

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

UNITED STATES OF AMERICA :
 :
 v. : **Crim. No. 23-CR-153 (JDB)**
 :
DAVID BALL JR., :
 :
 Defendant. :

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION TO MODIFY CONDITIONS OF RELEASE**

The United States respectfully submits this response in opposition to Defendant David Ball Jr.’s Motion to Modify Conditions of Release, in which the defendant seeks an exemption to his pretrial release condition prohibiting him from possessing firearms. ECF No. 16. Pretrial Services also opposes the defendant’s requested modification on the basis that the condition is necessary to ensure the safety of others.

BACKGROUND

On January 6, 2021, thousands of rioters took part in an attack on the U.S. Capitol in an effort to stop the certification of the results of the 2020 presidential election. Rioters forced their way into the U.S. Capitol building, requiring elected officials and their staff to flee or shelter in place and injuring many law enforcement officers. Congress was not able to resume its certification proceedings until hours later when law enforcement resecured the building.

The defendant participated in this attack. He traveled from his residence Maine to Washington, D.C. on January 5, 2021 and stayed overnight in a hotel near downtown. On January 6, 2021, he joined the crowd of rioters that breached the perimeter of the U.S. Capitol grounds established by Capitol Police and the U.S. Secret Service. The defendant entered onto the West

Plaza of the Capitol grounds, then eventually reached the Capitol building. Rioters first breached the U.S. Capitol building through the Senate Wing Door entrance at 2:13 p.m. by smashing the windows and kicking open a set of double doors. The defendant would enter through that Senate Wing Door entrance seven minutes later, at 2:20 p.m.

After entering the building, the defendant then moved to the “Crypt” area on the first floor of the building, where he joined a crowd of other rioters that amassed against a line of U.S. Capitol Police officers blocking the rioters from moving further into the building. The defendant pushed to the front of this crowd and stood feet away from the line of officers as he chanted with the crowd and pumped his fist in the air. Rioters overpowered this line of officers in the Crypt minutes after the defendant is captured on video near the front of this crowd. He remained in the building until approximately 2:38 p.m., when he left through another doorway on the first floor of the building.

When the defendant unlawfully entered the Capitol building, he carried with him a black flag featuring a skull and two short-barreled shotguns resembling a skull-and-crossbones symbol surrounded by the text, “2nd Amendment – 1789 – America’s Original Homeland Security.”¹



When the defendant pushed to the front of the crowd in the Crypt where it was stopped by the line of Capitol Police, he can be seen pumping his fist in the air holding this flag.

¹ Ball provided this flag along with his phone and clothing worn at the U.S. Capitol on Jan. 6, 2021 when he surrendered to authorities on March 23, 2023.



Due to his participation in the riot, the defendant was charged by criminal complaint on March 21, 2023, and he was arrested after voluntarily surrendering to authorities on March 23, 2023. ECF Nos. 1, 5. The defendant had an initial appearance on March 23, 2023 in the District of Maine before U.S. Magistrate Judge Karen Wolf, who released the defendant on bond subject to several conditions. Among these conditions—and contrary to the request of the defendant’s retained attorney in Maine—Judge Wolf ordered the defendant to surrender all firearms in his possession, though the defendant was permitted to retain his hunting bows. On April 4, 2023, the defendant appeared for an initial appearance in the District of Columbia before U.S. Magistrate Judge Robin M. Meriweather, who ordered the defendant released on personal recognizance subject to, among other conditions, that he not possess firearms, destructive devices, or other weapons.²

² Although Judge Meriweather did not explicitly carve out hunting bows from this prohibition, the government does not object to the defendant’s possession of hunting bows and would not object to a modification of this condition to explicitly permit his continued possession and use of hunting bows.

On May 9, 2023, the government charged the defendant via Information with knowingly entering or remaining in a restricted building or grounds without lawful authority, in violation of 18 U.S.C. § 1752(a)(1); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. §1752(a)(2); disorderly conduct in a Capitol building or grounds, in violation of 40 U.S.C. § 5104(e)(2)(D); and parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G). ECF No. 12. The defendant has pled guilty to all charges.

On June 23, 2023, the defendant filed the instant motion, in which the defendant requests that the Court modify his conditions of release to allow him to possess and use his Remington .308 rifle “for hunting purposes only.” Dkt. 16 at 1. But, contrary to defendant’s argument and for the reasons set forth below, the firearms restriction currently imposed is the least restrictive condition that will assure the safety of the community, and, thus, the Court should deny the defendant’s motion.

ARGUMENT

I. Applicable Authority.

Under the Bail Reform Act, 18 U.S.C. § 3142(b), if a judicial officer determines that release under two standard conditions (not committing federal, state, or local crimes while on pretrial release and cooperating in the collection of DNA) “will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community,” the judicial officer may impose additional conditions. 18 U.S.C. §§ 3142(b), (c)(1)(B). In that event, the judicial officer shall release the defendant “subject to the least restrictive further condition, or combination of conditions” that “will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(c)(1)(B). These

conditions may include prohibiting the defendant “from possessing a firearm, destructive device, or other dangerous weapon.” 18 U.S.C. § 3142(c)(1)(B)(viii).

To determine the appropriate conditions of release, the judicial officer considers (1) “the nature and circumstances of the offense charged;” (2) “the weight of the evidence;” (3) “the history and characteristics” of the defendant; and (4) “the nature and seriousness of the danger to any person or the community that would be posed by the [defendant’s] release.” 18 U.S.C. § 3142(g). The judicial officer may amend a release order “at any time.” 18 U.S.C. § 3142(c)(3).

II. The Court Should Not Modify Ball’s Release Conditions.

The defendant is already subject to the “least restrictive” combination of conditions necessary to ensure the safety of the community. 18 U.S.C. § 3142(c)(1)(B). The nature and circumstances of the defendant’s offense (his participation in the Capitol riot) demonstrate that he poses a danger. And yet, the defendant is not subject to home detention, a curfew, or GPS monitoring; instead, he must submit to supervision by Pretrial Services and is subject to certain travel restrictions. Together with these relatively limited conditions, the prohibition on firearms possession creates the least restrictive combination of conditions required to mitigate the danger that he poses to the community.

Further, the factors set forth in 18 U.S.C. § 3142(g) establish that the prohibition barring Ball from possessing a firearm during pretrial release is not unduly restrictive. Regarding the nature and circumstances of the offense charged, the events of January 6, 2021 are unprecedented. The attack “was an assault on the Capitol, and it was an assault on democracy.” *United States v. Paul Hodgkins*, 21-cr-0188 (RDM), Tr. at 71. It resulted in significant injuries to law enforcement officers who were protecting the Capitol and members of Congress from the mob.

The defendant's individual actions on January 4 through January 7, 2021, also warrant the partial ban on firearm possession while on pretrial release. As detailed above, the defendant willfully and enthusiastically joined in the breach of the U.S. Capitol that drove the Electoral College certification proceedings to a halt. Not only did he push to the front of an aggressive crowd as it confronted and eventually overpowered a line of Capitol Police officers inside the Capitol building, he carried with him a flag that demonstrates the defendant's association between his possession of firearms and his participation in the breach of the U.S. Capitol.

Likewise, the weight of the evidence is overwhelming. When interviewed at the time of his arrest, the defendant admitted he entered the U.S. Capitol building. The government also has extensive video evidence showing the defendant inside the U.S. Capitol building on January 6, 2021, as well as multiple witnesses placing Ball in the U.S. Capitol building or in Washington, D.C. on January 6, 2021.

Regarding the remaining two factors, the defendant's history and characteristics and the nature and seriousness of the danger to any person or the community, Pretrial Services noted in their recommendation for the defendant's pretrial conditions that he presented a medium risk of rearrest. ECF No. 7. The Pretrial Services Recommendation also identified three arrests (including the arrest in this case) and two prior convictions: one in 2017 for driving with suspended registration and another for which details were unavailable that occurred in 2003 when the defendant was 17 years of age. ECF No. 7. The defendant is self-employed as the owner of Broken Glass Company, a window repair business in Portland, Maine.

In his motion, the defendant presents several reasons why he should be permitted to possess a firearm during the pendency of this case, but none mitigate the danger posed by his possession

and use of firearms, and each justification put forward by the defendant can be satisfied by safer alternatives than his use of firearms:

- First, the defendant argues that hunting with a rifle provides him less expensive and healthier food than store-bought meat. Dkt. 16 at 2. But, even if reliance on store-bought food could be considered a hardship, the defendant remains in possession of his hunting bow with which he is also experienced.
- Second, defendant states that he routinely provides game meat to “less fortunate individuals in his community,” Dkt. 16 at 2, but there is no prohibition on the defendant providing food or assistance to these individuals through other means, even if the defendant was not still able to hunt using his bow.
- Third, the defendant states that hunting provides an opportunity for beneficial physical activity for his son, who suffers from cystic fibrosis, Dkt. 16 at 2, but the defendant can hardly claim that there are not easily comparable, low-cost alternatives—such as hiking or birdwatching—that provide the same opportunity for outdoor physical activity without the use of firearms.

CONCLUSION

The defendant has failed to justify his request for modifying the current pretrial release conditions to permit his possession and use of a firearm. His employment does not require him to possess a firearm, he still possesses a compound bow for hunting purposes, and he has made no argument regarding self-defense. The current pretrial release conditions are the least restrictive means the Court can impose to assure the safety of the community. For these and the other reasons stated above, the Court should deny the defendant’s motion.

Respectfully submitted,

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