

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

UNITED STATES OF AMERICA

v.

MATHEW CAPSEL,

Defendant.

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Case No. 21-CR-122(RMM)

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S
MOTION TO MODIFY PRE-TRIAL RELEASE
CONDITIONS**

The United States files this Opposition to the Defendant’s Motion to Modify Pre-Trial Release Conditions pursuant to the Bail Reform Act’s pretrial detention provisions under 18 U.S.C. § 3142. Based on arguments put forth here and in a subsequent hearing the government request that the Court deny the defendant’s request to further modify his release conditions.

BACKGROUND

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. 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 United States 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. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol.

As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police 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 U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

National Guard troops were present to assist the United States Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed

to members of the public.

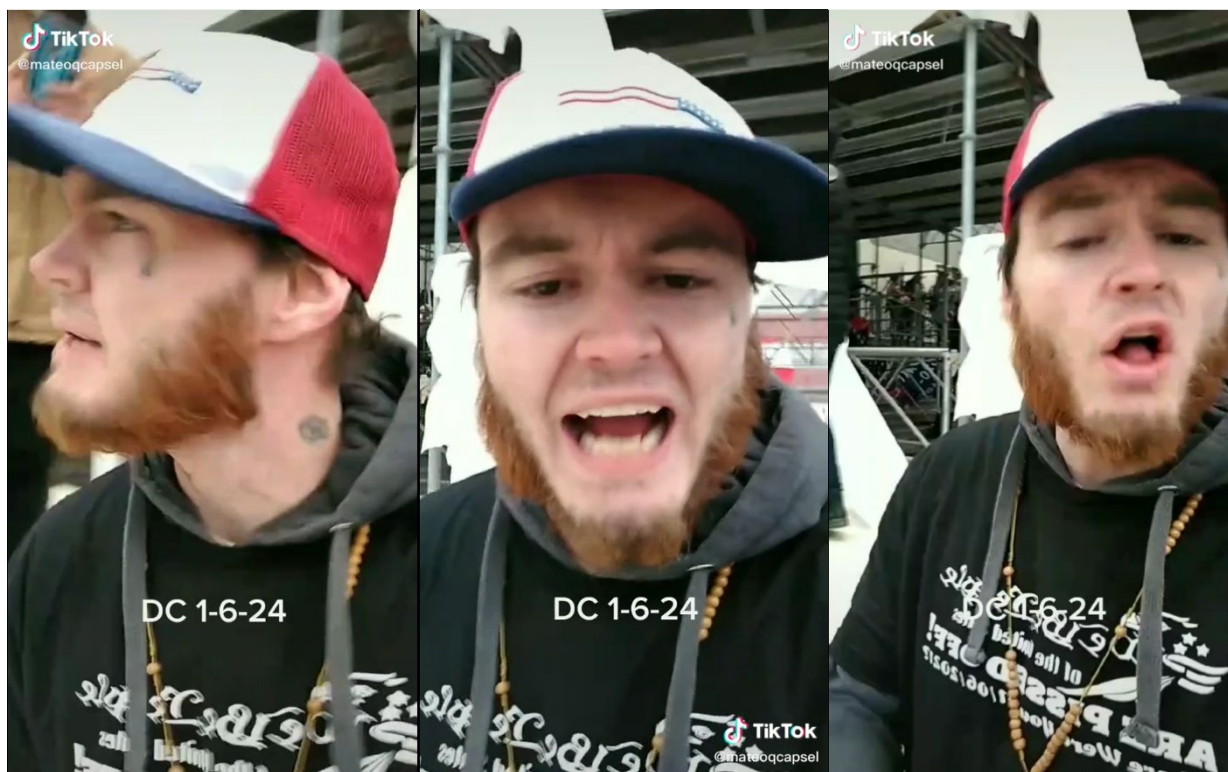
The Federal Bureau of Investigation received several tips providing videos and screenshots of MATHEW CAPSEL (“CAPSEL”) and his activities relating to the events on January 6, 2021, including the tips detailed below.

On or about January 8, 2020, the FBI received a tip from Witness 1 who submitted screenshots of a Facebook page with the name “Mateo Q Capsel” and a video posted by the Facebook account. Witness 1 reported that they had seen multiple videos of CAPSEL “on the frontline of the riot and breach”. Witness 1 reported that they were a former neighbor of CAPSEL and that CAPSEL was “known to be violent”.

On or about January 13, 2020, the FBI received a tip from Witness 2 who submitted screenshots of Facebook posts by “Mateo Q Capsel” stating that they are friends on social media with CAPSEL and that CAPSEL “was at Capitol building when the protesters and rioters got on the building before entering” and had video of this on his Facebook page.

A review of video posted on social media was conducted in which it appears that CAPSEL is fighting against National Guardsmen attempting to hold the line with riot shields.

The following screenshots are taken from a video posted on TikTok by @mateoqcapsel, an account which was used by CAPSEL, showing CAPSEL’s physical appearance and attire during the Capitol riot. CAPSEL has distinctive tattoos on his face and neck, and is wearing a red, white, and blue hat with a design on the front. His black shirt bears a recognizable design, and he is wearing a brown necklace.

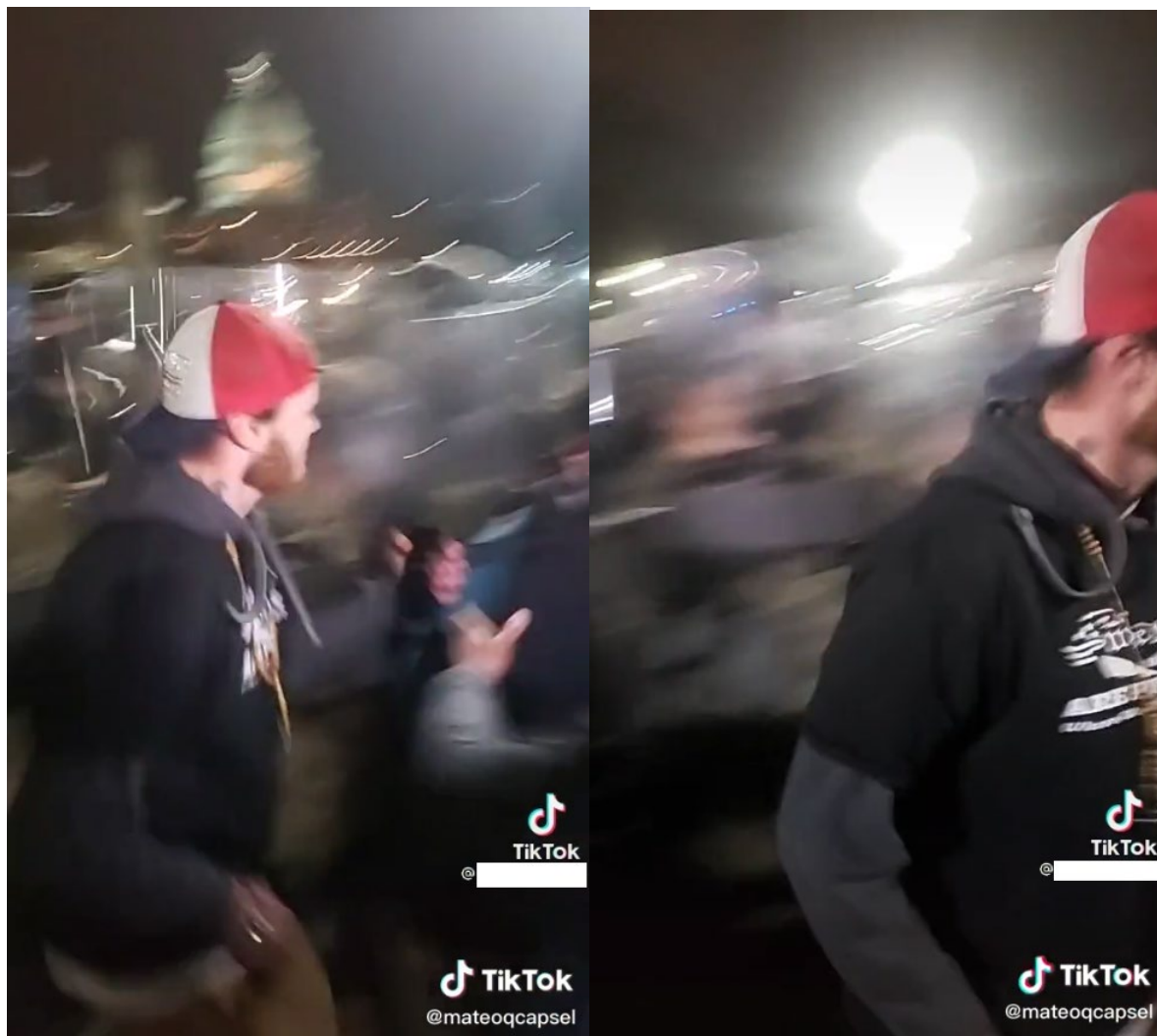


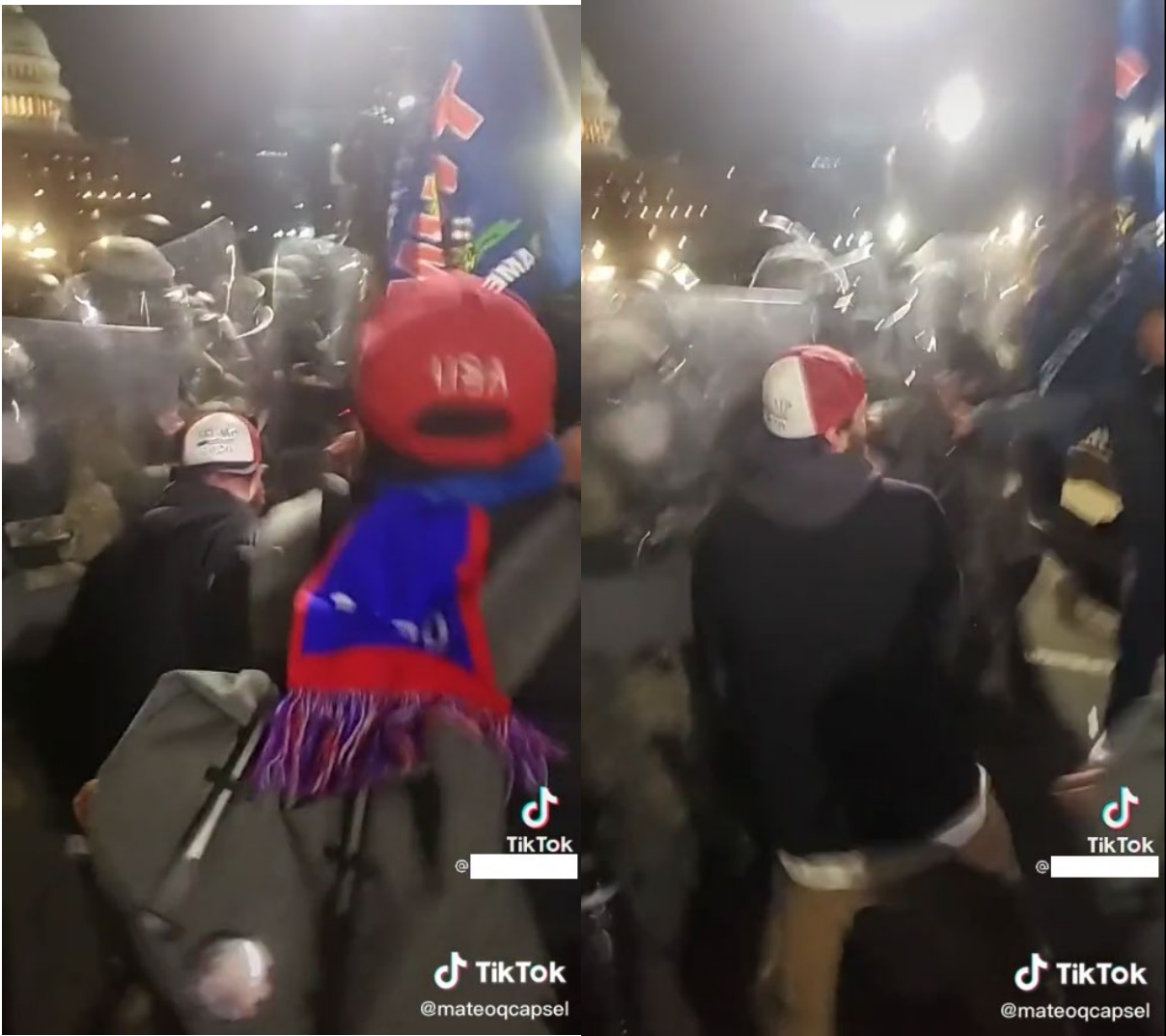
The authorities compared the screenshots with the defendant's driver's license photograph (depicted below) and confirmed his identity. The defendant has the same features and identifiable facial tattoo.



The following screenshots are taken from a video posted on TikTok by Witness 3, who was a witness to the events in the video and reposted to the account @mateoqcapsel. Authorities

spoke to Witness 3 who recorded the video and was informed that the timestamp of the video was 18:23 EST January 6, 2021. In this video, CAPSEL, identifiable by the tattoos on his face and neck, and wearing the same hat, shirt, and necklace, is fighting against National Guardsmen until he is pepper sprayed, as shown in the last screenshot. Specifically, the video depicts CAPSEL charging against a lined group of National Guardsman, running into their protective shields.







On these and other facts, the defendant, was charged on January 19, 2021, by criminal complaint with violations of 18 U.S.C. § 1752 (1) and (3) (unlawful presence on the grounds), 111(a) (assaulting an officer), and 231(a)(1) and (3) (Obstruction of an Official Proceeding). An arrest warrant issued for the defendant on January 19, 2021, and executed on January 29, 2021, was executed in Illinois whereupon he contested his detention and the Court in the Northern District of Illinois set forth the conditions of his release, including, notably, home confinement.

On February 5, 2021, this Court maintained the defendant's release conditions, with a slight exception to allow him to work within his home jurisdiction and set forth a preliminary hearing date. The parties most recently agreed to continue the hearing until June 4, 2021.

The defendant now seeks to have this Court remove his monitoring device all together. The Court should deny this request.

ARGUMENT

A. DEFENDANT'S VIOLATION OF A PROTECTIVE ORDER AND FTA

On May 20, 2020, in Illinois state matter 20-CM-278, CAPSEL was arrested on a charge of violating a Civil Protection Order, Domestic Battery and Trespassing. The charges were the result of CAPSEL violating a Civil Protection issued to protect his ex-wife. According to the Lasalle County Illinois State's Attorney's Office, the CAPSEL's bond in that matter contained the following conditions:

Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the Court until discharged; Not depart this stated without leave of the Court; and, not to violate any criminal statute of any jurisdiction. The defendant violated those conditions by failing to appear for a Final Pretrial Conference on January 8, 2021, and by traveling to the District of Columbia where the [insurrection] occurred.

Removing CAPSEL's electronic monitoring system would not provide the Court with the assurance that he would continue to attend hearings and comply with the Court's orders regarding locations he should refrain from visiting.

**B. N.D. OF ILLINOIS TOOK ALL OF THE RELEVANT CIRCUMSTANCES
INTO ACCOUNT WHEN FASHIONING RELEASE CONDITIONS**

Although the North District of Illinois did not agree with the governments' recommendation to detain the defendant, the Court fashioned conditions that were least restrictive, but that could ensure the safety of the community, defendant's compliance to stay out of the District of Columbia, and insure the defendant's appearance before this Court. See Attachment A. Considering the defendant's prior failure to appear in court on January 8, 2021, a monitoring device was deemed to be a necessary element of the defendant's release conditions. Nothing has changed in that regard.

CONCLUSION

For the reasons stated above, the Court should deny the defendant's request for a change of release conditions.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING U.S. ATTORNEY
D.C. BAR NO. 415793

By: _____/s/
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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2021, I sent a copy of the foregoing through electronic mail to Christopher Davis, Esq., counsel for the defendant.

/s/

KENYA K. DAVIS

Assistant United States Attorney