

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

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**NO. 22-3007**

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**UNITED STATES OF AMERICA,  
Appellee**

**V.**

**JORDEN ROBERT MINK  
Appellant**

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

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**APPELLANT'S REPLY MEMORANDUM OF LAW AND FACT**

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**District Court  
Cr No. 21-25 (RDM)**

## **STATEMENT OF FACTS**

Mr. Mink's case arises from the events at the U.S. Capitol on January 6, 2021, during which Mr. Mink is alleged to have intentionally broken two windows with a baseball bat at the Capitol Building and to have assaulted police officers by striking their police shields. However, Mr. Mink is not alleged to have caused bodily injury of any kind to any police officer or other persons. At no time is Mr. Mink alleged to have possessed any knives, firearms, or incendiary devices on the date of the offense.

Mr. Mink was charged by Criminal Complaint filed in the Western District of Pennsylvania at 21-MJ-105. On January 19, 2021, the United States Attorney's Office for the Western District of Pennsylvania filed a Request for Detention alleging that Mr. Mink was a danger to the community, that he posed a serious risk of flight, and that he posed a serious risk of obstructing justice and/or of intimidating or injuring prospective witnesses or jurors in this case. Thereafter, on January 27, 2021, an Indictment was filed in the United States District Court for the District of Columbia charging Mr. Mink with the following: 18 U.S.C. § 1512(c)(2) and 18 U.S.C. § 2 (Obstruction of an Official

Proceeding; Aiding & Abetting); 18 U.S.C. § 641; 18 U.S.C. § 2(a) (Theft of Government Property; Aiding & Abetting); 18 U.S.C. § 1361 (Destruction of Government Property); 18 U.S.C. § 1752(a)(1),(2),(4) and (b)(1)(A) (Unlawful Entry on Restricted Building or Grounds While Using or Carrying a Deadly Weapon); 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct In a Capitol Building); and 40 U.S.C. § 5104(e)(2)(F) (Physical Violence on Capitol Grounds).

On January 29, 2021, a Detention Hearing was conducted before Magistrate Judge Lisa Pupo Lenihan, after which Judge Lenihan ordered Mr. Mink to be held without bond pending trial on his case “on the basis of danger and obstruction of justice.”

A Superseding Indictment was subsequently filed, and Mr. Mink was arraigned on March 16, 2021. Mr. Mink was charged with the following: 18 U.S.C. § 1512(c)(2) and 18 U.S.C. § 2 (Obstruction of an Official Proceeding; Aiding & Abetting); 18 U.S.C. § 641; 18 U.S.C. § 2(a) (Theft of Government Property; Aiding & Abetting); 18 U.S.C. § 1361 (Destruction of Government Property); 18 U.S.C. § 1752(a)(1),(2),(4) and (b)(1)(A) (Unlawful Entry on Restricted Building or Grounds While Using or Carrying a Deadly Weapon); 40 U.S.C. §

5104(e)(2)(D) (Disorderly Conduct In a Capitol Building); 40 U.S.C. § 5104(e)(2)(F (Physical Violence on Capitol Grounds); 40 U.S.C. § 5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building); 18 U.S.C. § 231(a)(3)(Civil Disorder); 18 U.S.C. § 111(a)(1) and (b) (Assaulting, Resisting, or Impeding Officers Using a Dangerous Weapon); and 18 U.S.C. § 111(a)(1) (Assaulting, Resisting, or Impeding Certain Officers).

The testimony and documentary evidence at the hearing before the Magistrate Judge established the following: Between 2012 and 2020, Mr. Mink's record shows eight (8) criminal charges; three (3) of which resulted in convictions for misdemeanor offenses, three (3) of which resulted in convictions for summary citation level offenses, and two (2) of which were dismissed.

On January 18, 2021, Mr. Mink was arrested in Pittsburgh, PA, pursuant to a criminal complaint. The evidence presented at the January 29, 2021, Detention Hearing showed that on the date of his arrest, Mr. Mink, upon learning that law enforcement officers were at his home, told his fiancé that he was going to come home from his music studio to be taken into custody. Further, the evidence showed that in

the days leading up to his January 18, 2021, arrest, despite his awareness that he was likely under investigation for the events of January 6, 2021, he remained in Allegheny County and spent his time at his place of employment (a music studio), a medical appointment, and his home. The evidence further showed that law enforcement made no effort to contact, speak with, or meet with Mr. Mink before his arrest.

On January 18, 2021, once Mr. Mink was advised that law enforcement officers were at his home and despite his contention he was returning home to be taken into custody, law enforcement went to his music studio, before he could return home, and placed him under arrest without incident. He was fully cooperative with law enforcement on the day of his arrest. The evidence further showed that Mr. Mink has substantial ties to the community, family support, a stable residence, and has maintained sobriety since December 2019. Further, Mr. Mink has gainful employment available should he be released. The evidence also established a proper third-party custodian to supervise him should he be released.

Mr. Mink's criminal history does not include any arrests or convictions for assault on police officers, flight from apprehension, fleeing police, or resisting arrest. His criminal history does not involve the use or threat of use of firearms. Even though there was a social media post portraying him with a firearm, at no time did he threaten anyone. Further, the evidence showed that Mr. Mink possessed a valid firearms carry permit with no disqualifying convictions.

### **SUMMARY OF THE ARGUMENT**

The District Court's Order denying Appellant's Motion to Revoke his Pretrial Detention should be reversed and Appellant's Order of Detention should be vacated as the district court clearly erred when it determined that, if Mr. Mink were released, "no condition or combination of conditions [would] reasonably assure the safety of any other person and the community." 18 U.S.C. § 3142(f)(2). Mr. Mink was fully cooperative with police officers on the day of his arrest and was attempting to return home to be taken into custody when police officers apprehended him at his music studio. Despite his awareness that he was under investigation for the events on January 6, Mr. Mink

remained in the Pittsburgh area leading up to his arrest and made no attempt to evade police. Mr. Mink has substantial ties to the community, family support, a stable residence, and has maintained sobriety since December 2019. His past convictions, three (3) of which were misdemeanors and three (3) of which were summary citation level offenses, did not involve assaulting police officers, fleeing from apprehension, or resisting arrest.

When Magistrate Judge Lisa Pupo Lenihan ordered that Mr. Mink be held without bond, she relied on her determination that Mr. Mink was a danger to the community and a risk for obstruction of justice. However, there is no evidence that Mr. Mink poses an articulable future threat to the community considering his alleged conduct on January 6, 2021. *See United States v. Munchel*, 991 F.3d 1273 (D.C. Cir. 2021). Furthermore, there is no evidence to support that Mr. Mink has committed or is likely to commit obstruction of justice. The Government has alleged that Mr. Mink discarded the cell phone he was believed to have possessed on January 6, 2021, to destroy evidence of his involvement with the events at the Capitol. However, there is no evidence that Mr. Mink had any intention of obstructing justice. It is

common knowledge that the government could retrieve the evidence from his cell phone provider, and for this reason it would be absurd to think that Mr. Mink would have discarded the cell phone for the purpose of impeding the investigation in any way. Additionally, Mr. Mink was not, nor did he have any reason to believe that he was, under any legal obligation to maintain any personal property he possessed before, during, or after the events at the Capitol.

## **ARGUMENT**

### **I. The District Court’s Order Denying Appellant’s Motion to Revoke his Pretrial Detention Should be Reversed and Appellant’s Order of Detention Should be Vacated.**

When detaining a defendant on the grounds of dangerousness, the government must establish by clear and convincing evidence “that no condition or combination of conditions will reasonably assure the safety of any other person and the community,” 18 U.S.C. §3142(f)(2). Simply stated, it must be shown that pretrial detention is the only means by which the safety of the community can reasonably be assured. *United States v. Smith*, 79 F.3d 1208, 1209 (D.C. Cir. 1996). When weighing the evidence, the judicial officer must consider the following factors: (1) the



nature and circumstances of the offense charged, including whether, for example, the offense is a crime of violence; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. §3142(g). The district court clearly erred when it failed to properly review the detention hearing record as required by 18 U.S.C. § 3145(b) and determined based on these factors that, if Mr. Mink were released, "no condition or combination of conditions [would] reasonably assure the safety of any other person and the community." 18 U.S.C. § 3142(f)(2).

The government argues that *United States v. Munchel*, 991 F.3d 1273 (D.C. Cir. 2021), another Capitol rioter case in which the defendant was released, is not analogous to Mr. Mink's case because the defendant in *Munchel* differed in his level of involvement in the Capitol breach. In *Munchel*, however, the defendant brought a pocketknife and, as the government suggests, perhaps a firearm to the march which he stowed in a backpack outside of the Capitol and entered the Capitol with another dangerous weapon (a taser). This Court held that, despite

these factors, the defendant did not present a demonstrable threat to the community in light of his January 6, 2021, behavior and remanded the case back to the District Court who released the defendant on conditions.

The government also attempts to distinguish *United States v. Hale-Cusanelli*, 3 F.4th 449 (D.C. Cir. 2021), by stating that *Hale-Cusanelli* was a close case because the defendant was a veteran without a criminal record who entered the Capitol through doors which had already been kicked open. However, while the defendant in *Hale-Cusanelli*'s actions on January 6, 2021, may have been less extreme than that of Mr. Mink's alleged actions, the defendant in *Hale-Cusanelli* had an extensive history of condoning violence against members of other races, genders, and religions. Furthermore, the defendant in *Hale-Cusanelli* publicly proclaimed his desire for a "civil war" and eagerly assumed a leadership position during the Capitol riot, directing people to advance. In addition, the defendant in *Hale-Cusanelli* previously published the names and addresses of Jewish individuals, leading the Court to conclude that he posed a danger to the community should he be released. Despite these factors, the District Court observed and this

Court agreed that “this was a close case.” *Id.* at 457. However, the District Court ruled and this Court affirmed “that based on the totality of the circumstances, the government had met its burden.” *Id.*

If, despite the defendant in *Hale-Cusanelli*’s troubling past, the District Court found his release to be a “close case,” certainly the District Court erred when it found that Mr. Mink should be detained. Mr. Mink has no such concerning behavior in his past. The government cites an Instagram post that repeats a political saying, not meant to be taken literally, depicting Mr. Mink holding a firearm. However, Mr. Mink possessed a valid firearms carry permit with no disqualifying convictions, he did not threaten anyone in the post, and he does not have a history of using or threatening to use firearms. Furthermore, while Mr. Mink’s alleged conduct is considered serious, he did not join any organization or group to assist in the planning of the event, did not assume any leadership role, did not harm any individuals on the date in question, and did not travel to the Capitol with others.

The government also fails to acknowledge *United States v. Taylor*, 1:21-cr-392, in which the D.C. District Court denied the government’s Motion to Revoke the Magistrate Judge’s Release Order finding that the

government had failed to meet their burden by clear and convincing evidence for pretrial detention. In *Taylor*, the record showed that the defendant started and participated in a chat group, labeled the “DC Brigade,” in an effort to organize “fighters” to travel to Washington, D.C. on January 6, 2021, with the intent to seek violence and fight at the Capitol. He further incited the group to bring weapons, gave advice on the types of weapons to bring, and established a radio channel for the group to use while on the ground at the riot.

He, along with other co-defendants, travelled to D.C. with weapons to engage in the riot. In the chat he made statements saying he “personally want[ed] to be on the front steps and be one of the first ones to breach the doors” and called himself a “free American” who would “fight” and “bleed before [ ] allow[ing] our freedom to be taken from us.” He further stated that “anti-Americans ... have brought out the Patriot's fury onto these streets and they did so without knowing that we will not return to our peaceful way of life until this election is made right, our freedoms are restored, and America is preserved.” *Id.* at 2.

The defendant went to the January 6th events wearing a tactical plate-carrier armored vest with a knife, backpack, and stun baton. He marched to the Capitol after leaving former President Trump's speech and was one of the initial rioters to violently clash with law enforcement and incited other rioters to move forward into the Capitol where he and fellow rioters entered the Upper West Terrace and took photos of themselves. The defendant then made further post-riot statements on social media speaking of an "insurrection" and that they needed to "lay low" and "organize." *Id.*

The District Court looked to *Munchel* and found that if the facts there were insufficient to support a finding of the defendant's threat to the community in view of his January 6th actions, then the government's arguments as to *Taylor* were also insufficient to establish future dangerousness by clear and convincing evidence. *Id.* at 9.

As this Court is well aware, the majority of other alleged Capitol rioters have been released pending trial, even many who are accused of acts of violence during the incident. *See United States v. Leffingwell*, 21-CR-5 (D.D.C.); *United States v. Gossjankowski*, 21-CR-123 (D.D.C.);

*United States v. Blair*, 21-CR-186 (D.D.C.); *United States v. Sanford*, 21-CR-86 (D.D.C.); and *United States v. Klein*, 21-MJ-236 (D.D.C.)

As such, it is clear that Mr. Mink does not pose a danger to the community and conditions can easily be imposed that would ensure the safety of the community should he be released pending trial.

## **CONCLUSION**

The District Court's Order denying Appellant's Motion to Revoke his Pretrial Detention should be reversed and Appellant's Order of Detention should be vacated.

Respectfully submitted,

**/s/ Komron Jon Maknoon, Esquire**

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing Appellant's Memorandum of Law and Fact with the Clerk of the Court for the United States Court of Appeals for the District of Columbia by using the appellate CM/ECF system on March 25, 2022.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Komron Jon Maknoon, Esquire*

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

I hereby certify, pursuant to Fed. R. App. P. 32(g) and Fed. R. App. P. 27(d)(2)(C), that the foregoing reply was prepared in Century Schoolbook 14-point font and contains 2,453 words.

*/s/ Komron Jon Maknoon, Esquire*