

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

**UNITED STATES OF AMERICA**

**v.**

**CHRISTOPHER WORRELL,  
Defendant.**

:  
:  
:  
:  
:  
:  
:

**No. 21-CR-292 (RCL)**

**UNITED STATES' OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS INDICTMENT AS DEFECTIVE**

The United States of America respectfully submits this opposition to Defendant Christopher Worrell's Motion to Dismiss the Indictment as Defective. Dkt. 45.

Worrell raises three arguments with respect to the indictment. First, he contends that every Count of the indictment is impermissibly vague. Dkt. 45-1 at 4-6. Second, he contends that pepper spray is, as a matter of law and irrespective of the evidence the government puts on at trial, not a "dangerous weapon" under Section 1752(b)(1)(A) or Section 111(b) of Title 18. Dkt. 45-1 at 6-10. Finally, Worrell argues that two groups of counts (Counts One, Two and Five, and Counts Three, Four, and Six) are multiplicitous. Dkt. 45-1 at 10. These arguments are meritless.

**BACKGROUND**

In the days leading up to January 6, 2021, Worrell, a self-avowed member of the Proud Boys, traveled with other members of the Proud Boys to Washington, D.C. Dkt. 13 at 5; Dkt. 9 at 7-12. The morning of January 6, 2021, he moved in coordination with a group of Proud Boys, and surged forward with a crowd of rioters past barricades and onto restricted grounds to confront a line of police officers on the lower west terrace of the U.S. Capitol building. Dkt. 13 at 5; Dkt. 9 at 10. The officers were attempting to hold back the crowd and protect those inside the Capitol. Dkt. 13 at 5. Wearing a tactical vest and communications devices, and armed with

a canister of pepper gel spray, Worrell advanced, shielded himself behind a wooden platform and other protestors, and discharged the gel at the line of officers. Dkt. 13 at 5-6; Dkt. 9 at 9-12. Mere minutes later, the line of officers was breached a few yards from where Worrell had discharged his pepper gel spray, and rioters entered the Capitol. Dkt. 13 at 5; Dkt. 9 at 12.

Worrell is charged by indictment with: (1) Entering or Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (18 U.S.C. § 1752(a)(1), (b)(1)(A)); (2) Disorderly or Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapon (18 U.S.C. § 1752(a)(2), (b)(1)(A)); (3) Engaging in Physical Violence in a Restricted Building or Grounds Using a Deadly or Dangerous Weapon (18 U.S.C. § 1752(a)(4), (b)(1)(A)); (4) Act of Physical Violence in the Capitol Grounds or Buildings (40 U.S.C. § 5104(e)(2)(F)); (5) Civil Disorder (18 U.S.C. § 231(a)(3)); and (6) Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon (18 U.S.C. § 111(a)(1) and (b)). *See* Dkt. 31.

## ARGUMENT

### **I. The Indictment is Not Impermissibly Vague.**

Worrell first argues that the indictment generally “fails to describe in any meaningful way the acts that constitute the offense charged.” Dkt. 45-1 at 9. According to Worrell, the indictment’s counts merely “mirror[] the language of the statute,” without precisely identifying the exact acts that Worrell engaged in that violate those statutes. *Id.* at 5.

Worrell misunderstands the purpose of an indictment and the low bar an indictment must clear to satisfy the federal rules and Constitution. As the D.C. Circuit explained in *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976), “[a]lthough an indictment must in order to fulfill constitutional requirements apprise the defendants of the essential elements of the offense with which they are charged, neither the Constitution, the Federal Rules of Criminal Procedure, nor any

other authority suggests that an indictment must put the defendants on notice as to every means by which the prosecution hopes to prove that the crime was committed.” *Id.* at 124. Indeed, “the validity of an indictment ‘is not a question of whether it could have been more definite and certain.’” *United States v. Verrusio*, 762 F.3d 1, 13 (D.C. Cir. 2014) (quoting *United States v. Debrow*, 346 U.S. 374, 378 (1953)). “While detailed allegations might well have been required under common-law pleading rules, . . . they surely are not contemplated by Rule 7(c)(1), which provides that an indictment ‘shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.’” *Id.* at 110. As a mere notice pleading, an indictment is sufficient if it “contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend.” *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007); *Haldeman*, 559 F.2d at 123 (“The validity of alleging the elements of an offense in the language of the statute is, of course, well established.”). Only in the rare case where “guilt depends so crucially upon . . . a specific identification of fact” not included in the statutory language will an indictment that restates the statute’s language be insufficient. *Haldeman*, 559 F.2d at 125 (quoting *Russell v. United States*, 369 U.S. 749, 764 (1962)).

Applying these principles, courts in this District have upheld the sufficiency of indictments far less specific than Worrell’s. For example, in *United States v. Apodaca*, 275 F. Supp. 3d 123 (D.D.C. 2017), the defendants were charged with offenses under 18 U.S.C. § 924(c). The indictments provided only “general detail as to the places where the offenses were committed: namely, Mexico and the United States.” *Id.* at 154. As to the “when” of the offenses, the indictments alleged that the offenses had occurred over a two- and nine-year period. *Id.* Finally, the indictments “d[id] not specify a particular weapon that was possessed,” or “specify whether

the firearms were ‘used, carried or brandished’” under the statute. *Id.* Nonetheless, the indictments were sufficient.

Here, Worrell does not dispute that all of the elements of each offense are properly alleged in the indictment, which by itself identifies the criminal conduct with which Worrell is charged. And the indictment provides sufficient information to Worrell to fairly inform him of those offenses. Worrell knows the exact day on which the alleged crimes occurred: January 6, 2021, which is alleged in all counts. *See* Dkt. 31. He knows that all charged conduct occurred in this District, from the indictment’s allegation. *Id.* Four of the six Counts specifically refer to conduct on U.S. Capitol grounds, further narrowing the “where” of the charged crimes. Counts Five and Six relate specifically to an existing civil disorder and to a law enforcement officer. Counts One, Two, Three, and Six refer to the specific type of “deadly or dangerous weapon” that Worrell allegedly used or carried: a canister of pepper gel spray. *Id.* And the statutes charged are not so unusually vague that they require allegations beyond the elements of the offenses.

Worrell complains that the indictment does not explain *how* his conduct was “disorderly or disruptive,” nor the “manner” in which he was physically violent, nor “how Mr. Worrell allegedly committed or attempted to” commit a violation of 18 U.S.C. § 231, nor “how Mr. Worrell alleged forcibly assaulted . . . an employee of the United States.” Dkt. 45-1 at 9. But Worrell’s “complaint seems to result . . . from a general misunderstanding of the purpose of the indictment and, especially, from an inflated notion of what must be included therein.” *Haldeman*, 559 F.2d at 124. As the D.C. Circuit concisely explained in rejecting an identical argument in *Verrusio*:

Verrusio contends that Count Two of the indictment failed to allege an official act because it failed to say “how Mr. Verrusio was going to use his position” to help United Rentals . . . . The indictment certainly need not allege precisely how Verrusio contemplated [committing the crime]. Would he do it by himself or ask someone else to do it? Would that someone else be Colonel Mustard or Professor Plum? With a candlestick or a rope, in the library or the study? Answering those questions is not required at the indictment stage.

762 F.3d at 14–15. Worrell’s specificity argument fails.

## **II. Pepper Spray Is A Dangerous Weapon Under Sections 1752(b)(1)(A) and 111(b) of Title 18.**

Worrell is charged in Counts One, Two, and Three with violating paragraphs (1), (2), and (4) of Section 1752(a); each of those Counts also alleges that Worrell “did use and carry a deadly and dangerous weapon, that is, a canister of pepper spray gel,” during the offense under 18 U.S.C. § 1752(b)(1)(A). Dkt. 31 at 1-3. Worrell is charged in Count Six with “using a deadly or dangerous weapon, that is, a canister of pepper gel spray,” to assault, oppose, impede, intimidate, or interfere with a law enforcement officer under Section 111(a)(1) and (b). Worrell contends that the pepper gel spray that he carried and discharged on U.S. Capitol grounds on January 6, 2021 is not a “dangerous weapon” under Section 1752(b)(1)(A) or Section 111(b), and insists that Counts One, Two, Three, and Six<sup>1</sup> be dismissed now, before the government can even put on evidence of pepper spray’s dangerousness.

A “dangerous weapon” for purposes of Sections 111 and 1752—neither of which define the term—is “an object capable of causing serious bodily injury or death to another person,” where the defendant uses the object “in that manner.” *United States v. Arrington*, 309 F.3d 40, 45 (D.C. Cir. 2002 (citation omitted)).<sup>2</sup> Courts have fleshed out the meaning of that phrase in those and other

---

<sup>1</sup> Worrell also claims that Count Four has a dangerous weapon enhancement. It does not. Whether Worrell’s pepper spray gel is a dangerous weapon is irrelevant to whether he committed an act of physical violence under Section 5104(e)(2)(F) of Title 40.

<sup>2</sup> Looking at precedent outside of the Circuit, Chief Judge Howell recently held that a “deadly or dangerous weapon” under Section 111(b) of Title 18 means “any object which, as used or attempted to be used, may endanger the life of or inflict great bodily harm on a person.” *United States v. Klein*, No. CR 21-236 (JDB), 2021 WL 1377128, at \*6 (D.D.C. Apr. 12, 2021) (quoting *United States v. Bullock*, 970 F.3d 210, 215 (3d Cir. 2020) (citing *United States v. Sanchez*, 914 F.2d 1355, 1358-59 (9th Cir. 1990) (collecting cases))). The government views that definition as essentially identical to that used in *Arrington* and the Sentencing Guidelines.

statutes by looking to the definition of that phrase contained in the U.S. Sentencing Guidelines, which defines the term in part as “an instrument capable of inflicting death or serious bodily injury.” U.S.S.G. § 1B1.1 n.1(E). “Serious bodily injury” is defined in the Sentencing Guidelines to mean “injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.” *Id.* § 1B1.1 n.1(M). Worrell agrees that the Sentencing Guidelines provide the appropriate definition of “dangerous weapon” under Sections 1752 and 111. Dkt. 45-1 at 6.

In this case, Chief Judge Howell concluded that pepper spray is a “dangerous weapon” for purposes of the Bail Reform Act, rendering Worrell eligible for detention, at Worrell’s March 19, 2021 detention hearing. *See* Ex. 1 (Tr. of March 19, 2021 Hr’g) at 62-63 (“For purposes of this hearing, the Court does view pepper spray gel, particularly—if the marketing can be believed, a particularly powerful pepper spray gel as a dangerous weapon; it can cause serious bodily injury not only to people who suffer from preexisting conditions, like asthma to make it difficult for them to breathe, but it can cause people who get it in their mouth, their nose, and their eyes to feel very serious stinging and be very uncomfortable unless they can promptly wash it out.”).

Numerous courts have likewise concluded that pepper spray (or “mace”) is a dangerous weapon under the Sentencing Guidelines definition noted above. In *United States v. Neill*, 166 F.3d 943 (9th Cir. 1999), the victim “suffered from exercise-induced asthma controllable with a inhaler after exercising,” and a pepper-spray attack caused “severe asthma attacks for a week after the incident” and thereafter. *Id.* The Ninth Circuit concluded that pepper spray was a “dangerous weapon” under the Guidelines because, as those facts showed, it was capable of causing “serious bodily injury”:

Initially, evidence at trial proved that pepper spray is capable of causing “extreme pain.” [The victim] testified that after being sprayed she felt “like somebody took a match and stuck it up both sides of [her] nostrils ... it was like I was on fire.” Additionally, [the victim’s] testimony proves that pepper spray is capable of causing “protracted impairment of a function of a bodily organ.” [The victim] testified that “I was not able to breath, you know, no air in. A lot of coughing mucus in—in my lungs. Its like your lungs are just being filled up slowly with liquid and you're not able to breathe in because there's no way for the air to come in.” According to [the victim], this condition lasted for days and did not completely abate for two weeks. [The victim] testified that she is currently required to take five asthma relief pills a day for the rest of her life. Such lifelong severe asthma is surely a protracted impairment of a bodily organ, the lungs.

166 F.3d at 949-50.

Similarly, in *United States v. Bartolotta*, 153 F.3d 875 (8th Cir. 1998), the Eighth Circuit concluded that “mace” is a dangerous weapon under the Sentencing Guidelines. The victim in that case “testified that she developed chemical pneumonia as a result of the [mace attack], and that she missed almost two weeks of work. [The victim] had to take daily steroid shots for over four months and steroid pills for one year to cleanse the mace from her system.” *Id.* In *United States v. Melton*, 233 F. App’x 545 (6th Cir. 2007), the court affirmed the district court’s classification of pepper spray as a “dangerous weapon” based on the following effects:

The spray burns the face, nostrils, restricts breathing passages, and causes blindness. Most persons recover from its effects within 20 to 30 minutes, sooner with aid. However, persons with medical problems such as asthma have experienced damage to lungs when exposed to pepper spray.

*Id.* at 547; *see also United States v. Douglas*, 957 F.3d 602, 607 (5th Cir. 2020) (finding that pepper spray is a “dangerous weapon” and noting that “[t]wo victims were treated in a hospital after initial treatment in the prison infirmary, and one victim suffered protracted impairment in his right eye”); *Headwaters Forest Def. v. Cty. of Humboldt*, 240 F.3d 1185, 1199-1200 (9th Cir. 2000) (“pepper spray is designed to cause intense pain, a burning sensation that causes mucus to come out of the nose, an involuntary closing of the eyes, a gagging reflex, and temporary paralysis of the larynx”), *cert. granted, judgment vacated*, 534 U.S. 801 (2001); *cf. United States v. Dukovich*, 11 F.3d 140,

142 (11th Cir. 1994) (tear gas was “dangerous weapon” under Sentencing Guidelines because it can cause “eye pain and a severe headache,” and can cause vomiting, a rash, the loss of breath, or temporary damage to the eyes).

District courts have come to the same conclusion. *See United States v. Krueger*, No. 13-20242, 2013 WL 8584873, at \*2 (E.D. Mich. July 10, 2013) (concluding that pepper spray was dangerous weapon under Sentencing Guidelines); *Logan v. City of Pullman*, 392 F. Supp. 2d 1246, 1261 (E.D. Wash. 2005). Others have similarly concluded that pepper spray is a “dangerous weapon” under similarly-worded state statutes. For example, in *Norris v. Lafler*, No. 04-CV-72176, 2008 WL 786661 (E.D. Mich. Mar. 20, 2008), the district court found reasonable a state court’s conclusion that a combination of tear gas and pepper spray was a “dangerous weapon” under a state statute requiring a “serious injury,” because that combination had caused victims’ “extreme eye pain and burning sensations that required two of them to seek medical treatment,” one victim “need[ed] glasses to read and ha[d] blurred vision in his left eye” and cornea defects as a “result of being sprayed,” and another could not wear contact lenses for a month. *Id.* at \*8-9.

Several of these cases, in concluding that pepper spray is a dangerous weapon, noted that pepper spray had in fact caused serious bodily injury to the victims in those cases. Worrell, reviewing these cases, complains that the government, in the indictment, did not “produce a victim or any evidence that any individual was hit by the pepper gel spray.” Dkt. 45-1 at 9.

But that complaint evidences Worrell’s misunderstanding of the definition of a “dangerous weapon,” which infects his motion. It is true that some cases have emphasized the actual serious injuries suffered by victims of pepper-spray attacks, for those actual injuries are plainly *sufficient* to show that pepper spray is a dangerous weapon. But such injuries are not *necessary*. As the Sentencing Guidelines, D.C. Circuit case law, and text of Sections 1752(b)(1)(A) and 111(b) make



clear, the government need not show serious bodily injury—or even that the victim was touched by the dangerous weapon—in a particular case. The Guidelines and this Circuit’s *Arrington* case make this point obvious by stating that a weapon is dangerous if it is merely “*capable*” of inflicting “serious bodily injury” in the way it was used, even if it did not in fact do so. U.S.S.G. § 1B1.1 n.1(E) (emphasis added); *Arrington*, 309 F.3d at 45. Section 1752(b), meanwhile applies an enhancement to anyone who “uses *or carries* a . . . dangerous weapon” during and in relation to the offense. 18 U.S.C. § 1752(b)(1)(A) (emphasis added). By separately criminalizing the mere carrying of a “dangerous weapon,” the statute makes abundantly clear that a weapon can be dangerous under Section 1752 without ever having been used at all in the instant offense, much less without having hit a victim or caused serious bodily injury.<sup>3</sup> Finally, Section 111(b) states that a defendant will receive that subsection’s enhanced penalty if he “uses a . . . dangerous weapon . . . *or* inflicts bodily injury,” which presupposes that a defendant can use a dangerous weapon without causing bodily injury. 18 U.S.C. § 111(b).<sup>4</sup> That the government need not show contact with a victim is even more apparent in other contexts. A court would have no trouble concluding that a defendant used a dangerous weapon if a defendant drove a car directly at a law enforcement officer, even if the officer jumped away with just a few scratches (or if a defendant shot at a victim,

---

<sup>3</sup> Unlike Section 1752(b)(1)(A), Section 111(b) only applies if the defendant “uses” the dangerous weapon. 18 U.S.C. § 111(b). Thus, while a canister of pepper spray (like a firearm) may be a “dangerous weapon” under Section 1752(b)(1)(A) and Section 111(b) even if never used, the defendant could only be convicted of the latter Section 111(b) charge if he used the pepper spray in a way that it is dangerous (e.g., by discharging it).

<sup>4</sup> The enhanced penalty provision in Section 1752(b) operates similarly: it applies to the defendant’s use or carrying of a dangerous weapon *or* where the “the offense results in significant bodily injury.” 18 U.S.C. § 1752(B)(1)(B). That further makes clear that significant bodily injury is not required to show that the defendant used or carried a dangerous weapon, as otherwise the significant bodily injury provision would be superfluous.

but missed). Worrell’s case is logically indistinguishable. Thus, as long as the type of pepper spray used by Worrell *can* cause serious bodily injury, it is a dangerous weapon.

The cases cited earlier make clear that pepper spray can do so, and so is a dangerous weapon, for three reasons. First, it is capable of causing an “injury involving extreme physical pain”—typically extreme burning pain in the eyes, nose, throat, or lungs—as the Ninth Circuit held in *Neill*. 166 F.3d at 949 (“pepper spray is capable of causing ‘extreme pain’”). Second, pepper spray can cause “protracted impairment of a function of a bodily member [or] organ,” as evidenced by the “lifelong severe asthma” suffered by the victim in *Neill*, 166 F.3d at 950 (finding that to be “surely a protracted impairment of a bodily organ, the lungs”), the “chemical pneumonia” that forced the victim in *Bartolotta* to miss two weeks of work and receive treatment for a year, 153 F.3d at 879, the “blurred vision” and cornea defects suffered by the victim in *Norris*, 2008 WL 786661 at \*8, or the sustained vision impairment in *Douglas*, 957 F.3d at 604. Finally, pepper spray can require “medical intervention,” such as the doctor’s visit and prescriptions in *Neill*, the steroid shots and pills in *Bartolotta*, or the medical treatment in *Norris* and *Douglas*.

As Worrell notes, two courts have held that mace or pepper spray does not constitute a “dangerous weapon,” but those cases actually underscore a separate reason why Worrell’s argument cannot succeed at this stage as a matter of law. Those courts’ holdings were specifically tied to the *evidence* of dangerousness put on by the government in those cases. Thus, in *United States v. Harris*, 44 F.3d 1206 (3d Cir. 1995), the Court concluded that, by sentencing, some of the government’s evidence of dangerousness—a competitor’s pamphlet describing a different type of mace—“lacked sufficient indicia of reliability,” and that the government otherwise had offered only the product’s promotional literature, which was insufficient to establish that mace was a dangerous weapon. *Id.* at 1216. Similarly, in *United States v. Perez*, the case on which Worrell

primarily relies, the Court noted that “the evidentiary record is silent as to the form or nature of the pepper spray, its chemical composition, the strength or concentration of the active agent, the size of the can, whether the spray mechanism was functional, or the distance or velocity the mechanism was designed to achieve” and that the government did not “present any evidence on the dangerousness of pepper spray generally” before the district court. 519 F. App’x 525, 527-28 (11th Cir. 2013). The government had relied exclusively on the brand name of the canister and a warning on its label. *Id.* at 528.

But neither of those cases was decided on a motion to dismiss the indictment before trial, and neither suggests that the government was required to allege detailed, extensive facts about a dangerous weapon in the charging instrument. Those cases instead hold only that if the government offers essentially no *evidence* of pepper spray’s dangerousness other than marketing materials—not even the evidence in the factual records of cases like those cited above—it may fail to qualify as a dangerous weapon. But that can only be determined after the government puts on its evidence. Worrell seems to agree, stating that “[f]inding pepper spray to be a dangerous weapon require a case-specific factual showing,” and requesting “evidence” from the government. Dkt. 45-1 at 6, 9. Thus, to the extent they are relevant at all, *Harris* and *Perez* imply that the dangerousness question should be evaluated by the jury or judge after the government puts on its evidence. Neither *Harris* nor *Perez* (nor any other case cited by Worrell) provides any support for the idea Worrell espouses in his motion: that the Court can dismiss, at the indictment stage, a charge with a dangerous-weapon enhancement on the ground that the government has not alleged in the indictment all the detailed factual proof of that weapon’s dangerousness.

### III. The Indictment's Counts Are Not Multiplicitous.

Citing no case law, Worrell also briefly asserts that the indictment's counts are multiplicitous. Dkt. 45-1 at 10. Specifically, Worrell argues that Counts One, Two and Five are multiplicitous with one another, and that Counts Three, Four, and Six are multiplicitous with one another. *Id.* Worrell is wrong, and obviously so.

A defendant may be convicted of and sentenced under different statutory provisions for multiple offenses arising out of the same single act or course of conduct so long as Congress authorized the imposition of such multiple punishments. *See United States v. McLaughlin*, 164 F.3d 1, 8 (D.C. Cir. 1998) (“If the legislature intends to impose multiple punishment, imposition of such sentences does not violate Double Jeopardy.”). “To determine multiplicity *vel non*, courts generally apply the *Blockburger* test: ‘[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not,’ i.e., whether either is a lesser included offense of the other.” *United States v. Mahdi*, 598 F.3d 883, 888 (D.C. Cir. 2010) (quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999), and *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). If the two offenses each require proof of a fact the other does not, then the charges are not multiplicitous. *Id.* at 890.<sup>5</sup> The *Blockburger* “test focuses on the statutory elements of the offense, not on the proof offered in a given case.”

---

<sup>5</sup> On the other hand, if two offenses fail the *Blockburger* test—because one is a lesser-included offense of the other—that is not the end of the inquiry. In that scenario, the “*Blockburger* test . . . provides only a canon of construction, not a ‘conclusive presumption of law,’ *id.* at 888 (quoting *Garrett v. United States*, 471 U.S. 773, 779 (1985)), because there “‘is nothing in the Constitution which prevents Congress from punishing separately each step leading to the consummation of a transaction which it has power to prohibit and punishing also the completed transaction.’” *Id.* (quoting *Garrett*, 471 U.S. at 779) (emphasis in original). Here, the offenses clearly each require proof of a fact the others do not, so it is not necessary to conduct this further analysis.

*United States v. McLaughlin*, 164 F.3d 1, 8 (D.C. Cir. 1998). Thus, it is irrelevant whether there is significant overlap in the factual proof of each count at trial, or even whether two counts “are based upon the exact same set of facts and circumstances,” as long as each count’s elements require proof of a fact that the others do not. *United States v. Manafort*, 313 F. Supp. 3d 311, 314 (D.D.C. 2018); *see id.* (“[T]he test for multiplicity is not whether two counts are based on the same set of facts; rather, it is whether the statutory elements of the two offenses are the same.”).

Here, Worrell’s multiplicity arguments fail because each of the offenses charged in the indictment “requires proof of a fact which the other does not.” *Blockburger*, 284 U.S. at 304. Indeed, these are not close questions—which is likely why Worrell spends but a page on the argument, does not even attempt to evaluate or analyze the statutes’ elements, and cites nothing to support his claim. Many of the Counts require proof of multiple facts not required by the other Counts, and all require proof of at least one. Thus, the indictment satisfies *Blockburger*.

***Counts One, Two, and Five.*** Count One charges a violation of Sections 1752(a)(1) and (b)(1)(A) of Title 18, which applies to a defendant who “knowingly enters or remains in any restricted building or grounds without lawful authority to do so” while “us[ing] or carr[ying] a deadly or dangerous weapon.” 18 U.S.C. § 1752(a)(1), (b)(1)(A). The elements of that offense, as charged here with the dangerous weapon enhancement, are:

- 1) The defendant entered or remained in a restricted building or grounds as defined in 18 U.S.C. § 1752(c);
- 2) The defendant did so knowingly;
- 3) The defendant had no lawful authority to do so;
- 4) The defendant used or carried a deadly or dangerous weapon during and in relation to the offense.

Count Two charges a violation of Sections 1752(a)(2) and (b)(1)(A), which applies to a defendant who “knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engages in disorderly or disruptive conduct in, or within

such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions,” while “us[ing] or carr[ying] a deadly or dangerous weapon.” 18 U.S.C. § 1752(a)(2), (b)(1)(A). The elements of that offense, as charged here with the dangerous weapon enhancement, are:

- 1) The defendant engaged in disorderly or disruptive conduct;
- 2) The defendant did so knowingly;
- 3) The conduct was in, or within such proximity to, a restricted building or grounds as defined in 18 U.S.C. § 1752(c);
- 4) It was done when, or so that, such conduct in fact impeded or disrupted the orderly conduct of government business or official functions;
- 5) The defendant used or carried a deadly or dangerous weapon during and in relation to the offense.

Count Five charges a violation of Section 231(a)(3) of Title 18, which applies to a defendant who “commits . . . any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function.” 18 U.S.C. § 231(a)(3). As relevant here, the elements of that offense are:

- 1) The defendant knowingly committed an act with the intended purpose of obstructing, impeding, or interfering with one or more law enforcement officers;
- 2) At the time of the defendant’s act, the law enforcement officer or officers were engaged in the lawful performance of their official duties incident to and during a civil disorder; and
- 3) That such civil disorder in any way or degree obstructed, delayed, or adversely affected the performance of a federally protected function.

These three counts are not multiplicitous. Count One requires proof that the defendant was “without lawful authority” to be in any restricted building or grounds (element 3 of Count One). Neither Count Two nor Count Five requires proof of that fact. Elements 1 and 4 of Count One also require facts that Count Five does not: a defendant can violate Section 231 (Count Five)

without being in a restricted building or grounds and without carrying a deadly or dangerous weapon.

Count Two, meanwhile, requires proof that the defendant engaged in “disorderly or disruptive conduct” (element 1 of Count Two), which neither Count One nor Count Five requires. Count Two also requires proof that the defendant’s conduct “in fact impede[d] or disrupt[ed] the orderly conduct of government business or official functions” (element 4 of Count Two), which Counts One and Five do not. Finally, elements 3 and 5 of Count Two require facts that Count Five does not: a defendant can violate 18 U.S.C. § 231 without being “in” or “within such proximity to” any restricted building or grounds; and without carrying a deadly or dangerous weapon.

Finally, each of Count Five’s elements require proof of facts that are not required to prove Counts One or Two. That is, the government could prove a violation of both Section 1752(a)(1) and (a)(2) without proving that the defendant obstructed, impeded, or interfered with a law enforcement officer; that the officer was engaged in their official duties; that there was a civil disorder; or that the civil disorder affected the conduct or performance of any federally protected function. Counts One, Two, and Five are therefore not multiplicitous of one another.

Worrell complains that the charges all “seemingly refer to Mr. Worrell’s alleged presence at the Capitol Grounds on January 6.” Dkt. 45-1 at 10. But that simply assumes what evidence the government will use at trial to prove those three Counts. Moreover, both Counts Two and Five plainly require proof of more than mere “alleged presence” on Capitol grounds. In any event, Worrell misunderstands that the *Blockburger* multiplicity analysis refers to the elements of the offenses, not whether a single act could violate multiple statutes. The very premise of *Blockburger* and its progeny is that the “same act or transaction”—here, Worrell’s presence and violence at the Capitol Grounds—can form the basis of multiple criminal charges so long as each Count requires

proof of a fact that the others do not. *Mahdi*, 598 F.3d at 888; *Manafort*, 313 F. Supp. 3d at 314 (counts can be “based upon the exact same set of facts and circumstances,” if *Blockburger* is satisfied). That Worrell’s conduct on January 6, 2021 has led to multiple related charges is unsurprising and utterly ordinary in a criminal case.

***Counts Three, Four, and Six.*** Count Three charges a violation of Sections 1752(a)(4) and (b)(1)(A) of Title 18, which applies to a defendant who “knowingly engages in any act of physical violence against any person or property in any restricted building or grounds” while “us[ing] or carr[ying] a deadly or dangerous weapon.” 18 U.S.C. § 1752(a)(4), (b)(1)(A). The elements of that offense, as charged here with the dangerous weapon enhancement, are:

- 1) The defendant engaged in an act of physical violence against any person or property;
- 2) The defendant did so knowingly;
- 3) The defendant did so in a restricted building or grounds as defined in 18 U.S.C. § 1752(c);
- 4) The defendant used or carried a deadly or dangerous weapon during and in relation to the offense.

Count Four charges a violation of Section 5104(e)(2)(F) of Title 40, which applies to a defendant who “willfully and knowingly. . . (F) engage[s] in an act of physical violence in the Grounds or any of the Capitol Buildings.” 40 U.S.C. § 5104(e)(2)(F). The elements of that offense are:

- 1) The defendant engaged in an act of physical violence;<sup>6</sup>
- 2) The defendant did so willfully and knowingly;
- 3) The defendant did so in the Grounds or any of the Capitol Buildings;

Count Six charges a violation of Section 111(a)(1) of Title 18, which applies to a defendant who “forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any [law

---

<sup>6</sup> “Act of physical violence” is defined in Section 5104(a)(1) to mean “any act involving— (A) an assault or other infliction or threat of infliction of death or bodily harm on an individual; or (B) damage to, or destruction of, real or personal property.”



enforcement officer under 18 U.S.C. § 1114] while engaged in or on account of the performance of official duties.” 18 U.S.C. § 111(a)(1). The indictment further alleges that Worrell’s conduct “involve[d] physical contact with the victim . . . or the intent to commit another felony,” Dkt. 31 at 4, and that Worrell committed the offense “using a deadly or dangerous weapon,” *id.* at 3. With those enhancements, the elements of that offense are:

- 1) The defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with a designated federal officer;
- 2) The defendant did so forcibly;
- 3) The defendant did so while the designated federal officer was engaged in, or on account of, the performance of official duties;
- 4) The defendant intended to commit these acts;
- 5) The defendant’s commission of these acts involved physical contact or the intent to commit another felony;
- 6) The defendant used a deadly or dangerous weapon in the commission of these acts;
- 7) The defendant used the deadly or dangerous weapon intentionally.

*See United States v. Arrington*, 309 F.3d 40, 44 (D.C. Cir. 2002).

Based on the foregoing elements, Counts Three, Four, and Six are not multiplicitous, because each requires proof of a fact that the other two do not. Thus, Count Three requires that the defendant have acted “in any restricted building or grounds,” which neither Count Four nor Count Six requires. (Count Four requires that the defendant have acted on Capitol Grounds or in Capitol Buildings, but that is not sufficient to prove that that portion of the Capitol Grounds was a “restricted building or grounds” (as that phrase is defined in Section 1752(c)) at that time.) Count Three also requires, unlike Count Four, that the defendant have carried or used a deadly or dangerous weapon.<sup>7</sup>

---

<sup>7</sup> To be clear, given that each count plainly requires proof of at least one fact the others do not, the government does not in this opposition set out a full list of potential distinctions between all of the statutes charged in Counts One through Six—such as whether an act of “physical violence” under Sections 1752(a)(4) and 5104(e)(2)(F) requires proof beyond that necessary to satisfy Section 111(a)(1).

Count Four requires proof that the defendant acted “willfully” (element 2 of Count Four), and in the Grounds or in any of the Capitol Buildings (element 3 of Count Four). Neither Count Three nor Count Six requires proof of either fact. (Again, Count Three does require proof that the defendant have acted in a “restricted building or grounds,” but that phrase is not limited to the Capitol; it relates to, *inter alia*, any building or grounds “where the President or other person protected by the Secret Service is or will be temporarily visiting.” 18 U.S.C. § 1752(c)(1)(B). Thus, Count Three does not require proof that the events occurred on U.S. Capitol grounds.)

Finally, Count Six requires several elements required by neither Count Three or Four. Most obviously, Count Six requires that the target be a “person designated in Section 1114 of [Title 18],” which is not true of either Count Three or Four, both of which could be charged for violence against any victim or, indeed, against property. Count Six also requires that the conduct involve either physical contact or the intent to commit another felony, while neither is required by Count Three or Four. Thus, Counts Three, Four, and Six are also not multiplicitous.

Again, Worrell’s complaint that these counts appear to relate to “only a single act of violence,” Dkt. 45-1 at 10, misunderstands *Blockburger*. A single act of violence frequently results in multiple punishments, and that is entirely permissible so long as application of the *Blockburger* test (or other indicia of congressional intent) make clear Congress’s intent to permit such multiple punishment. That is so here, and so Worrell’s multiplicity complaint fails.

**CONCLUSION**

For the foregoing reasons, the Government respectfully requests that Worrell's Motion to Dismiss the Indictment be denied.

Respectfully submitted,

CHANNING D. PHILLIPS  
Acting United States Attorney  
D.C. Bar No. 415793

/s/ William Dreher  
WILLIAM DREHER  
D.C. Bar No. 1033828  
Assistant United States Attorney (Detailed)  
700 Stewart Street, Suite 5220  
Seattle, WA 98101  
(206) 553-4579  
william.dreher@usdoj.gov

# Exhibit 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\* \* \* \* \*

UNITED STATES OF AMERICA,	)	Criminal Action
	)	Case No. 21-MJ-296
vs.	)	
	)	
CHRISTOPHER JOHN WORRELL,	)	March 19, 2021
	)	9:58 a.m.
Defendant.	)	Washington, D.C.
	)	

\* \* \* \* \*

**TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE BERYL A. HOWELL,  
UNITED STATES DISTRICT COURT CHIEF JUDGE**

**APPEARANCES:**

FOR THE GOVERNMENT: WILLIAM DREHER  
U.S. Attorney's Office  
700 Stewart Street  
Seattle, WA 98101  
(206) 553-4579  
Email: william.dreher@usdoj.gov

FOR THE DEFENDANT: JOHN M. PIERCE, PRO HAC VICE  
Pierce Bainbridge P.C.  
355 South Grand Avenue, 44th Floor  
Los Angeles, CA 90071  
(213) 262-9333  
Email: jpierce@piercebainbridge.com

ROBERT LEE JENKINS, JR.  
1010 Cameron Street  
Alexandria, VA 22314  
(703) 309-0899  
Email: rjenkins@bynumandjenkinslaw.com

ALSO PRESENT: CHRISTINE SCHUCK, Pretrial Agent

Court Reporter: Elizabeth Saint-Loth, RPR, FCRR  
Official Court Reporter

***This hearing was held via videoconference and telephonically  
in compliance with the COVID-19 pandemic  
stay-safer-at-home recommendations and is therefore subject to  
the limitations associated with the use of technology.***

Proceedings reported by machine shorthand, transcript  
produced by computer-aided transcription.

**P R O C E E D I N G S**

THE COURTROOM DEPUTY: Matter before the Court,  
Magistrate Case No. 21-296, United States of America versus  
Christopher John Worrell.

Counsel, please state your names for the record,  
starting with the government.

MR. DREHER: Good morning, Your Honor.  
William Dreher for the United States.

THE COURT: Yes. Good morning, Mr. Dreher.

MR. PIERCE: Good morning.

MR. JENKINS: Good morning, Your Honor.

May it please the Court, Robert Jenkins and John  
Pierce on behalf of the defendant who is appearing by video.

THE COURT: All right. Thank you.

Mr. Worrell, do you have any difficulty hearing  
what's going on today?

THE DEFENDANT: No, ma'am.

THE COURT: Okay.

So this hearing is being held remotely with  
counsel and the defendant, Mr. Worrell, participating via  
videoconference.

Mr. Worrell, do you agree, after consultation with  
counsel, to participate in the hearing this morning remotely  
without being physically present here in the courtroom in  
Washington, D.C.?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right.

3 I would like to remind anyone listening to this  
4 hearing over the public teleconference line that, under my  
5 standing order, recording and rebroadcasting of court  
6 proceedings, including those held by videoconference, is  
7 strictly prohibited by judicial conference policy and the  
8 Federal Rules of Criminal Procedure. Violation of these  
9 prohibitions may result in sanctions, including removal of  
10 court-issued media credentials, restricted or denial of  
11 entry to future hearings, or any other sanctions deemed  
12 necessary by the presiding judge.

13 All right. So we're here on the government's  
14 request for review of a magistrate judge's release order;  
15 that release order was entered from my recollection -- I am  
16 getting so many of them -- I think it's the Middle District  
17 of Florida.

18 Is that correct, Mr. Dreher?

19 MR. DREHER: That's correct, Your Honor.

20 THE COURT: So in connection with the hearing this  
21 morning for review of that release order, I have received  
22 and reviewed, of course, the government's motion asking for  
23 a stay of the release order and its review.

24 I have reviewed the complaint in the case,  
25 docketed at ECF 1; the government's memorandum in support of

1 its motion for review of the release order, docketed at ECF  
2 No. 9. I have also looked at various items that were placed  
3 on the Middle District of Florida docket including the  
4 pretrial services report, an initial appearance summary, and  
5 the order entered by the magistrate judge in the Middle  
6 District of Florida setting the conditions of release. So  
7 those are all of the things I've looked at.

8 So if counsel wants to refer to something other  
9 than those, they have got to point me to them if something  
10 else is pertinent.

11 And I understand that Mr. Worrell has waived a  
12 preliminary hearing in the case. Is that right, Mr. Dreher?

13 MR. DREHER: Yes. That's correct, Your Honor.

14 THE COURT: All right. So his next appearance in  
15 court, other than this hearing, would be before a magistrate  
16 judge in this court for what purpose?

17 MR. DREHER: For an initial appearance and to,  
18 sort of, set a next date, either a status conference --

19 THE COURT: All right. But not for a preliminary  
20 hearing? I just want to make sure I understand the status.  
21 Is that correct?

22 MR. DREHER: That's correct.

23 What I was informed of by the AUSA in the Middle  
24 District of Florida is that there was a complete waiver of  
25 the preliminary hearing, both in the arresting district and



1 in Washington, D.C.

2 THE COURT: Okay. And so who is going to be  
3 speaking this morning on behalf of Mr. Worrell, Mr. Pierce  
4 or Mr. Jenkins?

5 MR. PIERCE: Your Honor, this is John Pierce. I  
6 will be speaking on behalf of Mr. Worrell.

7 THE COURT: Okay. So, Mr. Pierce, is that  
8 correct, a complete waiver of the preliminary hearing?

9 MR. PIERCE: Yes. That is correct.

10 THE COURT: All right.

11 Okay. So let me just start this morning with the  
12 government since it is the government's motion.

13 So the charges against Mr. Worrell under 18 U.S.C.  
14 1752(a)(1), (2), and (4) are all enhanced to a felony rather  
15 than a misdemeanor because of the use of the deadly or  
16 dangerous weapon.

17 So I just want to start with the question of  
18 whether the pepper spray gel that was allegedly used by  
19 Mr. Worrell is the dangerous weapon that the government is  
20 relying on for the felony charges under 1752. Is that  
21 correct?

22 MR. DREHER: That's correct, Your Honor.

23 THE COURT: And I appreciate that you listed a  
24 number of cases where pepper spray gel has been deemed a  
25 dangerous weapon; and I appreciate that. But has that

1 particular legal issue ever been decided in this Circuit?

2 MR. DREHER: So I have not -- I have not found a  
3 case on point in this Circuit, Your Honor, addressing that  
4 particular question.

5 I am aware that there was at least one prior case  
6 in which it was charged by the office of -- the U.S.  
7 Attorney's Office of D.C., but I am not aware of whether  
8 that case was actually adjudicated or not.

9 THE COURT: Okay. I mean, I just want to make  
10 sure I identify what legal issues have some precedent but  
11 outside the Circuit versus in the Circuit.

12 The government's memo, in footnote 4, says that a  
13 canister of Sabre Red maximum strength pepper gel was  
14 recovered from the defendant's residence. Was that pepper  
15 gel can a new one or is that one that had been used; or does  
16 the government know yet?

17 MR. DREHER: I do not. The government doesn't  
18 know at this point whether that one had been discharged or  
19 whether it's a new canister.

20 THE COURT: And is the Sabre Red maximum strength  
21 pepper gel the same type that is depicted in the photographs  
22 of the defendant on January 6th during the mob violence at  
23 the Capitol?

24 MR. DREHER: The government believes so, Your  
25 Honor. So the affiants in the Statement of Facts in support

1 of the complaint show a photo comparison between a zoomed-in  
2 photo that is a little blurry of the pepper spray or,  
3 rather, a canister that was on Mr. Worrell's tactical  
4 vest -- to a photograph of that brand, Sabre brand, maximum  
5 strength pepper gel spray. And based on the lettering, the  
6 colors, and all of the features of the -- that are depicted  
7 in both photos, the government does believe that, yes, that  
8 seems to -- in the government's view, to be clearly the  
9 brand that was used on that day, which was then corroborated  
10 by the fact that the very same brand was found within  
11 Mr. Worrell's home during the search.

12 MR. PIERCE: I think I can shed some light on  
13 that, Your Honor --

14 THE COURT: Actually, why don't you just wait your  
15 turn.

16 MR. PIERCE: No problem, Your Honor.

17 THE COURT: So let me just -- I mean, I have never  
18 heard of pepper spray gel. I have heard of pepper spray.  
19 So are you prepared to tell me what -- is there a difference  
20 between a pepper spray gel and a pepper spray; and, if so,  
21 what's the difference?

22 MR. DREHER: So I confess I am also not an expert  
23 necessarily in the difference between those two.

24 But my understanding is that pepper spray gel is  
25 essentially -- rather than spraying outward in a cloud is

1 directed in more like a stream. And so in its marketing,  
2 this particular pepper spray gel is marketed as being  
3 essentially more precise and less likely to lead to blow  
4 back from, for example, wind or things like that that might  
5 interfere with -- that might affect the user if you are  
6 using pepper spray.

7 THE COURT: I see. So it's safer for the user to  
8 use without getting back spray from the pepper gel and  
9 targeted to the target; is that right?

10 MR. DREHER: Exactly. And it's more likely to be  
11 targeted; that's right.

12 THE COURT: I see. Okay.

13 So the government's memo says that the pepper  
14 spray gel is marketed as 67 times more powerful than hot  
15 sauce; and it goes on to say that the pepper spray gel that  
16 the defendant used is marketed by its manufacturer as having  
17 double the average strength of other pepper sprays and  
18 providing maximum stopping power.

19 So since I have to make the legal decision that --  
20 at least as an initial matter, of whether this pepper gel is  
21 a dangerous weapon, could you describe what the effect of  
22 what pepper spray gel is, so -- and why, in the government's  
23 view, it amounts to a dangerous weapon?

24 It's certainly not deadly. I think you'd agree  
25 it's not a deadly weapon, right?

1 MR. DREHER: I think that's right in the sense  
2 that -- in terms of the distinction between deadly and  
3 dangerous. The definition under the sentencing guidelines  
4 of what constitutes a dangerous weapon encompasses weapons  
5 that have the ability to induce serious injury.

6 So what some of the case law talks about, when  
7 describing why pepper spray or, in this case, pepper spray  
8 gel can be or is a dangerous weapon is because it has the  
9 ability to induce, for example -- this is among the more  
10 common incidents -- to essentially bring on asthma attacks  
11 for individuals that have underlying conditions or other  
12 types of respiratory effects on individuals who have  
13 underlying conditions that are more susceptible to those  
14 types of attacks.

15 So it's not necessarily that every user who is  
16 sprayed with pepper spray results -- ends up having serious  
17 injury but, rather, that pepper spray and pepper spray gel  
18 do have the ability to induce those kind of serious injuries  
19 and has done so in several cases, including in some of these  
20 reported decisions.

21 THE COURT: And so other -- does it have no effect  
22 on people who don't have these underlying conditions or some  
23 effect? And, if so, what's the effect?

24 MR. DREHER: So the government's understanding is  
25 that the effects -- typically for these types of weapons is

1 a temporary effect during the day of -- or during the  
2 incident of essentially making it more difficult for  
3 orientation, making it more difficult for the intended  
4 target to see, because it effects the ability of the user --  
5 I'm sorry -- of the target to see if the spray or the gel  
6 gets in the eyes or in the nasal cavity. It can effect  
7 their ability to breathe. So the government --

8 THE COURT: Does it have -- leave a burning  
9 sensation or --

10 MR. DREHER: Yes.

11 THE COURT: -- or an uncomfortable sensation,  
12 or -- what's the effect?

13 MR. DREHER: Yes. There is a burning sensation  
14 associated with that through the ingredients in these common  
15 brands of pepper spray and pepper spray gel. So it can be a  
16 burning in the eyes; it could be burning in the mouth or  
17 nose depending on where the spray or the gel ends up.

18 And so there is significant, for example, footage  
19 from actually January 6th of the line of law enforcement  
20 officers who are on that west plaza in front of the  
21 United States Capitol where officers are routinely -- at any  
22 time between half a dozen or more than a dozen officers are  
23 leaving the line to go to the back of the line where there  
24 are water bottles and dousing their eyes or their faces with  
25 water bottles in an attempt to relieve the stinging from the

1 various sprays, including pepper spray, I believe, used by  
2 law enforcement that are -- that were being exchanged back  
3 and forth at the line that day. So, yes, those are the  
4 intended and common effects of the pepper spray, is that  
5 burning sensation in the eyes.

6 THE COURT: I see. Well, that was going to lead  
7 to my next question which is -- because I don't think it was  
8 in your brief -- that police on the west Capitol plaza where  
9 this was allegedly occurring suffered from the effects of  
10 pepper spray?

11 MR. DREHER: Yes, Your Honor. That's correct.

12 THE COURT: All right.

13 MR. DREHER: And I apologize if that was not --

14 THE COURT: I might have missed it; but I was  
15 going to ask you about whether there is any evidence that  
16 the police in that line -- in the photographs that appeared  
17 to be the target of the defendant's spraying of the gel  
18 indicated or reported any effects from pepper gel or pepper  
19 spray.

20 MR. DREHER: So I don't think that the government  
21 is aware yet of any evidence from that particular line  
22 that's photographed -- I shouldn't say that "line" -- the  
23 first few officers that appear in that photograph of the  
24 line, that any of them in particular reported those effects.

25 But what the government can say is that simply

1 from reviewing the body cam footage of the officers -- and  
2 obviously some -- many of those officers on that front line  
3 did not have a body cam -- do not have body cam footage.

4 THE COURT: Is that because they were Capitol  
5 police officers rather than MPD officers?

6 MR. DREHER: Yes. Correct, Your Honor.

7 So when the MPD officers arrive on the scene --  
8 which happened largely between 1:00 p.m. and 1:30 p.m. that  
9 afternoon -- from review of that footage, that's where you  
10 can see essentially at any given time, you know, around four  
11 to ten or more officers behind the lines and, sort of,  
12 rotating in and out of the lines -- being told to rotate out  
13 of the lines in order to pour cold water on their eyes or on  
14 their faces or talking directly to one another about the  
15 stinging in their eyes.

16 Now what the government doesn't -- I just don't  
17 want to -- the government is not specifically aware of any  
18 individual -- for example, an officer who was stationed or  
19 he was present, you know, sort of, at that moment close to  
20 where there are -- Mr. Worrell's pepper spray gel was  
21 discharged who then reported being hit by pepper spray gel.  
22 We are not yet aware of that type of a report from an  
23 officer; but we haven't conducted interviews with all of  
24 those officers at this time yet.

25 THE COURT: So the investigation is continuing on



1       that score?

2               MR. DREHER: That's correct.

3               THE COURT: All right.

4               All right. So the government is seeking pretrial  
5 detention under 3142(f)(1)(A) or (e) but not 3142(f)(1)(A)  
6 [sic] for a case involving a crime of violence. And I just  
7 wanted to ask you whether it's the government's position  
8 that a charge under 1752(a)(4), which the defendant is  
9 charged with -- knowingly engaging in any act of physical  
10 violence against any person or property in a restricted  
11 building or grounds -- is that not a crime of violence, and  
12 is that why you are not seeking detention under  
13 3142(f)(1)(A) for a crime of violence?

14              MR. DREHER: So I think that that is a closer  
15 question, Your Honor, just given the approach to determining  
16 what qualifies as a crime of violence, and obviously the  
17 relatively strict categorical approach that applies in  
18 defining that.

19              THE COURT: Well, and that's, I guess -- you know,  
20 there are two provisions to the definition of crime of  
21 violence; there is the elements clause, the residual clause.

22              I know the U.S. Attorney's Office is shying away  
23 from using the residual clause even though there is another  
24 circuit -- the Second Circuit has said it's perfectly  
25 appropriate to rely as a constitutional matter on the

1 residual clause in the context of the Bail Reform Act.

2 But putting that aside, why is it -- is it the  
3 government's position that even under the elements clause of  
4 crime of violence that 1752(a)(4) doesn't qualify? I just  
5 want to be clear --

6 MR. DREHER: And I understand, Your Honor.

7 THE COURT: -- or are you just following  
8 directions and being told: Just don't rely on crime of  
9 violence altogether?

10 MR. DREHER: I think the answer would be that, no,  
11 I don't think the government necessarily does not think that  
12 it is a crime of violence. But, as Your Honor indicated, we  
13 are not relying on that here in these preliminary papers.  
14 But I am happy to submit additional post-hearing, sort of,  
15 briefing on that question just to clarify the government's  
16 position.

17 THE COURT: No. That's all right. I mean, I  
18 think you have got plenty with the reliance on 18 U.S.C.  
19 Section 3142(f)(1)(E).

20 But let's turn to the second basis that the  
21 government is also seeking pretrial detention, under  
22 3142(f)(2)(B), because the defendant poses a serious risk of  
23 obstruction. And, of course, under that prong of the Bail  
24 Reform Act the government has to just establish that there  
25 is some risk that the defendant may engage in obstructive

1       conduct or intimidate or threaten prospective witnesses.

2               So could you just summarize your evidence on that  
3       ground for pretrial detention?

4               MR. DREHER: Yes, Your Honor. Happy to do so.

5               So the first incident in this case -- the first  
6       contact between law enforcement and Mr. Worrell after  
7       January 6th came on January 18th when Mr. Worrell was  
8       interviewed by the FBI agents outside of his residence about  
9       the incident on January 6th.

10              That interview happened because of a tip that had  
11       been submitted to the FBI indicating that someone had both  
12       been told that Mr. Worrell had traveled to Washington, D.C.,  
13       and participated in the riot at the Capitol and, also, had  
14       seen a Facebook video uploaded by the user of Mr. Worrell's  
15       Facebook account of Mr. Worrell -- apparently of Mr. Worrell  
16       at the Capitol. So that's the information that law  
17       enforcement had at the time.

18              They go and interview Mr. Worrell. And the report  
19       from that interview is that Mr. Worrell indicated --  
20       admitted that he was present in Washington, D.C., and that  
21       he engaged in First Amendment-protected activity, but that  
22       he engaged in no wrongdoing whatsoever or other criminal  
23       conduct.

24              Now, that -- at the time law enforcement -- local  
25       law enforcement and the FBI agents who were interviewing

1 Mr. Worrell were not aware of this photograph that  
2 apparently depicts Mr. Worrell discharging this canister of  
3 pepper spray gel on the west plaza of the Capitol.

4 And so Mr. Worrell's statement which the  
5 government believes was a knowingly false statement about  
6 his conduct on January 6th -- that statement led to a --  
7 several weeks' delay in the FBI's investigation where it  
8 took an additional several weeks to essentially piece  
9 together that Mr. Worrell was the individual pictured in  
10 these photographs with other individuals that the FBI  
11 eventually became -- other agents of the FBI eventually  
12 became aware of.

13 THE COURT: Isn't it a little tough, though,  
14 Mr. Dreher, to sort of say that a defendant engages in  
15 obstructive conduct simply because he doesn't stand up in  
16 front of -- in his first FBI interview and say: Oh, yeah, I  
17 committed a crime while I was there on January 6th? Isn't  
18 that a little bit of a stretch for obstructive conduct;  
19 don't you think?

20 MR. DREHER: Well, I think that if the defendant  
21 engages in an interview and admits to some conduct and then  
22 expressly disclaims other conduct, then that then interferes  
23 with the government's ability to identify other relevant  
24 evidence in the case because, essentially, they are not  
25 aware of the fact that there is this other conduct going

1 on --

2 THE COURT: Because what the defendant could have  
3 done is say: I am not going to answer anymore questions as  
4 opposed to incriminate himself.

5 MR. DREHER: I think that's right, Your Honor.  
6 Obviously an individual can decline to speak to law  
7 enforcement. But engaging in the conversation, providing  
8 some information, and then declining -- not "declining" --  
9 but expressly stating that there was nothing else --

10 THE COURT: Well, for purposes of the in-out  
11 decision at the detention hearing, could it also be that  
12 Mr. Worrell thought that if he were spraying pepper gel at  
13 police officers rather than being lawless that was, in fact,  
14 being patriotic; and so maybe that meant that he was doing  
15 something that was fine legally, as opposed to unlawful?

16 MR. DREHER: I think the government's view would  
17 be that that may be the case.

18 But if that were the case, that would actually  
19 just be further evidence of the problem here; that if  
20 that --

21 THE COURT: Exactly.

22 MR. DREHER: If Mr. Worrell's view that that is  
23 not problematic behavior, it indicates that even after --  
24 two weeks after January 6th his view was: I didn't do  
25 anything wrong.

1 THE COURT: Exactly.

2 MR. DREHER: I suppose -- in that sense, the  
3 government doesn't believe that that's the case; but if it  
4 were a statement that he believed to be true, the government  
5 doesn't think that minimizes the dangerousness. So now --

6 THE COURT: All right. And what else?

7 MR. DREHER: So the second incident -- and I don't  
8 want to overstate this. But when law enforcement went to  
9 Mr. Worrell's residence to search it and to arrest  
10 Mr. Worrell, Mr. Worrell was not home.

11 He was -- his girlfriend told officers that he was  
12 driving to go camping with other members of the Proud Boys.  
13 So law enforcement had her call Mr. Worrell; and Mr. Worrell  
14 was around three hours away, a three-hour drive away from  
15 home.

16 The FBI agent who spoke with Mr. Worrell told  
17 him -- directed him to turn himself in to the nearest FBI  
18 resident agency which -- I had not looked up how close that  
19 is, but it is dramatically closer -- several hours closer  
20 than his residence in Naples, Florida; and Mr. Worrell  
21 declined to do so. He said, no, I am going to come down to  
22 my residence and turn myself in there essentially after  
23 speaking with his wife.

24 Now, law enforcement did allow him to do that.

25 The FBI agent did say after that that he could do that. But

1 the reason that the FBI did that is because of, essentially,  
2 a concern in that situation where they have a defendant who  
3 has been informed that he is going to be arrested who was  
4 emotional -- obviously emotional over the phone and who had  
5 told law enforcement in the past that he has a concealed  
6 carry permit, and that he does conceal carry.

7 Law enforcement's primary objective on the morning  
8 of March 12 was making sure that everyone remain safe; that  
9 Mr. Worrell eventually turns himself in, that there is no  
10 danger to either others or, obviously, Mr. Worrell himself.

11 So law enforcement did, after he said that, allow  
12 him -- they essentially acceded to that; said, okay, if  
13 that's what you are going to do, then come on down. But I  
14 do think that that doesn't mitigate the fact that he was  
15 directed -- when he was contacted two months after  
16 January 6th, he was directed to turn himself into the local  
17 resident agency and declined to do so. The upshot was he  
18 then had an additional two hours with his cell phone in this  
19 case that ordinarily would have been seized from him at the  
20 moment of arrest.

21 Now, the government has no -- we have no idea yet  
22 what precisely is on the phone or whether anything was  
23 deleted. Obviously, we are not making that representation;  
24 but I do think that is one of the unfortunate effects of  
25 Mr. Worrell's declination -- really, refusal to obey the

1        directions and turn himself in at the local resident agency.

2                And the third incident, and this is one that --

3                THE COURT: I see. Is that fairly unusual, for a  
4        defendant being told to surrender to begin a negotiation  
5        over that? Is that unusual or is that a common thing?

6                MR. DREHER: I don't think I can say one way or  
7        another, Your Honor. I don't know that I know how unusual  
8        that is for a defendant to negotiate with the terms of  
9        turning himself in.

10               I think it's one thing for -- this is obviously  
11        not the case that we had here. There are instances in which  
12        a defendant is contacted through counsel or just over the  
13        phone and are asked to turn themselves in. In that context,  
14        if law enforcement is giving the defendant a heads up in  
15        advance and asking them to turn themselves in; if a  
16        defendant says, Can I turn myself in on Thursday? Usually  
17        that's not an issue.

18               The issue is when law enforcement intentionally  
19        plans, in part, to seek -- in part they want to seize  
20        evidence to arrest an individual at their home; they get to  
21        the home and find out the individual is not there. At that  
22        point, law enforcement has -- had an interest and still has  
23        an interest in trying to ensure that all relevant evidence  
24        is seized and, also, trying to ensure that a defendant who  
25        at this point is, sort of, surprised by the fact that the



1 FBI is at his home and is emotional over the phone -- law  
2 enforcement's interest isn't quickly ending that situation  
3 of the defendant being out of custody, driving around, and  
4 law enforcement not knowing where he is and is relying on  
5 him, essentially, contacting him regularly to inform them  
6 where he is.

7 He is mobile and several hours away from law  
8 enforcement. I think, in that context, it is particularly  
9 important that that kind of defendant in that situation turn  
10 themselves in immediately. But I can't say one way or the  
11 other whether it's common to get push back.

12 THE COURT: All right.

13 MR. DREHER: The last thing, Your Honor, is when  
14 Mr. Worrell did get home he made two unprompted statements  
15 to law enforcement, so this was a time when law enforcement  
16 was searching his residence and his vehicle. And what I  
17 have been told is that, among other things, he was informed  
18 that he should change out of the clothes that he was in into  
19 other clothes that would be more suitable -- basically, that  
20 the U.S. Marshals would allow him to remain in when he got  
21 down to the courthouse I think; so that's what law  
22 enforcement said that's what Mr. Worrell was doing.

23 He makes two statements then. First, he tell s  
24 law enforcement that he believes he knows who tipped off the  
25 FBI about him, and he provides the name of a specific

1 individual.

2           Second, he tells law enforcement that there is one  
3 person in particular that he is upset with or angry with,  
4 and that is a user of a Twitter account who had posted  
5 photos of Mr. Worrell and had purported to have identified  
6 Mr. Worrell online. And the FBI relayed to me that  
7 Mr. Worrell then said: If I ever find out who that guy is,  
8 you-all -- meaning the FBI -- will have to be coming after  
9 me again -- or will be coming after me again.

10           Now, those are statements -- those are not  
11 statements made -- those statements are obviously in the  
12 government's view unacceptable at any time; but those  
13 statements were not made two minutes after the FBI breached  
14 his home, surprised him, woke him up, statements like that.

15           Those statements were made two, three hours after  
16 he was first contacted when he had time to calm down, when  
17 he had driven himself all the way down to his home, had time  
18 to think about what was going on. So, in the government's  
19 view, that makes them all the more problematic; again, that  
20 these weren't some, sort of, surprise in the very first  
21 moments, foreseeable reactions to being arrested type  
22 statements.

23           THE COURT: All right. And the tipster that you  
24 referred to, was this the same tipster that in your papers  
25 you said that he or she had looked at a video uploaded to

1 the defendant's Facebook account that depicted the defendant  
2 issuing commands to other rioters on January 6th?

3 MR. DREHER: Yes, Your Honor.

4 And we do have -- I asked for a little bit more  
5 specificity about -- so that was the information that law  
6 enforcement was given when the tipster first contacted the  
7 FBI. We have since learned that the specific -- what the  
8 tipster was referring to was a video in which Mr. Worrell is  
9 saying to other individuals that they recognized his voice  
10 as saying -- essentially while they're walking together:  
11 Get in tight, get in tight, get in tight. So the report --  
12 that was the tipster's description of him issuing commands  
13 to other rioters, but I did want to provide that more  
14 information to the Court.

15 THE COURT: Did you say "getting tight"?

16 MR. DREHER: Get in tight.

17 THE COURT: "Get in tight"?

18 MR. DREHER: So get back together.

19 THE COURT: What is that supposed to mean?

20 MR. DREHER: I think that the direction -- so the  
21 government has not seen that video. The tipster who saw it  
22 attempted to forward it, a link, to the FBI. The FBI was  
23 not able to access it. By the time the FBI received it, it  
24 had been deleted or made to be a private video; they  
25 couldn't access it.

1 But my understanding from that description is that  
2 these were a group of individuals walking on Capitol grounds  
3 and that Mr. Worrell was directing them to get close  
4 together, get close together with each other. I don't know  
5 though, sort of, the timing of that statement, so whether  
6 that was -- you know, where exactly that occurred.

7 THE COURT: All right. So the government also  
8 says that the defendant in the photos on January 6th was  
9 wearing what appeared to be a push to talk radio earpiece in  
10 his left ear. Were other Proud Boy members that day using  
11 those same kind of radio communications?

12 MR. DREHER: Yes, Your Honor.

13 So the government does have evidence that there  
14 were several members of the Proud Boys that had various  
15 types of radio communication devices. I know that in other  
16 cases they may have been slightly different radio devices  
17 than the one pictured on Mr. Worrell. So, like, for  
18 example, they might look more like a walkie-talkie. The  
19 government has seen that on several individuals.

20 And Mr. Worrell's girlfriend in this case stated  
21 to law enforcement that that was the plan -- essentially was  
22 to have them have these radio communication devices and  
23 communicate over the radio on the day -- on January 6th --  
24 the plan of Mr. Worrell and other Proud Boy members, I  
25 think, in part, because of congestion or suspected or

1 anticipated congestion of the cell phone towers that might  
2 prevent the use of cell phones easily.

3 THE COURT: And so was it a plan so they wouldn't  
4 lose each other in the crowd or some other purpose for the  
5 communications?

6 MR. DREHER: So that Mr. Worrell's girlfriend did  
7 not clarify, what the, sort of, further intent behind that  
8 plan was but, yes, we have information that it was for them  
9 to remain in contact about what was going on in this crowd  
10 should be they separated or if they were, sort of, in  
11 different spots around the U.S. Capitol.

12 THE COURT: And the girlfriend also came to  
13 Washington on January 6th?

14 MR. DREHER: That's correct.

15 THE COURT: But she is not charged.

16 MR. DREHER: She is not charged. And all the  
17 government can say is obviously it does have, sort of,  
18 mountains of evidence to sift through in this case so -- we  
19 haven't at this time.

20 THE COURT: So the government has referenced in  
21 its memo a YouTube video of the defendant with another Proud  
22 Boy member Enrique Tarrio that was posted on January 7,  
23 2021. Is it the government's position that this defendant  
24 has any leadership or spokesperson role in the Proud Boys?

25 MR. DREHER: So I think at this stage it's

1       probably too early to tell. But the government -- so the  
2       government's position at this point, I think, is that it  
3       can't assert that Mr. Worrell is in a leadership or  
4       spokesperson role.

5               What the government knows is what it has presented  
6       to the Court, which is that Mr. Worrell has attended several  
7       Proud Boys -- what the government would call Proud Boy  
8       events with a number of other Proud Boys in locations,  
9       including in Washington, D.C., on December 12th; the event  
10      that's depicted in that video featuring Mr. Tarrio.

11             Mr. Worrell clearly knows these other individuals  
12      and has a preexisting relationship with them from the video;  
13      the government thinks that's apparent. But the government  
14      has not seen Mr. Worrell act in a leadership or spokesperson  
15      role --

16             THE COURT: So the government reports also that at  
17      the interview that the FBI had with him on January 18th, he  
18      defended the Proud Boys and said that this group was not a  
19      racist white supremacist group like the media tries to  
20      portray it. And then the complaint goes on to show  
21      photographs, both on page 5 and on page 6 of the criminal  
22      complaint, of the defendant posing with an "okay" hand  
23      signal -- with three fingers held up like a "W," and the  
24      thumb and the index fingers held together like an "O" or a  
25      "P." Doesn't that -- the government doesn't comment on this

1 in the complaint; but isn't that "okay" signal, sort of,  
2 well known to have been usurped by some of these gangs as a  
3 white power signal?

4 MR. DREHER: It is.

5 I think it would be accurate to say, Your Honor --  
6 certainly the government would say that that symbol is one  
7 that has been used by the Proud Boys and Proud Boys members,  
8 and that they use it to identify themselves in videos. And  
9 in the photograph -- Mr. Worrell is photographed twice on  
10 January 6th using that particular signal as are numerous  
11 other Proud Boys members.

12 And I think then with respect to any individual  
13 Proud Boy member or any individual who uses that symbol, the  
14 government would look for other contextual evidence in terms  
15 of the intent behind the use of that symbol. So I think  
16 that the Court is probably right that -- or is right that it  
17 has been used to convey the meaning that the Court  
18 identified.

19 THE COURT: Well, W and P, white power, I mean,  
20 rather than "okay."

21 MR. DREHER: That is exactly right. That is  
22 exactly right.

23 But I am not sure that the government is prepared  
24 to say that every time that is used they are necessarily  
25 confident that that is the way that it is being portrayed to

1       be used.

2               THE COURT:   Of course.

3               All right.   So one of the things that the  
4       government has pointed to is my decision in the *Chrestman*  
5       case.   And in *Chrestman* the defendant was detained pretrial.  
6       He engaged in preplanning; coordination with other members  
7       of these other rioters before, during, and after the riot;  
8       he took a number of overt actions to taunt the police;  
9       prevented the police from closing barriers in the tunnels  
10      underneath the Capitol.

11              This defendant -- based on the Government's  
12      proffer so far -- doesn't appear to have been leading the  
13      charge quite like *Chrestman*, and also never appeared to have  
14      entered the Capitol building to the extent that the  
15      government's investigation so far has not uncovered that.

16              So is this defendant in a different position than  
17      William Chrestman?

18              MR. DREHER:   So I think the Court is entirely  
19      correct; there are some distinctions between Mr. Chrestman  
20      and himself or -- and this defendant.

21              Primary among them, as the Court knows, is the  
22      fact that currently the government is not aware of evidence  
23      that Mr. Worrell actually entered the Capitol building on  
24      January 6th; I think that's the distinguishing factor.

25              I think, on the other hand though, what is present



1 in this case is -- first of all, obviously many of the  
2 same -- much of the same evidence that was present in the  
3 *Chrestman* case -- there is clear preplanning, clear  
4 coordination with other members of the Proud Boys; and then  
5 what we think is, sort of, distinguishing here is carrying  
6 and, then, ultimately his use of a dangerous weapon -- this  
7 pepper spray gel, in the government's view, fairly, clearly,  
8 and obviously against a line of law enforcement officers who  
9 are attempting to hold back this riotous crowd.

10 THE COURT: And, in fact, that line, police line,  
11 broke, right, and people were able to get into the Capitol  
12 building through the west plaza?

13 MR. DREHER: Yes. If I may direct the Court to  
14 the -- there is a photograph on the top of page 12 of the  
15 government's memorandum that was filed on Monday. I have  
16 that photograph; and I think I may be able to share it with  
17 the Court on the full screen, but I am also happy to refer  
18 the Court to it on page 12.

19 THE COURT: This is the memorandum that was  
20 docketed at ECF 9, correct?

21 MR. DREHER: Yes. That's correct.

22 THE COURT: I see the photograph.

23 MR. DREHER: So in that photograph, which is taken  
24 six minutes after -- according to the timestamps, the  
25 metadata on the various photographs from that day which came

1 from the same individual, which is why the government is  
2 more confident in the sequence here -- this happened six  
3 minutes after the photograph of Mr. Worrell spraying pepper  
4 spray gel.

5 You can see a couple of things of note. So,  
6 first, you can see that law enforcement since the time -- in  
7 those six minutes, since the time of that pepper spray gel  
8 discharge has moved protesters -- has attempted to move its  
9 line forward. So, for example, on the right side of that  
10 photograph you can see a wooden platform where there are two  
11 law enforcement officers spraying the crowd with their own  
12 canisters of pepper spray. That platform is the same  
13 platform that is the background in Mr. Worrell's -- the  
14 photograph of Mr. Worrell spraying his own canister of  
15 pepper spray gel; so he was 20 to 30 feet closer to the line  
16 of law enforcement about five, six minutes before this  
17 photograph was taken.

18 So at the time he discharged the pepper spray at  
19 the line -- there are actually protesters up on that  
20 platform rather than law enforcement. The first individuals  
21 up on the platform are other protesters or rioters. And the  
22 line of law enforcement extends, sort of, straight from that  
23 wooden platform across the plaza.

24 After that point, law enforcement goes through  
25 this enormous effort to try to push their lines a few --

1 just a few feet forward involving -- essentially using  
2 police barriers to physically push people forward. And you  
3 can see here they're trying to pepper spray the crowd and  
4 there is actually an exchange back and forth between -- some  
5 of the officers in this photograph are covered in pepper  
6 spray from a different pepper spray attack that happened  
7 about a minute or two before this photograph was taken.

8 And so the point here is you can see the defendant  
9 at this point obviously is about 20 or 30 feet back in the  
10 crowd holding his phone aloft. But where the breach  
11 actually happens is right to the -- right to Mr. Worrell's  
12 left. There is a small section of a staircase that is under  
13 the scaffolding that had been set up for the inauguration  
14 with the tarps around it. That staircase is, at this point,  
15 only guarded by that handful of officers that you can see in  
16 this photograph, whereas the rest of the line that's  
17 extending south from the wooden platform has at this point  
18 received numerous reinforcements from the Metropolitan  
19 Police Department.

20 They were trying -- you can tell that law  
21 enforcement was trying to extend its line outwards perhaps,  
22 I would assume, eventually to connect with the officers on  
23 the other side. And it became such a monumental effort  
24 because, again, of things like pepper spray attacks that  
25 they were receiving as well as groups of individuals in the

1 way.

2 They were not able to connect this line of  
3 individuals, this line of officers. So those officers --  
4 that was essentially the weak point in the line is just  
5 where Mr. Worrell was standing; that line was breached nine  
6 minutes after this photograph was taken. And when it was  
7 breached Mr. Worrell was, again, about five or ten feet,  
8 three or four rows back from the line as it was being  
9 breached.

10 So in the government's view -- although, again, I  
11 will say there is no evidence yet that Mr. Worrell then  
12 subsequently followed the crowd up into the Capitol  
13 building, the government --

14 THE COURT: And when you say "followed the crowd  
15 up into the Capitol building" it's up those steps with that  
16 thin police line at the top of the photograph on page 12?

17 MR. DREHER: That's right. And that breach then  
18 subsequently -- it plays a large role in why the rest of the  
19 line ends up -- the rest of the police line ends up  
20 collapsing because essentially there are now protesters in  
21 their rear. Right? There were protesters going up those  
22 stairs and then accessing the portions of the Capitol  
23 building that are above and directly behind the rest of the  
24 line of law enforcement. So, ultimately, that line of law  
25 enforcement also retreats even though they actually have

1       formed a fairly stable line just prior to the breach on  
2       those stairs.

3               And so, in the government's view, certainly any  
4       act of physical violence or impeding officers in that  
5       particular corner of the west plaza on that day -- you know,  
6       10, 15, 20 minutes before that line was breached --  
7       certainly contributed to -- in the government's view  
8       contributed to the isolation of those officers on that  
9       stairwell who were not able to be connected to the rest of  
10      the police line because law enforcement wasn't able --  
11      didn't, sort of, have the leeway to just move freely about  
12      the plaza on that day. Every few feet that they were moving  
13      required enormous effort. In the government's view, that  
14      did contribute to, again, the isolation of that line which  
15      is ultimately where the breach occurred.

16             THE COURT: All right. Is there anything further  
17      that the government would like say at this point?

18             MR. DREHER: The only other thing, Your Honor, is  
19      I do think that the defendant's criminal history is not  
20      egregious.

21             He has a few convictions from years ago, but the  
22      most recent conviction from when the defendant was 37, I do  
23      actually -- I'm sorry, I shouldn't say "conviction" -- the  
24      most recent arrest is from when the defendant was 37 which  
25      resulted in adjudication, withheld disposition, along with

1 essentially, sort of, like a probation-type sentence --

2 THE COURT: Sort of like a deferred prosecution?

3 MR. DREHER: I think that's right, Your Honor,  
4 yes. Exactly.

5 THE COURT: I see. That was the one he was on  
6 basically probation or deferred prosecution for three years?

7 MR. DREHER: I think it was -- I believe it was  
8 two years but, yes, several years.

9 THE COURT: Okay.

10 MR. DREHER: Two years of community control  
11 followed by three years of probation. But I do think that  
12 the arrest report in that --

13 THE COURT: So it was a total of five years?

14 MR. DREHER: That is what the pretrial services  
15 report indicates, is that there was two years of community  
16 control followed by three years of probation.

17 THE COURT: Okay. Do you have any idea what  
18 "community control" means?

19 MR. DREHER: I don't in that jurisdiction, Your  
20 Honor. My assumption had been that that is part of the  
21 deferred adjudication process. So, essentially, we will  
22 defer it. My assumption would be that it was a deferral for  
23 two years to determine whether there are any further  
24 violations --

25 THE COURT: I see.

1           MR. DREHER: -- and, then, the ultimate sentence  
2           became a three-year probationary sentence.

3           THE COURT: I see.

4           MR. DREHER: Mr. Worrell pled no contest to that  
5           charge.

6           But I do think -- the government views the arrest  
7           report in that case as troubling just given the conduct  
8           which I think doesn't obviously perfectly coincide with the  
9           conduct on January 6th; but does reflect a willingness by  
10          the defendant to carry tactical gear, to carry things like  
11          pepper spray which were found in his vehicle into -- and  
12          then, sort of, instigate confrontations.

13          So in this case he flashed a badge that he later  
14          admits he purchased over the internet or at least --  
15          obviously, these are the allegations in the arrest report  
16          which is a victim, a young woman, driving alone, to the  
17          government's knowledge. He flashes a badge, tells her she  
18          ran a red light, gets behind her. She thinks maybe she's  
19          being pulled over, but she is not sure because she is not  
20          sure whether this is a law enforcement officer. Thankfully  
21          she works for the sheriff's office actually.

22          Instead of immediately pulling over on the side of  
23          the road, which may be more isolated, she drives for about a  
24          mile until she gets to a business -- a parking lot of a  
25          business that she pulls into.

1           It's only when she pulls into that parking lot or,  
2           essentially, right beforehand that Mr. Worrell who had been  
3           driving behind her that entire time stops driving behind her  
4           and turns down a different street. She contacts law  
5           enforcement; they find Mr. Worrell.

6           He said that he was not tailing her and that he  
7           just happened to be going to a business across the street  
8           from where she turned into -- from the parking lot that she  
9           turned into. But he says that he did -- he essentially  
10          admits that he was aware that she may have thought he was a  
11          law enforcement officer. He admits -- he knew that what he  
12          did was wrong. And they find in his car -- this is in the  
13          front part of the car -- this is not the trunk, this is just  
14          the accessible portion of the driver's seat -- a series of  
15          items; there is a Glock 22, several boxes of ammunition, a  
16          tactical knife, a can of pepper spray, a flashlight, the  
17          same gold badge -- or the gold badge that the victim alleged  
18          that he had flashed at her, and two pairs of handcuffs with  
19          handcuffs keys.

20          There are some items obviously that an individual  
21          has the right to carry if they have proper documentation and  
22          they are not a prohibited person. But the government is  
23          unaware of any reason why someone would be driving around  
24          with handcuffs and handcuffs keys -- two sets of them --  
25          flashing badges at individuals who are driving and then



1 pulling behind them -- other than to potentially attempt  
2 some kind of citizen's arrest of those individuals using the  
3 handcuffs.

4 The government is not entirely sure where that was  
5 going. The fact that he had the handcuffs with him in the  
6 vehicle does demonstrate that there was a plan; there was,  
7 sort of, an intent to engage in these kinds of  
8 confrontations with people that he thought had violated the  
9 traffic code.

10 So, you know, given that -- the government is  
11 actually -- that is a more concerning arrest report than  
12 some arrest reports that the government reads about things  
13 that lead to withheld dispositions, and so that is why the  
14 government cited it specifically. I think that is another  
15 way in which there is a distinction between this defendant  
16 and Mr. Chrestman.

17 THE COURT: Okay. Thank you.

18 I will turn now to Mr. Pierce and give you an  
19 opportunity to respond.

20 But why shouldn't I view this 2009 arrest of the  
21 defendant when he is a total grownup, 37 years old, very  
22 concerning, trying to take the law in his hands -- his own  
23 hands -- pretending to be a law enforcement officer, why  
24 isn't that very -- shouldn't that be very concerning to the  
25 Court?

1           MR. PIERCE: With respect, Your Honor, I do not  
2 believe so. My understanding of that incident is at the  
3 time Mr. Worrell was actually training and -- training to be  
4 a bail bondsman. He was under the understanding that that  
5 vehicle was associated with an individual who was being  
6 sought on drug-related purposes. It did not turn out that  
7 the person driving the car was; but he did not have any  
8 intent to actually engage in any violence or abduct anybody  
9 or, in fact, pull anybody over. He was, in fact, training  
10 for that kind of position.

11           There was no adjudication of any guilt in that  
12 case. The weapons and other materials that were in the car  
13 were legal; there were no charges related to those materials  
14 or weapons. He did receive, I believe, it was two years  
15 of -- I forget the phrase that Mr. Dreher used but, sort of,  
16 oversight.

17           As with every other instance in which Mr. Worrell  
18 has been charged, he was in full compliance with the parole  
19 officers and with the conditions of this release even to the  
20 point where the parole officers found that he was in such --  
21 his conduct was so good that they reduced that period of  
22 time to a one-year probation period and, in fact, stipulated  
23 that even that one-year probation period would be reduced.

24           So I believe, in light of the way that the  
25 authorities handled that situation or the outcome of that

1 case, Your Honor, we believe it's really not, sort of, an  
2 indication that Mr. Worrell is any kind of danger. In fact,  
3 he is not any kind of danger; he has never engaged in any  
4 type of violent activity.

5 I can speak directly to the events on the 6th at  
6 Your Honor's direction here; but that is my, kind of,  
7 response to the incident in 2009, Your Honor.

8 THE COURT: So the police report of that incident  
9 is quite thorough and it has no mention of the defendant  
10 ever saying he was a bail bondsman in training.

11 MR. PIERCE: Your Honor, I have not -- I have not  
12 reviewed that actual police report. I am coming up to speed  
13 on these things. That is my understanding of what had  
14 occurred, and it's obviously --

15 THE COURT: It's attached to the government's  
16 memorandum in support of the motion for review of the  
17 release order docketed at ECF 9.

18 MR. PIERCE: Yes, Your Honor.

19 That is -- that is what occurred in that incident.  
20 As I set forth, we're happy to provide additional briefing  
21 or affidavits regarding that. But there was no violence;  
22 there was no intent to abduct anybody certainly. And the  
23 resolution of those charges I think is an indication that  
24 it's not as nearly as serious as --

25 THE COURT: Okay. So let me ask you, Mr. Pierce,

1 does the defendant dispute that pepper spray gel is a  
2 dangerous weapon?

3 MR. PIERCE: I don't know the answer to that, Your  
4 Honor. You know, I have been pepper sprayed. I don't view  
5 it as a dangerous weapon. It's obviously something that is  
6 used by many citizens to deter aggression. You know, this  
7 was a small single canister of pepper spray.

8 To clear up one issue from earlier in the hearing,  
9 the pepper spray that was recovered at Mr. Worrell's house  
10 was his girlfriend, Ms. Priller's pepper spray; it was a new  
11 can of pepper spray that had not been deployed, so it was  
12 different -- a different canister than Mr. Worrell had at  
13 the Capitol.

14 As a matter of law, I just don't know if pepper  
15 spray is considered dangerous. I personally don't view it  
16 as dangerous. Having been -- having it used against me, it  
17 certainly is not comfortable, and it's used to deter  
18 aggressors.

19 In fact, as I'd like to have a chance to explain  
20 in some detail, you know, at the crux of, sort of, the  
21 government's concerns about Mr. Worrell and the charges  
22 against him, in fact, rest on a factual assumption that  
23 simply is not true which is that Mr. Worrell, in fact, did  
24 not aim or deploy pepper spray at Capitol police officers.

25 In fact, Mr. Worrell was actually concerned that

1 an individual who he believed was posing a threat to the  
2 line of Capitol police officers -- he actually deployed the  
3 pepper spray against that individual and, in fact, he was  
4 attempting to help protect Capitol police officers.

5 He did not go there with any intent to enter the  
6 Capitol. He, in fact, expressly and adamantly in his own  
7 mind, and to the group of folks including females that went  
8 to D.C. with him, expressed that under no circumstances was  
9 anybody to go into any federal building whatsoever.

10 After Mr. Worrell deployed one small can of pepper  
11 spray against the single individual that he thought was  
12 posing a risk to the Capitol police officers, the only other  
13 conduct -- in fact, the reason he felt that an individual  
14 was posing a threat to the Capitol police officers was that  
15 he observed that individual throwing metal objects at the  
16 Capitol police officers and was concerned for their safety.

17 The only other activity that Mr. Worrell engaged  
18 in that was physical in nature aside from simply being  
19 there, sort of, exercising his First Amendment rights was  
20 that he did observe two elderly individuals, one male, one  
21 female -- once tear gas began to be deployed by the Capitol  
22 police officers, he observed these individuals in severe  
23 distress and he attempted to and did, sort of, reach them to  
24 try to pull them back out of the area where the tear gas was  
25 being deployed, out of the crowd so they could recover from

1 the effects of the tear gas.

2 Mr. Worrell then, in fact, himself was subject to  
3 the effects of some tear gas and simultaneously felt himself  
4 being pushed by the masses, the crowd -- and obviously there  
5 were a lot of people there toward the Capitol building --  
6 because he was, in fact, adamant that he was not going to be  
7 part of anything in terms of going into the Capitol  
8 building. He then --

9 THE COURT: So are you saying, Mr. Pierce, that he  
10 was willing to violate the law enough to go into a  
11 restricted area, to not follow police commands to leave the  
12 area, but he drew the line, in his own sense of what was  
13 legal and illegal at that point, in going into the Capitol  
14 building? He was willing to violate the law up to a point  
15 but not over that point?

16 MR. PIERCE: Well, I don't want to obviously  
17 speak, Your Honor, to exactly what was or was not illegal as  
18 I get into the facts and the law of the case.

19 But to answer your question -- sorry, I apologize,  
20 Your Honor.

21 Yes, Mr. Worrell was on the Capitol grounds. He  
22 felt he was exercising his First Amendment rights. But he  
23 is a veteran; he loves his country. He absolutely,  
24 categorically was adamant about the fact that neither him  
25 nor any of the friends, including male and female friends

1       that he was with, would enter any federal building. He was  
2       adamant in his mindset about that. That is something that  
3       we will prove at trial, if necessary.

4               But to directly answer your question, the answer  
5       is yes, Your Honor. Again, without actually stipulating  
6       that anything he did do was illegal, as I start to  
7       understand the facts and the law; but, yes, he did draw the  
8       line --

9               THE COURT: But you certainly understand my  
10       skepticism that -- about him saying that he was emphatically  
11       not going to go into the Capitol building because that would  
12       be illegal when he was clearly in a restricted area, not  
13       following police commands to leave the area and, as part of  
14       this crowd -- mob -- that was trying to stop -- the whole  
15       reason they were there was to stop the count of the  
16       Electoral College votes. So why was he even there then?

17              MR. DREHER: Well, as many Americans did,  
18       Mr. Worrell went to D.C. You know, he was there to listen  
19       to the President's speech.

20              THE COURT: Did he listen to the President's  
21       speech, and then walked down from there to the Capitol?

22              MR. PIERCE: Yes. Yes, he did, Your Honor.

23              And, you know, obviously there are different --  
24       many different views of the propriety or lack thereof of  
25       individuals marching down to the Capitol.

1 THE COURT: We have marches all the time in  
2 Washington, D.C., marches all the time.

3 MR. PIERCE: Yes, Your Honor.

4 THE COURT: This is not a march. This was a mob  
5 assault on the Capitol not following directions of the  
6 police and breaking police lines. This was not a protest.  
7 This was not a march, a protest march.

8 MR. PIERCE: Well, obviously, Your Honor --

9 THE COURT: And if the defendant thought that's  
10 what he was doing, he doesn't understand why he's sitting  
11 where he is then right now; and that gives me some pause as  
12 to his willingness to comply with release conditions given  
13 all of the facts that I have been given.

14 But let's turn to your view that -- or what you  
15 are saying now, which is that the pepper spray being pointed  
16 based on the photographs and the evidence the government has  
17 been able to gather to date -- that he was not pointing the  
18 pepper spray gel at police officers but, instead, at other  
19 members of the mob. That's what your story is right now?

20 MR. PIERCE: Yes, Your Honor.

21 In fact, it's exactly what happened. In  
22 paragraph 22 of the affidavit that supports the complaint it  
23 indicates the government itself is not clear as to what the  
24 target was. You know, I think that we all realize that  
25 two-dimensional -- these two-dimensional photographs that I



1 have reviewed, to me, make no indication that he's actually  
2 aiming at the Capitol police and, in fact, he was not.

3 There is numerous cell phone video of this  
4 incident including, I believe, some that Mr. Worrell took  
5 himself; but right now we're in the process of reviewing  
6 that. We believe that will show unequivocally that he was  
7 not aiming at Capitol police officers; we're happy to share  
8 that with the government. But, in fact, that's just what  
9 happened, Your Honor, with all due respect in the world.  
10 It's not my story, it's what happened.

11 THE COURT: Yes. But what I have in front of  
12 me -- I mean, if you say that you have evidence that shows  
13 that he was aiming at a mobster, I would like to see it; but  
14 this is the time to have seen it.

15 Instead, I have no such evidence; I just have your  
16 view that there is such evidence. Instead, what I have in  
17 front of me is the government's proffer which -- which  
18 shows, in a series of photographs, where people were located  
19 all within almost a five minute area. And based on those  
20 photographs -- in paragraph 27 of the affidavit it reads  
21 pretty clearly that it's very likely -- more likely that the  
22 intended target of the pepper spray was a line of law  
23 enforcement officers that were shown in various parts of the  
24 photograph. So based on the proffer I have in front of me  
25 and the photographic evidence and screenshots that seems --

1       that's what I have to rely on right now, as opposed to what  
2       you say is what are other photographs.

3               What would be the source of the other photographs  
4       that you are referring to, Mr. Pierce?

5               MR. PIERCE: There are numerous cell phone videos  
6       that Mr. Worrell himself took, and there are videos that  
7       other folks took that we're in the process of literally,  
8       right now, starting to review. And we will -- what supports  
9       our position we will turn over to the government. We will  
10      submit briefing to the Court in that regard in a subsequent  
11      motion if we're able to.

12              Mr. Worrell would not, did not, and has not aimed  
13      pepper spray at Capitol police officers. He did not do it.

14              THE COURT: And what -- how should the Court view  
15      the defendant's statement at the time of his arrest that the  
16      government has proffered where -- on page 14, where the  
17      defendant told law enforcement he knew who had alerted the  
18      FBI to his activities and offered the specific individual's  
19      name and also stated he was upset at a particular Twitter  
20      user who had exposed his identity online and that, if he  
21      ever found that person, the FBI would be coming for me  
22      again, or to words to that effect.

23              How should the Court be viewing those words?

24              MR. PIERCE: So I don't believe that he made those  
25      statements, and we will do further investigation into that.

1 THE COURT: You just deny that those words were  
2 said?

3 MR. PIERCE: As of right now I'm denying that  
4 those words were said.

5 THE COURT: I see. Okay.

6 MR. PIERCE: We can provide further -- I would  
7 respectfully say, Your Honor, Mr. Worrell's -- obviously  
8 there is a dispute in this case that will be worked out  
9 before the Court; and Mr. Dreher has his position, and we  
10 disagree that Mr. Worrell engaged in any violent activity  
11 towards law enforcement and, in fact, was trying to protect  
12 law enforcement.

13 What I would say is his history displays one of  
14 zero violence on any front, and we believe that supports the  
15 idea that --

16 THE COURT: Well, I am not sure I agree with you  
17 on that, Mr. Pierce, because that 2009 arrest where the  
18 defendant was aggressively following a woman in a car  
19 yelling at her, trying to intimidate her, showing a fake  
20 badge to have her pull over -- it's not like he engaged in  
21 physical contact with that person, but it was intimidating  
22 behavior and threatening behavior. Wouldn't you say?

23 MR. PIERCE: I don't know the details of that  
24 incident, just to speak candidly to the Court. I just would  
25 repeat what I indicated, that the way the authorities

1 handled that case certainly seemed to indicate that they  
2 were not concerned that that was some kind of violent  
3 incident that required pursuit to a conviction or  
4 adjudication of guilt.

5 THE COURT: All right.

6 Anything further that you would like to add before  
7 I give the government an opportunity for a reply since its  
8 their motion, the government's motion?

9 MR. PIERCE: Yes, Your Honor. You know, I would  
10 like to emphasize a couple of points.

11 So, first of all, I'd like to emphasize that  
12 Mr. Worrell did cooperate with authorities when they showed  
13 up to interview him, and he voluntarily spoke with  
14 authorities.

15 Also, whenever authorities showed up to arrest  
16 Mr. Worrell I want to, sort of, emphasize the response to  
17 Mr. Dreher that he made the request that he could come home  
18 so that he could see his girlfriend before being arrested;  
19 they did agree to that.

20 He was approximately three and a half hours away.  
21 He did return. And he called the government at their  
22 request approximately every 30 minutes and cooperated with  
23 that. Ms. Priller has complied with the condition of  
24 release that the Florida judge put on -- to turn his  
25 passport in. She has indicated she is willing to serve as a

1       custodian and is willing to put property up as collateral to  
2       take care of any kind of bond.

3               I'd also like to touch on a couple other points.

4               I mean, Your Honor, I would like to emphasize that  
5       this is not a case like some others I know Your Honor has to  
6       adjudicate in which the defendant entered into the Capitol,  
7       caused any sort of destruction in the Capitol or on Capitol  
8       grounds. He obviously had a small can of pepper spray that  
9       he deployed as I described, but he was not involved with  
10      fighting with officers or having things like fire  
11      extinguishers or metal poles; this is obviously not that  
12      kind of a case.

13              I'd also like to indicate that the vest that  
14      Mr. Worrell had was not -- it was not an illegal vest. It  
15      was not something that, I think, anybody would consider,  
16      sort of, a law enforcement tactical vest. It has plastic,  
17      sort of, cutouts inside of it for personal protection  
18      because at different protests -- at other instances in  
19      which, you know, some of his -- the members of the Proud  
20      Boys with which he has been a part of -- multiple of them  
21      were stabbed; that was to provide personal protection.

22              The communication earpiece he had was simply for  
23      convenience purposes to be able to communicate with the  
24      folks he was there with. Obviously, you know, lots of  
25      people there dealing with cell phones and calling people is

1 a little difficult. He was not -- he was not part of any  
2 kind of coordinated preplan to attack the Capitol or to --

3 THE COURT: Do you appreciate -- Mr. Pierce, if I  
4 could interrupt you for just a second.

5 MR. PIERCE: Yes. Absolutely.

6 THE COURT: Do you appreciate that when you say  
7 that he was wearing garb and had tactical gear on and  
8 tactical things -- you know, paraphernalia, the radio, to  
9 the bear spray for protective purposes -- do you appreciate  
10 that when I hear that I think: What kind of provocation was  
11 being planned that protective gear would be necessary if it  
12 were supposed to be a peaceful march?

13 Do you appreciate that protective gear indicates a  
14 form of preplanning to engage in a confrontation where that  
15 kind of protective gear would be necessary?

16 MR. PIERCE: Your Honor, Mr. Worrell was obviously  
17 planning on being in D.C. We've all obviously experienced  
18 an entire year in which American cities were being literally  
19 burned to the ground. Mr. Worrell has not denied that he is  
20 part of a group of Proud Boys which is not a criminal  
21 organization. It's not --

22 THE COURT: Well, that's yet to be seen; isn't it?  
23 It has the insignia of a gang. It has people who have a --  
24 to the extent that "gang" is used to describe people who  
25 have some unlawful purposes I think, you know, it's -- I

1 think it's meeting most of the indicia of a gang.

2 MR. PIERCE: My point, Your Honor, is -- and  
3 again, very respectfully, is that there were obviously  
4 numerous instances throughout the year in which there were  
5 high intensity things happening in different cities in which  
6 various groups, including Antifa and the Proud Boys that had  
7 confrontations --

8 THE COURT: Let's focus on January 6th. This is  
9 not about anything other than January 6th.

10 January 6th, he comes to hear a speech by the  
11 former President and he has to wear protective gear with a  
12 plan to then march to the Capitol into restricted areas  
13 where he goes despite restrictions and despite police  
14 orders, commands otherwise; and he is wearing protective  
15 gear.

16 Anyway, I don't want to -- I just -- I don't want  
17 to belabor the point; but the fact that he was wearing  
18 protective gear is not helpful.

19 MR. PIERCE: Your Honor, I am not -- I think it  
20 was entirely sensible and reasonable for, honestly, any  
21 human being who was going to be in D.C. that day in light of  
22 what had occurred in D.C. in previous days, a couple of  
23 months before, that were going to be similar in nature to  
24 January 6th, to expect that there was going to be possible  
25 violence in the city.

1           And, I mean, if I had chosen to exercise my First  
2   Amendment rights to be in D.C. that day -- which I did  
3   not -- regardless of whether I made the decision to go onto  
4   any Capitol grounds --

5           THE COURT: This is not about you, Mr. Pierce. I  
6   don't need to be talking about what you might or may not  
7   have done.

8           All right. Anything else about Mr. Worrell?

9           MR. PIERCE: Mr. Worrell is not violent and poses  
10   no danger to anyone, Your Honor. We would respectfully ask  
11   that Your Honor affirm the decision of the district judge in  
12   Florida on his release.

13          THE COURT: It was not a district judge in  
14   Florida, it was a magistrate judge.

15          MR. PIERCE: Magistrate judge in Florida, Your  
16   Honor.

17          THE COURT: All right. Mr. Dreher, any response?

18          MR. DREHER: Briefly, Your Honor. I just wanted  
19   to clarify one thing quickly before moving to response.

20          There is a -- I should clarify there is a decision  
21   from Judge Bates within this district that is not directly  
22   on point --

23          THE COURT: I have read Judge Bates's decision and  
24   it is, basically, early dicta about pepper spray.

25          MR. DREHER: Yes.



1           THE COURT: I think Judge Bates would be surprised  
2           if that were cited as a holding that pepper spray was a  
3           dangerous weapon in the context of either 1752 or the Bail  
4           Reform Act; but I have seen that, and that is the only  
5           reference to the pepper spray being used in the same  
6           sentence, shall we say, as a dangerous weapon. But -- I  
7           appreciate that. Thank you.

8           I have reviewed that opinion.

9           MR. DREHER: I just wanted to alert the Court to  
10          that. It's talking about a different definition under state  
11          law of what constitutes a dangerous weapon but, obviously,  
12          does have some discussion of that. So I just wanted to --

13          THE COURT: Correct.

14          So do you want to respond to the likelihood or not  
15          given the surrounding photographs of this five- to  
16          ten-minute period that the pepper spray gel being so clearly  
17          sprayed up on the platform by this defendant was to a fellow  
18          member of the mob or a police officer?

19          MR. DREHER: Yes, Your Honor.

20          So I think that what is important here and what  
21          can't be denied is the context of the defendant's conduct.

22          The government can't say -- because I currently do  
23          not have in my possession video or photographic evidence  
24          while obviously still collecting and reviewing evidence; but  
25          I have not currently identified a video or a photo showing,

1 sort of, essentially where that pepper spray gel went; that  
2 is why the affiant, in support of the claim, states he does  
3 not know with certainty the intended for the actual target  
4 of the pepper spray attack. I think there is a difference  
5 between certainty -- certainty and proof, certainty and  
6 probable cause; but even beyond that, proof by clear and  
7 convincing evidence or beyond a reasonable doubt.

8 And when you look at the context of this conduct,  
9 what you have is an individual who had this tactical vest  
10 on, so a defensive -- and his girlfriend indicated --  
11 Mr. Worrell's girlfriend indicated that it was, sort of, for  
12 defensive purposes, it was purposely stuffed with cardboard;  
13 so he had defensive gear and also had this pepper spray gel  
14 that could only be used -- it could have been used in a  
15 defensive posture; but there was obviously no indication in  
16 the photo that there was any threat against Mr. Worrell, and  
17 it could also be used in an offensive way against other  
18 individuals.

19 Now, he chooses to enter the U.S. Capitol grounds  
20 where at the time he is entering there are no other  
21 individuals who could have posed a threat to Mr. Worrell;  
22 there is just law enforcement officers. Those are the only  
23 people who are on the U.S. Capitol grounds at the time that  
24 he's surging forward with the crowd other than the other  
25 members of the crowd that he's going with.

1           So he chooses to enter the Capitol grounds with  
2       this can of pepper spray and then he deploys it in the crowd  
3       where it's only possible -- he's either aiming at law  
4       enforcement officers and perhaps struck law enforcement  
5       officers or he is -- I guess the claim would be that he  
6       happens to have been aiming at a rioter who was right next  
7       to a law enforcement officer and was -- at best the  
8       government is aware -- the only individual who came onto  
9       Capitol grounds with pepper spray in order to defend the  
10      Capitol against the other rioters of whom -- with whom he  
11      had traveled onto Capitol grounds that day. Obviously the  
12      government thinks that that claim is implausible.

13           I suppose it's also possible that he was using  
14      target practice at some other, sort of, physical object or  
15      something like that. I can't deny those possibilities; but  
16      none of them, in the government's view, are plausible given  
17      the context of his conduct on that day given that numerous  
18      other individuals in the crowd had been pepper spraying  
19      officers and officers had been pepper spraying back.

20           And I suppose, at the very least, if it were true  
21      that what happened that day as he moved forward in the crowd  
22      and discharged in an offensive way -- so not defensively, in  
23      an offensive way discharged pepper spray gel at an  
24      individual who was right next to law enforcement -- at the  
25      very least that would show an extraordinarily reckless

1 choice, to enter a confrontation with law enforcement and  
2 these other rioters and spray pepper spray gel in the  
3 vicinity with which, to be clear, can travel 15, 18, 20  
4 feet. It's not like it's the most accurate device that can  
5 be, sort of, specifically applied to one individual and no  
6 one else.

7 To deploy that in the context of where there is  
8 this face-to-face confrontation would itself be fairly  
9 reckless conduct in the crowd and would still be, of course,  
10 the use of a dangerous weapon and an act of physical  
11 violence on Capitol grounds.

12 So, one, that story would still confirm  
13 essentially all of the elements of the crimes charged in the  
14 complaint. And then, two, the government just finds it  
15 utterly implausible that -- he entered the Capitol grounds  
16 with this crowd, with the preparations that he made, with  
17 the prior contacts to march in D.C. and in the context of  
18 being present in D.C. with other Proud Boys members or with  
19 other members of the Proud Boys -- with the crowds in D.C.,  
20 having marched on January 6th with other members of the  
21 Proud Boys, entering the Capitol grounds, overturning police  
22 barriers, and then discharging the pepper spray gel -- the  
23 government finds that utterly implausible; but if  
24 Mr. Worrell wants to argue that to a jury down the road,  
25 obviously he's able to do so.

1           THE COURT: All right. The Court is ready to rule  
2           on the government's motion to review the Florida magistrate  
3           judge's decision to release the defendant pending trial.

4           On an appeal from a magistrate judge's order of  
5           pretrial release, the district court must conduct a *de novo*  
6           review and must do so promptly, 18 U.S.C. Section 3145(a).

7           The Bail Reform Act requires release of a  
8           defendant prior to trial unless a judicial officer  
9           determines, after a hearing, that no condition or  
10          combination of conditions will reasonably assure the  
11          appearance of the person as required and the safety of any  
12          other person in the community; see 18 U.S.C. Section  
13          3142(e) (1).

14          The government bears the burden to establish by a  
15          preponderance of the evidence that the defendant poses a  
16          serious risk of flight or serious risk of obstruction or  
17          attempt to obstruct justice or to intimidate or threaten a  
18          prospective witness and/or must show, by clear and  
19          convincing evidence, that no conditions of release will  
20          assure the safety of any other person or the community under  
21          18 U.S.C. Section 3142(f) (2).

22          In determining whether any conditions of release  
23          will reasonably assure the appearance of the person as  
24          required and the safety of others, the Court must take into  
25          account the available information concerning four factors

1 set out in 3142(g). These factors are: The nature and  
2 circumstances of the offense charged; the weight of the  
3 evidence against the person; the history and characteristics  
4 of the person, including the person's character, physical  
5 and mental condition, family ties, employment, financial  
6 resources, length of residence in the community, community  
7 ties, past conduct, history relating to drug or alcohol  
8 abuse, criminal history, and record concerning appearances  
9 at court proceedings; and then, finally, the nature and  
10 seriousness of the danger to any person or the community  
11 that would be posed by the person's release.

12 On an appeal from a magistrate judge's order of  
13 pretrial release the district court must conduct a *de novo*  
14 review.

15 In conducting this review, the Court examines the  
16 available information that touches upon those four statutory  
17 factors I just listed; and I will discuss each of them in  
18 turn, starting with the nature and circumstances of the  
19 offenses charged.

20 This first factor, the nature and circumstances of  
21 the offenses charged, weighs strongly in favor of detention.  
22 The defendant has been charged with four serious felony  
23 offenses, and it bears reviewing what these charges are.

24 First, he is charged with both knowingly entering  
25 and remaining in a restricted building or grounds without

1 lawful authority while using a dangerous weapon in violation  
2 of 18 U.S.C. Section 1752(a)(1) and with knowingly engaging  
3 in disorderly or disruptive conduct in any restricted  
4 building or grounds while using a dangerous weapon, in  
5 violation of 18 U.S.C. Section 1752(a)(2), both of which  
6 offenses carry up to 10 years' imprisonment.

7 The basis for these charges is the allegation that  
8 the defendant was part of the mob storming into the  
9 restricted areas on the Capitol grounds and pushing to get  
10 inside the Capitol building to stop the joint session of  
11 Congress and the Electoral College vote count, the peaceful  
12 transition of power in this country after a presidential  
13 election. And the defendant did more than just stand around  
14 with the mob to accomplish the goal.

15 He also allegedly carried and then used pepper  
16 spray gel pointing in the direction of the police line that  
17 was trying to defend the Capitol against the mob; and his  
18 efforts did help contribute to break up the police line and  
19 allowed the mob to surge into the Capitol building from the  
20 west plaza where he was and where he used and deployed the  
21 pepper spray gel.

22 In a third related charged based on the same  
23 offense conduct, the defendant is charged with knowingly  
24 engaging in an act of physical violence in a restricted  
25 building or ground by using a dangerous weapon, in violation

1 of 18 U.S.C. Section 1752(a)(4) which offense also carries  
2 up to 10 years' imprisonment.

3 And then, in the remaining felony charge, he is  
4 charged with obstructing, influencing, or impeding an  
5 official proceeding or attempting to do so in violation of  
6 18 U.S.C. Sections 1512(c)(2), and this charge carries up to  
7 20 years' imprisonment.

8 He is also charged with a misdemeanor offense  
9 which stems from some of the same conduct, and I won't  
10 address the misdemeanor.

11 In his proffer describing the defendant's conduct,  
12 the government has identified the defendant in various  
13 pictures and videos taken outside the Capitol building  
14 during the riot to stop the electoral vote count on  
15 January 6th; and, in particular, he was identified as among  
16 the first wave of individuals to breach the Capitol grounds.

17 The government has shown that the defendant  
18 engaged in prior planning before arriving at the Capitol,  
19 showing pictures of the defendant with paraphernalia  
20 obtained in advance and taken to the riot, including his  
21 tactical vest, his radio -- push radio which could avoid any  
22 congestion from cell phones to keep in touch to coordinate  
23 with the people he traveled there with, other Proud Boys.  
24 And he also had a can of pepper spray gel.

25 Of course, as I mentioned, he came with a Proud



1 Boy group; he had his ride to D.C. and his hotel paid for by  
2 others, and with this radio communication equipment to  
3 enable them to coordinate their activity for whatever their  
4 plans were to disrupt the joint session of Congress.

5 The Court weighs whether a defendant carried or  
6 used a dangerous weapon during this riot as a very  
7 significant issue and matter, critical issue, in determining  
8 whether or not detention is warranted.

9 The defendant's possession of pepper spray  
10 indicates not just a defensive use but a particular intent  
11 to prepare for an attack on the Capitol and all of the other  
12 so-called protective gear as defense counsel has described  
13 the other equipment he had from the radio, tactical event --  
14 tactical vest as protective gear is protective in the event  
15 the plans include provocation and confrontation.

16 And in this case the defendant, along with the  
17 mob, disobeyed police commands, police orders, restrictive  
18 barriers in order to get as close to the Capitol building as  
19 possible. And defendant's discharge of pepper spray  
20 which -- based on the piecing together of the photographs  
21 that the government has presented to this Court as part of  
22 its proffer -- persuades this Court that the government is  
23 correct that the likely target of that bear -- the pepper  
24 spray was the Capitol police line.

25 The conversations that the defendant's live-in

1 girlfriend had with law enforcement showed that the  
2 defendant's journey to the Capitol was very well  
3 orchestrated, all expenses paid Proud Boy field trip, that  
4 required significant planning and an intent to come here  
5 with all of the defensive gear necessary to execute a plan.

6 He actually gathered with this large group of  
7 other Proud Boys -- according to the picture and the  
8 government's papers -- right across the street from this  
9 very courthouse before marching with this group to the east  
10 side of the Capitol building and then -- walking -- making  
11 his way around with this crowd, this mob, to the west plaza  
12 where a serious breach of the Capitol building was made  
13 right in the area where the defendant was standing and  
14 actually used his pepper spray.

15 For purposes of this hearing, the Court does view  
16 pepper spray gel, particularly -- if the marketing can be  
17 believed, a particularly powerful pepper spray gel as a  
18 dangerous weapon; it can cause serious bodily injury not  
19 only to people who suffer from preexisting conditions, like  
20 asthma to make it difficult for them to breathe, but it can  
21 cause people who get it in their mouth, their nose, and  
22 their eyes to feel very serious stinging and be very  
23 uncomfortable unless they can promptly wash it out. And as  
24 the government has proffered, this defendant was not the  
25 only person with pepper spray apparently at this west plaza

1 and that the law enforcement officers there were continually  
2 having to change places from the front line to go and wash  
3 out their eyes, confounding their mission at that time to  
4 protect the Capitol building from being overrun by a mob  
5 which mission they failed because the mob did get into the  
6 Capitol building. And as the government has said, the fact  
7 that the police officers' mission failed that day on  
8 January 6th was contributed to by bear spray [sic] from this  
9 defendant being shot in their direction.

10 In support of the government's position, contrary  
11 to the defendant's -- that he was trying to protect the  
12 Capitol police -- the government has presented an  
13 exceptionally clear photograph, at 2:31 p.m. on January 6th,  
14 of the defendant spraying the pepper spray gel toward the  
15 location where other photographs make clear there was a thin  
16 line of police officers trying to block entry to the  
17 building from the mob; and other photographs around the same  
18 location showed that there is this police line exactly in  
19 the direction where the defendant was aiming the pepper  
20 spray.

21 A canister of Sabre Red maximum strength pepper  
22 gel was subsequently recovered from the defendant's  
23 residence. Defense counsel now says that that particular  
24 can of pepper gel belonged to the defendant's girlfriend who  
25 was also present apparently on January 6th in Washington,

1 D.C., but has not been charged; but I don't think there is  
2 much dispute based on the photographs and the clear  
3 photographs of the defendant spraying pepper gel that he had  
4 at least some can of pepper gel when he was here.

5 The government does not have evidence of the  
6 defendant entering the Capitol building itself; but, if  
7 correct, this singular stroke of good judgment on  
8 Mr. Worrell's part does not detract from the other  
9 circumstances here underlying the offense conduct that weigh  
10 in favor of pretrial detention.

11 As to the second factor, the weight of the  
12 evidence against the defendant -- the weight of the evidence  
13 is strong here, and it favors detention. The government  
14 submitted photos, video clip screenshots showing the  
15 defendant's presence at the Capitol with his fellow Proud  
16 Boys near the front of the line standing off against the  
17 police, and the photo of the defendant aiming and firing  
18 pepper spray towards this police line is certainly the most  
19 damning.

20 In short, the weight of the evidence weighs  
21 heavily in favor of pretrial detention.

22 As to the defendant's history and characteristics,  
23 the government doesn't argue and doesn't dispute that he  
24 presents no risk of flight because he has strong ties to  
25 where he is -- where he lives in Florida.

1 But among the history and characteristics that the  
2 Court examines is that he is unapologetically associated  
3 with the Proud Boys. There's multiple photographs that the  
4 government has submitted of the defendant wearing Proud  
5 Boys' attire and paraphernalia, and claiming that the Proud  
6 Boys are not a racist white supremacist group like the media  
7 tries to portray, which is a statement that the defendant  
8 made at his first FBI interview.

9 I do find this claim somewhat unconvincing since  
10 there are at least two photographs that the government has  
11 presented of the defendant using this white power hand  
12 gesture in the photographs which is a clear signal of white  
13 supremacy.

14 He also has a criminal history that -- although  
15 not particularly serious and certainly dated and would not,  
16 standing alone, make much of a difference at all in a  
17 detention decision; the Court does find very troubling the  
18 defendant's arrest for which he was given deferred  
19 prosecution for impersonating a law enforcement officer.

20 Having read the police report in connection with  
21 that arrest, and as detailed by the government today, the  
22 defendant observed a woman who is a stranger to him speed  
23 through a yellow light, and he ran a red light to catch up  
24 to her, pulled alongside her car, displayed a gold-colored  
25 badge signaling to her to put her window down; and then,

1 when she did put her window down, the defendant began  
2 yelling at her for running a red light and positioned his  
3 vehicle aggressively behind the woman and followed her until  
4 she finally pulled into a parking lot.

5 This was based on the black and white summary of  
6 the events in the police report, intimidating and  
7 threatening action by the defendant; and luckily the woman  
8 worked in the sheriff's department so recognized that the  
9 badge looked funny, called law enforcement. And when law  
10 enforcement caught up with the defendant he denied having  
11 flashed his badge, he denied tailing the woman to law  
12 enforcement; but those denials were refuted both by the  
13 woman's testimony as well as in the defendant's vehicle they  
14 found the fake badge as well as the gun, boxes of  
15 ammunition, knives, handcuffs, can of pepper spray, and  
16 other stuff. There is no evidence in the record that this  
17 defendant has ever been a law enforcement officer.

18 At the hearing today defense counsel says that he  
19 was in training to be a bails bondsman but there is no  
20 evidence in the pretrial services report that that was a job  
21 he ever held. But this prior intimidating conduct towards a  
22 total stranger in service of imposing his own authority,  
23 even to the extent of breaking the law, resulting in his own  
24 arrest is a significant backdrop to evaluating the  
25 government's proffer as to the risk the defendant poses of

1 obstruction and intimidating witnesses if released.

2           The government agrees with the government -- the  
3 Court agrees with the government that the defendant's  
4 conduct both on and after January 6th, 2021, establishes by  
5 the requisite clear and convincing evidence that this  
6 defendant poses a serious risk of attempting to obstruct  
7 justice and threatening or intimidating -- or attempting to  
8 do so -- of prospective witnesses in this case based on the  
9 following:

10           First of all, the alleged offense conduct;  
11 participating with this mob on January 6th disregarding  
12 police commands to breach police lines in a lawless way for  
13 the purposes of stopping the electoral vote count shows a  
14 complete disregard for the law and the constitutional norms  
15 in this democracy; it's an attitude of disrespect for the  
16 law that is only compounded by him aggressively shooting  
17 pepper spray at the police to break up the police line and  
18 the fact the mob did break up the police line and get into  
19 the Capitol building.

20           Second, on March 12th the defendant refused to  
21 follow the FBI direction to turn himself in at the nearest  
22 FBI office while he was on the road for another Proud Boy  
23 field trip. Instead of complying with the FBI request, the  
24 defendant said he would only turn himself in at his  
25 residence.

1 Not every defendant in my experience about to be  
2 arrested feels sufficiently emboldened to set the terms and  
3 conditions of his arrest when given a direct order to  
4 surrender; to my mind, this is unusual.

5 The government reports that the defendant was  
6 eventually convinced to drive several hours to turn himself  
7 into law enforcement at his home as he demanded. And by the  
8 time he got there law enforcement had been unable to locate  
9 several distinctive items the defendant wore on January 6th,  
10 including his radio communication device, his tactical vest,  
11 and his GoPro-style camera that he used.

12 His disregard of a direct command to turn himself  
13 in immediately raises a risk that if he is released he may  
14 similarly view any release conditions imposed on him as a  
15 matter for negotiation or to simply follow his own mind as  
16 to what he wants to do or, as his 2009 arrest for pretending  
17 to be a law enforcement officer suggests, that he will  
18 simply take the law into his own hands; also, his offense  
19 conduct on January 6th is also a demonstration of him  
20 defining the law the way he wants.

21 Finally, Worrell stated that he believed he knew  
22 who had tipped off the FBI, and he made a general threat  
23 toward a particular Twitter user who posted photographs of  
24 him online. He said he was upset at this Twitter user who  
25 had exposed his identity online and that if he ever found



1 out who that person was the FBI would be coming for him  
2 again. Remarkably, the defendant said this when he was  
3 being placed into custody.

4 These are bold intimations of threats that raises  
5 potential witness-intimidation concerns if this defendant  
6 were released and is a key consideration under 18 U.S.C.  
7 Section 3142(f)(2)(B).

8 In short, taken together, these considerations  
9 relevant to this factor weigh in favor of detention.

10 As to the last factor, the nature and seriousness  
11 of the danger to any person in the community that would be  
12 posed by the defendant's arrest, this factor also weighs in  
13 favor of detention for all the reasons I have just  
14 described, including his participation with the mob on  
15 January 6th and compounded by his using pepper spray gel,  
16 shooting it in the direction of the U.S. Capitol police  
17 trying to defend the building; the aspects of his criminal  
18 history from the 2009 arrest and, most concerning, the  
19 threats -- the intimations of threats that he made about  
20 both the tipster and the Twitter user. The government calls  
21 these "vague threats"; to my estimation they are not so  
22 vague.

23 Saying that the FBI will be coming for him again  
24 is a clear indication that -- an insinuation that he would  
25 like to take action against that prospective witness, and it

1 is a danger signal that raises significant concern that  
2 there are no conditions or combination of conditions to  
3 assure the safety of the community and potential witnesses  
4 and those in particular who aided the government in  
5 identifying the defendant were he to be released. These  
6 factors are important, and are all present here and favor  
7 detention.

8 So upon consideration of the proffered evidence  
9 presented, the factors set forth in 18 U.S.C. Section  
10 3142(g), the Court finds that all four statutory factors  
11 weigh heavily in favor of pretrial detention, and the  
12 government has met its burden of establishing no condition  
13 or combination of conditions will reasonably assure the  
14 safety of any other person and the community.

15 The magistrate judge's pretrial detention ruling  
16 is, therefore, reversed.

17 The government's motion for pretrial detention is  
18 granted; and the defendant will be held without bond pending  
19 trial.

20 The Court will enter the transport order for  
21 Mr. Worrell to be brought to this district pending trial.

22 He is directed to appear before a magistrate judge  
23 in this district on April 8th, 2021, at 10:00 a.m. unless he  
24 is indicted before then. If he is indicted, he will then  
25 appear when scheduled before the judge to whom his case is

1 randomly assigned.

2 Is there anything further today from the  
3 government?

4 MR. DREHER: No, Your Honor.

5 Other than -- I just want to clarify one quick  
6 factual issue for the Court; and that is the timestamp on  
7 that photograph, the photograph -- key photograph in  
8 question is 2:31 from the metadata from that photograph.  
9 The government believes that the incident itself actually  
10 occurred around 1:30.

11 So there is a gap between the -- there is some  
12 issue in terms of the internal timestamp that we received on  
13 the photographs which is why it's important to the  
14 government obviously the fact that -- it's important that  
15 the timestamps on those photographs came from the same  
16 device used by the same photographer. But I just wanted to  
17 clarify that the government's belief is that this incident  
18 occurred around 1:30 p.m.

19 THE COURT: Anything further from the defense?

20 MR. PIERCE: No, Your Honor.

21 THE COURT: All right. You are all excused.

22 (Whereupon, the proceeding concludes, 11:47 a.m.)

23 \* \* \* \* \*

24

25

**CERTIFICATE**

I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings to the best of my ability.

PLEASE NOTE: This hearing was held via videoconference and telephonically in compliance with the COVID-19 pandemic stay-safer-at-home recommendations and is therefore subject to the limitations associated with the use of technology, including but not limited to telephone signal interference, static, signal interruptions, and other restrictions and limitations associated with remote court reporting via telephone, speakerphone, and/or videoconferencing capabilities.

This certificate shall be considered null and void if the transcript is disassembled in any manner by any party without authorization of the signatory below.

Dated this 8th day of April, 2021.

/s/ Elizabeth Saint-Loth, RPR, FCRR  
Official Court Reporter