UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

Appeal No. 21-3029

UNITED STATES OF AMERICA

Appellee,

v.

TIMOTHY HALE-CUSANELLI,

Appellant

MEMORANDUM OF LAW AND FACTS

This is an interlocutory appeal from the district court's order detaining defendant, Timothy Hale-Cusanelli, pending trial.[1] Mr. Hale-Cusanelli's charges arise from the events at the Capitol on January 6, 2021. The detention order is based primarily on defendant's "repugnant" ideology, a decade old misdemeanor conviction that has been misrepresented by the government and defendant's post January 6th statements taken out of context.

Applicable Legal Standards

In general, persons charged with a crime are not detained pre-trial. They may be "released on [their] own personal recognizance or upon execution of an

[1] Counsel wishes to alert the court to the fact that Mr. Hale-Cusanelli has indicated that he wants replacement counsel. A motion is currently pending in the district court, that counsel expects will be addressed at the next status hearing scheduled for June 1, 2021. *United States v. Hale-Cusanelli,* Case No. 21-cr-37, Dkt. 33.

unsecured appearance bond," 18 U.S.C. § 3142(a)(1), or they may be "released on a condition or combination of conditions" that will ensure their appearance in court and the safety of the community, *id.* §§ 3142(a)(2) and (c)(1). "In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception." *United States v. Munchel,* 991 F.3d 1273, 1279 (D.C. Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987). "Detention until trial is relatively difficult to impose." *United States v. Singleton,* 182 F.3d 7, 9 (D.C. Cir. 1999).

Under the Bail Reform Act, the judicial officer shall hold a detention hearing on his or her own motion or on the government's motion if the case involves a serious risk that the person will obstruct justice or attempt to threaten prospective witnesses. 18 U.S.C. § 3142(f)(2)(B). Detention is proper if the government shows that there is "no condition or combination of conditions" that "will reasonably assure … the safety of any other person and the community." 18 U.S.C. § 3142(f). In assessing whether pretrial detention is warranted for dangerousness, the judicial officer must take into account the nature and circumstances of the offense charged, the weight of the evidence, the history and characteristics of the person and the nature and seriousness of the danger to any person or the community posed by the person's release. 18 U.S.C. § 3142(g)(1)-(4).

To justify detention on the basis of dangerousness, the government has the burden to prove that pretrial release of the defendant will pose a danger to any person or the community, and it must prove the facts underlying this contention by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Chimurenga,* 760 F.2d 400, 405 (2d Cir.1985). "[C]lear and convincing evidence" means something more than "preponderance of the evidence," and something less than "beyond a reasonable doubt." *See Addington v. Texas,* 441 U.S. 418, 431 (1979).

> Thus, a defendant's detention based on dangerousness accords with due process only insofar as the district court determines that the defendant's, history, characteristics and alleged criminal conduct make clear that he or she poses a concrete, prospective threat to public safety.

U.S. v. Munchel, 991 F.3d at 1280. Review of a district court's dangerousness determination is for clear error. *Id.* at 1282. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

Background

On January 15, 2021, defendant was charged by criminal complaint with violating 18 U.S.C. § 231(a)(3)(civil disorder); 18 USC § 1752(a)(1),(2)(entering or remaining in a restricted building or grounds and disorderly conduct in a

restricted building); and 40 U.S.C. § 5104(e)(2)(D), (G)(disorderly conduct in the Capitol grounds or buildings and parading, demonstrating or picketing in the Capitol). Dkt. 1.[2] A warrant was issued and defendant was arrested that same day in Colt's Neck, New Jersey where he resides. Dkt. 22.

On January 19, 2021, he appeared before a magistrate judge in the District of New Jersey. Dkt.18, 2. The magistrate judge ordered him released with conditions but delayed release to allow the United States to appeal. *Id.* The United States promptly filed an Emergency Motion for Emergency Stay and Review of that Release Order, as well as a Motion to Transport Defendant to this District forthwith. Dkt. 3, 4. That same day Chief Judge Beryl Howell granted both motions. Dkt. 5, 6.

On January 29, 2021, an indictment issued charging Hale-Cusanelli with civil disorder and aiding and abetting in violation of 18 U.S.C. §231(a)(3) and 2, obstruction of an official proceeding and aiding and abetting in violation of 18 U.S.C. §1512(c)(2) and 2, entering and remaining in a restricted building or grounds in violation of 18 U.S.C. § 1572(a)(1), disorderly and disruptive conduct in a restricted building or grounds in violation of 18 U.S.C. §1572(a)(2), impeding ingress or egress in a restricted building or grounds in violation of 18 U.S.C.

[2] "Dkt.___" refers to the docket number if the document filed in the district court case. *United States v. Hale-Cusanelli,* 21-cr-37.

1752(a)(3), disorderly conduct in a Capitol building in violation of 40 USC §5104(e)(2)(D), and parading, demonstrating or picketing in a Capitol building in violation of 40 U.S.C. § 5104(e)(2)(G). Dkt. 9. Defendant was transported to the District of Columbia on February 3, 2021.

On March 1, 2021, defendant moved for release pending trial on personal recognizance or alternatively with conditions. Dkt. 7. At a hearing on March 23, 2021, the court ordered that defendant be detained pretrial. On April 2, 2021, defendant moved the court for reconsideration which was denied on April 28, 2021. Dkt. 21. A timely appeal was noted. Dkt. 28.

Mr. Hale Cusanelli's Personal History

Mr. Hale Cusanelli "is 31 years old and never been accused of assaulting anybody in his life. Never committed an act of violence in connection with this offense." Supp. 13.[3] He was employed as a private security officer at the Naval Weapons Station Earle in Colts Neck, New Jersey. Dkt. 18, 1. He was also enlisted as a Sergeant in the United States Army Reserves. *Id.*

Defendant has no criminal history except a misdemeanor disorderly conduct offense. Supp. 26. The government proffered that he was arrested along with three others on August 4, 2010 "for using a 'potato gun' made out of PVC pipe to

[3] "Supp. ___" refers to the Supplement to Appellant's Memorandum of Law and Facts followed by the page number.

shoot frozen corn at houses in Howell, New Jersey." Dkt. 18, 18-19. The words "White is Right" were written on the "gun" along with a drawing of a confederate flag." *Id.* at 19. Defendant was in possession of a "punch dagger" at the time of the arrest. *Id.* When asked by the court what happened with that arrest, the prosecutor stated "I believe he was convicted of a lesser offense." Supp. 9. The defense proffered that defendant was not in possession of the "gun" but that it was in the possession of one of the co-defendants and that the whole case was resolved with a plea to a disorderly conduct offense. Supp. 14.

Confidential Human Source

On January 12, 2021, a confidential human source ("CHS") reported to the Naval Criminal Investigative Services ("NCIS") that Hale-Cusanelli told the CHS he was at the U.S. Capitol on January 6, 2021. Dkt. 18, 2. Hale-Cusanelli showed CHS videos on his cell phone. CHS further reported that Hale-Cusanelli is a white supremacist and Nazi sympathizer who posts opinion videos on YouTube.

On January 14, 2021, CHS was equipped with an NCIS provided recording device to record a conversation with Hale-Cusanelli regarding his participation at the Capitol. Dkt. 18, 19. During the conversation Hale-Cusanelli admitted to entering the Capitol and giving directions by voice and possibly using hand signals. He told CHS he did not remember what exactly he did but admitted to using hand signals and recalled saying "advance" a lot. It was unclear whether this

occurred while Hale-Cusanelli was outside or inside the Capitol building. According, to the government, he further opined that a civil war was probably the "simplest solution," the "most likely outcome" and the "best shot" to obtain "a clean bill of health, as a society." *Id.* at 20.

Interview of Defendant

On January 15, 2021, defendant was arrested. Dkt. 22. He waived his rights to counsel and to remain silent and was interviewed by law enforcement for nearly six (6) hours. On January 6, 2021, Hale-Cusanelli traveled to Washington DC to see President Trump speak.[4] Dkt. 18, 1.

Hale-Cusanelli thought there would be a protest at the Capitol. When he got to the Capitol grounds, he saw police throwing flashbangs at the crowd and spraying them with tear gas. As he got closer to the building, he shouted at the police to stop shooting/spraying him. He did not fight any police officer, did not attack anyone, did not loot nor destroy property. Hale-Cusanelli reported that, while inside the Capitol, he waited in line with others and to use the restroom facilities. Hale-Cusanelli did not know where he was inside the Capitol but when

[4] Defendant told law enforcement that he worked the 3rd shift on January 6th and drove by himself to Washington DC leaving at approximately 8:30 am. He arrived around noon at the end of President Trump's speech where he heard President Trump encourage people to walk to the Capitol.

he heard that there was a shooting inside the building, he left.[5] Based on recordings provided defendant appears to have been one of hundreds that walked into the "Crypt" entrance to the Capitol. Defendant provided authorities the password to his cell phone and computer and directed them where to find various personal items that were requested, including a suit he wore on January 6th and a flag he picked up off the ground.

District Court Rulings

At a hearing on March 23, 2021, the district court stated that this matter was a "close case in terms of the government meeting its burden under the Bail Reform Act" and a "tough issue." Supp. 28, 33. Analyzing the "nature and circumstance of the offense" factor, the court stated that defendant is "certainly by no means the most dangerous or culpable person that I'm looking at … on January 6th. *Id.* at 8. Although defendant was present, entered the Capitol and admitted to using hand signals and saying "advance," he did not commit any violence nor destroy any property. *Id.* He also wore a suit and tie to the event that the court found suggested that he did not come armed for battle but rather for a rally or protest. *Id.* The court found that this factor weighed in favor of release. *Id.* at 25.

[5] According to the government, surveillance video showed defendant entering the Capitol through a door that others had kicked open. Dkt. 18, 27.

Regarding the "weight of the evidence" factor, the court stated only that "I think that factor does weigh for detention in this case." *Id.*

> I think that the weight of the evidence, as far as I can tell, appears to be overwhelming; that the defendant did what the government says that he did on January 6th.

Id.

The "most difficult" factor, was the "defendant's history and characteristics." *Id.* at 25-26. The court found that "he has no criminal history" except

> possibly he has a disorderly conduct conviction, but certainly nothing like the criminal history of most defendants that I detain in this courthouse.

Id. at 26. "He was employed. He was a military veteran with a security clearance." *Id.* He had various positions of trust with the government for some years and is "very unlike most defendants that I see being detained. That all speaks in his favor." *Id.*

On the other hand, it found a "well documented history of racist and violent language" that "goes beyond just being racist, suggesting violence towards people who are not like Mr. Hale-Cusanelli. The language is repugnant and very concerning." *Id.* at 26-27. The court openly struggled, however, because defendant's ideology "does not appear to have translated into actions prior to

January 6th." *Id.* at 8. In response the government stated that defendant has put this ideology into action in the past. *Id.*

> Granted 2010 is a long time ago but to be driving around with a potato gun with white is right written on it, while carrying a bush dagger, is relevant to this analysis.

Id. Relying on the government's representations, the court took "note" of defendant's decade old arrest and found that although "he was not convicted of a weapons offense, just a lesser misdemeanor," that incident suggests defendant has harbored neo-Nazi beliefs for a number of years and "is *some* evidence of the defendant actually acting out" on that belief. *Id.*

The court also noted defendant's post January 6th language in which he told CHS that he "is looking forward to a civil war."[6] *Id.* The court pointed to defendant quoting of Thomas Jefferson that "the tree of liberty needs to be watered with the blood of patriots from time to time" that the court found "troubling" for the Bail Reform Act analysis. *Id.* at 28. The court stated that it was also concerned about the "potential escalation of violence at this point given all that has occurred." *Id.*

[6] According to the government, it is defendant's ideology that "is the driving force behind his desire to start "a Civil War." Dkt. 26, 3.

Finally, the court felt it had a duty to protect the CHS given that defendant knows who it is. *Id.* The court ultimately overruled the release order of the magistrate judge and ordered defendant detained pending trial. *Id.* at 29.

Defendant moved for reconsideration on April 2, 2021 and supplemented that motion in light of this court's decision in another January 6th pretrial detention case.[7] Defendant also noted that the confidential source had relocated from New Jersey, as was planned prior to the events January 6, 2021, thereby decreasing any probability defendant would have contact with that individual. At a hearing on April 28, 2021, the district court ruled that *Munchel* was inapplicable since unlike *Munchel* its detention ruling did not rely on the nature and circumstances of the January 6, 2021 offense. Supp. 37-38. Specifically, the district court stated: "[I]f I was just looking at what defendant did on January 6th, he would be a free man right now." Supp. 38.

The court further ruled that the fact that CHS moved out of the Colt's Neck, New Jersey was not reason to release defendant because CHS could move back. Supp. 39. The district court denied defendant's reconsideration request.

ARGUMENT

Defendant's Future Dangerousness Was Not Established By Clear and Convincing Evidence

[7] *United States v. Munchel,* 991 F.3d at 1273.

Since this is not a rebuttable presumption case, release is the norm. *United States v. Salerno*, 481 U.S. 739, 750 (1987)(detention is "carefully limited exception").

> The crux of the constitutional justification for preventive detention under the Bail Reform Act is that when the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community, a court may disable the arrestee from executing that threat.

United States v. Munchel, 991 F.3d at 1282–83 (internal quotations and citation omitted). A close review of the district court's factual findings and analysis of the required factors for consideration in detention cases demonstrates that the government fell short of proving by clear and convincing evidence that no combination of conditions can reasonably ensure the safety of an individual or the community.

History and Characteristics of the Defendant

The district court found defendant had no criminal history. Supp. 26. Despite the government having conducted an extensive investigation of defendant, including interviewing 44 of defendant's coworkers[8] the court found, only that,

> for a number of years defendant has apparently had a kind of neo-Nazi racist ideology that has led him to use racist language, sexist language and has been generally engaged in hateful conduct, if not necessarily

[8] The government proffered no evidence where defendant has engaged in any attempt to commit violence against another person or threatened another person.

> violent conduct toward a number of people with whom he's had contact.

Id. The court also found that defendant's decade old misdemeanor conviction involving a "potato gun" that had written on it "white is right," was "*some* evidence of the defendant actually acting out on" a racist and neo-Nazi ideology. *Id.* (emphasis added).

This finding regarding the potato gun incident is clearly erroneous. The government's proffers and arguments regarding this incident as evidence of defendant acting on long held white supremacy beliefs are disingenuous at best. The 2010 police report of that incident specifically states that the investigating officer concluded that there wasn't "any bias related intent involved with this particular offense." Supp. 59.[9] The officer found that no one residing in the targeted house was of African American descent and, one of the codefendant arrestees admitted that he shot the potato gun at the house because he was in a dispute with one of the sons that resided there.[10] *Id.*

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[9] The police report produced in the Supplement to Appellant's Memorandum has been redacted for privacy purposes to exclude personal information of the victim and non-juvenile codefendant.

[10] The government had disclosed the 2010 police report to the defense on March 8, 2021, however, counsel had not reviewed it and the court, therefore, did not have the benefit of this information. It is defendant's position that detention is improper even if the 2010 incident is "some evidence" of defendant acting out on an ideology. However, if this court does not agree, it is defendant's position that the case should be remanded for reconsideration of this relevant evidence which

Even considering this youthful indiscretion as proffered by the government, and found by the court to be "some evidence" of defendant acting out on a racist ideology, it is surely tempered by the absence of any "acting out" in the intervening decade. During that time, defendant has had no criminal history, was employed and enjoyed the privileges of citizenship including having and expressing objectionable opinions. He maintained a security clearance and was enlisted in the army reserves for nearly eleven years. In connection with his reservist duties and security work he had daily possession of firearms but never abused them. The court found that "[h]e had various positions of trust with the government for some years" all of which the court determined "speaks in his favor." Supp. 26. Accordingly, the district court erred in concluding that this factor weighed in favor of detention.

Nature and Circumstances of the Offense

The court rejected the government's argument and determined that "this factor weighs in favor of release." Supp. 25. On reconsideration, the court made clear that "if I was just looking at what the defendant did on January 6th, he would be a free man right now." *Id*.

Weight of the Evidence

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indicates that the principal perpetrator of the event, a codefendant, was not motivated by racial animus.

The district court found that the weight of the evidence favored detention because the evidence demonstrates that "defendant did what the government says he did on January 6th. *Id.* This factor, however, is the "least important" factor under § 3142(g) because the statute neither requires nor permits a pretrial finding of guilt. See *United States v. Hir*, 517 F.3d 1081, 1090 (9th Cir. 2008); *United States v. Epstein*, 425 F. Supp. 3d 306 (S.D.N.Y. 2019). Nevertheless, looking at the weight of the evidence in the context of dangerousness, it is slight for defendant. He did not plan the events of January 6th or belong to any group that did. He never possessed a weapon or aided and abetted others who did. He did not assault anyone, threaten anyone, disobey law enforcement nor destroyed property. If the evidentiary weight of this factor on future dangerousness were clear, surely one could picture what that looks like.[11] But here, no picture of dangerousness is evident in this case.

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[11] It may look something like "the weight of the evidence" found by Judge Kelly where most of the evidence proffered by the government is in the form of photographs and video that show defendant, among other things, using a police riot shield to break the Capitol window together with circumstantial evidence that he obtained the shield by force. *United States v. Pezzola*, CR 21-52-1 (TJK), 2021 WL 1026125, at *8 (D.D.C. Mar. 16, 2021). It may look like what Judge Lambreth found where the evidence that "defendant carried a dangerous weapon, disobeyed law enforcement officers and obstructed lawful government proceedings is not weak or ambiguous.… So not only does the evidence against defendant paint a picture of an individual willing to resort to violence to stop the legitimate functions of our government but that evidence is voluminous and strong." *United States v. Chansley,* 21-cr-0003(RCL), Dkt. 25 at 24.

Nature and Seriousness of the Danger Posed By Release

The district court did not identify and articulate any serious potential threat that defendant poses to CHS or to the community. Rather, the alleged future threat to CHS is speculative at best and is no greater than that involving any adverse witness in any criminal proceeding. Similarly, the alleged threat to the community that defendant will start a civil war fails to take into account that his "desire" for war was not to initiate or encourage such action, but rather that it was, in his view, the "inevitable" outcome to the current political climate and divide.

There is No Clear and Convincing Evidence that Defendant Presents an Identified and Articulable Threat to CHS

The government speculates that defendant is a threat to CHS solely because CHS reported him to NCIS, surreptitiously recorded a conversation with him for authorities and holds racist and anti-Semitic views. The court was "concerned for the safety of the confidential human source" because it is "pretty obvious to the defendant anyway who this person is." Supp. 28.

> And given the sum evidence that the defendant has been willing to put these thoughts into action in the past, I think I have a duty to protect that confidential source.

Id.

That defendant knows who CHS is and "has been willing to put these thoughts into action" in the past, has nothing to do with any future threat to CHS's

safety. The only time that the court indicated that defendant put thoughts into action occurred a decade earlier with the "potato gun" incident. Neither on that occasion nor any time since is defendant alleged to have physically harmed or attempted to harm an individual.[12] While a threat to someone need not be physical, as the government noted, the court failed to take account that despite defendant's ideology, during the three-year period that defendant and CHS were in virtually daily contact, there was never any hostility or animosity between them. Dkt. 25, 2 n.2. Even during the recorded conversation between CHS and defendant, they discussed running errands for one another and joked around, even as they discussed defendant's involvement in the events of January 6th.

It is also unlikely that defendant poses a danger to CHS, since CHS's employment has terminated in New Jersey and CHS has relocated some 1500 miles away. Dkt. 25, 2. That relocation had nothing to do with reporting defendant to NCIS or the events of January 6th. CHS's plans to leave the New Jersey area were well known to defendant and their colleagues prior to the events of January 6th. Dkt. 27, 4-5. Further, defendant has no knowledge of CHS's specific address, where CHS is employed or how to contact CHS and has no ill

[12] Defendant was alleged to have used physical force in a dismissed domestic violence case, but in that instance, defendant was acting in reasonable defense of a family member, his mother, who was being attacked by a boyfriend. The district court ruled, "I don't believe that case … would justify detention in any way." Supp. 27.

will towards CHS. Dkt. 25, 2 n.2. The government presented no evidence that since his arrest, defendant has attempted to contact CHS or otherwise find out where CHS lives or works. Finally, defendant has no motive to threaten CHS because "CHS has no more information about Defendant's involvement in the instant offenses than Defendant already provided to the government in the nearly six-hour interview he gave." *Id.*

Neither the government nor the district court articulated the basis for believing that no combination of release conditions would reasonably ensure the safety of CHS. The court simply ruled that evidence that CHS relocated is insufficient for defendant's release because the CHS "may well move back." Supp. 39. Any concerns the court has about a potential threat to CHS could easily be mitigated by conditions of release for a stay away or no contact order and GPS monitoring. *Id.;* Dkt. 25, 2. Defendant had no objection to such an order and expressed his willingness to abide by it. *Id.* Moreover, as former military, CHS is certainly capable of calling the authorities if Mr. Hale-Cusanelli ever presents anything in the way of a threat." *Id.* Because conditions of release will reasonably ensure the safety of CHS, even if CHS chooses to return to New Jersey, the district court clearly erred.

There is No Clear and Convincing Evidence that Defendant Presents an Identified and Articulable Threat to the Community

At the heart of the court's dangerousness to the community determination is defendant's violent language and statements after January 6th about desiring a civil war and the Thomas Jefferson quote that the tree of liberty should be refreshed with the blood of patriots.[13] Supp. 27, 28. The future danger apparently anticipated by the government is that defendant will "start a 'Civil War'" Dkt. 26, 3. But even the government concedes that this is a "fantasy." See Dkt. 18, 32. Importantly, neither the government nor the district court identified any feasible mechanism with which defendant could or would engage in such activity. Notably, while defendant expressed to CHS this fantasy to be involved in "a part of history" he denied that he was encouraging it or that he was taking any steps to bring it to fruition. Defendant's comments to CHS about a "civil war" were in the larger context of a believed future for our country as a means of resolving the political divide between factions.

Defendant is not a member of any white supremacy or militia group. He does not own any firearms or weapons. He has engaged in no violent acts. His

[13] The recording made by CHS was not disclosed to the defense until May 7, 2021, after the court's rulings. While the government's quotes regarding defendant's statements to CHS are accurate, it omits other relevant mitigating statements and the context in which they were made. For example, defendant also stated that "When I say I want civil war, it's not like I want to see people dead in the street" and "civil war, not that I actually want that, I think that civil war is probably the simplest - not that the simplest solutions are always the best solutions - but I think it probably is the simplest solution, the most likely outcome, inevitably."

post January 6th statements were not made to a large number of people at a rally or through social media as some call to action but rather in a one-on-one conversation with someone he knew for years while discussing ideology and a belief about what the future may hold. That defendant holds these views, does not realistically translate into a danger to the community. Even when combined with the decade old "potato gun" incident, the evidence falls far short of demonstrating "a concrete, prospective threat to public safety." Nevertheless, and despite it being a "close call," the court found "that no condition or combinations of conditions will assure the safety of the community if I release the defendant pending trial." Supp. 29.

On reconsideration the court ruled that *Munchel* was inapplicable because unlike *Munchel,* it had not relied on the nature and circumstances of the offense on January 6th. Somewhat contradictorily, however, the court pointed to the fact that defendant "might have been urging people to advance" on January 6th as a basis for its dangerousness finding. Supp. 38-39. The court explained that this conduct together with the decade old "potato gun" incident raised concern "that he was perhaps looking to act on" his "animus against groups of people in this country." Supp. 38-38.

In *Munchel,* the D.C. Circuit stated, "[i]n our view, 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 cleared the way." *Munchel,* 991 F.3d at 1284. At most, the fact that defendant "might have been urging people to advance" on January 6th would place him into the lesser category of dangerousness. However, even this alleged action would have been related to generally entering the building and was not in relation to any breaking of windows or doors to facilitate moving indoors. Defendant was not alleged to have been among the first few people to enter the building. The recordings indicate that defendant entered after large numbers of the crowd, dozens if not hundreds, preceded him into the Capitol.

Pretrial detention is authorized under 18 U.S.C. 3142(f) if there is a risk of dangerousness. The government maintains that defendant is a danger to the CHS and the community because of his white supremacist and Nazi sympathizing ideology. Dkt. 18, 11-21. The government concedes that such ideology "would not be grounds for pretrial detention" without more. *Id.* at 19. The government, however, has failed to prove "more."

CONCLUSION

For the foregoing reasons, the district court clearly erred in overruling the magistrate judge's release order. Accordingly, defendant requests that the district court's detention order be reversed and defendant be released pending trial. Alternatively, defendant requests that the case be remanded so that the district

court may reconsider its ruling in light of the 2010 police report and the full context of defendant's recorded statements to CHS.

Respectfully submitted,

/s/

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Certificate of Word Count

I certify that the foregoing Memorandum of Law and Facts is prepared in Times New Roman 14 point font and contains 5,180 words.

/s/
Jonathan Zucker

CERTIFICATE OF SERVICE

I certify that on this 27th day of May, 2021, I caused the foregoing to be electronically filed with the court using the CM/ECF system that will electronically serve the following registered users:

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/s/
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