get in there.’ I just felt like the spirit of God

wanted me to go in the Senate room, you know. But I was about to break the glass and I thought, no, this is our house, we don't act like that. I was tempted to, I'm not gonna lie. 'Cause I'm pretty upset. You know? They stole my country." Describing what he did once inside the Senate Chamber, he stated, "I had accomplished my goal. I pled the blood of Jesus on the Senate floor. You know. I praised the name of Jesus on the Senate floor. That was my goal. I think that was God's goal." Black stated he called his father while sitting on the floor.

Black also admitted he possessed a dangerous weapon:

I actually had a knife on me, but they never . . . I had too much clothes on, it was freezing out there, you know, so. I never, I wasn't planning on pulling it. I just carry a knife because I do. I work outside, and you need knives, you know. I just . . . you're not allowed to carry guns in D.C. and I don't like being defenseless.

At the conclusion of the YouTube videos, Black opined the Constitution gives "we the people" the right to "abolish a corrupt government." He also expressed what appears to be his reason for entering the Capitol:

It's a . . . crooked Democrat House, crooked Republicans too. And a crooked Democrat Senate, crooked Republicans too. And now it's a straight-up crooked, lying, cheating, you know, president. . . . They're the ones leading the country. They're not *the* antichrist, but they're anti-Christian. . . . Ain't nothing we can do to stop it. . . . America has been stolen.

On January 8, 2021, Black turned himself in to law enforcement and voluntarily interviewed with a special agent of the FBI in Moody, Alabama. During that interview, Black stated his disinclination to travel to Washington, D.C., to protest the counting of the Electoral College votes, but God had other plans for him: "I didn't want to go. It was on my bucket list to never go to D.C. But, you know – I was praying about it, and asked the Lord, 'I don't want to go. . . . You want me to go?' And He was like, 'Yeah.' . . . I felt like He wanted me to go."

Black reiterated while he was outside the Capitol, he was attempting to help a police officer when he was shot in the face with a plastic bullet. This caused him to bleed profusely, and people tried to drag him back. But Black stopped them, saying, “No, God sent me here for a mission.” Black said that after getting shot, the Lord told him to “go to the other side of the” Capitol.

Black restated some things from his YouTube videos:

I just felt like the Lord wanted me to go in there and plead the blood of Jesus, inside the building. You know, I just wanted to show the politicians that we the people run this country, you don't. You know, you swore an oath to defend the Constitution and you didn't do it. You know, you're a bunch of lying crooks, Democrat and Republicans. . . . I wanted them to know that we the people can do it if we decide, you know? And there were no lead bullets flying from us. But, you know, we had the numbers and the power at the moment to show them that you don't run this country. We do. You know? That was – and I wanted to plead the blood of Jesus on that place because there's all kinds of evil coming out of that thing. Their – their mission is not for the good of the people, you know? And I believe that considerably.

Black recounted an incident between rioters at an entranceway to the Capitol. “One cop, when he got sprayed, he was trying to get out of there. And some people were trying to hurt him.” While Black stated he “yell[ed]” at the rioters not to hurt the officer, he also admitted telling them, ““We gotta get him out from in front of the door to get in there. So, you know, don't beat him back into the door. Let him out. They're leaving. Let him go, you know?””

When the agent asked if he had violent intentions when he entered the Capitol, Black responded, “No, no, no . . . I had zero intentions. . . . He [God] said, ‘Go here,’ and I went. And then when I got to this part, He said, ‘Go here,’ and I went. And then when I got there, He said, ‘Go here,’ and I went. That was all I did the whole time.”

Black repeated his belief that “we just had an election stolen” and that the political system is corrupt. “America is mad, the ones that are paying attention,” he said. “It's gonna have to be

the Lord, ‘cause the only thing that can happen now is an armed revolution, and I just don’t want to see that, you know?”

Black also discussed his belief that people set to assume power in the federal government in January are trying to take away “our guns”: “If they come in here trying to take something, you stop them, you know? But if they ever get our guns, that’s it. . . . If they ever talk about taking – I mean, all my guns are legal. But if I – I don’t know. I just don’t want to kill anybody, you know? But I don’t know what’s gonna happen next.” When the agent questioned why he would think he would have to kill somebody, Black replied, “Well, I mean, if they come in here trying to take our guns, or trying to turn America into slavery again, I don’t want to see that.”

When the agent asked whether he would go back “up there” – presumably to Washington, D.C., for another rally – Black replied, “Nah, I mean – . . . if I felt like the Lord wanted me to go, I would, but I don’t have no plans. I wasn’t planning on going to that one,” referring to the January 6 events.

On January 14, 2021, Black interviewed a second time with the FBI. He stated the knife he carried inside the Capitol was “bolted on my hip,” and that “I always carry a knife” because he works outdoors. He claimed he forgot the knife was on him until he returned to his vehicle after leaving the Capitol.¹³

Later on January 14, Black consented to a search of his home and truck. FBI agents recovered the knife that Black admitted he carried inside the Capitol. The knife, which has a curved blade and a sharp tip, is over seven inches long. While the curved cutting edge of the blade

¹³ If the Court is inclined to independently review Black’s recorded interviews with FBI, or any video evidence in this case, the government can make these videos available in the same manner it has provided them to the defense, through the USAfx file-share application.

may be slightly under or just about three inches long (depending on whether the blade is measured straight or on a curve), the length of the entire blade is at least 3.25 inches long.¹⁴ Agents also found a loaded Taurus revolver in Black's truck. Black admitted he drove that truck by himself with the gun in it from Alabama to the Washington, D.C., area to attend the rally, but parked the vehicle "miles away" outside the District of Columbia.

ARGUMENT

Authorities

A detention hearing may be reopened at any time before trial if the judicial officer finds that "information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community." 18 U.S.C. § 3142(f)(2).¹⁵ "New and material information consists of something other than a defendant's own evaluation of his character or the strength of the case against him"; instead, it must consist of "truly changed circumstances, something unexpected, or a significant event." *United States v. Lee*, 451 F. Supp. 3d 1, 5 (D.D.C. 2020) (quoting *United States v. Esposito*, 354 F. Supp. 3d 354, 359 (S.D.N.Y. 2019)). Similarly, pursuant to 18 U.S.C. § 3145(b), "[i]f a person is ordered detained by a magistrate judge . . . the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order." 18 U.S.C. § 3145(b).

¹⁴ A picture of the knife beside a ruler is shown in Attachment C to this Opposition.

¹⁵ For clarity, the citation here to § 3142(f)(2) refers to the block of text underneath § 3142(f)(2)(B).

District courts apply a de novo standard of review in evaluating a magistrate judge's detention decision. *United States v. Karni*, 298 F. Supp. 2d 129, 130 (D.D.C. 2004).

The Court should analyze four factors under 18 U.S.C § 3142(g) in determining whether to detain the defendant pending trial: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) his history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by his release.

In the context of considering detention based on the potential dangerousness of Capitol rioters, the D.C. Circuit recently held that “those who actually assaulted police officers and broke through windows, doors, and barricades, and those who aided, conspired with, planned or coordinated such actions, are in a different category of dangerousness than those who cheered on the violence or entered the Capitol after others had cleared the way.” *United States v. Munchel*, - -- F.3d ----, 2021 WL 1149196 at *2, *8 (D.C. Cir. Mar. 26, 2021) (remanding to district court to reconsider the detention orders for defendants who “entered the Capitol through an open door and stayed inside for approximately twelve minutes” and whose entry police officers were not blocking).

A review and understanding of the facts and circumstances in this case suggest there is no condition or combination of conditions that would reasonably assure the safety of any other person and the community if he is released.

Nature and Circumstances of the Offense

Black stands indicted for five felonies – the lead count of Obstruction of an Official Proceeding and Aiding and Abetting carries a maximum penalty of 20 years in prison – and three

misdemeanors. If Black were found guilty and sentenced consecutively for all eight counts in the indictment, he would face over 56 years in prison. While none of the offenses qualify as a crime of violence or involved any of the characteristics listed in 18 U.S.C. § 3142(g)(1), four involve Black carrying a dangerous weapon – a curved knife with a sharp tip – inside the Capitol.¹⁶

The circumstances of Black’s offenses are harrowing and repugnant. On January 6, 2021, Black zealously participated in an infamous attempt to subvert the Nation’s democratic process based on his own misguided, false belief that the presidential election, and America, had been “stolen” and that the Constitution allowed him to “abolish” a “corrupt” or “crooked” government. He and his rioting confederates succeeded in obstructing an *actual* constitutional mandate, Congress’s certification of the Electoral College votes, for several hours. His repeated statements that God ordered his conduct reveal his absolute, pious determination to breach the Capitol and get to the Senate floor to “pray the blood of Jesus.”

Black stated he did not brandish his knife inside the Capitol and at one point claimed he did not realize he had it on him until later in the day. But he also admitted he carried it because he

¹⁶ The defense refers to Black’s knife as a “small knife with a blade less than three (3) inches.” (Motion at 5.) As shown in Attachment C to this Opposition, this characterization is inaccurate. Black’s knife – which has a sharp tip capable of piercing or puncturing and could be thrust over three inches or slice into another person – clearly qualifies as an inherently “dangerous weapon” for purposes of 18 U.S.C. § 3142(f)(1)(E). *See United States v. Chansley*, No. 21-CR-3, mem. op. at 13-14 (D.D.C. Mar. 8, 2021) (adopting definition of “dangerous weapon” under 18 U.S.C. §§ 111 and 113 in bond-review ruling, and holding a dangerous weapon is “an object that is either inherently dangerous or is used in a way that is likely to endanger life or to inflict great bodily harm” and that knives are inherently dangerous); *see also* U.S. Sentencing Guidelines Manual § 1B1.1, appl. n. 1.E (2018) (defining “dangerous weapon,” in part, as “(i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but . . . closely resembles such an instrument”). Further, Black’s admission that he carried the knife because he did not want to be “defenseless” shows he was prepared to “use[] [it] in a way that was likely to endanger life or inflict great bodily harm” if he needed to defend himself at or inside the Capitol.

does not like to be “defenseless,” recognizing that District of Columbia law might not allow him to carry a firearm in public. In any event, he carried a dangerous weapon into the Capitol that, on any normal day, a security guard would forbid him to bring inside the building.

Black was not simply an opportunistic or moderate participant in the Capitol attack. He did not lay back or merely cheer on others, as some rioters did, and enter the building only after other rioters had broken through police lines and the doors to the building were open. He was, by his own admissions, at the vanguard of the mob.

Beginning with the string of events that placed him at the forefront of insurrectionists trying to breach the Capitol, Black counted himself with that mob: “Once we found out Pence turned on us and that they had stolen the election, like officially, the crowd went crazy. I mean, it became a mob. We crossed the gate.”

After crossing the gate, he engaged in close physical confrontation with officers who were trying to prevent the attack at two separate points.

First, he admitted being close “to the line of cops” on the west side of the Capitol, at one point coming in contact with officers as their line “got pushed back . . . 4-8 feet,” causing an officer “right in front of” him to fall. Surveillance video of Black shows him interacting within arm’s length of a defensive line of officers. He makes direct contact as the mob pushes him and the officers from behind, causing the line to bow backwards, but the video does not show an officer falling in front of him. Soon after this contact, Black was shot in the face with a less-than-lethal plastic projectile, turning him away from that line of officers. But even after getting shot in the face and bleeding profusely, Black persisted to get inside the Capitol, so he made his way to the east side of the building.

Second, he admitted that on the “other side,” he spoke face-to-face with officers in a doorway to the Capitol. As other rioters pepper-sprayed the officers attempting to prevent a breach, he told one officer, “Hey, man, we don’t want to hurt you” – an assertion belied by the mob’s pepper-spraying of the officers – and “I appreciate your service, but, you know, we’ve got to show these politicians that we mean business.” He admonished another officer, “The halls have been breached. You might need to retreat.” He described being “pinned” against a wall with that officer as “angry” and “pissed” “patriots” pushed from behind. While he claimed he was trying to protect the officer by exhorting those “patriots” to allow him out of the doorway – an assertion the government cannot confirm– he also admitted he wanted to get the officer out because he was obstructing their way into the building.

Black claimed he may not have wished harm on the officers or to destroy any property. But he willingly joined a violent siege on the east side of the building. The rioters he counted himself with swarmed, yelled at, grabbed at, pushed, and pulled the hopelessly outnumbered officers who could not hold their desperately thin line. Less than two minutes after interior rioters just started to push open the double doors to the East Rotunda entrance, and within seconds after the front of the exterior rioters began streaming in, Black forced his way over the threshold and right between two officers who tried but had no way of stopping him or others. While Black professed no harm to police, he had no problem storming over the threshold and through those two officers, and his conduct aided and enabled other rioters to assault those and other officers and to defile the Capitol. And he did all this while armed with a knife.

Black eventually made it to the Senate floor, playing a direct role in obstructing the certification of the Electoral College votes. While he claimed he merely wanted to “pray the blood

of Jesus” there, the *New Yorker* contributor’s video and other evidence reveal Black did much more than just pray. He rifled through Senator’s papers, apparently taking a cellphone photo of a paper related to a Congressman and Senator’s one state’s objection to the certification. He apparently gave his cellphone to another person to take a photo of him while he posed inside the Chamber. He sat on the Chamber floor and calmly talked on his cellphone. A USCP officer asked him to leave the Senate wing, and had to ask him a second time to leave before Black got up from the floor. While Black’s admonishments to others to be respectful inside the Chamber are commendable, and the *New Yorker* contributor spoke favorably of his influence there, his conduct was also consistent with his attempts to exercise leadership from the very beginning of the entire incursion.

Weight of the Evidence

The weight of the evidence against Black is overwhelming. USCP surveillance video captured Black engaging directly with police officers on the west and east sides of the Capitol. On the east side, during a violent struggle between rioters and police trying to prevent them from breaching the building, surveillance video captured Black force himself through officers to gain entry. Open-source media captured him on the floor of the Senate Chamber. He posted a detailed confession to his criminal conduct on YouTube and consented to two interviews with the FBI. In these recorded statements, he fully admitted entering the Capitol with a knife and spelled out his corrupt motivation for obstructing a proceeding of Congress. He consented to a search of his home, during which agents recovered the knife that he confirmed he carried into the Capitol. The FBI recovered additional photo evidence of Black’s presence inside the Senate Chamber from his cellphone.

Defendant's History and Characteristics

The government is unaware of Black having any convictions for prior criminal conduct. In his interview with the FBI on January 8, 2021, he admitted a prior membership in a “motorcycle club,” and suffering a severe beating as a punishment for leaving the group. It is unclear when he was a member of this group and whether the group was a verified criminal motorcycle gang. During the detention hearing in the Northern District of Alabama, a Pretrial Services Officer from the Northern District of Alabama testified that Black reported having a recent history of smoking marijuana.

Nature and Seriousness of Danger Posed by the Defendant's Release

Black's actions and statements related to this case reflect the continuing threat of danger he poses to others and the community if he is released.

Black acted as a leader during attempts to breach the building. He admitted that following the news Vice President Pence would not block the certification of the Electoral College votes, he “crossed the gate” into the Capitol grounds and faced off against two separate lines of police officers. During the first confrontation with police on the west side of the Capitol, video shows him at the very front of the group, being pushed into the line of and brushing against officers. Shortly after that, Black was shot in the face with a less-than-lethal projectile, causing him to bleed profusely. Not even that serious injury could deter him from making his way to the east side of the Capitol to confront a second line of officers. During the second confrontation, he again positioned himself at the front of the mob, this time to breach an entryway the officers were guarding. Black admitted this group was violent, pepper-spraying officers as they attempted to gain entry.

Black has a disquieting tendency to cast America's social and political situation in violent, apocalyptic terms. He expressed his belief that the only solution to the election and his country being "stolen" is "an armed revolution," though he does not want to see that happen. He believed the incoming federal government that was assuming power this past January would try take away his and other people's guns. He admitted he is prepared to defend against that, possibly violently: "If they come in here trying to take something, you stop them, you know? But if they ever get our guns, that's it. . . . If they ever talk about taking – I mean, all my guns are legal. But if I – I don't know. I just don't want to kill anybody, you know? But I don't know what's gonna happen next." When an agent questioned why he would need to kill someone, Black replied, "Well, I mean, if they come in here trying to take our guns, or trying to turn America into slavery again, I don't want to see that." FBI confirmed Black had access to firearms when it recovered a loaded revolver in the truck he admitted he drove to the Washington, D.C., area. As long as he stands indicted before this Court for any felony, he is federally prohibited from receiving a firearm that has traveled in foreign commerce, a predicament that may cause him further aggravation.¹⁷

Black firmly believes that he was directed by a higher power to travel to Washington, D.C., unlawfully breach the Capitol, and get to the Senate floor to "pray the blood of Jesus." In Black's own words, God said, "'Go here,' and I went. And then when I got to this part, He said, 'Go here,' and I went. And then when I got there, He said, 'Go here,' and I went. That was all I did the whole time." Black repeatedly stated it was "on my bucket list never to go to D.C." But his belief that God commanded him to act contrary to his restrained instincts suggests that Black is willing to

¹⁷ See 18 U.S.C. § 922(n) ("It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.")

break the law – including participating in a violent breach of the seat of government and the disruption of the constitutional transfer of power – if he believes it is God’s will.

Even after the chaos of what occurred at the Capitol on January 6, Black expressed ambivalence to an FBI agent, with an ultimate sense of obligation to submit to what he perceives as a divine directive. When the agent asked if Black would go back “up there,” presumably to Washington, D.C., to attend another rally, Black stated, “Nah, I mean – . . . *if I felt like the Lord wanted me to go, I would*, but I don’t have no plans. [Emphasis added.] I wasn’t planning on going to that one,” referring to the January 6 events he participated in, despite his instinct not to go.

Now that the transfer of power to the “straight-up crooked, lying, cheating” man whose electoral certification he sought to thwart has fully taken place, Black has suggested, if not outright proclaimed, he could resort to violence to “stop” him and others from taking his guns. If released, he would have the opportunity again to disrupt the United States government or harm members of the government, to plan with others who might be willing to engage in that conduct, and to spread his baneful ideas on social media or other ways. For all these reasons, Black remains an ongoing, grave danger to others and the community if he is released.

In sum, Black is a man with a strong sense of mission who is outraged about his country being “stolen.” He has dire ideas about his guns being taken away from him and a possible “armed revolution.” He drove himself over 700 miles from his Alabama home and helped lead an insurrection. Even after he was shot on the west side of the Capitol and blood throbbled from his face, he was undeterred, made his way to the west side of the building, and forcibly broke through a violently besieged line of officers there, eventually arriving in the Senate Chamber. There is clear and convincing evidence that Black presents an identified and articulable ongoing threat to

others and the community. *See Munchel*, 2021 WL at *4 (preventive detention appropriate where there is clear and convincing evidence the defendant “*presents an identified and articulable threat*”) (emphasis in original). Black’s arguments do not have a “material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(f)(2); *Lee*, 451 F. Supp. 3d at 5. If anything, the significant additional evidence the government has accumulated since Black’s detention hearing weighs materially in favor of his continued detention pending trial.

CONCLUSION

WHEREFORE, for the foregoing reasons, and for any other such reasons as may appear to the Court, the government respectfully requests that the Court DENY Black’s Motion, and that Black remain held without bond pending trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 1, 2021, I served a copy of this pleading on defendant's counsel through the Court's electronic case files system.

s/ Seth Adam Meinero _____

SETH ADAM MEINERO

Trial Attorney

Detailer

Attachment A

**(Screen Captures of Video
from West Side of Capitol)**

Attachment A-1



- Black circled in yellow (wearing bill of red hat protruding from a green camouflage hood)

Attachment A-2



- Black circled in yellow (wearing bill of red hat protruding from a green camouflage hood)

Attachment A-3



- Black circled in yellow (wearing bill of red hat protruding from a green camouflage hood)

Attachment A-4



- Black circled in yellow (wearing bill of red hat protruding from a green camouflage hood and yellow glove at face)

Attachment A-5



- **Black circled in yellow (wearing green camouflage jacket, with man in blue top touching face)**

Attachment B

(Screen Captures of Video from East Side of Capitol)

Attachment B-1



- Black circled in yellow (wearing black skull cap and green camouflage jacket)
- Positions of officers indicated with green arrows outlined in red

Attachment B-2



- Black circled in yellow (wearing black skull cap with white writing on front and sunglasses)
- Positions of officers indicated with green arrows outlined in red (wearing black skull caps)

Attachment C

(Picture of Knife)

