

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

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 21-726 CJN**
 :
 JOSIAH KENYON, :
 :
 Defendant. :

NOTICE AS TO STATUS OF DETENTION HEARING

The United States of America hereby provides notice to the Court regarding the status of the requested detention hearing for Defendant Josiah Kenyon in preparation for the arraignment hearing set for Monday, January 3, 2022 at 2:30 p.m. Briefly, at his initial appearance in this Court on December 30, 2021, there was some confusion as to whether Defendant had had a detention hearing in the District of Nevada where he was arrested. This notice attempts to provide clarification for the Court and to show that Defendant did have a detention hearing on December 3, 2021 in the District of Nevada. Thus, if Defendant wishes to have the Nevada court's order reviewed, he must now file a motion requesting such relief with the district court. *See* 18 U.S.C. § 3145(b).

BACKGROUND

Defendant Josiah Kenyon was charged by criminal complaint on November 23, 2021 with a number of crimes related to his behavior on January 6, 2021 while at the United States Capitol building. The charges included violations of 18 U.S.C. § 231(a)(3), civil disorder; 18 U.S.C. § 1361, destruction of government property over \$1000; 18 U.S.C. § 111(a)(1) and (b), assault of a federal officer with a dangerous weapon; 18 U.S.C. § 1752(a)(1) and (2), entering and remaining in a restricted building or ground and engaging in disorderly or disruptive

conduct; and 40 U.S.C. § 5104(e)(2)(D) and (F), disorderly conduct and acts of physical violence in the Capitol grounds or buildings. Defendant was later arrested near Reno, Nevada on December 1, 2021 after state authorities conducted a welfare check on Defendant's two young children and discovered that Defendant had an outstanding federal warrant for his arrest. On December 10, 2021, a federal grand jury charged Defendant with similar crimes in a nine-count indictment resulting from Defendant's actions on January 6, 2021. ECF No. 6.

THE HEARINGS AND THE COURT'S ORDER

On December 3, 2021, Defendant appeared by video for his initial appearance and identity hearing before Magistrate Judge William G. Cobb in the District of Nevada. *See* Exhibit A, Criminal Docket Sheet for *United States v. Kenyon*, No. 21-mj-00134 WGC.¹ Defendant was represented by a local Federal Public Defender and the United States was represented by a local Assistant United States Attorney. *Id.* Defendant waived his identity hearing. *See* Exhibit B, Waiver of Rule 5 & 5.1 Hearings. In the same document, Defendant chose not to waive his preliminary hearing or detention hearing. *Id.* He instead requested that his preliminary hearing be held in the "prosecuting district, at a time set by that court." *Id.*

Notably, although Defendant also could have requested that his detention hearing be held in the prosecuting district, the form appears to indicate by omission that Defendant opted to have his detention hearing on December 3rd in Nevada. *Id.* (the detention hearing box is *not* checked); *see also* Exhibit A, Entry 2. The last paragraph of the Minutes for Entry 2, though, is quite clear and provides:

Detention hearing held. Pretrial Services recommends the defendant be detained. The government moves for detention. Defense counsel argues for defendant's release with conditions. After consideration of counsels' arguments, the

¹ The criminal docket contains entries for 1-2, and 4 through 10. It is unclear why entry three is missing.

government's motion is **GRANTED**. The court adopts the findings found in the Pretrial Services Report and oral report. The defendant is **ORDERED** detained pending further court proceedings in the District of Columbia. Next appearance date in originating district is on a date and time to be determined by the U.S. Marshals Service. Defendant is remanded to the custody of the U.S. Marshals Service for transport to the District of Columbia. **IT IS SO ORDERED.**

Exhibit A, Entry 2 (emphasis in original). The notes indicate that a full hearing was held. Pretrial services recommended detention. The government agreed with the recommendation and argued for the same. Magistrate Judge Cobb granted the government's motion. Indeed, according to the local AUSA, the court heard argument from the parties for approximately 45 minutes, including whether there was the possibility of Defendant's release to a third party. Ultimately, as the entry reflects, Magistrate Judge Cobb agreed with the government and detained Defendant pending the proceedings in the District of Columbia.

Because Defendant has now been indicted, this Court can arraign Defendant on the new charges at the next scheduled hearing. This Court does not, however, need to conduct a detention hearing as Magistrate Judge Cobb has previously ruled that Defendant should be detained pending further proceedings in this Court. Should Defendant wish to have Magistrate Judge Cobb's detention order reviewed by the district court, he may file a motion with the court pursuant to 18 U.S.C. § 3145(b) and the district court can review the order at that time.

**United States District Court
District of Nevada (Reno)
CRIMINAL DOCKET FOR CASE #: 3:21-mj-00134-WGC All Defendants**

Case title: USA v. Kenyon
Other court case number: 1:21-mj-00666 District of
Columbia

Date Filed: 12/02/2021

Assigned to: Unassigned
Referred to: Magistrate Judge William
G. Cobb

Defendant (1)

Josiah Kenyon

represented by **Lauren D Gorman**
Federal Public Defender
200 S. Virginia Street, Suite 340
Reno, NV 89501
775-321-8451
Fax: 702-388-6261
Email: lauren_gorman@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: FPD

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

18:231.F

Disposition

Plaintiff

USA

represented by **Randolph J St Clair**

United States Attorney's Office

400 South Virginia St., Ste. 900

Suite 900

Reno, NV 89501

775-784-5438

Email: Randy.StClair@usdoj.gov*LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: USA*

Date Filed	#	Docket Text
12/02/2021	1	Rule 5(c)(3) Documents Received as to Josiah Kenyon. Documents received from District of Columbia include Arrest Warrant and Complaint. District of Columbia Case No. 1:21-mj-666 (Attachments: # 1 Complaint)(HKL) Modified on 12/3/2021 to add "District of" notation (DRM). (Entered: 12/02/2021)
12/03/2021	2	<p>MINUTES OF PROCEEDINGS - Video Initial Appearance in Rule 5(c)(3) Proceeding as to Josiah Kenyon held on 12/3/2021 before Magistrate Judge William G. Cobb. Crtrm Administrator: <i>Karen Walker</i>; AUSA: <i>Randolph J. St. Clair</i>; Def Counsel: <i>Lauren Gorman</i>; PTS: <i>Jennifer Simone</i>; Court Reporter/Recorder: <i>Liberty Court Recorder</i>; Time of Hearing: <i>11:25:42 a.m. - 11:35:47 a.m.</i>; Courtroom: 2.</p> <p>Defendant appearing by video in custody. Defendant and his counsel provide oral consent to appear by video for today's hearing. The court approves defendant's oral consent and finds the defendant willingly and voluntarily agrees to proceed with today's hearing via video conference. Financial Affidavit filed. The Federal Public Defenders Office is appointed as defense counsel. Attorney Lauren D Gorman for Josiah Kenyon added. The defendant submits two forms to be filed with the court: (1) Assertion of 5th & 6th Amendment Rights and (2) Waiver of Rule 5 & 5.1 Hearing. Waiver of Identity Hearing filed.</p> <p>Video Preliminary Examination set for 12/17/2021 at 11:00 A.M. in Reno Courtroom 2 before Magistrate Judge William G. Cobb.</p> <p>Detention hearing held. Pretrial Services recommends the defendant be detained. The government moves for detention. Defense counsel argues for defendant's release with conditions. After consideration of counsels' arguments, the government's motion is GRANTED. The court adopts the findings found in the Pretrial Services Report and oral report. The defendant is ORDERED detained pending further court proceedings in the District of Columbia. Next appearance date in originating district is on a date and time to be determined by the U.S. Marshals Service. Defendant is remanded to the custody of the U.S. Marshals Service for transport to the District of Columbia. IT IS SO ORDERED.</p>

12/03/2021	4	ORDER APPOINTING COUNSEL as to Josiah Kenyon. FPD, Lauren Gorman, appointed as counsel for Defendant. Subpoenas issued upon request, with exception to out-of-state subpoenas which will require court approval. Signed by Magistrate Judge William G. Cobb on 12/3/21. (Copies have been distributed pursuant to the NEF - HKL) (Entered: 12/03/2021)
12/03/2021	5	NOTICE - ASSERTION OF FIFTH AND SIXTH AMENDMENT RIGHTS by Josiah Kenyon. (HKL) (Entered: 12/03/2021)
12/03/2021	6	COMMITMENT TO ANOTHER DISTRICT as to Josiah Kenyon. Defendant committed to District of Columbia. Signed by Magistrate Judge William G. Cobb on 12/3/21. (Copies have been distributed pursuant to the NEF - HKL) (Entered: 12/03/2021)
12/03/2021	7	WAIVER of Rule 5(c)(3) Hearings by Josiah Kenyon. (HKL) (Entered: 12/03/2021)
12/06/2021	8	TRANSMITTAL to Clerk, District of Columbia. D.C. Case No. 1:21-mj-666 . (DRM) (Entered: 12/06/2021)
12/10/2021	9	MOTION to Vacate Hearing 2 Initial Appearance - Rule 5(c)(3) (fka Rule 40),,,,,,, <i>Motion to Vacate Preliminary Hearing and Proposed Order</i> by USA as to Josiah Kenyon. (St Clair, Randolph) (Entered: 12/10/2021)
12/13/2021	10	ORDER granting 9 Motion to Vacate Hearing as to Josiah Kenyon (1). IT IS HEREBY ORDERED that Video Preliminary Examination set for Friday, December 17, 2021, at 11:00 A.M. in Reno Courtroom 2 before Magistrate Judge William G. Cobb is VACATED . Signed by Magistrate Judge William G. Cobb on 12/13/2021. (Copies have been distributed pursuant to the NEF - HJ) (Entered: 12/13/2021)

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
DEC 03 2021	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

AO 466A (Rev. 12/17) Waiver of Rule 5 & 5.1 Hearings (Complaint or Indictment)

UNITED STATES DISTRICT COURT

for the

United States of America

v.

JOSIAH KENYON

Defendant

Case No. 3:21-mj-134-WGC

Charging District's Case No.

WAIVER OF RULE 5 & 5.1 HEARINGS (Complaint or Indictment)

I understand that I have been charged in another district, the *(name of other court)*

I have been informed of the charges and of my rights to:

- (1) retain counsel or request the assignment of counsel if I am unable to retain counsel;
- (2) an identity hearing to determine whether I am the person named in the charges;
- (3) production of the warrant, a certified copy of the warrant, or a reliable electronic copy of either;
- (4) a preliminary hearing to determine whether there is probable cause to believe that an offense has been committed, to be held within 14 days of my first appearance if I am in custody and 21 days otherwise, unless I have been indicted beforehand.
- (5) a hearing on any motion by the government for detention;
- (6) request a transfer of the proceedings to this district under Fed. R. Crim. P. 20, to plead guilty.

I agree to waive my right(s) to:

- an identity hearing and production of the warrant.
- a preliminary hearing.
- a detention hearing.
- an identity hearing, production of the judgment, warrant, and warrant application, and any preliminary or detention hearing to which I may be entitled in this district. I request that my
 - preliminary hearing and/or detention hearing be held in the prosecuting district, at a time set by that court.

I consent to the issuance of an order requiring my appearance in the prosecuting district where the charges are pending against me.

Date: 12/3/21

(Handwritten signature)
Defendant's signature

/s/Lauren D. Gorman

Signature of defendant's attorney

Lauren Gorman

Printed name of defendant's attorney