

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

UNITED STATES OF AMERICA

v.

KEVIN DOUGLAS CREEK,

Defendant.

Magistrate Judge Robin M.
Merriweather

Case No.: 1:21-mj-00460

* * * * *

**DEFENDANT’S MOTION FOR REVOCATION OF DETENTION ORDER
AND REQUEST FOR EXPEDITED HEARING**

Defendant, **KEVIN DOUGLAS CREEK**, by and through his counsel, Brian M. Boyle and C. David Joyner¹, hereby moves this Honorable Court for Revocation of Detention Order imposed by the U. S. Magistrate Judge Linda T. Walker, Northern District of Georgia, on June 14, 2021. *See* Order dated June 14, 2021 a true and correct copy of which is attached hereto as Exhibit A. Mr. Creek also respectfully requests an expedited hearing of this matter pursuant to 18 U.S.C. § 3145(b).

I. PROCEDURAL HISTORY

On or about June 4, 2021, Defendant, **KEVIN DOUGLAS CREEK**, was charged with the following offenses:

18 U.S.C. § 1752 (a)(1)- Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority,

18 U.S.C. § 1752 (a)(2)- Disorderly and Disruptive Conduct in a Restricted Building or Grounds,

18 U.S.C. § 1752 (a)(4)- Engaging in Physical Violence in a Restricted Building or Grounds,

40 U.S.C. § 5104 (e)(2) (D)- Disorderly Conduct on Capitol Grounds,

¹ Motion for admission *pro hac vice* to be filed.

**40 U.S.C. § 5104 (e)(2) (F)- Physical Violence on Capitol Grounds,
18 U.S.C. § 231 (a)(3)- Obstruction of Law Enforcement During Civil Disorder, and
18 U.S.C. § 111 (a)(1)- Assault, Resisting or Impeding Certain Officers.**

These charges are based on alleged incidents involving the Defendant on January 6, 2021, in Washington, D.C. The Defendant was present for a peaceful protest/ rally on that date in the District of Columbia but was not there to engage in any form of violent protest or plan to overthrow the Government. Mr. Creek did not enter the Capitol Building at any time, nor was anyone physically harmed by the alleged actions of Kevin Creek.

On June 9, 2021, Defendant, was arrested and detained in the Atlanta City Detention Center until his Initial Appearance could be scheduled. Defendant appeared with counsel, C. David Joyner, for his Initial Appearance on June 10, 2021, in the Court of The Honorable U.S. Magistrate Judge Linda T. Walker. Ryan Buchanan, an Assistant U.S. Attorney for the United States District Court for the Northern District of Georgia, appeared on behalf of the government. Contrary to a Pretrial Services Report recommending Mr. Creek's release with conditions and an unsecured bond presented to all parties and the Court at that time, the Government moved for a continued detention under 18 U.S.C. §§ 3142(e) which prompted a continuance being granted for the purpose of preparing for a detention hearing. A true and correct copy of the Pretrial Services Report recommending Mr. Creek's pretrial release is attached hereto as Exhibit B.

A detention hearing was conducted with all parties present on June 14, 2021. After the court heard brief argument from Assistant U.S. Attorney Ryan Buchanan, and counsel for Defendant, C. David Joyner, and after considering the recommended bond conditions set out in the Pretrial Services Report, the court granted the Government's motion and request for continued detention of the Defendant pursuant to 18 U.S.C. § 3142(f)(1). Defendant remains in

custody at the present time and is being housed at the Clayton County Detention Center in Lovejoy, Georgia.

II. ARGUMENT AND CITATION OF AUTHORITY

This Court must review the U.S. Magistrate Judge's detention order promptly and under a *de novo* standard of review. See U.S.C § 3145(b); *United States v. Fortna*, 769 F.2d 243, 249 (5th Cir. 1985).

Pretrial release should only be denied for "the strongest of reasons." *Truong Dinh Hung v. United States*, 439 U.S. 1326, 1329 (1978) (citation omitted). Indeed, it is well understood that when Congress enacted the Bail Reform Act it retained the preference for the release of most defendants prior to trial. See *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir. 1992) ("There can be no doubt that this Act clearly favors non-detention."). Given this fact, the provisions of the Bail Reform Act should be narrowly construed in favor of release. See, e.g., *United States v. Singleton*, 182 F.3d 7, 23 (D.C. Cir. 1999); *United States v. Hinote*, 789 f.2d 1490, 1941 (11th Cir. 1986) (It is required "that we strictly construe provisions of the Bail reform Act of 1984). Cf. *Williams v. United States*, 458 U.S. 279, 290 (1982) (Criminal statutes should be narrowly construed in favor of the defendant).

As argued by counsel for Defendant during the detention hearing, Defendant is not a flight-risk nor is there a risk of violence toward another. Mr. Creek has been cooperative in every aspect of the investigation. Mr. Creek was interviewed, with his counsel, by Officers with the Federal Bureau of Investigation on May 21, 2021. Additionally, when notified that a search warrant had been obtained and was being executed at his home, Mr. Creek returned home from work and fully cooperated with the officers who were present. Mr. Creek also provided his PIN

number in order that his phone could be accessed by the officers. Ultimately, Kevin Creek peacefully surrendered himself on June 9, 2021, and has remained in custody since that time.

Mr. Creek has not tried to flee or obstruct any search, seizure or effectuation of any warrant or aspect of this case. Mr. Creek has not attempted to contact any witnesses or otherwise attempt to obstruct justice.

As clearly outlined in the Pretrial Services Report, Mr. Creek is a self-employed, family man who has and will continue to cooperate fully with the U.S. Pretrial Services. He will absolutely comply with all special conditions recommended in the Pretrial Services Report including, but not limited to, surrendering his passport, surrendering any and all weapons, remaining within the Northern District of Georgia, unless required to appear in Court in the District of Columbia, and will faithfully report to the pretrial officer as required.

As is also stated in the Pretrial Services Report, Mr. Creek was previously in the United States Marine Corp, was honorably discharged, and has no prior arrests or convictions for any alleged incidents of violence. Thus, as concluded by the officers who prepared the Pretrial Services Report, Mr. Creek should be released with special conditions.

Mr. Creek is a very involved Father, has been traveling to and from volleyball tournaments and touring college campuses with his daughter since January 6, 2021. On these trips to various locations within the United States, Mr. Creek has cooperated with the local and federal authorities each and every time he and his daughter were delayed at checkpoints in the airports by the TSA. Mr. Creek has returned back home to Georgia on each occasion and has continued his daily life, including the operation of his roofing business which employs several people.

III. CONCLUSION

Due to the fact Mr. Creek has demonstrated that he will not be a flight risk; will not obstruct or attempt to obstruct justice; is not a serious risk to threaten, injure or intimidate prospective witnesses or jurors; and has been cooperative with investigators from the beginning of their investigation, concluding in his peaceful and timely surrender, he is an appropriate candidate for Pretrial Release under the special conditions set forth in the Pretrial Services Report prepared by a United States Probation Officer. Mr. Creek should be immediately released pursuant to 18 U.S.C. 3142.

Respectfully Submitted,

/s/ Brian M. Boyle

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 17th day of June 2021, Defendant's Motion for Revocation of Detention Order and Request for Expedited Hearing was filed and sent via ECF, to:

Jacob Strain
Assistant United States Attorney
111 South Main Street, #1800
Salt Lake City, Utah 84111

Counsel for the United States

 /s/ Brian M. Boyle
Brian M. Boyle

UNITED STATES DISTRICT COURT

for the

Northern District of Georgia

United States of America)

v.)

KEVIN DOUGLAS CREEK)

Defendant)

Case No. 1:21-MJ-584-LTW

ORDER OF DETENTION PENDING TRIAL

Part I - Eligibility for Detention

Upon the

- Motion of the Government attorney pursuant to 18 U.S.C. § 3142(f)(1), or
- Motion of the Government or Court’s own motion pursuant to 18 U.S.C. § 3142(f)(2),

the Court held a detention hearing and found that detention is warranted. This order sets forth the Court’s findings of fact and conclusions of law, as required by 18 U.S.C. § 3142(i), in addition to any other findings made at the hearing.

Part II - Findings of Fact and Law as to Presumptions under § 3142(e)

0 A. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(2) (previous violator): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community because the following conditions have been met:

- 0 (1)** the defendant is charged with one of the following crimes described in 18 U.S.C. § 3142(f)(1):
 - 0 (a)** a crime of violence, a violation of 18 U.S.C. § 1591, or an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**
 - 0 (b)** an offense for which the maximum sentence is life imprisonment or death; **or**
 - 0 (c)** an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508); **or**
 - 0 (d)** any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; **or**
 - 0 (e)** any felony that is not otherwise a crime of violence but involves:
 - (i)** a minor victim; **(ii)** the possession of a firearm or destructive device (as defined in 18 U.S.C. § 921);
 - (iii)** any other dangerous weapon; **or (iv)** a failure to register under 18 U.S.C. § 2250; **and**
- 0 (2)** the defendant has previously been convicted of a Federal offense that is described in 18 U.S.C. § 3142(f)(1), or of a State or local offense that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed; **and**
- 0 (3)** the offense described in paragraph (2) above for which the defendant has been convicted was committed while the defendant was on release pending trial for a Federal, State, or local offense; **and**
- 0 (4)** a period of not more than five years has elapsed since the date of conviction, or the release of the defendant from imprisonment, for the offense described in paragraph (2) above, whichever is later.

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0 B. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(3) (narcotics, firearm, other offenses): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because there is probable cause to believe that the defendant committed one or more of the following offenses:

- 0 (1)** an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508);
- 0 (2)** an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332b;
- 0 (3)** an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
- 0 (4)** an offense under Chapter 77 of Title 18, U.S.C. (18 U.S.C. §§ 1581-1597) for which a maximum term of imprisonment of 20 years or more is prescribed; **or**
- 0 (5)** an offense involving a minor victim under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

0 C. Conclusions Regarding Applicability of Any Presumption Established Above

0 The defendant has not introduced sufficient evidence to rebut the presumption above.

OR

0 The defendant has presented evidence sufficient to rebut the presumption, but after considering the presumption and the other factors discussed below, detention is warranted.

Part III - Analysis and Statement of the Reasons for Detention

After considering the factors set forth in 18 U.S.C. § 3142(g) and the information presented at the detention hearing, the Court concludes that the defendant must be detained pending trial because the Government has proven:

- 0** By clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community.
- 0** By a preponderance of evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance as required.

In addition to any findings made on the record at the hearing, the reasons for detention include the following:

- 0** Weight of evidence against the defendant is strong
- 0** Subject to lengthy period of incarceration if convicted
- 0** Prior criminal history
- 0** Participation in criminal activity while on probation, parole, or supervision
- 0** History of violence or use of weapons
- 0** History of alcohol or substance abuse
- 0** Lack of stable employment
- 0** Lack of stable residence
- 0** Lack of financially responsible sureties
- 0** Lack of significant community or family ties to this district

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- Significant family or other ties outside the United States
- Lack of legal status in the United States
- Subject to removal or deportation after serving any period of incarceration
- Prior failure to appear in court as ordered
- Prior attempt(s) to evade law enforcement
- Use of alias(es) or false documents
- Background information unknown or unverified
- Prior violations of probation, parole, or supervised release

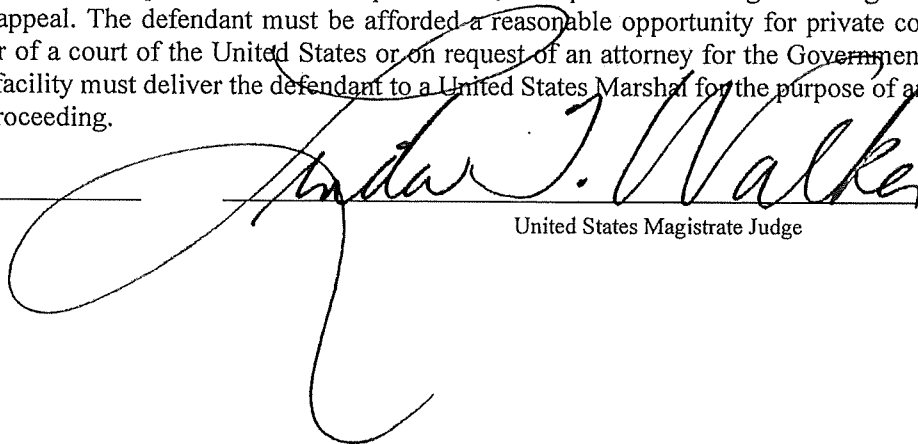
OTHER REASONS OR FURTHER EXPLANATION:

*Defendant assaulted several
Capitol Police Officers.*

Part IV - Directions Regarding Detention

The defendant is remanded to the custody of the Attorney General or to the Attorney General's designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant must be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

Date: 06/14/2021


United States Magistrate Judge

PS3 (12/05-Rev. for PACTS 6/11)

Kevin Douglas Creek, / Unassigned

In accordance with Local Rule 57.1, Pretrial Services Reports are made available to Defense Counsel and the Government. The Pretrial Reports are not public record, are not to be reproduced or disclosed to any other party, and shall remain confidential as provided in Title 18 U.S.C. § 3153(c)(1).

PRETRIAL SERVICES REPORT

District/Office Northern District of Georgia/Atlanta	Charge(s) (Title, Section, and Description) Rule 5 - District of Columbia
Judicial Officer Honorable Linda T. Walker United States Magistrate Judge	Count 1: Title 18 U.S.C. § 1752(a)(1) - Knowingly Entering or Remaining in Any Restricted Building or Grounds Without Lawful Authority
Docket Number (Year – Sequence No. – Def. No.) Unassigned - NDGA 1:21-MJ-00460 - District of Columbia	Count 2: Title 18 U.S.C. § 1752(a)(2) - Disorderly and Disruptive Conduct in a Restricted Building or Grounds Count 3: Title 18 U.S.C. § 1752(a)(4) - Engaging in Physical Violence in a Restricted Building or Grounds Count 4: Title 40 U.S.C. § 5104(e)(2)(D) - Disorderly Conduct on Capitol Grounds Count 5: Title 40 U.S.C. § 5104(e)(2)(F) - Physical Violence on Capitol Grounds Count 6: Title 18 U.S.C. § 231(a)(3) - Obstruction of Law Enforcement During Civil Disorder Count 7: Title 18 U.S.C. § 111(a)(1) - Assault, Resisting or Impeding Certain Officers

DEFENDANT

Name Creek, Kevin Douglas		Employer/School Nailed It (Self-Employment)	
Other Names on Charging Document N/A			
Address 340 Crown Vetch Lane John's Creek, GA 30005		Employer/School Address John's Creek, GA	
At Address Since 2016	Time in Community of Residence 39 Years	Monthly Income \$8,333.33	Time with Employer/School 4 years

INTRODUCTION:

The defendant is scheduled to appear before Your Honor on June 10, 2021, for an Initial Appearance.

The defendant was interviewed on June 10, 2021, in Atlanta, Georgia. Verifications were obtained from the defendant's wife, Jurga Creek.

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Kevin Douglas Creek, / Unassigned

DEFENDANT HISTORY / RESIDENCE / FAMILY TIES:

The defendant, age 46, advised he was born on November 11, 1974, in Rochester, New York. The defendant reported he has lived in Alabama and Texas, during his childhood, and finally relocated to Georgia, when the defendant was in the fourth grade. He noted he has lived at the above address since 2016, with his wife and children, in a home they are purchasing. The defendant said if released on bond, he wished to return to this residence.

The defendant advised his children, Max Creek (12) and Sofi Creek (17), reside in the home with him. He informed his daughter Sahara Creek (20), resides in North Carolina, and the defendant maintains contact with her every couple of months. The defendant related his mother, Catherine Creek (73), resides in Cumming, Georgia, and they maintain monthly contact. He said his father, Hal Creek (74), resides in Gray, Georgia, and they maintain contact several times per week. The defendant stated his sister, April O'Harrow (48), resides in Cumming, Georgia, and they maintain weekly contact. He said his brother, Chris Creek (50), resides in Dallas, Georgia, and they maintain daily contact. The defendant noted he has a half-brother, Jeff Creek (54), who resides in Jacksonville, Alabama, with whom he has not communicated, in two years.

Pretrial Services contacted the defendant's wife, Jurga Creek, who corroborated the personal history information provided by the defendant. **Mrs. Creek noted the defendant may possess firearms, but she is unsure whether they belong to the defendant or his father. She advised that if Court ordered, the defendant would be willing to remove any firearms from the home.**

Education:

The defendant reported having some college education, noting he attended Coastal Carolina Community College located in Jacksonville, North Carolina.

Mrs. Creek confirmed her husband has some college education.

PASSPORT/IMMIGRATION HISTORY:

The defendant informed he does possess a passport. He reported traveling on vacations within the past ten years to Lithuania, where his wife is from; Dominican Republic; Mexico; and Canada.

Mrs. Creek confirmed this information.

EMPLOYMENT HISTORY / FINANCIAL RESOURCES:**Employed/Unemployed History:**

Start Date	End Date	Employer Name/ Unemployed	Address	Monthly Income	Time in Status/ Hours a Week
2016	Present	Nailed It Roofing (Self-Employment)	John's Creek, Georgia	Over \$100,000 / year	4 years

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Kevin Douglas Creek, / Unassigned

The defendant advised that he was previously employed with KTM Roofing, for seven years. He noted that he served in the United States Marine Corp from 1995 to 1999. He advised he received an Honorable Discharge.

Mrs. Creek confirmed this information.

Finances:

Assets	Amount	Liabilities	Amount
2020 Porsche	\$65,000.00		
2020 Hyundai Tucson	\$15,000.00		
Total	\$80,000	Total	\$0
Estimated Net Worth: \$80,000			

In addition to the above listed vehicles, the defendant stated he makes monthly payments of \$850 for a 2018 Ford F150, that has a remaining balance of \$20,000. The defendant informed his home is worth \$650,000, and the monthly mortgage payments are \$2,800, with a remaining balance of \$250,000. The defendant advised his wife pays the household bills, so he is unsure of the total cost of these items.

Mrs. Creek confirmed this information.

RESOURCES FOR BOND:

The defendant may have financial resources for bond.

HEALTH:

Physical Health:

The defendant stated he is in excellent physical health with no medical problems reported.

Mrs. Creek confirmed this information.

Mental Health:

The defendant reported he suffers from a panic disorder, for which he is currently prescribed and is taking Diazepam.

Mrs. Creek stated she has no knowledge of the defendant suffering from any mental health ailments.

Substance Abuse:

At the request of the defense attorney, the defendant was not questioned about substance abuse.

Mrs. Creek reported the defendant consumes alcoholic beverages on an occasional basis. She noted that he does not use illicit drugs.

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Kevin Douglas Creek, / Unassigned

PRIOR RECORD:

A criminal record check conducted through the National Crime Information Center (NCIC), state, and local records revealed the following arrest history.

<u>Date of Arrest</u>	<u>Agency</u>	<u>Charge</u>	<u>Disposition</u>
02/01/2001 (Age 26)	Cobb County Police Department; Marietta, GA	Public Indecency / Indecent Exposure (M)	8/24/2001 - Adj. guilty; 30 days confinement; 23 months probation; fine

ASSESSMENT OF NONAPPEARANCE:

The defendant poses a risk of nonappearance for the following reasons:

1. Instant Offense
2. Mental Health History

ASSESSMENT OF DANGER:

The defendant poses a risk of danger for the following reasons:

1. Nature of Instant Offense
2. Mental Health History

RECOMMENDATION:

To reasonably assure the defendant's appearance and the safety of the community, I respectfully recommend the defendant be released on a \$10,000 Unsecured Bond and with the following conditions:

1. Comply with prohibitions against traveling inside or outside of the district.
2. Surrender any passport(s).
3. Comply with restrictions about applying for or obtaining a new passport.
4. Report as soon as possible, to the supervising officer any contact with any law enforcement personnel, including, but not limited to, any arrest, questioning, or traffic stop.
5. Comply with prohibitions on possessing firearms or other weapons.
6. Report to pretrial services.
7. Refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. 802, unless prescribed by a licensed medical practitioner.
8. Refrain from the excessive use of alcohol.
9. Continue current mental health treatment

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Kevin Douglas Creek, / Unassigned

Pretrial Services Officer Ashley Watson <i>Ashley Watson</i> United States Probation Officer	Date 6/10/2021	Time 12:14 pm
Reviewed By: <i>F. White</i> Felicia S. White, Senior United States Probation Officer		