

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

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v.

Criminal No. 21-MJ-61; 21-CR-53 (CJN)

EDWARD JACOB LANG,

Defendant.

GOVERNMENT’S MEMORANDUM
IN SUPPORT OF PRE-TRIAL DETENTION

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in support of its oral motion that the defendant, Edward Jacob Lang, be detained pending trial pursuant to 18 U.S.C. § 3142(f)(1)(A) [Crime of Violence]. There are no conditions or combinations of conditions which can effectively ensure the safety of any other person and the community, pursuant to 18 U.S.C. § 3142(e).

The government respectfully requests that the following points and authorities, as well as any other facts, arguments and authorities presented at the detention hearing, be considered in the Court’s determination regarding pre-trial detention.

Factual Background

1. The Attack on the United States Capitol on January 6, 2021.

1. On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, located at First Street Southeast, Washington, District of Columbia.

During the joint session, elected members of the United States House of Representatives and Senate met in the United States Capitol to certify the vote count of the Electoral College for the 2020 Presidential Election, which took place on November 3, 2020.

2. The United States Capitol is secured 24 hours a day by security barriers and United States Capitol Police (“USCP”) occupy various posts throughout the grounds. Restrictions around the United States Capitol include permanent and temporary security barriers and posts manned by USCP. USCP officers wore uniforms with clearly marked police patches, insignia, badges, and other law enforcement equipment. Only authorized people with appropriate identification are allowed access inside the United States Capitol. On January 6, 2021, the exterior plaza of the United States Capitol was also closed to members of the public.

3. The January 6, 2021 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 Michael R. Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the United States Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the United States Capitol building and USCP were present, attempting to keep the crowd away from the Capitol building and the proceedings underway inside. As the certification proceedings were underway, the exterior doors and windows of the Capitol were locked or otherwise secured.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way

through, up, and over the barricades, and past officers of the USCP, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by the USCP or other authorized security officials.

6. A short time later, 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 Pence, were instructed to—and did—evacuate the chambers. As such, all proceedings of the United States Congress, including the joint session, was effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the United States Capitol, including the danger posed by individuals who had entered the United States Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the United States Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 pm after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

7. After the Capitol was breached, USCP requested assistance from the Metropolitan Police Department (“MPD”) and other law enforcement agencies in the area to protect the Capitol, keep more people from entering the Capitol, and expel the crowd that was inside the Capitol. Multiple MPD officers and other law enforcement officers came to assist.

8. Shortly before 3:00 PM on January 6, 2021, protesters had engulfed the west side of the Capitol and were climbing on the scaffolding in front of building as well as various

features of the building. Although the Capitol Building had already been breached and protesters had flooded in through several entrances, a group of MPD officers and members of the USCP and other agencies called to assist had been able to hold their position and deny entry through the very prominent entrance of the lower west terrace (the exit through which the President typically comes through during inauguration). To enter the Capitol through the lower west terrace, one must walk through an arch and a short tunnel with a series of glass doorways, as pictured below in a photo from later that night.



9. Around 2:40 PM, a group of law enforcement officers were maintaining a line at the second set of glass doors inside the tunnel. Officers reporting to the scene rushed to the tunnel from within the building while protesters outside of the tunnel continued to summon more

men to push their way through the tunnel. A growing number of protesters made their way into the tunnel with a variety of tools and weapons and the tunnel became the point of one of the more intense and prolonged clashes between protesters and law enforcement at the Capitol on that day. Many of the protesters in the tunnel were recording video and many of the videos continue to circulate Internet channels, social media, and the news. Much of the fighting over the next two and a half hours was also captured on surveillance footage from a camera above the lower west terrace doorway.

2. Edward Jacob Lang's Criminal Conduct

The Defendant is prominently featured in many of those videos and photos and can be seen on surveillance footage repeatedly fighting against the law enforcement officers guarding the lower west terrace doors from nearly the beginning of the fighting at 2:40 p.m. to nearly the end around 5 p.m. Indeed, the defendant posted many of the videos and photos himself, including, for example:

- A photograph of the defendant, which was posted to the defendant's Facebook page, and an accompanying video showing him and a large crowd at the arch near the lower west terrace door of the Capitol on January 6, 2021, with the accompanying caption: "I was the leader of Liberty today. Arrest me. You are on the wrong side of history." (A witness that has known the defendant since childhood identified him as the individual in the photograph below. The black jacket and blue and white shirt the defendant is wearing in the photograph below (and in all of the other videos and photos mentioned below) were recovered during a search of the apartment where he was arrested in January.);



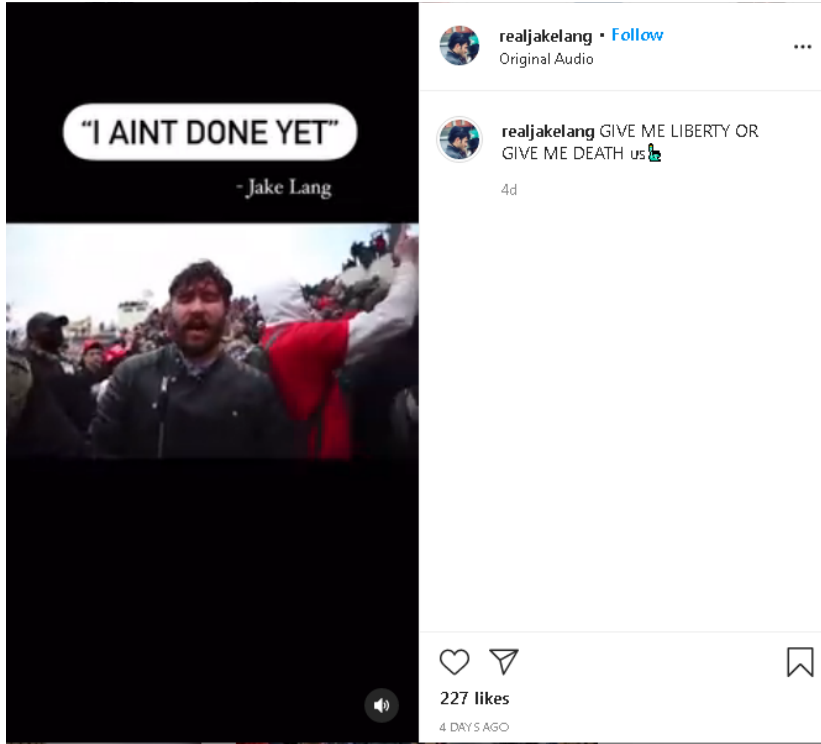
- A video clip showing the defendant in a gas mask up against the law enforcement officers guarding the lower west terrace doors at that same arch;



- A video clip of the defendant in that same mask thrusting a shield in the air in front of the line of law enforcement officers guarding the lower west terrace doors at that same arch with the words “this is me” and a finger pointing to himself that appear to have been added by the defendant before posting it online;



- A photo of the defendant in the crowd down below the arch with the words “I aint done yet” in quotes above it and a related video;



Similarly, the defendant is featured in numerous videos and photos taken by news media in the area on January 6, 2021, including for example the two photos below showing him attacking law enforcement with a black and red bat (a red arrow has been added above the defendant's head in each photo).





In addition, the defendant participated in a nearly 45 minute long public live video interview posted on Instagram on January 7, 2021, where he described his actions on January 6, 2021, noting, among other things:

- “It was war. This was no protest.”;
- After describing how he was shot in the foot with a rubber bullet, stating that this “was after already three hours face to face with them. We gave them not an inch. We tried getting in through the front but we couldn’t. Other people got access through a couple of windows, stuff like that and slowly funneled in but we were trying to get through the main gates.”;
- “You know I had a gas mask on for the first two, three hours. I was fighting them face to face but eventually they started using the stuff that goes right through the gas mask.”;
- “Six, seven times at least I got hit. Kept getting whatever the eyewash spray out, waiting 5 or 10 minutes, get back in there. You know and I even had a gas mask on. I got a gas mask with me, it is full of blood from the top, my head just leaked down into it.”; and
- “A lot of people were thinking it was a game, for like their snapchat or to be a part of history, then they started getting hit with batons, and people started coming out with blood and people were getting trampled. And I am like straight up get the women and children out of this little corridor right here. We are talking war. We need men up there, men who are going to pull cops down and out of there. Men who are going to take a bullet if need be, you know. This was tyrants versus freedom fighters. At the end of the

day painting us as insurrectionists, a mob. This was no mob. A mob is a bunch of people like attacking each other. This was an organized unit of patriots trying to take on tyrants. You know what I mean. A mob has no goal. A mob is just, uh, just screaming and shit. This was patriots on a goal, on a mission to have the Capitol building. To stop this presidential election from being stolen so that we at least have one presidential veto left from all of these bullshit laws and restrictions.”

An open-source search of social media depictions from January 6, 2021, also uncovered additional videos and photographs of the defendant discussing his thoughts about what would follow the attack on the Capitol. In a video posted by a Twitter account holder, the defendant had a conversation with an unidentified female (“UF”), which was streamed on Instagram. The following was an excerpt of the conversation posted online:

- UF: “So what do you think happens next?”
- The Defendant: “Guns...That’s it. One word. The First Amendment didn’t work, we pull out the Second. We’re all civilized people and we love going to work and praying to God on Sundays and having nice family barbeques...and that was every single person there. No one wants to take this and and die for our rights, but dying for our rights is the only option that any person with a logical brain sees right now. This is it.”

Similarly, on January 14, 2021, just two days before he was arrested, the defendant posted a story to his Instagram. Among other things, he stated: “I want to use this time to say thank you for all the people that have been reaching out, calling me a patriot...” “Been really amazing to have this impact on the community, going to keep on fighting for you guys, we got some big things planned. We are not going to let them take our Constitutional Liberties. Our God-given rights are safe within the hearts of the patriots. So we won’t give up. You guys should not give up. Contact me if you want to be a part of the patriot movement.”

The Defendant’s actions on January 6, 2021, are also captured by a Capitol police surveillance camera from inside the arch – where, just as he claimed in the interview described

above, he can indeed be seen for hours at the front line of the rioters confronting law enforcement and violently attempting to get inside the Capitol.

In addition to other crimes, the Defendant has now been indicted for three of his episodes of violent assaultive behavior during those hours of fighting law enforcement. Specifically, he has been indicted on eleven different charges, including:

- One charge of Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a), and one charge of Civil Disorder, in violation of 18 U.S.C. § 231(a)(3) for assaulting law enforcement officers with his feet and fists around 4:10 to 4:13 p.m., as captured on surveillance footage;
- One charge of Assaulting, Resisting, or Impeding Certain Officers with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 111(a) and (b), and one charge of Civil Disorder, in violation of 18 U.S.C. § 231(a)(3) for assaulting law enforcement officers with a shield around 4:44 to 4:46 p.m., as captured on surveillance footage; and
- One charge of Assaulting, Resisting, or Impeding Certain Officers with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 111(a) and (b), and one charge of Civil Disorder, in violation of 18 U.S.C. § 231(a)(3) for assaulting law enforcement officers with a bat around 4:54 to 4:57 p.m., as captured on surveillance footage.

3. Procedural History

On January 15, 2021, an arrest warrant was issued for the defendant, who was then arrested in New York on January 16, 2021. On January 19, 2021, at the defendant's initial appearance in the arresting jurisdiction, the government orally moved for the defendant's detention pending trial pursuant to § 3142(f)(1)(A) [Crime of Violence] of the federal bail statute.

The defense consented to detention, but indicated it might file a future bail application. On January 29, 2021, the defendant was indicted on eleven charges, including two counts of Assaulting, Resisting, or Impeding Certain Officers with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 111(a) and (b), one count of Assaulting, Resisting, or Impeding Certain Officers, in violation of 18 U.S.C. § 111(a), three counts of Civil Disorder, in violation of 18 U.S.C. § 231(a)(3), one count of Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(c)(2) and 2, one count of Disorderly and Disruptive Conduct in a Restricted Building or Grounds, with a Deadly or Dangerous Weapon, in violation of Title 18 U.S.C. § 1752(a)(2) and (b)(1)(A), one count of Engaging in Physical Violence in a Restricted Building or Grounds, with a Deadly or Dangerous Weapon, in violation of Title 18 U.S.C. § 1752(a)(4) and (b)(1)(A), one count of Disorderly Conduct in a Capitol Building, in violation of Title 40 U.S.C. § 5104(e)(2)(D), and one count of Act of Physical Violence in the Capitol Grounds or Buildings, in violation of Title 40 U.S.C. § 5104(e)(2)(F). The Defendant was transferred to D.C. and the Court set this matter for an initial appearance and detention hearing on Tuesday, February 9, 2021, at 1 p.m. (The matter was initially set for an initial appearance on February 4, 2021 but was continued to the 9th at the request of both parties.)

ARGUMENT

There are four factors under § 3142(g) that the Court should consider and weigh in determining whether to detain a defendant pending trial: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) his history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by his release. *See* 18 U.S.C. § 3142(g). In consideration of these factors,

the government respectfully submits that there are no conditions or combinations of conditions which can effectively ensure the safety of any other person and the community.

Nature and Circumstances of the Offenses Charged

During the course of the violent siege of the U.S. Capitol on January 6, 2021, over 100 law enforcement officers reported being assaulted or injured by the violent mob while attempting to protect the U.S. Capitol and the individuals inside of the building. These assaults occurred both inside of the Capitol, as well as on the steps outside of the Capitol and the grounds of the Capitol, where the enormous mob included numerous individuals with weapons, bulletproof vests, and pepper spray who were targeting the officers protecting the Capitol. Additionally, the violent crowd encouraged others in the crowd to work together to overwhelm law enforcement and gain unlawful entry into the U.S. Capitol.

What is extremely troubling about the defendant's role in this attack is the severity of his actions, the length of time he was engaged in fighting law enforcement, and the escalation of his violent assaults. As noted above, around 2:40 p.m., on January 6, 2021, the defendant joined a large mob that substantially outnumbered law enforcement guarding the lower west terrace doors to the Capitol. The defendant was part of a group that pushed forward inside of a small tunnel to reach the lower west terrace doors and attacked law enforcement in an effort to gain entry. The law enforcement officers were all in full uniform with the word "police" clearly visible. Over the next two and a half hours, the rioters continued to fight with law enforcement guarding these doors. The defendant played a leading role in that effort, continually re-engaging with law enforcement on the front lines from 2:40 p.m. to around 5 p.m., when according to his own account, he was shot in the foot with a rubber bullet. The defendant has now been indicted for

three of his violent during that nearly two and a half hours of fighting with law enforcement: (1) his attack on law enforcement officers with his feet and fists from around 4:10 to 4:13 p.m., as captured on surveillance footage; (2) his attack on law enforcement with a shield from around 4:44 to 4:46 p.m., as captured on surveillance footage; and (3) his attack on law enforcement officers with a bat from around 4:54 to 4:57 p.m., as captured on surveillance footage.

To be clear, these violent attacks by no means comprise all of his criminal actions that day. He began trying to get past the line of law enforcement guarding the lower west terrace doors at 2:40 p.m. As he himself admitted in an interview on Instagram, he continued that effort almost continuously, taking only periodic breaks to wash pepper spray out of his eyes, from 2:40 p.m. until around 5 p.m. Based on available surveillance footage identified thus far, his efforts that day also included, for example, joining the large mob pushing with all of their might against the officers and helping to protect other rioters with an apparently stolen riot shield as those rioters sprayed officers with chemical irritants, threw projectiles at them, and attacked them with poles, sticks, and other items. As the government continues to investigate these additional actions, it may indeed supersede with additional charges based on these multiple additional violent attacks on law enforcement -- which the defendant himself described as a "war."

However, even if only focusing on the specified incidents of violence for which the defendant has now been indicted, his actions clearly represent violent criminal behavior that involved a further dangerous escalation aimed at allowing other violent rioters to unlawfully enter the U.S. Capitol. Officers could have easily been seriously injured, if not killed, by his attacks first with his body, then with a shield, and finally with repeated downward blows with a baseball bat.

During his online Instagram interview, the defendant stated that his purpose in joining the violent rioters was to enter the U.S. Capitol and disrupt the vote count of the Electoral College as it met to certify the results of the 2020 Presidential Election (or in his words “take the Capitol” and “stop the Presidential election from being stolen”). Thus the defendant combined his criminal intention to interfere with the functioning of Congress with multiple violent assaults – two with a dangerous weapon – on the law enforcement officers trying to protect that function. As a result, the nature and circumstances of these offenses overwhelmingly weigh in favor of detention.

Weight of the Evidence Against the Defendant

The second factor to be considered, the weight of the evidence, also clearly weighs in favor of detention. The evidence against the defendant is also quite strong and compelling. As noted above, the defendant was observed on U.S. Capitol surveillance cameras, social media videos and photos (much posted by himself), and media footage attacking law enforcement officers and attempting to unlawfully enter the U.S. Capitol. A witness that has known him since childhood identified him in some of those photos and videos. Additionally, a social media video captures the defendant admitting that he wore a gas mask and fought law enforcement for hours on January 6, 2021. Lastly, law enforcement recovered some of the distinct clothing he wore that day, including a blue and white floral shirt and a black jacket with numerous zippers, from the apartment where he was arrested. The evidence against this defendant is overwhelmingly strong, and accordingly, the weight of the evidence weighs heavily in favor of detention.

Defendant's History and Characteristics

The government recognizes that the defendant has only one prior conviction for a misdemeanor possession of a controlled substance. However, the defendant's actions, as demonstrated by his apparent willingness to repeatedly engage in assaultive behavior while armed as part of a violent mob attacking law enforcement officers, should give this Court great concern about the danger he would pose to the community, if released.

Danger to the Community and Flight Risk

The fourth factor, the nature and seriousness of the danger to any person or the community posed by a defendant's release, also weighs in favor of the defendant's detention. The charged offenses involve violent assaultive conduct, and the assaults became more violent and dangerous when the defendant armed himself first with a shield and then with a baseball bat. He armed himself and assaulted law enforcement with the intent to unlawfully enter the U.S. Capitol and stop the functioning of our government as it met to certify election results. The danger the defendant caused by assisting the violent mob cannot be understated. The defendant was a spoke in the wheel that caused the historic events of January 6, 2021, and he is thus a danger to our society and a threat to the peaceful functioning of our community. His public comments about further escalation – like his noting that what happens next is “guns” and indicating that “we have got some big things planned” -- just add to the danger to the community already made clear by his decision to violently and repeatedly attack law enforcement guarding the Capitol on January 6, 2021.

Given the above assessment of all four relevant factors, no conditions or combinations of conditions can effectively ensure the safety of any other person and the community.

CONCLUSION

WHEREFORE, the United States respectfully requests that the Court grant the government's motion to detain the defendant pending trial.

Respectfully submitted,

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By:



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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2021, I caused a copy of the foregoing motion to be served on counsel of record via email.

/s/ Melissa Jackson
MELISSA JACKSON
Assistant United States Attorney