

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

UNITED STATES OF AMERICA

v.

ROBERT MORSS,

Defendant.

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Criminal No. 21-CR-40

**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, Robert Morss, 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

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 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, were 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 p.m. 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 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. During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted

evidence of violations of local and federal law, including scores of individuals inside the United States Capitol building without authority to be there.

Facts Specifically Related to Morss

9. An individual wearing tan camouflage clothing with a tactical style vest, scissors tucked in the front of the vest, tan gloves, and at times a red baseball style hat, who was subsequently identified as MORSS, as explained below, can be seen in multiple photos by the media on January 6, 2021, such as the ones below taken near the National Monument before the Capitol was stormed. MORSS had curly hair sticking out the side of his hat and wore clear goggles at times. MORSS also had a blue patch on his right shoulder and appeared to be wearing a weightlifter's belt. As explained below, MORSS is subsequently captured on video near the frontline of rioters who pushed past police guarding the Capitol, organizing a shield wall in the violent attack on officers inside the Lower West Terrace tunnel, and entering into the Capitol through a broken window.



10. As captured on USCP surveillance, police Body Worn Camera (“BWC”) footage, and various videos posted to social media and YouTube, on January 6, 2021, law enforcement to include USCP and MPD were along a temporary fence line in the Lower West Terrace area of the Capitol. Law enforcement stood behind the metal fencing shoulder to shoulder. As time moved on, the crowd started to push and tear down the fencing separating them and law enforcement. Law enforcement attempted to push back and reestablish the fence line. During this time objects were thrown at officers, physical assaults occurred, and chemical irritants were used. By around 2:40 p.m., the crowd of rioters eventually pushed through the fence line and law enforcement were forced to retreat.

11. MORSS is visible in this crowd early on. For example, around 2:09 p.m., a few minutes after the crowd can be seen on BWC footage unsuccessfully trying to violently push through the fence separating the crowd from the Capitol and while officers are repeatedly asking

the crowd to back up, MORSS can be seen on BWC footage. As captured on BWC footage, after being asked to back up, MORSS grabs the officer's baton and tries to rip it away, as shown in the still below with a red arrow above MORSS. (MORSS does not appear to be successful in ripping away the baton.)



12. At approximately 2:11 p.m., MORSS can be seen near the front of the crowd on BWC footage again, as shown in the still below.



13. At approximately 2:14 p.m., MORSS can be seen on BWC footage again. On the video, he comes up behind those at the front line of the crowd facing law enforcement and stands there for about a minute. MORSS then seems to speak to the person to his right (who appears to be one of the same individuals he was photographed with near the National Monument earlier) and then to the person on his left. The person to his left can be seen nodding as if in response. A few seconds later, as shown in the still below, MORSS reaches through the crowd and grabs the fence being held by the MPD officer and being used to keep the crowd back. As seen on the video, MORSS then rips the fence out of the hands of the officer, with the assistance of the other rioters, including the one that appeared to nod in response to something MORSS said right before grabbing the fence. MORSS then retreats back into the crowd with the fence.



14. At approximately 2:26 p.m., MORSS can again be seen on BWC footage. While wearing a neck gaiter covering his mouth, it appeared as though MORSS was addressing the officers and can be heard saying, “You guys are betraying us. You get paid enough to betray your people?” MORSS then points and says, “look they are coming in over there.” As shown in the still below, MORSS then says “This is our Capitol. This is our Capitol.”



15. Then around 2:30 p.m., after the crowd again surged forward and pushed the officers further back, MORSS can be seen on BWC footage at the front of the rioters waving a yellow flag, as captured in the still below with a red box around MORSS. MORSS can be heard telling the officers: “take a look around, back up, we are going to take our Capitol back.”



16. Around 2:33 p.m., as captured on BWC footage, as the crowd of rioters continued to advance and law enforcement began to retreat, MORSS and two unidentified individuals struggled over a black flag pole with an MPD officer, as shown in the still below with a red arrow above MORSS.



17. Around 15 seconds later, as captured on BWC footage, a helmet visor was thrown at an MPD officer presumably from someone in the crowd, the MPD officer attempted to pick up the visor off the ground. MORSS grabbed the visor as well and attempted to pull it out of the MPD officer's hands. The MPD Officer was able to pull away with the visor. At that point,

MORSS lunged forward and grabbed the visor again; MORSS and unidentified individuals then tried to rip the visor out of the officer's hand. (This is shown in the stills below with a red box around MORSS.) The MPD officer then regained control of the visor.



18. As captured on BWC and surveillance footage, the rioters continued to move forward, yelling at officers to retreat. Around 2:35 p.m., MORSS can be seen on BWC footage near the front lines of the rioters surrounding the officers, as shown in the still below with MORSS (marked by a red arrow) motioning at the officers to retreat while holding a yellow flag.



19. By 2:40 p.m. on January 6, 2021, rioters had engulfed the west side of the United States 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 rioters had flooded in through several entrances, a group of MPD officers and members of the USCP or other agencies had been able to hold their position and deny entry through the very prominent entrance of the Lower West Terrace. To enter the United States Capitol through the Lower West Terrace, one must walk through a short tunnel with a series of glass doorways. Around 2:40 p.m., a group of 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 rioters outside of the tunnel continued to summon more men to push their way through the tunnel. A growing number of rioters made their way into the tunnel with a variety of tools and weapons. The tunnel became the point of an intense and prolonged clash between rioters and law enforcement at the United States Capitol. Many of the rioters in the tunnel were recording video and many of the videos circulated and continue to circulate on Internet channels, social media, and the news.

20. Portions of the rioters' effort in the tunnel to get through the Lower West Terrace doors were captured both in video surveillance from USCP camera in the tunnel and in video footage posted to YouTube (hereinafter, YouTube Video 1). In YouTube Video 1, which was filmed by a member of the press, a large group of rioters attempted to break through the line of uniformed law enforcement officers who were in place to prevent rioters from entering the Lower West Terrace door of the United States Capitol. Law enforcement officers were at the front of the doors inside the tunnel attempting to stop numerous rioters from gaining access to the U.S. Capitol.

21. At approximately, 2:57 p.m., MORSS is visible in USCP surveillance footage at the entrance of the tunnel, where he stays for the next few minutes. MORSS can be seen in this surveillance footage with both the same yellow flag and goggles that he is pictured with in the BWC footage described above.

22. As captured on USCP surveillance footage, MORSS hung back by the entrance to the tunnel for a few minutes. Then around 3:02 p.m., he pushed his way forward towards the line of officers guarding the Lower West Terrace doors to the Capitol.

23. As captured on YouTube Video 1, MORSS joined the rioters directly confronting the officers guarding the Lower West Terrace doors. MORSS then grabbed an MPD Officer's shield, as shown in the still below with a red box around MORSS.



24. As captured on YouTube Video 1, MORSS continued pushing and pulling against law enforcement shields and the officers holding those shields for the next few minutes, as shown in the still below with a red box around MORSS.



25. As captured on YouTube Video 1, MORSS, with the assistance of other rioters then began to rip the USCP riot shield away from an MPD officer, while he (or someone near him) yelled “send the shield back, send the shield back!” Together, MORSS and the rioters assisting him successfully ripped the USCP riot shield from the MPD officer. Then, around 3:05 p.m. as seen in USCP surveillance footage, MORSS carried the shield away MORSS then passed the shield back to the rioters behind him, who passed it back into the crowd, as captured in the still below with a red box around MORSS.



26. As captured on USCP surveillance footage, at approximately 3:06 p.m., MORSS then walked out of the tunnel and into the crowd near the arch entrance to the tunnel. As captured in a video posted to YouTube, hereinafter YouTube Video 2, upon exiting the tunnel, MORSS was seen on the steps that lead to the tunnel. He started to speak with other rioters. MORSS yelled into the crowd, “shield wall” and started yelling for people to pass up police riot shields, as shown in the still from YouTube Video 2 below.



27. As shown in YouTube Video 2, shields were then passed from the crowd to MORSS and others by the tunnel’s front entrance. The shields were then passed to the rioters at the front of the line confronting the officers guarding the doors with MORSS then quickly returning into to the tunnel to apparently direct the activity, as shown in the still below from surveillance video with a red box around MORSS.



28. MORSS re-entered the tunnel at approximately 3:07 p.m., as captured on surveillance footage. As captured in a video posted to YouTube, hereinafter YouTube Video 3, which shows the same activity as the USCP surveillance footage from a different angle, MORSS, as shown in the still below with a red box around him, entered the tunnel and started to instruct rioters who had shields in their possession to organize a shield wall. MORSS yelled out: “Hey, everyone with a shield, back up and organize! Make a shield wall! Organize right now and make a shield wall. Where are those fucking shields!”



29. As shown in USCP surveillance footage and YouTube Video 3, MORSS then walked toward the front of the tunnel bracing both arms on the back of the person directly in front of him and began pushing forward, as shown in the still from YouTube Video 3 below with a red box around MORSS's hand pushing forward on the rioter directly in front of him. MORSS then pushed with the crowd together as they pushed in unison attempting to break past the officers guarding the Lower West Terrace doors.



30. As captured in YouTube Video 3 and USCP surveillance footage, around 3:08 p.m., MORSS then instructed an individual to the side of the tunnel with a flag to “block out” or “take out” the camera, while pointing to the USCP camera affixed above the doors in the tunnel, as shown in the still below with a red box around MORSS. The individual he was speaking to then began to repeatedly knock out or block the camera with the tip of the flag pole. (This camera was part of the USCP security footage.)



31. Around 3:10 p.m. as shown on surveillance video, MORSS, who now held a shield moved away from the front line of rioters and towards the arch. He stayed in the tunnel, holding the shield, as shown in the still below with a red box around MORSS. MORSS then passed the shield off to another rioter and once again began pushing with the group in an attempt to break through the officers guarding the doors.



32. As seen in surveillance footage and YouTube Video 1, MORSS then continued to use his entire body to push against the rioters in front of him as the group tried to use the shields to push past the officers guarding the door. As can be heard in YouTube Video 1, the group of rioters all yelled “heave ho” as they pushed in unison against the officers guarding the doors. (This is shown in the still from YouTube Video 1 below, with MORSS in the red box.) It was during this time that an MPD officer was being violently crushed against the first set of doors with a shield held by another rioter, as also captured in YouTube Video 1.



33. Around 3:12 p.m., as captured on surveillance video, MORSS then passed another shield and also passed what appeared to be a riot style baton off to another rioter behind him, as shown in the still below with a red box around MORSS. Around 3:14 p.m., MORSS eventually walked out of the tunnel and back into the crowd, as can be seen in both surveillance footage and various photos and videos posted online.



34. Around 3:48 p.m., as captured in a Parler video posted by ProPublica, MORSS stood in the crowd near a window to the right of the archway entrance to the Lower West Terrace doors into the Capitol. (Multiple other videos online show rioters breaking the window with various tools over the preceding hour.)

35. Then, in a video posted to YouTube, hereinafter YouTube Video 4, MORSS and other rioters climbed through the broken window into the Capitol, as shown in the still below with a red box around MORSS. Based on a comparison to surveillance footage showing some of the same events, this occurred around 4:17 p.m. Multiple other videos posted online captured the same activity.



36. The broken window MORSS climbed through led to a hideaway office for members of Congress, but was not specifically assigned to anyone on January 6. As captured on a livestream video from another rioter inside the room, furniture inside the room was toppled over and scattered, as well as some pieces appearing to be broken. In that video, someone inside the room can be heard asking for a crowbar and masks, and there are banging sounds. A few of the rioters were captured still breaking and pulling on a section of the remaining glass left in the window. (A still from that video is below, with a red box around MORSS.)



37. In another short video, filmed from within that same room by a separate rioter, MORSS is again visible, as shown in the still below. This video also shows other rioters in the room including furniture toppled over and scattered about, and legs missing from a desk as well as the drawers.



38. Video posted online showed rioters handing out furniture from the room through the broken window at different times throughout the unrest. Similar furniture (including what appear to be legs of chairs/tables and desk drawers) was then used by other rioters to attack officers guarding the Lower West Terrace doors, as captured by surveillance and BWC footage. Around what appears likely to be approximately 4:30 p.m.,¹ MORSS can be seen inside the room and looking out after another window had been broken out, as shown in the media photograph below with a box around MORSS. At this time, it is unknown what, if any, actions MORSS may have taken while inside the room.



39. In addition, multiple high definition photographs were taken of MORSS by members of the media that day, including, for example the below photograph from around 2:49

¹ The timestamp listed for this photograph online appears to be one hour fast based on a comparison to surveillance footage capturing some of the same actions shown in photographs by the same photographer that day.

p.m.,² where scissors and what appears to be a knife can be seen tucked into pockets on his tactical vest, as shown in the red circles below. A tourniquet is also visible next to the scissors.:



Identification of MORSS

40. While conducting their investigation into the events of January 6th, the FBI requested assistance from the public in identifying people of interest who were suspected of criminal activity that day. Pictures of subjects from January 6th were shared with the public, including “Photo 147 – AFO” the screenshot from YouTube Video 1 below. The FBI received a

² As with the above, the timestamp listed online for photos by this photographer appear to be one hour fast based on a comparison to surveillance footage capturing some of the same actions shown in photographs by the same photographer that day.

tip from a witness who only provided their first name and no contact information. This witness identified Photo 147 – AFO as Robert Morss a Penn State graduate.



Photograph #147 - AFO

41. Official government records indicated that there was a Robert Morss with an address in State College, Pennsylvania.

42. On February 20, 2021, law enforcement interviewed Witness 1 who knows MORSS personally from multiple close interactions with him in a professional capacity. Law enforcement showed Witness 1 the three pictures below and asked if Witness 1 recognized this individual. Witness 1 identified the pictures below as MORSS.



43. On February 20, 2021, law enforcement interviewed Witness 2 who knows MORSS personally in a different professional capacity than Witness 1. (Witness 1 and Witness 2 were interviewed separately, and the undersigned is not aware of any connection between the two.) Law enforcement showed Witness 2 the same three pictures above and asked if Witness 2 recognized this individual. Witness 2 identified the pictures above as MORSS, noting that he/she was 100% confident that it was MORSS. Witness 2 indicated that law enforcement should reach out to Witness 3, who also knows MORSS personally in a similar professional capacity as Witness 2.

44. On February 20, 2021, law enforcement interviewed Witness 3 who knows MORSS personally in a similar professional capacity as Witness 2. Law enforcement showed Witness 3 the same three pictures above and asked if Witness 3 recognized this individual. Witness 3 identified the individual in the pictures as MORSS, noting that he/she was 100% confident that it was MORSS. (Witness 3 also indicated that MORSS may struggle with some mental health issues due to his time in the military.)

45. On February 23, 2021, law enforcement interviewed Witness 4 who knows MORSS personally from multiple interactions with him in a professional capacity. Law enforcement showed Witness 4 the same three pictures above and asked if Witness 4 recognized this individual. Witness 4 identified the individual in the pictures as MORSS, noting that he/she was 100% confident that it was MORSS.

46. Financial records from an account owned by MORSS show spending at what appears to be a gas station in Falls Church, VA, on January 7, 2021. Similarly, based on a review

of records obtained via a search warrant, MORSS's Uber account showed travel from Virginia to Washington, D.C. on the morning of January 6, 2021.

47. In addition, law enforcement has compared known photographs of MORSS to the surveillance footage and confirmed that he indeed appears to be the same person.

48. Finally, after his arrest, another witness, Witness 5, confirmed that MORSS was the individual in the pictures above and further explained that MORSS drove up to Washington D.C. with the two individuals wearing similar military clothing in photos with him near the National Monument.

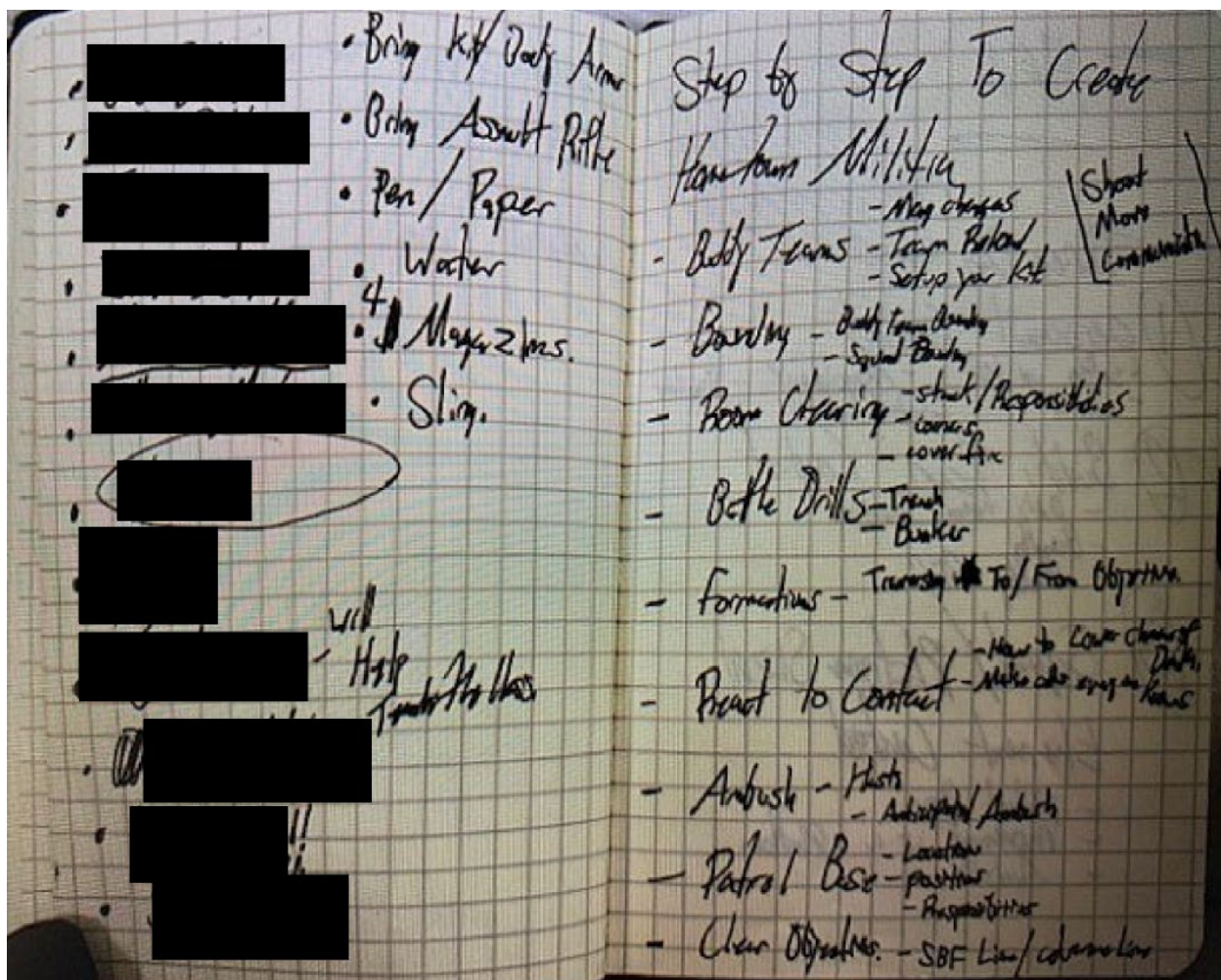
49. The FBI also received nine tips indicating Photograph 147 was someone else other than MORSS. A review of those complaints revealed the following, four of the tipsters alleged photograph 147 "looked like" the person they were reporting on. One tipster advised photograph 147 "looks very similar," to the person they reported on. One of the tipsters was fifty percent sure it was the person they were reporting on but had not seen that person in approximately 25 years. Another tipster reported on a person who was forty years of age and the tipster had not seen that person in seven years. Two other tipsters were not certain it was the person they were reporting on. In all the tips, law enforcement was able to acquire pictures believed to be the person the tipsters were speaking about except for two. The pictures acquired did not look like Photograph 147. In all the tips received, no tipster provided any corroborating information that the person they reported on actually traveled to Washington, D.C. and participated in the riot at the Capitol.³

³ The undersigned is not aware of any other information provided to the FBI about Photograph 147 at this time. However, the FBI is receiving tips from throughout the country on a semi-daily basis about individuals who may have participated in the events at the Capitol on January 6, 2021 and continue to analysis the backlog of tips already received.

Arrest of MORSS

50. During his arrest, law enforcement recovered some clothing and other items that appear to match those he carried with him on the 6th – including a “Don’t Tread on Me” flag, a neck gaiter, a military utility bag, a black tourniquet, and military fatigues. (Law enforcement also recovered a fully constructed U.S. Capitol Lego set.) In addition, MORSS had three different firearms including a handgun, a shotgun, and a rifle.

51. Law enforcement also recovered a notebook from his car with writings that included “Step by Step To Create Hometown Militia.” It included a list of names, a list of equipment, and a list of steps, such as “Battle Drills”; “Ambush”; and “Formations.” The relevant pages, which are pictured below with names redacted out, also included notes such as: “Bring Kit/Body Armor”; “Bring Assault Rifle”; “4 Magazines.”



Procedural History

52. On June 10, 2021, U.S. Magistrate Judge Merriweather issued a warrant to arrest the Defendant on violations of 18 U.S.C. § 231(a)(3) (Certain Acts During Civil Disorder), 18 U.S.C. § 111, 2 (Assaulting, Resisting, or Impeding Certain Officers or Employees), 18 U.S.C. § 2112 (Robbery of Personal Property of the United States), and 18 U.S.C. § 1512(c)(2)(Obstruction of Official Proceeding).

53. On June 11, 2021, FBI agents arrested the Defendant at his residence in Glenshaw, Pennsylvania and brought him before a U.S. Magistrate Judge in the Western District of

Pennsylvania for an initial appearance and removal to this District. At that hearing, the Defendant waived his right to have a detention hearing and a preliminary hearing in the arresting district.

54. On June 16, 2021, Morss was indicted on nine charges, including three violations of 18 U.S.C. § 2111 (Robbery), two violations of 18 U.S.C. § 111(a) (Assaulting, Resisting, or Impeding Certain Officers or Employees), one violation of 18 U.S.C. § 1512(c)(2)(Obstruction of an Official Proceeding), one violation of 18 U.S.C. § 231(a)(3) (Certain Acts During Civil Disorder), one violation of 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building), and one violation of 40 U.S.C. § 5104(e)(2)(F) (Act of Physical Violence in the Capitol Grounds or Buildings).

ARGUMENT

55. 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. In addition, the analysis emphasized by the D.C. Circuit recently in *United States v. Munchel*, No. 21-3010, 2021 WL 1149196 (D.C. Cir. Mar. 26, 2021), supports the conclusion that detention is appropriate here.

Nature and Circumstances of the Offenses Charged

56. 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.

57. In this case, the Defendant was part of a violent mob that engaged in one of the most intense and prolonged clashes between the rioters attempting to overrun Capitol on January 6 and the law enforcement officers charged with protecting it. This was an assault by a large group armed with both their bodies and a variety of weapons (batons, shields, and random objects like speakers thrown at police).

58. The defendant repeatedly not only assisted that mob in this violent battle against law enforcement but also repeatedly led the attack. Specifically, early on in that battle, MORSS repeatedly ripped away (or tried to rip away) the very items law enforcement was using to protect themselves and keep the crowd at bay. First, as the rioters were continuously pushing back the police line to get into the Capitol, MORSS tried to rip away an officer's baton around 2:09 p.m. Then, he successfully rip the barrier fence keeping back the crowd from one of the officer's holding it around 2:14 p.m. As he did again later on, MORSS can be seen coordinating and getting others to help him in this effort – acting as a leader in the effort to take over the Capitol. Then, at 2:33 p.m., MORSS can be seen struggling with an officer over a flag pole and trying to rip away a visor from an officer.

59. Later, after the law enforcement officers had retreated and the crowd had overtaken the lower western side of the Capitol, MORSS helped organize the effort of a violent group of rioters trying to break through the Lower West Terrace doors beginning around 3 p.m. Once inside that small tunnel, MORSS first made his way to the front of the rioters trying to push past law enforcement and then ripped away the item that should have been used by officers to protect themselves – a shield. MORSS then went out into the crowd and encouraged others to pass back the stolen shields so the rioters could create a “shield wall” -- which he then organized and created, with the rioters using the stolen shields to violently push against, and in some cases, crush, the officers guarding the doors. As he did earlier with the fence, he once again acted as a leader in this capacity, getting others in the group to work with him – work with him to attack the officers and push against them, work with him to rip the shield from an officer (nearly dragging that officer into the crowd in the process), and work with him to first pass that shield back and then to create a shield wall that was used to crush officers in the rioters’ path.

60. MORSS continued to be a leader of the rioters inside the tunnel, telling others to block out or take out the camera recording the rioters attacking law enforcement around 3:08 p.m. He then re-joined the rioters violently pushing against the law enforcement officers guarding the doors, heaving as a group while they yelled “heave-ho.” (This heave-ho left an officer pinned against a door as co-defendant McCaughey pushed a shield up against him and another rioter ripped his mask off.) The shield wall MORSS organized and helped create was pivotal in accomplishing this violent effort.

61. Around two hours after MORSS first began leading the effort to push back law enforcement and gain entry to the Capitol, he entered into the Capitol through a broken window

and could be seen there around 4:30 p.m., as other rioters passed out broken furniture from the room. It does not appear that he made it any further than the hideaway office that rioters took over and damaged.

62. MORSS also came to the Capitol armed and ready for violence – wearing tactical gear, wearing goggles to no doubt avoid smoke or OC spray, and even having a knife and scissors tucked into his vest.

63. In short, MORSS came prepared for violence and then repeatedly led the violent mob attacking law enforcement in an effort to overtake the Capitol. According to online interviews, MORSS appears to have been an Army Ranger before his current job, meaning he used the very training instilled in him by the U.S. government to attack the center of our democracy. His actions inherently prove he is a danger to the community at large, and the law enforcement officers who stand in the way of his ideological beliefs, whose safety can only be assured by his detention.

64. As the *Munchel* panel noted, “those who actually assaulted police officers . . . are in a different category of dangerousness than those who cheered on the violence or entered the Capitol after others cleared the way.” *Munchel*, 2021 WL 1149196, at *8. Here, MORSS did not just cheer on violence, nor was he just a participant. He is charged with serious felonies as a result. MORSS repeatedly led and organized multiple assaults against law enforcement. He led and completed these assaults on multiple officers, despite the fact that he was in an extremely public setting, around people filming his behavior, and in the presence of many additional different law enforcement officers. MORSS came prepared for battle, dressed in tactical gear, wearing goggles, and carrying a knife and scissors, and a tourniquet. MORSS actively tried to

destroy evidence of the crime as it was occurring, telling another rioter to block out or take out a camera as he organized the assault in the Lower West Terrace tunnel. Finally, there is some evidence that MORSS is not done with his efforts, as he had a handwritten how-to list for creating a local militia that included steps like “Bring Assault Rifle.” With all of these factors taken into consideration, the nature and circumstances of these offenses overwhelmingly weigh in favor of detention.

Weight of the Evidence Against the Defendant

65. 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, body worn cameras, and media footage attacking law enforcement officers and attempting to unlawfully enter the U.S. Capitol. Multiple witnesses identified him in high definition photographs from that day. He has now been indicted by a Grand Jury. 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

66. The government recognizes that the Defendant has no prior contacts with law enforcement. All of which weighs in favor of release. In addition, his steady housing and community connections weigh in favor of release. However, the Defendant’s actions, as demonstrated by his apparent willingness to repeatedly engage in assaultive behavior and lead a violent mob attacking law enforcement officers, should give this Court great concern about the danger he would pose to the community, if released. In addition, his easy access to firearms (a

shotgun and two other firearms were found in his home or car during the search at his arrest), indication that he plans to create an armed militia, and military training heighten this risk to the community.

Danger to the Community and Flight Risk

67. 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 continued for a sustained period of time. He organized rioters assaulting 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 leading 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.

68. MORSS's dangerousness is not limited to his past actions, but presents a future threat. It is difficult to fathom a more serious danger to the community—to the District of Columbia, to the country, or to the fabric of American Democracy—than the one posed by someone who knowingly and eagerly engaged in a violent insurrection to occupy the United States Capitol and abort the certification of a lawful and fair election. Every person who was present without authority in the Capitol on January 6 contributed to the chaos of that day and the danger posed to law enforcement, the United States Vice President, Members of Congress, and the peaceful transfer of power. However, MORSS violently led that effort and thus his specific conduct aggravated that chaos and danger.

69. The Defendant's highly public and repeated assaults of officers at the Capitol Building and organizing and leading of others engaged in the same, illustrate his danger to the community. The United States submits that the Defendant's lack of respect for the rule of law and his unwillingness to abide by lawful government orders goes directly to his future dangerousness. The D.C. Circuit has recognized that a "Court's finding as to [a defendant's] potential compliance is relevant to the ultimate determination of 'whether there are conditions of release that will reasonably assure ... the safety of any other person and the community.'" *Munchel*, 2021 WL 1149196, at *5; *see also United States v. Hir*, 517 F.3d 1081, 1092-93 (9th Cir. 2008) (explaining that release conditions require "good faith compliance" and that the circumstances of the charged offenses indicate "that there is an unacceptably high risk that [the defendant] would not comply...with the proposed conditions"); *United States v. Tortora*, 922 F.2d 880, 886-90 (1st Cir. 1990).⁴ The Defendant's actions established that his own personal beliefs override the rule of law and that he will readily resort to violence to halt the legitimate functions of the United States government with which he disagrees. (Concerningly, MORSS refused to answer any questions posed by Pre-Trial after his arrest, further underlining this risk.) Such blatant disregard of the law and the valid authority of our government weigh in favor of detention. If MORSS is unwilling to obey orders or to conform his behavior to the law while in full view of many law enforcement officers and a host of cameras, it is unlikely that he would adhere to this Court's directions and release orders, thereby demonstrating his continued dangerousness.

⁴ Although unpublished, the D.C. Circuit has re-iterated this important distinction repeatedly in opinions upholding detention decisions in other Capitol cases. *See, e.g., United States v. Christopher Joseph Quaglin*, No. 21-3028, 21-CR-40 (TNM)-4 (June 24, 2021); *United States v. Christopher John Worrell*, No. 21-3020, 21-CR-292 (RCL)-1 (May 5, 2021).

70. The fact that the unique circumstances that arose on January 6, 2021, are unlikely to arise in precisely the same context a second time does not minimize his future dangerousness. In contrast to the defendants in *Munchel*, MORSS's repeated physical attack on officers protecting the Capitol and the people inside it, prove that he poses a threat regardless of the unique circumstances of January 6, 2021. His willingness to arm himself on the 6th, his leadership role that day, his training in the military and use of that training in the manner in which he organized and led the rioters on the 6th, his interest in creating an armed militia, and his access to weapons generally (three different firearms were found during the search of his residence and car), all add the danger he poses to the community if released.

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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