

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

UNITED STATES OF AMERICA :
 :
 v. : **CASE NO. 21-mj-686**
 :
LUCAS DENNEY, :
 :
Defendant. :

**UNITED STATES' RESPONSE TO DEFENDANT LUCAS DENNEY'S
MOTION FOR RELEASE OF CUSTODY FOR FAILURE TO COMPLY
WITH FEDERAL RULE OF CRIMINAL PROCEDURE 5.1(c)**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully responds to Defendant Lucas Denney's Motion for Release of Custody for Failure to Comply with Federal Rule of Procedure 5.1(c). In support thereof, the government states the following:

1. On December 13, 2021, Defendant Denney was arrested in his home state of Texas on an arrest warrant issued from the United States District Court for the District of Columbia by Magistrate Judge Robin M. Meriweather on numerous felony charges related to his violent actions at the Capitol on January 6, 2021, including violations of 18 U.S.C. §§ 111(a)(1) and (b) and 2; Assaulting, Resisting, or Impeding Certain Officers or Employees and Using a Deadly or Dangerous Weapon or Inflicting Bodily Injury; 18 U.S.C. § 231(a)(3), of Obstruction of Law Enforcement During Civil Disorder; 18 U.S.C. § 1512(c) and (k), Obstruction of an Official Proceeding and Conspiracy to Obstruct an Official Proceeding; 18 U.S.C. §§ 1752(a)(1), (2), (4) and (b)(1)(A), Knowingly Entering or Remaining in any Restricted Building or Grounds with a Deadly or Dangerous Weapon, Disorderly and Disruptive Conduct in any Restricted Building or Grounds with a Deadly or Dangerous Weapon, and Engaging in Physical Violence in any

Restricted Building or Grounds with a Deadly or Dangerous Weapon; and 40 U.S.C. § 5104(e)(2)(F), Violent Entry and Disorderly Conduct on Capitol Grounds. ECF Nos. 1, 5.

2. Denney made his initial appearance in the Western District of Texas in front of Magistrate Judge Collis White on December 14, 2021. *See* Exhibit A, Criminal Docket for Case No. 21-mj-2264 CW. On December 17, 2021, Judge White detained Denney and issued an order of removal, as well as an order detaining Denney without bond. *See* Exhibit B, Order of Removal, and Exhibit C, Order Granting Oral Motion to Detain. In the first paragraph of the Order of Removal, Judge White writes:

In accordance with the Bail Reform Act of 1984, 18 U.S.C. 3142(f), and Rule 5(c)(2) of the Federal Rules of Criminal Procedure, a detention hearing was held in conjunction with a removal hearing on December 17, 2021. Defendant was charged by criminal complaint in the District of Columbia but arrested in the Western District of Texas. Although it is anticipated by the undersigned that a formal Rule 5.1 preliminary hearing will be held in that charging district within the required fourteen days, for the purposes of the Bail Reform Act the Court concludes that there is sufficient probable cause to believe Defendant committed at least one of the charges enumerated in the aforementioned criminal complaint filed on December 7, 2021.

3. Despite the statement that he anticipated a formal Rule 5.1 preliminary hearing to be held in Washington, D.C., at the hearing, Judge White heard testimony from FBI Special Agent James Farris and found that there was “probable cause to believe Defendant committed – at the very least – a violation of 18 U.S.C. § 231(a)(3).” Exhibit B at 1-2.

4. Unlike Defendant’s claims to the contrary, he did *not* have an initial appearance in Washington, D.C. on January 4, 2022. *See* January 4, 2022, Minute Entry for proceedings held before Magistrate Judge G. Michael Harvey for defendant Donald Hazard. Indeed, Denney did not arrive in Washington, D.C. until January 31, 2022. *See* Exhibit D, Email correspondence from Elizabeth Oglesby at the United States Marshal Service. Defendant Denney’s initial appearance has been scheduled for March 10, 2022 in front of this Court.

5. Federal Rule of Criminal Procedure provides that a magistrate judge “must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody . . .” Here, Denney has not yet had his initial appearance in the District of Columbia. Thus, a preliminary hearing should be set within 14 days of Defendant Denney’s initial appearance in the District of Columbia, which is currently scheduled for March 10, 2022. The government has complied with Rule 5.1 and Defendant Denney should remain in custody pending further proceedings.

WHEREFORE, because the United States has complied with Federal Rule of Procedure 5.1, this Court should deny Defendant Denney’s Motion for Release of Custody for Failure to Comply with Federal Rule of Procedure 5.1(c) and he should remain detained pending further proceedings of this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the Government's Response to Defendant Lucas Denney's Motion for Release of Custody for Failure to Comply with Federal Rule of Criminal Procedure 5.1(c) was served on all counsel of record via the Court's electronic filing service.

/s/ Jennifer M. Rozzoni
JENNIFER M. ROZZONI
Assistant United States Attorney

Date: March 3, 2022