

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

UNITED STATES OF AMERICA	:	
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	:	
v.	:	Criminal No. 21-CR-40
	:	
	:	
DAVID LEE JUDD,	:	
	:	
Defendant.	:	

**GOVERNMENT’S MEMORANDUM
IN SUPPORT OF PRE-TRIAL DETENTION**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in support of its oral motion that the Defendant, David Lee Judd, be detained pending trial pursuant to 18 U.S.C. § 3142(f)(1)(A) [Crime of Violence] and 3142(f)(1)(E) [Dangerous Weapon]. There are no conditions or combinations of conditions which can effectively ensure the safety of any other person and the community, pursuant to 18 U.S.C. § 3142(e).

The government respectfully requests that the following points and authorities, as well as any other facts, arguments and authorities presented at the detention hearing, be considered in the Court’s determination regarding pre-trial detention.

Factual Background

The Attack on the United States Capitol on January 6, 2021.

1. On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, located at First Street Southeast, Washington, District of Columbia.

During the joint session, elected members of the United States House of Representatives and Senate met in the United States Capitol to certify the vote count of the Electoral College for the 2020 Presidential Election, which took place on November 3, 2020.

2. The United States Capitol is secured 24 hours a day by security barriers and USCP occupy various posts throughout the grounds. Restrictions around the United States Capitol include permanent and temporary security barriers and posts manned by USCP. USCP officers wore uniforms with clearly marked police patches, insignia, badges, and other law enforcement equipment. Only authorized people with appropriate identification are allowed access inside the United States Capitol. On January 6, 2021, the exterior plaza of the United States Capitol was also closed to members of the public.

3. The January 6, 2021 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.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the United States Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the United States Capitol building and USCP were present, attempting to keep the crowd away from the Capitol building and the proceedings underway inside. As the certification proceedings were underway, the exterior doors and windows of the Capitol were locked or otherwise secured.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way

through, up, and over the barricades, and past officers of the USCP, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by the USCP or other authorized security officials.

6. A short time later, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. As such, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the United States Capitol, including the danger posed by individuals who had entered the United States Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the United States Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

7. After the Capitol was breached, USCP requested assistance from MPD and other law enforcement agencies in the area to protect the Capitol, keep more people from entering the Capitol, and expel the crowd that was inside the Capitol. Multiple MPD officers and other law enforcement officers came to assist.

8. During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted

evidence of violations of local and federal law, including scores of individuals inside the United States Capitol building without authority to be there.

Facts Specifically Related to Judd

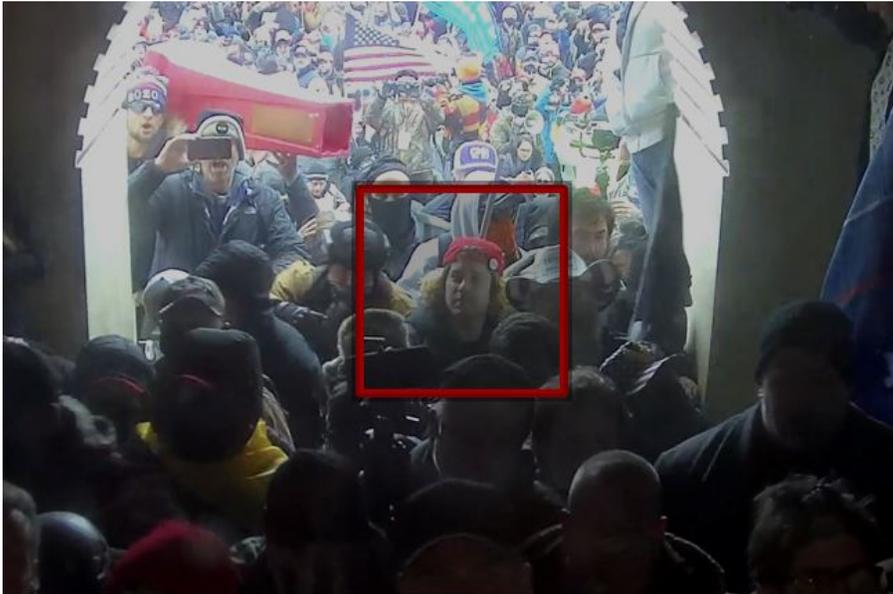
9. By 2:40 p.m. on January 6, 2021, protesters had engulfed the west side of the United States Capitol and were climbing on the scaffolding in front of building as well as various features of the building. Although the Capitol Building had already been breached and protesters had flooded in through several entrances, a group of MPD officers and members of the USCP or other agencies had been able to hold their position and deny entry through the very prominent entrance of the Lower West Terrace. To enter the United States Capitol through the Lower West Terrace, one must walk through a short tunnel with a series of glass doorways. Around 2:40 p.m., a group of officers were maintaining a line at the second set of glass doors inside the tunnel. Officers reporting to the scene rushed to the tunnel from within the building while protesters outside of the tunnel continued to summon more men to push their way through the tunnel. A growing number of protesters made their way into the tunnel with a variety of tools and weapons. The tunnel became the point of an intense and prolonged clash between protesters and law enforcement at the United States Capitol. Many of the protesters in the tunnel were recording video and many of the videos circulated and continue to circulate on Internet channels, social media, and the news.

10. Portions of the rioters' effort in the tunnel to get through the Lower West Terrace doors were captured both in video surveillance from USCP camera in the tunnel and in video footage posted to YouTube (hereinafter, YouTube Video 1). In YouTube Video 1, a large group of rioters attempted to break through the line of uniformed law enforcement officers who were in

place to prevent rioters from entering the Lower West Terrace door of the United States Capitol Building. Law enforcement officers were at the front of the doors inside the tunnel attempting to stop numerous rioters from gaining access to the U.S. Capitol.

11. Around 2:52 p.m.,¹ YouTube Video 1 shows a white male with curly blonde hair wearing a red “Make America Great Again” baseball hat backwards, a black hoodie and a grey vest, who was subsequently identified as JUDD, as explained below, to the side of the entrance of the tunnel.

12. Then, at approximately 2:56 p.m., JUDD can be seen in surveillance footage going into the tunnel with additional rioters walking toward the line of law enforcement guarding the Lower West Terrace doors, as shown in the still image below with a red rectangle added around JUDD.



13. JUDD then joins the group as the rioters push in unison against the officers. As

¹ This time is approximate and based on a review of the EXIF data for the related video and a comparison to the timestamp for available surveillance video capturing the same events.

captured in video filmed on the phone held by a rioter standing next to JUDD in the tunnel, multiple rioters can be heard yelling “ready, heave” as the group pushes in unison.

14. Then, at approximately 2:58 p.m., JUDD can be seen in USCP surveillance footage turning around and exiting the tunnel. For the next few minutes, JUDD can be seen near the arch, occasionally waving others in and yelling.

15. Around 3:06 p.m., USCP surveillance video shows JUDD near the crowd outside the arch entrance of the Lower West Terrace tunnel. In another video filmed outside of the arch around the same time and posted to YouTube (hereinafter, YouTube Video 2), JUDD can be seen next to another rioter (RIOTER 1) yelling for the crowd to pass back the stolen riot shields in order to make a “shield wall.” JUDD can also be seen yelling “shield wall” as he pumps his fist in the air in YouTube Video 2, as shown in the still below with a red box added around JUDD. (The same can then be heard and seen inside the tunnel in YouTube Video 1, where RIOTER 1 can be heard instructing the front line of rioters to make a “shield wall” and “organize,” as rioters behind them pass up shields to those facing line of law enforcement officers guarding the Lower West Terrace doors.)



16. On the surveillance video looking out through the arch, around 3:06 p.m., JUDD is seen helping move at least two shields into the tunnel and pass them to another rioter in front of him, as shown in the still below with a red circle around JUDD.



17. Moments later JUDD can be seen on the surveillance footage walking into the tunnel. He then lights an object on fire and throws it at the line of law enforcement officers who

are guarding the Lower West Terrace doors to the United States Capitol Building, as shown in the three stills below. He then immediately turns and walks out of the tunnel. As captured in another video filmed inside the tunnel and originally posted to YouTube (hereinafter, “YouTube Video 3”), an unidentified member of the crowd (who can be seen standing next to JUDD in surveillance video when he throws the item) can be heard yelling: “You going to do that and run away! What the fuck.” When asked what the individual did, the unidentified member of the crowd states: “He threw a firecracker, a big giant, what the”



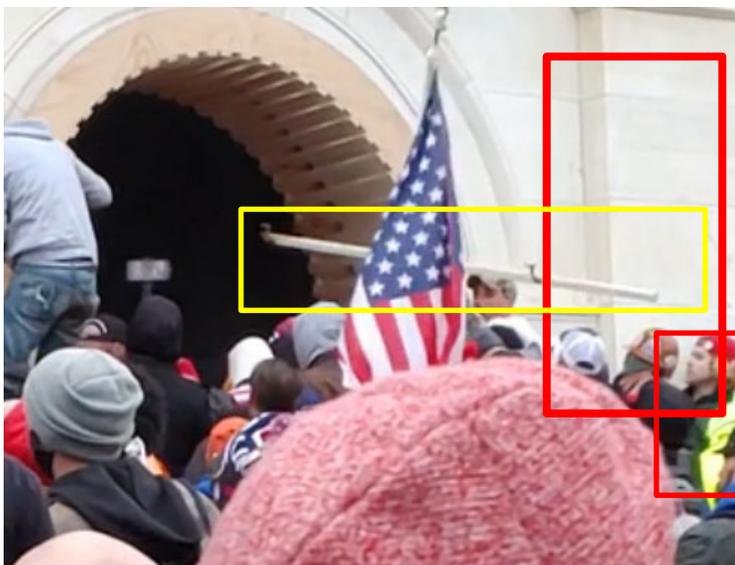
18. As seen on USCP surveillance video, JUDD then stays at the entrance to the tunnel and appears to be directing the crowd to the tunnel by waiving them forward.

19. Additional USCP surveillance footage and many different videos posted online show JUDD present at various locations near the arch entrance of the Lower West Terrace tunnel for approximately the next hour. During these various videos, JUDD can be seen chanting with the crowd, encouraging people to enter the tunnel, and assisting the rioters exiting the tunnel wash the OC spray from their faces with water.

20. One of these videos was posted to YouTube (hereinafter, "YouTube Video 4") covers multiple clips showing the entrance to the tunnel on the Lower West Terrace. The clips do not include time stamps but do correspond to USCP surveillance footage of the same events. Around timestamp 58:30 of YouTube Video 4, which corresponds to approximately 3:27 pm based on a comparison to USCP surveillance footage showing the same events from a different angle, JUDD can be seen standing to the side of the arch, as indicated in the red box below.



21. Similarly, in a video posted to Parler and then posted online, which corresponds to USCP surveillance from around 4:14 p.m., JUDD can be seen lifting an American flag in the air triumphantly moments after another rioter throws a long projectile at officers, as shown in the stills below (with the projectile highlighted in a yellow rectangle and JUDD in a red rectangle).



22. Then, around 4:16 p.m., as can be seen in USCP surveillance footage, JUDD once again joins a large group of rioters pushing against law enforcement officers guarding the Lower West Terrace doors, as shown in the still below with a red rectangle around JUDD. The rioters push as a group against the officers for a few minutes until they are forced back out of the tunnel by law enforcement.



23. The same events are captured near the end of YouTube Video 4, where unidentified rioters can be heard yelling “push” as the crowd all tries to push into the tunnel and past the line of law enforcement. JUDD can be seen joining the crowd at the tunnel entrance pushing forward toward the police line, as shown in the still below.



Identification of JUDD

24. On January 25, 2021, Agents in Texas spoke with Witness 1 who has met JUDD personally. Witness 1 indicated JUDD had posted an advertisement on social media asking for a ride to the rally and provided a contact telephone number. Witness 1 provided the following copy of the advertisement, which is copied below with the phone number partially redacted:



25. Subscriber records for the phone number listed in the advertisement (XXX-XXX-

5770) show that the phone number listed is used by JUDD.

26. Witness 1 provided additional details about JUDD, that have all been corroborated by law enforcement.

27. Witness 1 stated Photograph 137 from the FBI website is definitely JUDD. Although Witness 1 was not shown any photos during the interview, the following is Photograph 137 that was posted to the FBI website in connection with “Seeking Information” Photograph #137 - AFO.



Photograph #137 - AFO

28. After this identification was made, Agents in Texas reached out to Witness 2, who had known JUDD personally for several years. Witness 2 was interviewed on March 4, 2021, and shown Photograph 137 with the agent making no mention of JUDD’s name. Witness 2 identified the individual from Photograph #137 as JUDD.

29. After his arrest, JUDD was interviewed by law enforcement. During the interview, JUDD admitted that he rode with others to Washington, DC and attended the rally in Washington, DC on 01/06/2021. JUDD claimed he did not do anything inside the Capitol. He explained that he was not there to do anything illegal. He admitted that while at the rally, he

wore a red “Make America Great Again” hat. He explained that at the time, his hair was longer and curly with blonde/orange highlights. He explained that he remained around the Capitol during the riot to “help others” and “never assaulted a federal officer.” He explained that “didn’t do anything” but added he could understand the civil disorder charge. JUDD also stated “I don’t want to think about that day” and that he had “put that day out of my mind.”

Procedural History

30. On March 23, 2021, U.S. Magistrate Judge Harvey issued a warrant to arrest the Defendant on violations of 18 U.S.C. § 231(a)(3) (Certain Acts During Civil Disorder) and 18 U.S.C. § 111(b) (Assaulting, Resisting, or Impeding Certain Officers or Employees While Using a Deadly or Dangerous Weapon).

31. On March 26, 2021, FBI agents arrested the Defendant at his residence in Carrollton, Texas and brought him before a U.S. Magistrate Judge in the Eastern District of Texas for an initial appearance and removal to this District. At that hearing, the Defendant waived his right to have a detention hearing and a preliminary hearing in the arresting district.

32. On April 16, 2021, JUDD was indicted on nine charges, including two violations of 18 U.S.C. § 111 (Assaulting, Resisting, or Impeding Certain Officers or Employees), one violation of 18 U.S.C. § 111(b) (Assaulting, Resisting, or Impeding Certain Officers or Employees While Using a Deadly or Dangerous Weapon), one violation of 18 U.S.C. § 1512(c)(2)(Obstruction of an Official Proceeding), one violation of 18 U.S.C. § 231(a)(3) (Certain Acts During Civil Disorder), one violation of 18 U.S.C. § 1752(a)(2) and (b)(1)(A) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon), one violation of 18 U.S.C. § 1752(a)(4) and (b)(1)(A) (Engaging in Physical

Violence in a Restricted Building or Grounds with a Deadly or Dangerous Weapon), one violation of 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building), and one violation of 40 U.S.C. § 5104(e)(2)(F) (Act of Physical Violence in the Capitol Grounds or Buildings).

ARGUMENT

33. There are four factors under § 3142(g) that the Court should consider and weigh in determining whether to detain a 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. *See* 18 U.S.C. §3142(g). In consideration of these factors, the government respectfully submits that there are no conditions or combinations of conditions which can effectively ensure the safety of any other person and the community. In addition, the analysis emphasized by the D.C. Circuit recently in *United States v. Munchel*, No. 21-3010, 2021 WL 1149196 (D.C. Cir. Mar. 26, 2021), supports the conclusion that detention is appropriate here.

Nature and Circumstances of the Offenses Charged

34. During the course of the violent siege of the U.S. Capitol on January 6, 2021, over 100 law enforcement officers reported being assaulted or injured by the violent mob while attempting to protect the U.S. Capitol and the individuals inside of the building. These assaults occurred both inside of the Capitol, as well as on the steps outside of the Capitol and the grounds of the Capitol, where the enormous mob included numerous individuals with weapons, bulletproof vests, and pepper spray who were targeting the officers protecting the Capitol. Additionally, the violent crowd encouraged others in the crowd to work together to overwhelm law enforcement and gain unlawful entry into the U.S. Capitol.

35. In this case, the Defendant was part of a violent mob that engaged in one of the most intense and prolonged clashes between the rioters attempting to overrun Capitol on January 6 and the law enforcement officers charged with protecting it. This was an assault by a large group armed with both their bodies and a variety of weapons (batons, shields, and random objects like speakers thrown at police and in JUDD's case- a firecracker).

36. The Defendant repeatedly assisted that mob in this violent battle against law enforcement -- not only by arming himself with a firecracker and throwing it at the police but also by (1) assisting in creating a shield wall and (2) repeatedly coming back to help the crowd violently push against law enforcement guarding the doors. Specifically, early on in that battle, JUDD pushed into the tunnel and assisted in the violent pushing against the officers in unison by the rioters in the tunnel. After a few minutes, he left as rioters continued to try to push past law enforcement inside the tunnel. A few minutes later, as captured on surveillance video, he then helped coordinate a shield wall to fight against the officers in the tunnel and then helped pass those stolen shields to the front. Then, he upped the ante by lighting and throwing a firecracker at the police -- something so shocking and dangerous even the rioters nearby him were upset about it. It should be noted that the Lower West Terrace is a very small tunnel, which at the time had a lot of OC spray in the air that was crowded with a lot of people -- both other rioters and law enforcement -- making his actions that much more dangerous. JUDD then stayed there for the next hour cheering as the rioters became more brazen -- attacking with poles and sticks. Finally, once again, he came back a third time-- again joining the large group of rioters violently pushing into the tunnel and using their collective might to force their way through the police line. In short, he repeatedly chose to join and assist a violent mob attacking law enforcement in an effort

to overtake the Capitol. His actions inherently prove he is a danger to the community at large, whose safety can only be assured by his detention

37. As the *Munchel* panel noted, “those who actually assaulted police officers . . . are in a different category of dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way.” *Munchel*, 2021 WL 1149196, at *8. Here, JUDD did not just participate in one assault on law enforcement, he repeatedly joined in on those assaults. He used both his body and a firecracker. He completed these assaults on multiple officers, despite the fact that he was in an extremely public setting, around people filming his behavior, and in the presence of many additional different law enforcement officers. With all these factors taken into consideration, the nature and circumstances of these offenses overwhelmingly weigh in favor of detention.

Weight of the Evidence Against the Defendant

38. The second factor to be considered, the weight of the evidence, also clearly weighs in favor of detention. The evidence against the Defendant is also quite strong and compelling. As noted above, the Defendant was observed on U.S. Capitol surveillance cameras, social media videos, and media footage attacking law enforcement officers and attempting to unlawfully enter the U.S. Capitol. Two witnesses identified him and he himself admitted to going to the D.C. on the 6th. He has now been indicted by a Grand Jury. The evidence against this Defendant is overwhelmingly strong, and accordingly, the weight of the evidence weighs heavily in favor of detention.

Defendant's History and Characteristics

39. The government recognizes that the Defendant has limited prior contacts with law enforcement. All of which weighs in favor of release. In addition, his steady housing and community connections weigh in favor of release. However, the Defendant's actions, as demonstrated by his apparent willingness to repeatedly engage in assaultive behavior and use of a dangerous weapon as part of a violent mob attacking law enforcement officers, should give this Court great concern about the danger he would pose to the community, if released.

Danger to the Community and Flight Risk

40. The fourth factor, the nature and seriousness of the danger to any person or the community posed by a defendant's release, also weighs in favor of the defendant's detention. The charged offenses involve violent assaultive conduct, and the assaults became more violent and dangerous when the Defendant armed himself with a firecracker inside a small tunnel filled with people, lit it, and threw it at law enforcement. He armed himself and assaulted law enforcement with the intent to unlawfully enter the U.S. Capitol and stop the functioning of our government as it met to certify election results. The danger the Defendant caused by assisting the violent mob cannot be understated. The Defendant was a spoke in the wheel that caused the historic events of January 6, 2021, and he is thus a danger to our society and a threat to the peaceful functioning of our community.

41. JUDD's dangerousness is not limited to his past actions but presents a future threat. 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 knowingly and eagerly engaged in a violent insurrection to occupy the United States Capitol and

abort the certification of a lawful and fair election. 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. However, JUDD's specific conduct aggravated that chaos and danger.

42. The Defendant's highly public and repeated assaults of officers at the Capitol Building and his use of a firecracker as a weapon during the riot, illustrate his danger to the community. The United States submits that the Defendant's lack of respect for the rule of law and his unwillingness to abide by lawful government orders goes directly to his future dangerousness. The D.C. Circuit has recognized that a "Court's finding as to [a defendant's] potential compliance is relevant to the ultimate determination of 'whether there are conditions of release that will reasonably assure ... the safety of any other person and the community.'" *Munchel*, 2021 WL 1149196, at *5; *see also United States v. Hir*, 517 F.3d 1081, 1092-93 (9th Cir. 2008) (explaining that release conditions require "good faith compliance" and that the circumstances of the charged offenses indicate "that there is an unacceptably high risk that [the defendant] would not comply...with the proposed conditions"); *United States v. Tortora*, 922 F.2d 880, 886-90 (1st Cir. 1990). The Defendant's actions established that his own personal beliefs override the rule of law and that he will readily resort to violence to halt the legitimate functions of the United States government with which he disagrees. Such blatant disregard of the law and the valid authority of our government weigh in favor of detention. If JUDD is unwilling to obey orders or to conform his behavior to the law while in full view of many law enforcement officers and a host of cameras, it is unlikely that he would adhere to this Court's directions and release orders, thereby demonstrating his continued dangerousness.

43. The fact that the unique circumstances that arose on January 6, 2021, are unlikely to arise in precisely the same context a second time does not minimize his future dangerousness. In contrast to the defendants in *Munchel*, JUDD's repeated physical attack on officers protecting the Capitol and the people inside it, prove that he poses a threat regardless of the unique circumstances of January 6, 2021. His willingness to arm himself on the 6th with a firecracker and access to weapons generally (he has a concealed carry permit and two firearms were found at his home during the search of his residence), all add the danger he poses to the community if released.

CONCLUSION

WHEREFORE, the United States respectfully requests that the Court grant the government's motion to detain the Defendant pending trial.

Respectfully
submitted,

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