

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

Crim No.: 1:21-cr-52 (TJK)

Dominic Pezzola

Defendant.

**DEFENDANT’S REPLY TO THE GOVERNMENT’S OPPOSITION TO
DEFENDANT’S MOTION FOR MODIFICATION OF BOND**

Defendant files the instant reply to the Prosecution’s Opposition to Defendant’s Motion for Modification of Bond. Defendant incorporates by reference all arguments made in his original Motion for Bond Review and Motion for Modification without repeating those arguments here. In the instant motion defendant will address primarily and seek to rebut the Prosecution’s Opposition.

As noted, preventive detention principally addresses two issues: danger and risk of flight.

Obviously the prosecution has thoroughly reviewed what are apparently hundreds if not thousands of hours of recordings of the January 6, 2021, events at the Capitol. Notwithstanding the rampant violence that occurred that day, between law enforcement and the protesters, there is no evidence nor allegation that defendant Pezzolo ever attempted to injure

any other person in any way. What is revealing in the prosecution's pleadings is the argument they are not able to make: they maintain that Pezzolo's release presents an unreasonable risk of danger when they cannot point to a single instance when Pezzolo ever physically injured another person, attempted to injure another person, expressed an intent or desire to injure anyone¹, possessed a weapon or participated in any plan to injure anyone. There is ample evidence that Pezzolo was present and surrounded by others who were actively engaged in violence on January 6. However, there is no indication nor claim that he ever was a participant in the violence that was occurring around him. The allegation is that he marched to the Capital, went passed police, broke a window and entered as part of the massive group that entered. Once inside there is no claim that he attempted to injure anyone nor destroyed any property except the window used to gain entry.

¹ The prosecution claims they have a Cooperating witness who claims that Pezzolo was present as part of a group when members expressed an interest in future acts of violence. However, there is no claim Pezzolo made those statements nor that he personally expressed an intent to engage in those acts.

The prosecution claims that Pezzolo is violent because he “robbed an officer of his riot shield” but the circumstance of how he acquired² that shield are far from clear. There is evidence that he is at the demonstration without a shield, that there were numerous altercations between protesters and law enforcement. Someone is seen in the crowd, the prosecution maintains is Pezzolo, in possession of a shield but there is no showing that person took the shield by force or violence from an officer³. Upon information and belief, no officer has claimed Pezzolo took the shield from them.

The gist of the prosecution’s argument is that the Proudboys engage in violence, there is evidence Pezzolo is associated with the Proudboys, therefore, Pezzolo must be violent and his release is unreasonably dangerous. The prosecution’s argument is guilt by association. As noted earlier, Pezzolo has no convictions nor even an allegation of any prior criminal activity. For 43 years he has been a model citizen, who honorably

² For the sake of argument, the defendant is assuming, but not conceding, that the prosecution’s allegation that Pezzolo possessed police issued riot shield during the event at issue.

³ At another point there is a recording on the steps of the Capital where there are hundreds of protesters. One person is recorded as “claiming they took a shield from a cop” but it is not clear who the declarant is nor that the claim is accurate rather than false braggadocio.

served his country, has been gainfully lawfully employed and supported his family through honest physical labor. Past is prologue. If released it may be safely assumed that Pezzolo will resume his life as an honest hard-working citizen who has no involvement in criminal activity. His alleged involvement in the instant case is an aberration that is not likely to be repeated.

Ironically the prosecution has indicted Pezzolo on terrorism charges when, from his perspective, his involvement in the events of January 6, 2021, were motivated by patriotic desire. Pezzolo considers himself a loyal patriotic United States citizen who pledged to serve his country, to defend it against enemies foreign and domestic. His actions on January 6, 2021, were not intended to subvert the United States but to defend it. Like millions of others, he was gullible enough to be misled by the deception of the then President of the United States. He was told that the “election had been stolen” and it was the duty of citizens to “fight like hell to prevent the steal.” At the time the deception was being parroted by numerous elected officials as well as other charlatans masquerading as journalists. Pezzolo

believed them, he was motivated by a desire to serve and protect his country. Obviously, his belief was ill founded but well intentioned.⁴

Regarding risk of flight, upon learning of the arrest warrant the defendant contacted a lawyer in Rochester, NY. In conjunction with that lawyer he made arrangements to voluntarily surrender himself on January 15, 2021⁵. He did not wait for law enforcement to find him. A voluntary surrender is not consistent with an intent to flee. With the exception of his service in the Marines, the defendant has lived his entire life in Rochester, NY. All his family, social and employment connections are there.

⁴ In retrospect, Pezzolo regrets his involvement in the activities of January 6. He has expressed remorse and disavows any beliefs in the philosophy espoused by the Proud Boys. He has made clear that he is severing any relationship he may have had with that group or similar groups. He simply wishes to go home to his family, return to work and support his family.

⁵ Pezzolo has been incarcerated since January 15, 2021. The prosecution does not dispute that Pezzolo's alleged involvement with the Proud Boys was short. His first contact began the end of November, approximately 5-6 weeks before January 6, 2021. At this point he has spent more time incarcerated because of his alleged activity as a Proud Boy, than he spent associated with the Proud Boys in the community. Pezzolo's incarceration occurs under particularly arduous conditions. Because of security concerns he is not housed in "general population." His conditions are more akin to solitary confinement. He spends 23 hours a day locked in a single cell by himself. He is allowed out of his cell for 1 hour per day when he may shower, use the phone if available and engage in whatever physical recreation is offered. Incarceration under these isolated conditions is particularly painful and carries with it well documented deleterious psychological consequences.

Defendant lacks the resources, financial and personal, to flee. He has no interest in living his life “on the run” away from his wife and children.

Realistically, his release poses no serious flight risk as the prior Court found.

WHEREFORE for the foregoing reasons, and any others which may appear at a full hearing on this matter, and any others this Court deems just and proper, defendant through counsel, respectfully requests that he be released on modified conditions.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I certify that on February 28, 2021, I caused a copy of the foregoing Memorandum to be filed with the Clerk using the CM/ECF System which will send notification of this filing to all parties.

Courtesy copies were sent by email to the assigned AUSAs.

_____/s/_____
Jonathan Zucker