

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

UNITED STATES OF AMERICA

v.

MICHAEL JOHN LOPATIC, SR.,

Defendant.

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: **Case No. 21-CR-35 (EGS)**
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**DEFENDANT’S SUPPLEMENTAL BRIEF IN SUPPORT
OF APPEAL OF DETENTION ORDER**

Defendant Michael J. Lopatic, Sr. (“Mr. Lopatic”), by and through undersigned counsel, respectfully submits this Supplemental Brief in support of his Appeal of the Detention Order issued by the Magistrate Judge from the Eastern District of Pennsylvania.

On April 22, 2021, this Honorable Court convened a hearing regarding Mr. Lopatic’s Appeal of his detention order and invited the Parties to submit supplemental briefing in light of the Honorable Amy Berman Jackson’s recent order in the case of *USA v. Joshua M. Black*, Case No. 1:21-mj-00049-RMM (D. D.C. April 22, 2021). A transcript of the hearing is attached hereto as Exhibit “A”. In that case, the Court granted the defendant’s release from detention pending trial under the conditions that he will be subject to home confinement (with exceptions for work, church and medical and legal appointments), GPS location monitoring, and he would have to surrender all firearms in his residence. Ex. A, at 44:18-23.

The Court found that the Government failed to prove that there were no conditions or combination of conditions that would assure the safety of the community until trial. *Id.* at 44:6-16. Similar to this case, the Government conceded that Mr. Black was not charged with a crime of violence and none of the characteristics listed in 18 U.S.C. § 3142(g)(1) were involved. Gov.

Memo. in Opp., at 15, attached hereto as Exhibit “B”. In that case, Mr. Black breached the Capitol building and walked up the Capitol Rotunda east stairs and onto the Senate floor where he rummaged through papers on a Senator’s desk and took one of the papers away; sat on the Senate floor defying a USCP officer’s repeated requests to leave; and joined in a prayer with other individuals near the presiding officer’s chair. *Id.* at 17. In addition, Mr. Black was carrying a knife and had a loaded Taurus revolver in his truck because he did not “like being defenseless”, *see Ex. A*, at 18:2-8. By contrast, Mr. Lopatic travelled to the District of Columbia unarmed and did not have any weapons on him on January 6th.

Notably, during an interview with a special agent of the FBI, on January 8, 2021, Mr. Black stated that he “[does not] want to kill anybody.... But [he did not] know what’s going to happen next.” Ex. B, at 20. When the agent questioned why he would think he would have to kill somebody, Mr. Black replied, “Well, I mean, if they come in here trying to take our guns, or trying to turn America into slavery again, I don’t want to see that.” *Ibid.* Mr. Black also indicated that he would return to Washington, D.C., “if [he] felt like the Lord wanted [him] to go”. *Ibid.* In fact, Mr. Black explained that he did not want to go to the District of Columbia or breach the Capitol building on January 6th either, but decided to go because he felt that “the spirit of God wanted [him] to go”. *Ibid.*

Furthermore, in her ruling, Judge Jackson noted that “[e]ven after [Mr. Black] was questioned by the FBI, after all that happened, he’s not saying I think I learned a lesson here, but he’s persisting in the point of view that he may be called upon to take action in the future.” Ex. A, at 24:17-21. By contrast, Mr. Lopatic deeply regrets his actions on January 6th, and would never put himself in a similar situation again or travel to the District of Columbia for any other

reason than to attend his Court proceedings. Mr. Lopatic also never indicated that he would harm, let alone kill, another human being for any reason.

Even though the Court noted that Mr. Black’s “own statements give rise to considerable, articulable concerns about the future”, *see Ex. A*, at 22:15-17, and that his “anger didn’t dissipate”, *see id.* at 23:25-24:2, Judge Jackson found that Mr. Black should be released from detention pending trial because the Court “must identify an articulable threat posed by the defendant to an individual or to the community”, *id.* at 25:1-3 (*citing USA v. Munchel*, No. 21-3010, at 11 (D. D.C. March 26, 2021)), and no such threat has been articulated in his case.

Specifically, the Court found:

Am I confident that you’re going to follow my conditions of release? Not entirely. But, given the presumptions in the Bail Reform Act and the high burden imposed on the government, can I find that the government has established by clear and convincing evidence that there are no conditions or combination of conditions that will assure the safety of the community between now and the time of your trial? I don’t think I can. I don’t believe that the government has established by clear and convincing evidence that confining you to your home without weapons won’t be enough to mitigate the harm.

Id. at 44:6-16.

For the foregoing reasons and the reasons stated in his previous pleadings, Defendant Michael J. Lopatic, Sr., respectfully requests that this Honorable Court order his release.

Dated: April 23, 2021

Respectfully Submitted,

/s/ Dennis E. Boyle

Dennis E. Boyle, Esquire

Blerina Jasari, Esquire

Attorneys-at-Law

1050 Connecticut Ave, Suite 500

Washington, D.C., 20036

Email: dboyle@dennisboylelegal.com

bjasari@dennisboylelegal.com

Phone: (202) 430-1900

Counsel for Defendant

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)	Criminal Action
)	No. 21-cr-127
Plaintiff,)	
)	MOTIONS HEARING
vs.)	
)	Washington, DC
Joshua Matthew Black,)	April 22, 2021
)	Time: 11:15 a.m.
Defendant.)	

TRANSCRIPT OF MOTIONS HEARING
HELD BEFORE
THE HONORABLE JUDGE AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For the Plaintiff:	Seth Adam Meinero Assistant U.S. Attorney 555 4th Street, NW Washington, DC 20904 (202) 252-5847 Email: Seth.meinero@usdoj.gov
For the Defendant:	Clark U. Fleckinger, II Attorney at Law 9805 Ashburton Lane Bethesda, MD 20817 (301) 294-7301 Email: Cufleckinger@aol.com
Also Present:	Christine Schuck, Pretrial Services

Court Reporter:	Janice E. Dickman, RMR, CRR, CRC Official Court Reporter United States Courthouse, Room 6523 333 Constitution Avenue, NW Washington, DC 20001 202-354-3267
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1 THE COURTROOM DEPUTY: Good morning, Your Honor.
2 Good morning to counsel and the parties.

3 This morning we have a video motions hearing. This
4 is criminal case number 21-127, United States of America versus
5 Joshua Matthew Black. Appearing by telephone, will the
6 pretrial services agency officer please identify herself for
7 the record?

8 PRETRIAL SERVICES OFFICER: Good morning, Your Honor.
9 Christine Schuck, pretrial services.

10 THE COURT: Good morning.

11 THE COURTROOM DEPUTY: Will counsel for the
12 government please identify himself for the record?

13 MR. MEINERO: Good morning, Your Honor. Seth Adam
14 Meinero for the United States.

15 THE COURT: Good morning.

16 THE COURTROOM DEPUTY: Will counsel for the defendant
17 please identify himself for the record?

18 MR. FLECKINGER: Yes. Good morning, Your Honor.
19 Clark Fleckinger on behalf of Joshua Black, who is present.

20 THE COURT: All right. Good morning, Mr. Fleckinger.
21 And I know you wanted to use this opportunity to speak to
22 Mr. Black, and I hope you had some time to do that. But our
23 jail time slots are limited and if I let that go on much
24 longer, I wasn't going to have time for this hearing and I
25 don't want it to get interrupted. So that's why I need to

1 proceed, and maybe -- you may get an opportunity later in this
2 hearing to speak with him again. But did you at least complete
3 the conversation you wanted to have?

4 MR. FLECKINGER: I did, Your Honor. Thank you.

5 THE COURT: Okay.

6 THE COURTROOM DEPUTY: Will the defendant himself
7 please identify himself for the record?

8 THE DEFENDANT: Joshua Black.

9 THE COURT: All right. Mr. Black, can you hear and
10 see everyone?

11 THE DEFENDANT: I can hear everyone except the lady
12 on the telephone.

13 THE COURT: All right. And when I start to talk, I'm
14 going to ask everyone to mute their phones so that we don't
15 have the feedback that we're having right now.

16 Mr. Black, this is an important hearing in your case.
17 Have you discussed with your lawyer your constitutional right
18 to be here and have this hearing in person?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: And do you agree to participate by video
21 conference this morning? The court has been closed to
22 in-person proceedings to protect not only court personnel, but
23 also you from the coronavirus.

24 THE DEFENDANT: Yes, ma'am, I understand.

25 THE COURT: All right. And so, I find under the

1 CARES Act that this hearing should not be further delayed until
2 we can have it in person, and it's in the interest of justice
3 to proceed by video.

4 All right. So, if everybody -- can everybody mute?
5 I think that would be helpful.

6 On February 17 a grand jury sitting in this
7 courthouse charged the defendant with eight counts related to
8 the Capitol riot on January 6, 2021: Obstruction of an
9 official proceeding, in violation of 18 U.S. Code 1512;
10 entering and remaining in a restricted building or grounds with
11 a deadly or dangerous weapon, in violation of 18 U.S. Code
12 § 1752; disorderly and disruptive conduct in a restricted
13 building or grounds with a deadly or dangerous weapon; impeding
14 ingress and egress in a restricted building or grounds with a
15 deadly or dangerous weapon; unlawful possession of a dangerous
16 weapon on Capitol grounds; entering and remaining on the floor
17 of Congress, in violation of 40 U.S. Code § 5104(e) (2) (A);
18 disorderly conduct in a Capitol building, and; impeding passage
19 through the Capitol grounds or buildings and aiding and
20 abetting.

21 We're here today on the defendant's motion to
22 reconsider and vacate the magistrate judge's order of
23 detention, which is Docket 15. The government opposed the
24 motion in Docket 20 and in a supplement Docket 25. After his
25 arrest, the magistrate judge in the U.S. District Court for the

1 Northern District of Alabama ordered that Mr. Black be detained
2 on January 26, 2021. It's Docket 6, pages 12 through 19. That
3 judge found by clear and convincing evidence that there were no
4 conditions or combination of conditions that could reasonably
5 assure the safety of the community. The defense expressed its
6 intention to challenge that ruling when the defendant was
7 presented before the magistrate here on February 16, and told
8 me the same thing at a status conference on March 19th, and
9 ultimately filed this motion that we're here today to discuss
10 on March 24th.

11 The motion does not challenge the government's
12 ability to seek detention on these charges. It disputes the
13 significance of the knife that the defendant was carrying with
14 him on January 6 for the purpose of the motion, but it does not
15 challenge and could not challenge that there is a probable
16 cause finding that he committed more than one felony, quote,
17 while armed with a deadly or dangerous weapon, close quote, for
18 purposes of § 3142(f)(1)(E).

19 The Bail Reform Act doesn't define a dangerous
20 weapon, but courts have interpreted the term in relation to
21 other statutes, such as 18 U.S. Code §§ 111 and 113, which
22 criminalize assaults with a dangerous weapon.

23 They've defined a dangerous weapon as an object
24 that's either inherently dangerous or is used in a way that is
25 likely to endanger life or inflict great bodily harm. For

1 instance, the District Court in the *United States versus*
2 *Chansley*, cited cases from the Ninth, Fourth, Sixth and
3 Eleventh Circuits using that definition for a bond review
4 motion.

5 If you look at O'Malley's Federal Jury Practice and
6 Instruction, § 25.12, it defines a dangerous weapon as one
7 that, quote, has the potential to inflict serious bodily harm,
8 close quote. And the Sentencing Guidelines, § 1B1.1, define
9 dangerous weapon as an instrument capable of inflicting death
10 or serious bodily injury.

11 So there's no dispute that we have that element in
12 this case, and the defense motion is not based on that. The
13 defendant argues that the defendant does not pose the sort of
14 danger that can't being mitigated by conditions. And that's
15 what we're here to determine.

16 There's no dispute about the rules that govern this
17 decision; it's a decision that's mine to make de novo, no
18 matter what a prior magistrate judge said.

19 The Bail Reform Act starts out with the fundamental
20 principle, consistent with the presumption of innocence, that
21 the judicial officer shall order pretrial release on personal
22 recognizance unless the judicial officer determines that such
23 release will not reasonably assure the appearance of the person
24 as required or will endanger the safety of any other person or
25 the community. That's section 3142(b).

1 If that's not assured, the statute next calls for the
2 defendant's release subject to the least restrictive further
3 condition or combination of conditions that the judicial
4 officer determines will reasonably assure the appearance of the
5 person as required and the safety of any other person and the
6 community. That's in § 3142(c).

7 The government initially sought the defendant's
8 detention based on a risk of flight and danger to the
9 community. The magistrate judge did not find grounds to be
10 concerned about flight and the government doesn't appear to be
11 advancing that theory anymore. The government may move that a
12 defendant shall detained in certain cases and under certain
13 circumstances, and we've already determined, given the weapon,
14 that this falls in that category. And the Bail Reform Act
15 provides that some circumstances give rise to a rebuttable
16 presumption that the defendant poses a danger. But this case
17 doesn't involve that presumption.

18 The Bail Reform Act provides, though, that if a
19 judicial officer finds by clear and convincing evidence that no
20 condition or combination of conditions will reasonably assure
21 the appearance of the person as required and the safety of any
22 other person and the community, such judicial officer shall
23 order the detention of the person before trial. That's 18 U.S.
24 Code §§ 3142(e)(1) and (f)(2)(G).

25 It is the government's burden to prove that no

1 conditions will suffice, and to prove it by clear and
2 convincing evidence. Even if the defendant does not pose a
3 flight risk, though, danger to the community alone is a
4 sufficient reason to order pretrial detention. It's
5 *United States versus Salerno*, 481 U.S. 739, from 1987.

6 To determine whether the government has carried its
7 burden the Court must consider four things: The nature and
8 circumstances of the offense charged, including whether the
9 crime is a crime of violence; the weight of the evidence
10 against the defendant; the history and characteristics of the
11 defendant, and; the nature and seriousness of the danger to any
12 person or the community that would be posed by the person's
13 release. Those factors are set out in 18 U.S. Code 3142(g).

14 It's very important to emphasize that the exact same
15 rules and standards and presumptions apply in cases arising out
16 of the attack on the U. S. Capitol on January 6. Those
17 individuals cannot be held to any higher level of scrutiny or
18 some presumption not specified in the statute. But by the same
19 token, there's nothing about what they did or why they did it
20 that warrants a less rigorous analysis.

21 Even in a decision overturning a detention order and
22 remanding it to the trial court for reconsideration, the D.C.
23 Circuit summed it up and it said it cannot be gainsaid -- which
24 means denied -- that the violent breach of the Capitol on
25 January 6 was a grave danger to our democracy, and that those

1 who participated could rightly be subject to detention to
2 safeguard the community. That's *United States versus Munchel*,
3 2021 WL at 1149196, page 8. It's an opinion issued by the D.C.
4 Circuit on March 26th, 2021.

5 For the applicable test, the *Munchel* decision applied
6 and quoted *Salerno*, 481 U.S. at page 751. And it said when the
7 government proves by clear and convincing evidence that an
8 arrestee presents an identified and articulable threat to an
9 individual or the community, we believe that, consistent with
10 the due process clause, a court may disable the arrestee from
11 executing that threat. That's *Salerno*.

12 But, the *Munchel* court emphasized that the bond
13 determination is a forward looking assessment. What we're
14 looking for when we assess the 3142(g) factors is whether the
15 defendant, quote, poses a concrete, prospective threat to
16 public safety. *Munchel* said the courts said that at page 4.
17 In other words, is there a threat of continuing violence in the
18 future?

19 The *Munchel* court made quick work of the argument
20 advanced in that case by the defense that it would be improper
21 to rely on a finding that the defendants were unlikely to abide
22 by release conditions in deciding whether to detain them. The
23 Court said, on page 5, "It defines logic to suggest that a
24 Court cannot consider whether it believes that the defendant
25 will actually abide by its conditions when making the release

1 determination in the first instance pursuant to 18 U.S. Code
2 § 3142."

3 So that is a critical factor here. But a risk of
4 noncompliance alone is not sufficient, it must be tied to the
5 finding of dangerousness or flight.

6 This was clearly the concern that animated the
7 magistrate judge of the defendant's own home district in
8 Alabama and, frankly, a worries me, too, and that is why I
9 found it necessary to have a hearing today, to talk to the
10 defendant face to face, even if over a computer screen, before
11 making my final decision on this motion.

12 So I'm going to go through the § 3142(g) factors one
13 by one and raise questions when I get to them. But it's going
14 to take me a little while to go through the facts.

15 The first factor is the nature and circumstance of
16 the offense. I can't just consider the charges. *Munchel*
17 requires that when assessing whether a defendant poses an
18 articulable threat to the community in the future, one thing
19 the court has to consider is what he personally did on January
20 6th, not just what transpired in general or the fact that law
21 enforcement officers were physically attacked and property was
22 stolen, vandalized, defiled, or destroyed by members of the
23 mob.

24 There's no significant dispute about what happened
25 here. On January 6 the U.S. Capitol was closed to the public

1 while, in accordance with the U. S. Constitution, the joint
2 session of Congress was convened to certify the vote of the
3 Electoral College in the 2020 Presidential election. That was
4 after every single one of the 50 states, including those under
5 Republican control or with Republican election officials, had
6 certified its own count, and after court challenges to those
7 counts or certifications had been rejected by more than 60
8 courts across the country by state judges and federal judges
9 appointed by presidents of both parties, including former
10 President Trump. Vice President Pence was present and
11 presiding, as the Constitution required him to do.

12 Defendant was a member of the group that forced its
13 way through the barricades and had past the officers attempting
14 to keep the crowd away from the building, and forced its way
15 into the building to stop that process, and he ended up on the
16 floor of the Senate chamber.

17 Defendant attended a similar rally for President
18 Trump in Georgia prior to going to Washington, D.C. He told
19 the FBI agents that he didn't want to travel to D.C., but that
20 he, quote, was praying about it and asked the Lord, "I don't
21 want to go. You want me to go?" And he was like, "Yeah. I
22 felt like he wanted me to go." He also said, quote, He sent me
23 here for a mission, close quote.

24 The interviews with the FBI agents are quoted in the
25 government's opposition at page 10 and thereafter.

1 The defendant drove from Alabama to D.C. to
2 participate in that day's events. He stated on a YouTube video
3 that he created the day he turned himself in to the FBI, before
4 he turned himself in, to tell, as he said, his side of the
5 story that, quote, It's a crooked Democrat house, crooked
6 Republicans, too, and a crooked Democrat Senate, crooked
7 Republicans, too. And now it's a straight-up crooked, lying,
8 cheating, you know, President. They're the ones leading the
9 country. That's not the antichrist, but they're
10 anti-Christian. America has been stolen.

11 The defense argues in its memorandum that the
12 defendant didn't drive to D.C. with the intent to enter the
13 Capitol. Maybe not, when he got into the car. But we don't
14 have to decide that question. It's clear that his attempt
15 crystallized early that afternoon. As he put it, quote, Once
16 we found out Pence had turned on us and that they had stolen
17 the election, like officially, the crowd went crazy. I mean,
18 it became a mob. We crossed the gate. We just wanted to get
19 inside the building.

20 Video surveillance footage from January 6 initially
21 shows defendant Black at the west side of the Capitol building
22 at the front of a large crowd confronting the police officers.
23 He is relatively still; he may be talking to some of the
24 officers, but others are gesturing and yelling.

25 Eventually, as the crowd got more unruly, he's thrust

1 into the line of officers. There's no allegation that he
2 propelled himself into the officers and he does seem to back
3 away. Officers began firing less-than-lethal munitions into
4 the crowd. And Black, who was at or close to the front, was
5 apparently hit by one of the plastic projectiles that the
6 police fired into the crowd, causing a gash on his cheek that
7 made him recognizable in future videos and pictures. Yet he
8 was undeterred, telling others who tried to pull him back
9 because he was bleeding that, "God sent me here for a mission."
10 He made his way to the east side of the building, he told the
11 FBI the Lord wanted him to go to the other side of the Capitol.

12 Surveillance video depicts his presence at the east
13 rotunda entrance, and another video the government has
14 presented in its supplemental memorandum shows the minutes
15 preceding Black's entry, during which a large crowd pushes
16 against a small line of officers who are defending a closed
17 door just behind them.

18 It's not easy to differentiate the individual actions
19 of every individual in the large, angry, noisy mob. There are
20 a lot of people, some of them are large and at times obscuring
21 the camera, and many of them have their own cell phones in the
22 air as they're filming themselves and each other.

23 The government asserts that early on, the crowd as a
24 whole, with defendant in the vanguard, was engaged in a heaving
25 motion to dislodge the Capitol police officers who were

1 defending the entry to the building. And this effort is quite
2 apparent on the video, as is its eventual success when the
3 doors are shown to be open.

4 The government indicates that the door was ultimately
5 opened by others who broke in elsewhere and forced the door
6 open from the inside. The video of the defendant on the east
7 side of the building doesn't show the moment the door opened.
8 I need to note here, though, that the court in *Munchel* took
9 pains to emphasize that those defendants walked through doors
10 that were already wide open, they were not secured, and that
11 the two of them had not participated in the crowd's efforts to
12 force its way in. But whether the particular doors in this
13 case got opened from the inside or the outside, that is not the
14 case here.

15 The government calls the defendant a leader -- which
16 was not apparent to me from the video -- that he's giving
17 instructions to, exhorting or organizing the others. I can't
18 draw that inference from what I've seen and I'm not going to
19 rule against his motion on that basis. But he is
20 unquestionably in the front and he is unquestionably a full
21 participant in the joint effort to breach the doors.

22 The defense insists that while he was up there, the
23 defendant was doing his best to ensure that no one hurt the
24 officers. And there was some suggestion that at the first
25 point when he's trying to gain entry and was hit by the plastic

1 bullet, he was bending down to render aid to a fallen officer.
2 You can't really see that on the video from the west side.

3 However, there is one point in the video provided in
4 the supplemental memorandum of the east rotunda entrance,
5 approximately 49 seconds in, where the defendant's arm is
6 outstretched and he has his hand on the back of another person
7 who is closer to an officer who appeared to be suffering after
8 he was sprayed with something. This could be consistent with
9 an attempt to get someone else to desist from further acts
10 against a besieged officer. It's not clear, but I'll give the
11 benefit of that inference.

12 The video is not the only evidence we have, though.
13 The defendant took to YouTube to tell his own side of the
14 story. And he said, about the west entrance, "When we got up
15 there, the cops had formed a line, and they were out numbered,
16 probably 1,000 to 1." He said, "The only way they were going
17 to stop the crowd was with lead bullets. The crowd had pushed
18 and the cop's line got pushed back, I don't know, four to eight
19 feet, and there was, like, a step where I was, and the cop in
20 front of me fell down."

21 Black also talks about being at the front of the
22 crowd at the east entrance, at the door. And I don't need to
23 characterize what happened because Black himself described that
24 moment as a "mob rule situation." He said, "the patriots were
25 pissed." And, "The next thing, you know, I'm up there at the

1 police." And actually seemed to be at the front for the entire
2 video.

3 Black recalled five or six police in riot gear at the
4 doorway when another rioter sprayed them with pepper spray,
5 spraying all of them but two, and they were trying to get out
6 and one of them fell down and the people started, like,
7 bum-rushing him. Black claimed he told other rioters, "Let him
8 out, he's done." Black described another officer as, quote,
9 walking like a blind man, close quote, because he'd gotten
10 pepper-sprayed, quote, right in the face, close quote. He
11 recounts his message for the officers, "Hey, man, we don't want
12 to hurt you. I appreciate your service, but, you know, we've
13 got to show these politicians that we mean business. Hey,
14 look, man, your mission is over, you've done your job. The
15 halls have been breached. You might need to retreat."

16 And he says, "The mob behind me -- the crowd, the
17 angry patriots -- started pushing." Does he just get swept up?
18 Was he pushed in? I don't think so. That's not apparent on
19 the video. Plus, according to the defendant himself, he told
20 the others to let the officer out because, quote, if we don't
21 let him out of here, we're never getting in, close quote.

22 Similar, he told the FBI, quote, One cop, when he got
23 sprayed, he was trying to get out of there and some people were
24 trying to hurt him." While Black stated that he yelled at the
25 rioters not to hurt the officer, he also admitted telling them,

1 "We got to get him out from in front of the door to get in
2 there. So, you know, don't beat him back into the door. Let
3 him out. They're leaving. Let him go, you know."

4 So we have something of a mixed motive. Maybe he
5 didn't want to see an officer hurt, I'll give him credit for
6 that. But letting him alone, letting him get away from the
7 crowd would also serve to facilitate their entry at this point
8 where it was just those few officers under attack who were
9 standing in the way.

10 The defendant said, in his YouTube video, "We just
11 wanted to get inside the building. I wanted to get inside the
12 building so I could plead the blood of Jesus over it. That was
13 my goal." As he said in one of the YouTube videos, "I just
14 wanted to show the politicians that we the people run this
15 country, you don't." And, "You know, you swore an oath to
16 defend the Constitution and you didn't do it. You know, you're
17 a bunch of lying crooks, Democrat and Republicans. I wanted
18 them to know that we the people can do it if we decide, you
19 know? And there were no lead bullets flying from you us. But,
20 you know, we had the numbers and the power at that moment to
21 show them that you don't run this country, we do. You know?
22 That was -- and I wanted to plead the blood of Jesus on that
23 place because there's all kinds of evil coming out of that
24 thing. Their -- their mission is not for the good of the
25 people, you know? And I believe that considerably."

1 So, what did the defendant do once he got inside?
2 First of all, the defendant admits to possessing a knife while
3 inside the Capitol. He claims he wasn't planning on pulling
4 it, and notes that he always carries knives on him because of
5 his work. But at another point in his YouTube video the
6 defendant also reveals that he knew that he wasn't supposed to
7 have a firearm in D.C. and he doesn't, quote, like being
8 defenseless, close quote. This implies that he brought the
9 knife with him knowing he might need to use it, rather than
10 having it on him accidentally or absent-mindedly. And this is
11 further supported by his decision to leave the firearm in his
12 truck outside of the District of Columbia.

13 Defendant explains in his YouTube video that after he
14 managed to gain entrance to the building, he, quote, felt like
15 the spirit of God wanted him to go into the Senate room. He
16 says he, quote, found a little spot and there was a glass door
17 and it said U.S. Senate on it. I said I need to get in there.
18 I just felt like the spirit of God wanted me to go in the
19 Senate room, you know. So I was about to break the glass and I
20 thought, no, this is our house, we don't act like that. I was
21 tempted to, I'm not going to lie, because I'm pretty upset, you
22 know? They stole my country.

23 And defendant apparently restrained himself from
24 breaking the glass, and he did enter the chamber. That, too,
25 was not accidental, it was not because he got caught in the

1 flow of the crowd. In his words, again found in the YouTube
2 videos that he posted, he said, "I pled the blood of Jesus on
3 the Senate floor. You know, I praised the name of Jesus on the
4 Senate floor. That was my goal. I think that was God's goal."

5 Video footage from within the chamber also shows the
6 defendant rummaging through papers on a Senator's desk, taking
7 pictures of documents and of himself, but also requesting that
8 other people not disrespect the Senate. There was a reporter
9 from *The New Yorker* who chronicled the day's events who
10 happened to be in the Senate chamber at the time and he
11 credited Black with attempting to maintain order and respect in
12 the chamber. There is video from his reporting during which a
13 Capitol police officer asked Black and the others, "Any chance
14 I could get you guys to leave the Senate wing?" And the
15 defendant responds, "We will. I've been making sure they ain't
16 disrespecting the place." And Black apparently told Chansley,
17 another defendant, "Stop acting like a fool, cut it out." And
18 that's in the government's opposition at page 7, quoting a
19 video from *The New Yorker*.

20 I want to note that I appreciate the candor and the
21 fairness that characterized the government's pleadings in this
22 case. That's how a prosecutor is supposed to behave when,
23 consistent with your *Brady* obligations, you're fair about what
24 an individual actually did when there's a positive part of the
25 story to tell. You're going to have a lot more credibility on

1 the day that you need to tell me that somebody else is the
2 worst of the worst.

3 The defendant contacted the FBI himself after
4 learning that the agents wanted to speak to him. He spoke with
5 the FBI twice, and also consented to a search of his home and
6 showed the agents certain items of interest, including the
7 knife that he had with him on January 6th, which is depicted in
8 the government's pleadings.

9 In sum, if you look at the nature and circumstances
10 of the offense -- and that's where we still are -- the first
11 factor here, he was armed. He was at the forefront of the
12 angry mob's effort to force its way in over the officers'
13 resistance, and he knowingly and intentionally entered the
14 space he was not supposed to enter. And this was because he
15 believed in his right as a citizen to express his
16 dissatisfaction with the election with a show of force. But he
17 did not use or even brandish the knife at any time, and it is
18 one that he carries regularly. He left his gun outside of the
19 District of Columbia. He did not personally attack anyone.
20 There is some evidence that he encouraged others not to attack
21 the officers, and he was peaceful and not destructive within
22 the Senate chamber and respectful towards the officers. He
23 turned himself in to the FBI and cooperated fully with them,
24 providing two voluntary interviews.

25 So this factor cuts both ways. The allegations and

1 the defendant's actions and his justifications are deeply
2 concerning and they give rise to some reason to be concerned
3 about the safety of the community, in particular governmental
4 officials and institutions, in the future. But his individual
5 actions on that date do not include much to supply grounds for
6 a prediction that he would be a danger in the future that
7 stringent conditions could not control, which is the issue.

8 The second factor I have to consider is the history
9 and characteristics of the defendant. This factor weighs in
10 the defendant's favor. He's 45 years old. He has no prior
11 criminal history other than a fairly old traffic offense. He
12 has a stable home where he lives with other family members.
13 There's no suggestion of drug or alcohol abuse. He's
14 responsible and employed in a landscaping business.

15 Third factor is the weight of the evidence. The
16 evidence with respect to the offense is strong. It was
17 videotaped, it was described in detail by the defendant
18 himself, not just an FBI interviews, but in videos that he
19 created and posted on social media on his own.

20 Courts in other circuits have cautioned, though, that
21 a district court assessing the weight of the evidence must not
22 consider the evidence of the defendant's guilt, but rather must
23 consider only the weight of the evidence of his dangerousness.
24 The Sixth Circuit said that in *United States versus Stone*, 608
25 F.3d 939, in 2010. And the Ninth Circuit said it in

1 *United States versus Gebro*, G-E-B-R-O, 948 F.2d 1118, holding
2 that § 3142(g) neither requires nor permits a pretrial
3 determination of guilt.

4 But if we're just looking at the evidence of his
5 dangerousness, that results in a substantial overlap with the
6 fourth factor, which is the nature and seriousness of the
7 danger to any person or the community that would be posed by
8 the defendant's release.

9 When the FBI agent asked the defendant if he had
10 violent intentions when he entered the Capitol, he responded,
11 "No, no, no. I had zero intentions. God said, 'Go here,' and
12 I went. And then when I got to this part, He said, 'Go here,'
13 and I went. And then when I got there, He said, 'Go here,' and
14 I went. That was all I did the whole time."

15 This is where the determination becomes particularly
16 challenging, as the defendant's own statements give rise to
17 considerable, articulable concerns about the future. The
18 defendant announced on YouTube that the Constitution gives we
19 the people the right to, quote, abolish a corrupt government,
20 close quote. The defendant also told the FBI, quote, America's
21 mad, the ones that are paying attention. It's going to have to
22 be the Lord, because the only thing that can happen now is an
23 armed revolution and I just don't want to see that, you know.
24 He said, quote, If they come in here trying to take something,
25 you stop them, you know? But if they ever get our guns, that's

1 it. If they ever talk about taking -- I mean, all my guns are
2 legal. But if I -- I don't know. I just don't want to kill
3 anybody, you know? But I don't know what's going to happen
4 next. When the agent questioned why he would think he would
5 have to kill somebody, the defendant replied, quote, Well, I
6 mean, if they come in here trying to take our guns, or trying
7 to turn America into slavery again, I don't want to see that,
8 close quote.

9 When the agent asked whether he would go back up
10 there -- meaning, presumably, here, Washington, D.C. -- he
11 replied, "Nah. I mean, I felt like the -- if I felt like the
12 Lord wanted me to go, I would, but I don't have no plans, close
13 quote. But then he added, "I wasn't planning on going to that
14 one," meaning the January 6th events.

15 I note that the defendant doesn't claim a direct line
16 of communication, that he hears voices or sees visions giving
17 him instruction. What he said over and over again in the
18 material I've quoted is that he, quote, felt like, close quote,
19 the Lord wanted him to do certain things, and he did them. And
20 that's what we have on the record and I can't ignore it.

21 The defendant appears to have been a decent,
22 generally law-abiding person until this moment. But, as he
23 said, he was angry. He's not volatile; he's calm about it on
24 the video. But my concern is he didn't get angry when he got
25 there, he didn't just get caught up in the mood. These are his

1 beliefs and he's expressed them quite clearly and he's quite
2 earnest about them and the anger didn't dissipate. It's
3 relevant to that determination that the videos were posted and
4 the statements to the FBI were made two days after the attack
5 on the Capitol. He didn't return chastened and apologetic once
6 the scope of the damage done and the injuries to law
7 enforcement officers became known. And it's not as if the
8 effort by some political leaders and media figures to stoke
9 this sort of anger has abated in any way.

10 So the defendant's earnestness cuts both ways. He's
11 imbued -- both politically and in his conviction that he was
12 called upon -- and that he may be called upon again to take
13 action.

14 Thus, the fourth factor weighs in favor of detention.
15 There is an articulable basis for concern regarding not just
16 his compliance with his conditions of release, but posing a
17 real threat of danger to the public. Even after he was
18 questioned by the FBI, after all that happened, he's not saying
19 I think I learned a lesson here, but he's persisting in the
20 point of view that he may be called upon to take action in the
21 future.

22 But the defendant's quite vague about what it is he
23 may feel compelled to do in the future. So there's a question
24 about whether I can detain him consistent with the Bail Reform
25 Act.

1 *Munchel* says, "To order a defendant preventively
2 detained, a court must identify an articulable threat posed by
3 the defendant to an individual or the community. The threat
4 need not be of physical violence, and it may extend to
5 nonphysical harms, such as corrupting an organization, but it
6 must be clearly identified." For that, though, the D.C.
7 Circuit said see *Salerno*, and all the quote from *Salerno* says
8 is, "The act applies in narrow circumstances where the
9 government musters convincing proof that the arrestee presents
10 a demonstrable danger to the community."

11 Defendant's own words could satisfy the requirement
12 of the demonstrable danger, but is it clearly identified? Is
13 he any less of a danger because at this point there's no
14 telling what he may feel that God wants him to do, or is the
15 evidence sufficient because, in his own words, that could
16 include an armed rebellion or killing someone? He's the one
17 who volunteered those options, not the FBI.

18 So my first question for counsel for the defendant
19 is: What is your response to that? How specific does *Munchel*
20 say it has to be?

21 MR. FLECKINGER: Well, I think, Your Honor -- and
22 thank you -- I think that *Munchel* indicates that the threat --
23 the specific threat dissipates under the unique circumstances
24 of this -- of this -- the events of January 6. There are going
25 to be no further political rallies. There are -- for the next

1 couple of years. There are -- at least during the pendency of
2 this case --

3 THE COURT: Well, there's not -- it's going to be
4 four years before somebody is certifying the Electoral College
5 vote. Are you telling me there are not going to be any
6 political -- people are already starting to run for the next
7 Senate and, frankly, the next Presidential election.

8 MR. FLECKINGER: No, I get that. And one of the
9 conditions of release that could be imposed, that he not
10 participate in a political activity or political rallies during
11 the course of his pretrial release. I think that addresses
12 that issue.

13 And one of the things that *Munchel* indicated was that
14 you have to look at it in the context of what is likely. And
15 whether or not there is any likely political rally that is
16 going to raise the kinds issues that Mr. Black was concerned
17 about and which compelled him to go to Washington, D.C. on
18 January 6 is another issue. I don't think that there are any
19 Alabama activities which are political activities which are in
20 the offing which would address those kinds of issues. And I
21 don't think there's somebody that is talking about slavery or
22 talking away guns.

23 So in the unique context of this pretrial detention
24 hearing, I think that there is really no identifiable,
25 articulable danger to the community under circumstances where

1 the same sorts of political issues are not being presented as
2 were presented on January 6.

3 THE COURT: Well, isn't it fair to say that the same
4 political issues and the same political concerns are being
5 pumped out into the airways on a daily basis?

6 MR. FLECKINGER: Yes. No, I -- I agree that that
7 exists, but there are going to be no political rallies in D.C.
8 with regard to these issues for at least a couple of years
9 and --

10 THE COURT: I guess my concern is when he spoke to
11 the FBI, he doesn't just say I might do something if I go to
12 another rally, or I might need to go to another rally. He
13 talked about an armed rebellion might be necessary, given the
14 anti-Christian, corrupt nature of the currently duly-elected
15 government in this country. He talked about possibly needing
16 to kill someone, if someone came for his guns. So, can he
17 abide by the condition of surrendering his firearms?

18 MR. FLECKINGER: Yes. Yes.

19 THE COURT: Does he understand that that is going to
20 be a condition of his release, if he's released? And will he
21 abide by that, and is that going to trigger a reaction on his
22 part?

23 MR. FLECKINGER: Mr. Black and I have talked about
24 that particular issue. Mr. Black had a small, snub-nosed
25 firearm, pistol type of weapon that was in Alabama, and that is

1 no longer in his home. He showed it to the FBI agents at that
2 time. That firearm has been taken out of that home by his
3 brother. If Mr. Black needs to surrender that firearm, I would
4 submit -- and I would ask Mr. Black to confirm that --
5 surrender that firearm to the law enforcement authorities, I
6 think that he would do that. And you're welcome to ask him
7 whether or not he would surrender his firearm to law
8 enforcement. But he doesn't even know where that firearm is at
9 this point in time. I'm actually --

10 THE COURT: Mr. Black, can you abide by a condition
11 that requires you to surrender any firearms and to ensure that
12 there are none in your residence?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Notwithstanding what you told the FBI,
15 that doesn't count as somebody coming for your guns, in your
16 point of view?

17 THE DEFENDANT: I was talking about something
18 completely different.

19 THE COURT: You would abide by that condition?

20 THE DEFENDANT: Yes. Yes, ma'am, I would.

21 THE COURT: All right. Let me go back to the
22 government. I still want to talk about *Salerno* and the
23 specificity required by *Munchel*. What's the government's
24 position about whether that has been satisfied? It seems to me
25 that the defendant made some threatening remarks, but are those

1 words enough to warrant detention under the case law that we
2 have?

3 MR. MEINERO: Your Honor, *Munchel*, the threat
4 assessment looks to the resources and capabilities of the
5 defendant. We know -- and relating back to the statements that
6 you recounted about his dire outlook, about the possibility of
7 armed revolution and his being very exercised about the
8 possibility of taking -- or, having his guns taken away, we
9 know he has the resources, potentially, to engage in violent
10 conduct. He was -- when the FBI went to his home, they did
11 find a loaded revolver in his truck. He drove that truck to
12 Washington -- to the Washington area, although he said he
13 parked it outside of Washington.

14 We know what his capabilities are, too. I don't
15 think it could be underscored enough what Mr. Black's
16 determination was to get inside the Capitol. After he was shot
17 on the east side -- I'm sorry, on the west side, he still made
18 his way over to the west side -- to the east side, participated
19 in the forceful breaching of the east front, made his way
20 between two officers to the Senate floor.

21 So we know the level of determination he has. And I
22 don't think that the threat need only look at the possibility
23 of whether Mr. Black would engage in another rally that could
24 lead to that kind of conduct, I think -- what it shows is that
25 kind of determination, that kind of -- the resources and the

1 capability of engaging in violent conduct can be applicable to
2 a number of different circumstances outside of the political
3 realm.

4 There is also -- which Your Honor mentioned -- this
5 disturbing factor here of Mr. Black having some restrained
6 instincts, but if he believes there is a divine directive
7 telling him to act contrary to those instincts, he submits --
8 he submits to the divine directive. So that is something that
9 troubles us greatly. And in speaking to the threat, that shows
10 that -- the intentions and capability of Mr. Black are there to
11 engage in further dangerousness.

12 THE COURT: Well, the specific aspects in *Munchel*
13 that I was asking both of you to weigh in on was their
14 insistence that the threat be not only something that he's
15 capable of carrying out, but identifiable. Do we have a
16 sufficiently specific and identifiable threat to create the
17 demonstrable danger that the courts talk about?

18 MR. MEINERO: Well, Your Honor, if you're talking
19 about another political event, I can't tell you exactly what
20 the political event would be. I mean, looking to a political
21 event was one factor *Munchel* looked to in assessing those
22 defendants' dangerousness. But as Your Honor mentioned, there
23 are talk of political rallies all the time. There are
24 certainly the possibility of other events.

25 Mr. Black also voiced this concern about coming into

1 power in January, that government has come into power. This
2 government, he believes, could take away his guns. So, there
3 is still there simmering tension with him about the general
4 political situation.

5 THE COURT: All right. I want to make one thing very
6 clear before I go on, which is that neither a defendant's
7 religious beliefs, nor his political beliefs should be a factor
8 in a court's ruling on detention one way or the other. This
9 defendant will not be detained because of his faith or because
10 of his political views. But it doesn't necessarily point in
11 favor of release either when he says he acted in accordance
12 with what God told him to do or because he sincerely believed
13 the election had been stolen and he had a right as a citizen to
14 storm the Capitol and disrupt the Senators' performance of
15 their constitutional function.

16 This defendant and all defendants are absolutely free
17 under the Constitution to practice their faith and engage in
18 prayer and espouse their political views and, ordinarily, to
19 rally, to vote, to make campaign contributions, to blog, and to
20 talk about all of it on YouTube. All I want to talk about
21 today is his actions, not his thoughts.

22 As I've said all along, it's the government's burden
23 to prove the conditions wouldn't be sufficient to keep his
24 actions from hurting a person or the community at large. But
25 it's going to be the defendant's obligation as a human being

1 with free will to comply with those conditions. And the point
2 of those conditions will be to ensure the safety of the
3 community. The magistrate judge in the defendant's own
4 district was deeply concerned that notwithstanding the
5 defendant's assurances that he might not want to do something,
6 he will do it if he understands it to be God's will.

7 He said that the defendant's participation in the
8 forcible unauthorized entry into this nation's Capitol while
9 armed with a knife is suggesting future violent acts, combined
10 with his using God as a justification for his actions weigh in
11 favor of detention.

12 Particularly concerning are his statements that the
13 only thing that could happen now is an armed revolution and he
14 didn't want that to happen, and that all his guns were legal
15 and that he didn't want to kill anyone, but he didn't know what
16 would happen next. That's what the magistrate judge wrote in
17 his opinion.

18 I'm faced with the same dilemma. Those voluntary
19 statements give rise to a lot of questions about his ability to
20 abide by any conditions, and the defense memorandum didn't
21 quite clear it up. The defense does not assure me,
22 unequivocally, of course he will abide by your conditions, of
23 course he will abide by the most fundamental statutorily
24 required condition of pretrial release, which is that he will
25 not violate another federal, state or local crime.

1 What defense told me on page 17 -- paragraph 17 on
2 page 8 of its memorandum is to further address the concern of
3 the government that Mr. Black appears willing to act violently
4 if God tells him to so act, an act which would be out of
5 character for Mr. Black. Mr. Black advises that he will abide
6 by whatever conditions of release the Court imposes, and that
7 not only will he follow any order of the Court, but that God
8 would never ask him to breach a promise that he made to
9 someone, including, most importantly in this context, the
10 Court. I appreciate that. But I'm not going to go there and I
11 shouldn't.

12 What you understand to be the Lord's will and how God
13 might judge you in the hereafter is not my department. Your
14 relationship with God is between you and your pastor and God,
15 and I would not presume to offer an opinion. My concern is the
16 here and now and how you behave, and reducing any risk that
17 could arise if you engaged in similar conduct again, for
18 whatever reason.

19 I can't base my decision on your assurances of what
20 the defendant believes today, even after careful contemplation
21 and prayer, what God -- about what God would or wouldn't tell
22 him to do in the future. What I need is his assurance that
23 he's going to comply with the conditions of release, period.

24 To be clear, if I release you, Mr. Black, I'm not
25 going to tell you that you can't find guidance in prayer;

1 that's your business and that's your right. But I will be
2 telling you that if you think God wants you to do something
3 that violates a court order and you do it, I will revoke your
4 bond. And I need to be comfortable that you understand that.

5 Mr. Fleckinger, can you let me know -- and you can
6 let me know if you need to confer with the defendant before you
7 answer these questions -- what can the defense say to dispel
8 those concerns that the magistrate judge had? If he is
9 released, he's going to have to be able to let me know that he
10 understands my conditions and he's prepared and committed to
11 complying with them and, as you know, he's going to have to
12 swear to them. Can he take the oath that he's going to be
13 required to abide by, that he's not going to violate federal or
14 state law and that he's going to abide by my conditions, given
15 everything that he's said?

16 MR. FLECKINGER: I don't need to talk with Mr. Black
17 with regard to that. We've already discussed those issues.
18 And he will. He will take the oath and he will abide by
19 whatever conditions are imposed.

20 I think that there are a number of conditions which
21 can be imposed that will alleviate the Court's concerns. And I
22 think that his behavior subsequent to the events of January 6
23 are indicative of that, wherein he was completely cooperative
24 with law enforcement.

25 I will say this, for whatever it's worth, because I

1 think you've addressed it in the context of his behavior, his
2 behavior at the time of the -- of January 6, while under the
3 circumstances and based upon the indictment there is certainly
4 probable cause that it was illegal, there was also substantial
5 compassion which was exhibited by Mr. Black during the course
6 of these events. And Mr. Meinero is aware of those events.

7 In fact, Your Honor indicated something to the effect
8 of how honorable the government has been during the course of
9 these pretrial proceedings. I've been in substantial contact
10 with Mr. Meinero. Mr. Meinero has been exceedingly honorable
11 with regard to all of his prosecutorial obligations in terms of
12 turning over *Brady*. Among the kinds of things that Mr. Meinero
13 has turned over are things which I received on Saturday or
14 Sunday of this past weekend; FBI 302 form wherein an FBI agent
15 had -- had several conversations -- or, actually had two
16 conversations with Mr. Black at the time of the events on
17 January 6. He was nothing but respectful and differential to
18 that officer. I'm not going to mention his name at
19 Mr. Meinero's request. But, I think that Mr. Meinero will
20 probably corroborate what I'm indicating in that regard.

21 In addition to that, I know that Mr. Meinero has a
22 PowerPoint presentation that he wants to provide to the Court,
23 if the Court thinks that it's necessary. I don't know whether
24 it is or not. But in any event, as part of that PowerPoint
25 presentation there is a video that Mr. Meinero shared with

1 me -- I think it was yesterday morning -- which I took a look
2 at and which shows Mr. Black on the ground -- this is after
3 Mr. Black had been shot in the face with the rubber pellet --
4 and there was a lot of commotion taking place, there was a lot
5 of scuffling which was taking place between Capitol police
6 officers and the protestors that were there. Mr. Black,
7 despite the fact that he'd just been shot, was on the ground
8 trying to protect a police officer that had fallen to the
9 ground and said something to the effect of, "Don't hurt him.
10 Don't hurt him."

11 I think that that tells volumes about what
12 Mr. Black's true intentions were and that they were not violent
13 intentions, and that he truly has no violent intentions in the
14 future. I think that what Mr. Black has probably been saying,
15 both on the YouTube and during the course of the FBI
16 interviews, was a bit of hyperbole.

17 I have been dealing with Mr. Black for a couple of
18 months now. I am convinced, through my dealings with
19 Mr. Black, that Mr. Black understands the gravity of the
20 situation that he is in, he respects the authority of this
21 Court, he respects law enforcement. He may not have respected
22 the administration that was coming in as of January 20, but he
23 certainly respects at this point the authority of the Court and
24 will abide by whatever conditions are imposed. And I think
25 that there are a substantial number, including, by the way,

1 courtesy supervision by the U. S. Probation office in the
2 Northern District of Alabama. I've spoken with people down
3 there, they're willing to supervise him with regard to whatever
4 conditions are imposed, whether that is GPS monitoring, whether
5 that is any sort of home detention -- I don't think that that
6 is necessary, but I do think that pretrial release under the
7 circumstances is certainly appropriate.

8 THE COURT: All right.

9 MR. FLECKINGER: And I hope --

10 THE COURT: I just want to ask you one question.

11 MR. FLECKINGER: Sure.

12 THE COURT: Your first sentence, I think you said, "I
13 don't need to talk to the defendant before I answer this
14 question," and then you went on to answer the question,
15 suggesting that you didn't. But I didn't quite catch it and I
16 wasn't sure if you were saying you did want to talk to him or
17 that you didn't need to talk to him.

18 MR. FLECKINGER: (Shakes head.)

19 THE COURT: You did not?

20 MR. FLECKINGER: I indicated I did not need to talk
21 to him because we've already discussed these issues.

22 THE COURT: All right. So does he understand that if
23 he violates any conditions I impose, he will go back to D.C.
24 jail, even if he is sincerely of the view that he's doing what
25 God wants him to do?

1 MR. FLECKINGER: Yes.

2 THE COURT: And I already spoke to him directly about
3 the guns, but he said, "If I felt like the Lord wanted me to go
4 back to D.C., I would." Is he committed to complying with the
5 condition of not returning to the District?

6 MR. FLECKINGER: He will not return to the District,
7 except to come back to court when required.

8 THE COURT: All right. Mr. Meinero, how have you
9 shown by clear and convincing evidence that no combination of
10 conditions, such as home detention or the surrender of his
11 weapons or GPS monitoring, would not assure the safety of the
12 community?

13 MR. MEINERO: Your Honor went through a very thorough
14 recitation of what occurred on January 6th. What it comes down
15 to for us, Your Honor -- and there's one thing I should note,
16 just to, again, going to the obligation of candor to the court
17 and in fairness to Mr. Black -- when we filed our opposition
18 supplement, we were unaware of a video we found just this week
19 in which Mr. Black does appear to protect an officer who had
20 fallen to the ground. And I can show that video to Your Honor,
21 it's about a two-minute video, if you would like to see that
22 before making your decision.

23 THE COURT: I accept your representation, and I
24 appreciate the fact that you have told me that.

25 MR. MEINERO: But, the problem, from our perspective,

1 Your Honor, is that the commendable things he did that day, the
2 well wishes he had for officers, including the officer
3 Mr. Fleckinger mentioned in that 302, were negated by his
4 participation in that violent siege on the east front.

5 Mr. Black participated in the pushing maneuver to try
6 to breach that entranceway. He eventually muscled his way over
7 the threshold and in between two officers on his way to the
8 Senate chamber.

9 Your Honor has listed many of the very troubling
10 statements that Mr. Black has made about an armed revolution,
11 though he does not want to see it. His concern that when asked
12 by an FBI agent about this notion about having guns taken away,
13 that he just doesn't want to kill anybody, but I don't know
14 what's going to happen next, all this speaks to a concrete
15 concern, despite what Mr. Black may promise to the Court, that
16 he is still a danger. And I believe we have shown that by
17 clear and convincing evidence, there is a concrete threat that
18 this man, who was so determined to make his way into the
19 Capitol, even after being shot, that he still poses a danger of
20 threat to others in the community.

21 THE COURT: All right. Mr. Fleckinger, why would any
22 of the conditions we're talking about stop him, if he does come
23 to believe again that insurrection or rebellion is the
24 necessary course of action?

25 MR. FLECKINGER: You know, I understand your concern.

1 I'm not sure that there is any -- I think that the Court can
2 direct -- impose a condition that he not participate in
3 political activity during the pretrial release period. And
4 Mr. Black actually has been very apolitical for most of his
5 life. The first political event that he ever went to was the
6 event in Georgia, in Milton, Georgia, a couple days before this
7 rally in -- on January 6.

8 So I don't think Mr. Black, who has been nonviolent,
9 not involved in criminal behavior before, not political before,
10 is going to, under the circumstances present here, where there
11 is already a new administration, and so that is a
12 fait accompli, I don't think that there is any likelihood that
13 Mr. Black is going to continue to engage in political activity
14 which is going to be at all disruptive and in violation of any
15 court order.

16 But, you know, I suppose GPS monitoring is not going
17 to be able to monitor his thought process, but I think
18 Mr. Black's candor with regard to his involvement, his candor
19 with regard to the fact that he was carrying a knife, his --
20 his willingness -- his nonviolence at the time of this incident
21 of January 6 and, in fact, going to the defense of a -- of a
22 fallen officer, I think that speaks volumes and tells the Court
23 that Mr. Black is not likely to engage in this kind of behavior
24 again and that -- and Mr. Black has indicated to me that it is
25 his belief that God would never tell him to break a bond that

1 he has made to another person. And if he makes a bond with
2 Your Honor, that he will comply with whatever conditions
3 imposed by Your Honor. I would suggest that he will, and that
4 the government has not shown that he won't. And that's really
5 the issue.

6 THE COURT: Well, my issue is not his sincerity when
7 he tells me he would abide by my conditions. And my issue is
8 not his political thoughts or his political activity at all.
9 My issue is his -- the fact that he is imbued with his
10 political views, is mixed with his being imbued with his
11 religious views, and all of that has all been fine until he
12 takes his cue from his thoughts about that to take action, and
13 his belief that that's the voice he needs to listen to and
14 that's his guide, notwithstanding what he would have thought
15 the right thing to do was before.

16 And so his candor is his -- kind of the most powerful
17 piece of information I have on both sides of the equation. It
18 is a very close case. I hope that by listening today, the
19 defendant understands why the community, the magistrate judge
20 in Alabama and I are deeply concerned about what he said, that
21 he could pose a risk and that he needs to think about all of
22 that.

23 And what I'm going to do, I want to take about a
24 five- or ten-minute break here and then come back and let you
25 know if I'm going to rule right now or whether I need to take

1 it under advisement first. So I want to do that and marshal my
2 thoughts. But I'm not going to give up our opportunity for the
3 defendant to use the facility that he's in. So I ask everybody
4 to just stay connected and I'm going to take a brief --

5 MR. FLECKINGER: Before Your Honor leaves --

6 THE COURT: Yes?

7 MR. FLECKINGER: -- could I just get into a breakout
8 room, while you're gone, with Mr. Black?

9 THE COURT: Absolutely.

10 MR. FLECKINGER: Okay. All right.

11 THE COURT: Do we have a breakout room, Mr. Haley?

12 THE COURTROOM DEPUTY: No, he has phones.

13 THE COURT: Mr. Meinero can get off and I'm going to
14 leave the room.

15 THE COURTROOM DEPUTY: He can do the same thing they
16 did before, they can both mute their computers and talk on the
17 phone.

18 THE COURT: Talk on the phone. I'm going to step out
19 and Mr. Haley can help you with the logistics.

20 THE COURTROOM DEPUTY: This Honorable Court will take
21 a brief recess.

22 (Recess.)

23 THE COURTROOM DEPUTY: Your Honor, the defendant
24 stepped out of the room for a minute.

25 THE COURT: All right.

1 THE COURTROOM DEPUTY: Mr. Fleckinger, did he say
2 where he was leaving when he left the room?

3 MR. FLECKINGER: He did not. I didn't realize he had
4 left until I turned back.

5 THE COURTROOM DEPUTY: Oh, here he is.

6 MR. FLECKINGER: He's coming back.

7 THE COURTROOM DEPUTY: Mr. Black, you're there. You
8 can hear us?

9 THE DEFENDANT: Yes, sir.

10 THE COURTROOM DEPUTY: All right. This Honorable
11 Court is again in session. Recalling case number 21-127, the
12 United States of America v. Joshua Matthew Black. We have
13 Mr. Meinero for the government. We have Mr. Fleckinger for the
14 defense. Mr. Black is present by video.

15 Pretrial, are you still with me?

16 PRETRIAL SERVICES: Yes, Your Honor, pretrial is on
17 the line.

18 THE COURTROOM DEPUTY: Thank you, everybody. Thank
19 you, Your Honor.

20 THE COURT: All right. Mr. Black, I need you to
21 understand that this is a very close case. I've struggled with
22 this decision. I've gone back and forth a number of times. I
23 was particularly struck when I wrote down all of your
24 statements to prepare my remarks this morning, one after
25 another after another. I find it all very problematic. While

1 I do respect your candor, and earnestness, and your general
2 commitment to nonviolence, do I think you pose a danger to the
3 community? I do. I don't think you wanted to hurt anyone, but
4 the Bail Reform Act recognizes that physical violence to a
5 person isn't the only danger that the statute protects against.

6 Am I confident that you're going to follow my
7 conditions of release? Not entirely. But, given the
8 presumptions in the Bail Reform Act and the high burden imposed
9 on the government, can I find that the government has
10 established by clear and convincing evidence that there are no
11 conditions or combination of conditions that will assure the
12 safety of the community between now and the time of your trial?
13 I don't think I can. I don't believe that the government has
14 established by clear and convincing evidence that confining you
15 to your home without weapons won't be enough to mitigate the
16 harm. There will be a different calculus applied if you're
17 convicted.

18 But, I will release you. I will grant the motion on
19 a very stringent set of conditions. You are going to be
20 required to remain at your home. You're going to be committed
21 to home detention, with the exception of working, going to
22 church, meeting with your attorney or court appearances or
23 medical appearances.

24 All this will be written down, although I appreciate
25 the fact that you are trying to take notes. You can be sure

1 I'm going to put it in writing, Mr. Black.

2 You may not leave your home for any other purpose,
3 absent permission from the pretrial services agency. You will
4 be subject to location monitoring, GPS monitoring that you're
5 going to have to keep charged. You are going to have to
6 surrender all firearms. There may be none in the residence. I
7 don't care who they belong to, who lives with you, you can't
8 have access to guns in your house.

9 You say you don't have a passport; you may not obtain
10 one. You must remain within the Northern District of Alabama.
11 You may not travel outside of that District, nationally or
12 internationally, without the Court's permission, which you have
13 to seek at least three business days in advance.

14 Mr. Black, do you understand those conditions?

15 THE DEFENDANT: Yes, Your Honor. You said outside of
16 the district. I mean, I don't know --

17 THE COURT: I'm sorry, can you say that again? We
18 had a little trouble picking that up with the microphone.

19 THE DEFENDANT: You said I can't go outside of the
20 District. Other than not knowing what the District is, but I
21 agree to stay in whatever boundaries are put on.

22 THE COURT: And do you understand -- can you tell me,
23 yes or no, that you're going to --

24 THE DEFENDANT: Yes.

25 THE COURT: -- abide by your conditions of release?

1 THE DEFENDANT: Yes, Your Honor, everything you've
2 said so far.

3 THE COURT: And one of the conditions of your release
4 is that you're not going to violate any state or federal or
5 local laws. Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. And do you understand that if
8 you violate any conditions I impose, you're going back to D.C.
9 jail, even if you assure me, with all sincerity, that after
10 much prayer and contemplation you were persuaded that the Lord
11 wanted you to do whatever you did?

12 THE DEFENDANT: I understand, Your Honor.

13 THE COURT: All right. And do you understand that if
14 you're opposed to the current leadership of this country and
15 you choose unlawful means to bring about change, you're going
16 to be in violation of your conditions of release?

17 THE DEFENDANT: Yes, Your Honor, I understand.

18 THE COURT: All right. And you have no problem this
19 morning swearing to the conditions of release that we're going
20 to impose that I just described?

21 THE DEFENDANT: Could you say that again? I don't
22 understand.

23 THE COURT: You have no problem taking an oath to
24 abide by the conditions of release in this case?

25 THE DEFENDANT: No, ma'am, I have no problem.

1 THE COURT: All right. Right now we've already --
2 Mr. Haley, you have the conditions. And what happens now?
3 They get sent to the Northern District of Alabama and that's
4 where he signs them? Or does he sign them here before he goes?

5 THE COURTROOM DEPUTY: No, it will be unsigned, based
6 on the COVID situation.

7 THE COURT: Okay. So they're not going to be
8 physically signed?

9 THE COURTROOM DEPUTY: Correct, Your Honor. I'm
10 confirming with pretrial.

11 It's not to be signed by the defendant based on the
12 COVID restrictions, is that correct, Ms. Schuck?

13 PRETRIAL SERVICES OFFICER: That is correct, Your
14 Honor. What pretrial can notate on the release order is
15 "Acknowledged on the record," or "Signature requirement
16 suspended due to COVID pandemic."

17 THE COURT: All right. But you, Mr. Haley, can at
18 least swear him?

19 THE COURTROOM DEPUTY: Sure.

20 Mr. Black, this is the courtroom deputy. Will you
21 please raise your right hand.

22 Sir, do you solemnly affirm and truly declare that
23 you will well and truly follow the conditions of your release
24 as set forth by the Court today and those which are set in the
25 written order which you will receive a copy of from your

1 attorney, and that you do so under the pain and penalty of
2 perjury?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: All right. Mr. Black, it is my sincere
5 hope that we do not have any revocation hearings between now
6 and the time of your trial. I believe that you are sincerely
7 committed to following my conditions of release, but I will not
8 hesitate to bring you back, if we have a problem with your
9 compliance in this case.

10 I want to thank Mr. Fleckinger and Mr. Meinero for
11 being thoughtful about your approach to this case. And we have
12 another status conference set to deal with the legal matters in
13 relationship with the case. Those will continue to be by
14 video. The defendant doesn't need to return to the District of
15 Columbia for all court appearances until it's safe to do so.

16 Mr. Fleckinger, is there anything I need to take up
17 right now on behalf of Mr. Black?

18 MR. FLECKINGER: No, Your Honor. I would like to
19 speak with Mr. Black after the conclusion of this hearing for
20 about five minutes, if I could.

21 THE COURT: All right. Well, you can do that by
22 phone the same way.

23 MR. FLECKINGER: Right.

24 THE COURT: We'll do that, because there's a lot of
25 people otherwise.

1 Mr. Meinero, anything further on behalf of the
2 government?

3 MR. MEINERO: Just one thing further, Your Honor,
4 about the condition regarding surrendering firearms. Does the
5 order specify to whom or what entity the firearms must be
6 surrendered? Because the government does not believe that
7 Mr. Black just giving firearms to a family member would be
8 appropriate.

9 THE COURT: Ms. Schuck, the conditions of release
10 included in the printed form, the condition that he surrender
11 firearms, how is that logistically accomplished?

12 PRETRIAL SERVICES OFFICER: What I have seen in the
13 past, Your Honor, procedure of pretrial services is they can be
14 surrendered to law enforcement, such as the sheriff's office,
15 and other times, as the government has noted, they are
16 surrendered to family members. But they can be surrendered to
17 the local sheriff's office.

18 THE COURT: I would say they can be surrendered to a
19 family member, but not one that lives in the house. And I
20 would propose working with pretrial in the Northern District of
21 Alabama to identify a local law enforcement agency for that
22 purpose. And that you not acquire any others.

23 PRETRIAL SERVICES OFFICER: I will let them know.

24 THE COURT: All right. Ms. Schuck, is there anything
25 else I need to do or add this morning before we conclude these

1 proceedings?

2 PRETRIAL SERVICES OFFICER: I was just going to add
3 on the order that Mr. Black contact the Northern District of
4 Alabama within 24 hours upon his return to the jurisdiction for
5 additional reporting instructions, so he can be guided as to if
6 he's to report in person. I don't know what their COVID
7 guidelines are, as far as getting the location monitoring
8 device on, if they're going to meet him at the courthouse or
9 outside the courthouse, et cetera.

10 THE COURT: All right. Mr. Black, the phone number
11 will be on the release order and Mr. Fleckinger will get a copy
12 of the release order as soon as it's docketed. And so you need
13 to contact pretrial services within the Northern District of
14 Alabama within 24 hours of your arrival.

15 THE DEFENDANT: (Nods head.)

16 THE COURT: All right. Thank you very much,
17 everyone.

18 MR. FLECKINGER: Thank you, Your Honor.

19 MR. MEINERO: Thank you, Your Honor.

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and 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.

Dated this 23rd day of April, 2021

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001

This hearing was held telephonically in compliance with the COVID-19 pandemic stay-at-home orders and is, therefore, subject to the limitations associated with the use of current 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.

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

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

BACKGROUND

Procedural Background

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

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

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

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

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

Factual Background

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

On January 6, 2021, a joint session of the United States Congress convened at the Capitol. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Vice President Mike Pence was present and presiding in the Senate chamber.

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

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

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

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

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

² As captured in Attachment A-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Black also admitted he possessed a dangerous weapon:

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

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

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

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

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

Black restated some things from his YouTube videos:

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

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

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

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

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

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

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

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

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

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

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

ARGUMENT

Authorities

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

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

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

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

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

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

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

Nature and Circumstances of the Offense

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Weight of the Evidence

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

Defendant's History and Characteristics

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully submitted,

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

BY: /s/ Seth Adam Meinero
SETH ADAM MEINERO
Trial Attorney
Detailee
D.C. Bar Number 976587
United States Attorney’s Office
for the District of Columbia
Federal Major Crimes Section
555 4th Street, N.W., Fourth Floor
Washington, DC 20530

CERTIFICATE OF SERVICE

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

s/ Seth Adam Meinero _____

SETH ADAM MEINERO

Trial Attorney

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