

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

**UNITED STATES OF AMERICA**

**VS.**

**DANIEL RAY CALDWELL**

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**CRIMINAL NO. 1:21-CR-00181**

**DEFENDANT’S REPLY TO THE GOVERNMENT’S OPPOSITION  
TO DEFENDANT’S MOTION FOR PRE-TRIAL [ECF No. 22]**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendant, **DANIEL RAY CALDWELL**, by and through undersigned counsel, respectfully submits this reply to the Government’s opposition to the defendant’s pre-trial release.

The defendant should be released pending trial, because there are conditions and/or a combination of conditions that will assure the defendant’s appearance and the safety of the community.

The defendant respectfully replies’ to the government’s opposition.

**I.**

**REPLY TO GOVERNMENT’S ARGUMENT**

*A. The Chrestman “six guideposts”*

The governments rely’s on the “six guideposts” for assessing “the comparative culpability of a given defendant in relation to fellow rioters’. *United States v. Chrestman*, No.-mj-218 (ZMF), 2021 WL 765662 (D.D.C. Feb 26, 2021) at 8. The guideposts are as follows: (1) whether the defendant has been charged with a felony or misdemeanor offenses; (2) the extent of the

defendant's prior planning, "for example, by obtaining weapons or tactical gear"; (3) whether the defendant used or carried a dangerous weapon; (4) evidence of coordination with other protestors before, during, or after the riot; (5) whether the defendant played a leadership role in the events of January 6, 2021; and (6) the defendant's "words and movements during the riot" -- e.g., whether the defendant, "remained only on the grounds surrounding the Capitol" or stormed into the Capitol interior, or whether the defendant "injure, or threatened to injure others". *Id.* 7-8.

The government claims that the defendant meets five of the six guideposts. The defendant respectfully disagrees. The defendant has been accused of felony offenses in the instant case. There is limited information that the defendant made prior planning in this case that he would pursue. The government has made the accusation through the photos that he used/carried a dangerous weapon. There is zero evidence that the defendant coordinated with other protestors before, during, or after the riot. There is zero evidence that the defendant held a leadership role in the planning or execution of the events that occurred on January 6, 2021. The defendant is seen on the Capital grounds, but he did not storm into the Capitol interior or vandalize the interior of the Capital. As any defendant that appears before the court facing criminal charges an argument can be made regarding a person's dangerousness. In this case, and applying the *Chrestman* factors it is reasonable to assume that the defendant is not an ongoing danger of similar alleged activity.

**B. 18 U.S.C. § 3142(g)(1-4)**

*(1) The Nature and Circumstances of the Offense Charged:*

The defendant agrees with the government that the allegations that he has been accused of are very serious. On January 6, 2021, the defendant joined other protestors on their walk to the

Capital. The defendant did not storm or forcibly enter Capitol grounds. On this day, the defendant was actively protesting and expressing his opinion to the current political climate. His words and gestures reflected the thoughts and opinions of former President Trump. The defendant did not tout his actions he documented what he observed while on the Capital grounds to Pro Publica.

(2) *The Weight of Evidence Against the Person:*

The defendant does not pose a threat to the community. The actions led to the events of January 6, 2021, have ended. The government has not presented any credible evidence of an ongoing threat to the community by the defendant.

(3) *History and Characteristics of the Person:*

First, the government misstates the defendant's criminal history. The defendant has not been convicted of the misdemeanor offense of Assault Causing Bodily Injury - Family Violence. As previously stated, the defendant does not have any felony or misdemeanor convictions as it relates to crimes against persons or weapons' convictions.

Furthermore, the mere fact that the defendant does not have a job does not conclude that he will not appear. The best evidence that he will appear at any future court proceedings is his past history. The defendant has previously appeared at all court proceedings. The defendant has previously complied with all terms and conditions of probation on his past misdemeanor criminal charges. Other than his time in the United States Marine Corp his home has always been the State of Texas.

(4) *Nature and Seriousness of the Danger to Community:*

The words the defendant used on the grounds of the Capital are protected speech. The

mere fact he disagreed with the current political climate on January 6, 2021, does not make him a danger to the community. The events that occurred on January 6, 2021, has subsided. The defendant has been confined for the three months and for the past forty-five days he has been held in solitary confinement. Any argument that he was a danger to the community is stale and without merit.

**II.**

**CONCLUSION AND PRAYER FOR RELIEF**

Mr. Caldwell is not a risk of nonappearance/flight or a danger to the community. The defendant respectfully requests this Honorable Court follow the recommendation of Tiffany Routh, United States Probation Officer - Eastern District of Texas, and release the defendant to one of the two 3<sup>rd</sup> - Party Custodians with appropriate conditions.

Respectfully submitted,

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By: /s/ John Hunter Smith  
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ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Motion was provided to with Mr. James Dennis Peterson and Ms. Puja Bhatia, Assistant United States Attorneys via CMECF/PACER on May 7, 2021.

*/s/ John Hunter Smith*  
John Hunter Smith