

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

UNITED STATES OF AMERICA :
 :
 : **v.** : **D.D.C. Case No. 22-mj-112-RMM**
 :
RODNEY KENNETH MILSTREED, : **(D.Co. Case No. 22-mj-93-MEH)**
 :
 : **Defendant.** :
 :

**MOTION FOR EMERGENCY STAY AND
FOR REVIEW AND APPEAL OF RELEASE ORDER**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court, first, to stay defendant Rodney Kenneth Milstreed’s release pending trial, and second, to review the decision by the Magistrate Judge from the District of Colorado to deny the government’s motion for pre-trial detention. In support thereof, the government states the following:

I. BACKGROUND & PROCEDURAL POSTURE

On May 24, 2022, defendant Rodney Kenneth was arrested in the District of Colorado on an arrest warrant issued from the United States District Court for the District of Columbia by Magistrate Judge Robin M. Meriweather in connection with a Criminal Complaint charging the defendant with Assaulting, Resisting, or Impeding an Officer Using a Dangerous Weapon, in violation of 18 U.S.C. § 111(a)(1) and (b), Assault by Striking, Beating, or Wounding, in violation of 18 U.S.C. § 113(a)(4), Simple Assault, in violation of 18 U.S.C. § 113(a)(4), Obstruction of Law Enforcement During Civil Disorder, in violation of 18 U.S.C. § 231(a)(3), Obstruction of Justice, in violation of 18 U.S.C. § 1512(c)(2), Entering or Remaining in any Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(1), Disorderly and Disruptive Conduct in any

Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2), Engaging in Physical Violence any Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(4), and Disorderly Conduct, Impeding Passage, and Act of Violence on Capitol Grounds or Buildings, in violation of 40 U.S.C. § 5104(e)(2)(D), (E), and (F).

During the defendant's initial appearance in the District of Colorado on May 24, 2022, the government made a motion to detain the defendant without bond pending trial pursuant to 18 U.S.C. §§ 3142. The defendant is eligible for detention, pursuant to 18 U.S.C. § 3142(f)(1), because the case involves a crime of violence, namely Defendant's violent assaults on federal officers. A detention hearing was held on May 27, 2021, during which Magistrate Judge Michael Hegarty denied the government's detention motion and issued an order releasing the defendant with certain conditions. *See* D. Co. case no. 1:22-mj-93-MEH, Dkt. No. 10, attached as Exhibit A.¹ The government orally moved to stay the defendant's release pending an appeal by the government. The magistrate judge granted that request on a limited basis, and ordered the defendant's release be stayed until Wednesday, June 1, 2022, at 11:00 am.

The government hereby appeals that release order and asks this Court to stay the defendant's release pending a hearing on this appeal. Milstreed poses a clear danger and no combination of conditions could assure the safety of the community if he is released. 18 U.S.C. § 3142(f)(1)(A). As discussed below, in his own words, Rodney Milstreed went to the U.S. Capitol on January 6, 2021, "with a 4 ft club and intended to crack some heads." And he indeed used that club to assault a police officer guarding the building and the important proceedings taking place there. As Milstreed put it, his "only intentions were to drag these fucking criminals

¹ A transcript of this hearing has been requested but is not yet available. It will be provided to the Court as a supplement when the government receives it.

onto constitution blvd and pound their head in.” And he warned, “This aint over these fucks will go down. FACT.” He had amassed assault weapons and ammunition before the event, in preparation for civil war. He began taking steroids in the weeks leading up to January 6, so that he would be “jacked” and ready because, he said, someone needed to “hang for treason” and the battle might come down to hand-to-hand combat.

Jurisdiction over this review and appeal lies in this Court, rather than to a judge in the District of Colorado, pursuant to 18 U.S.C. § 3145(a)(1) (when defendant is released by person other than judge of court having original jurisdiction over offense, government’s appeal lies to court of original jurisdiction).

II. STATEMENT OF FACTS

a) Rodney Milstreed’s Response to the 2020 Presidential Election

After the 2020 Presidential election, defendant Milstreed made online comments and social media posts expressing his displeasure at the results. As early as November 5, 2020, two days after the election and before the results had been tabulated, he told his Facebook friend Anne,² “I’m ready to stand with patriots to over throw this shit Live or dead[.] We cannot walk away from this shit[.]” *See* Exhibit 1. On November 9, 2020, Milstreed messaged his Facebook friend Trent, “Gonna get ugly when they overturn these v[o]tes[.]” He then sent Trent the following two photos showing what appears to be two assault weapons, two upper receivers, miscellaneous gun parts, several loaded magazines, and multiple large boxes of ammunition. *See* Exhibit 2.

² The full names of Milstreed’s Facebook and other online associates are redacted here for their privacy. The Facebook messages have been provided here as they were written. The Facebook exhibits attached to this Motion do not include icons or emojis, but the electronic data provided by Facebook does include that metadata, so icons and emojis have been reproduced here where possible.



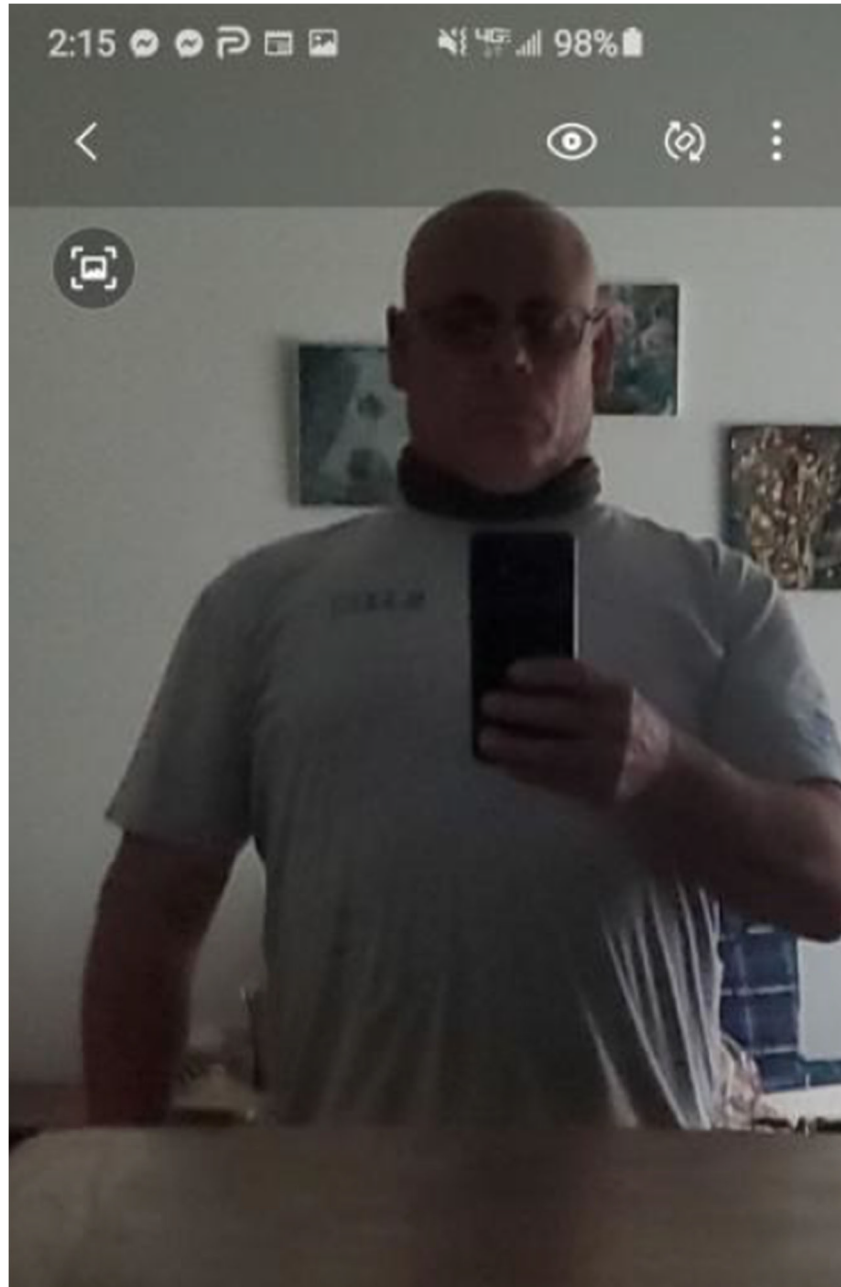
In the first photo, a blue plaid pattern bedsheet can be seen in the upper right corner, on top of which are two or three boxes of what appear to be large quantities of ammunition.



Milstreed described these weapons as “just a few” and “Some of the sleeping giant,” suggesting that he had access to an even larger armory. Exh. 2.

A minute later, he sent Trent a selfie, shown below, in which the same blue plaid pattern bedsheet from the first array of firearms can be seen behind and below Milstreed’s left elbow. This suggests that Milstreed’s boast about his cache of military-style weapons and boxes filled with ammunition was not puffery, but in fact those weapons were in his possession at the time he took

and posted the photo. Along with the selfie, Milstreed referred to himself as “Skin head and all son” and added what seems to be a threat, “These mother fuckers dont want me to start doing cocaine again son[.]” Exh. 2.



Milstreed’s suggestions of violence quickly bloomed to overt threats. On November 11, Milstreed’s Facebook friend Anne sent a TV screenshot from Fox Business showing alleged fraud

in the election results. Exhibit 3. Milstreed replied, “I so sick of these fucks. Think we’re just gonna let them have it. Over alot of dead bodies.” He opined, “If someone furnishes them with guns, we’re gonna have are [sic] hands full[.] I see war either way[.]” He told Anne, “I just bought 2,000 dollars worth of steroids. When it happens I’m going full retard... These fucks don’t want me to start doing cocaine again.” Apparently referring to Joe Biden, he said, “Beady eyed creep needs to be hung for treason.” *Id.*

On November 25, 2020, Milstreed posted several comments on others’ Facebook posts. In one, apparently referring to election-related lawsuits, he said, “I pray every night. I hope we dont have to hurt anyone. THESE JUDGES BETTER DO THE RIGHT THING.” Later that day, he commented, “We the people are the ones that have to do the punishing. 🍌 🍌 🍌 🍌 🍌.” In a third comment, he made reference to “a up coming civil war.” Exhibit 4.

On December 20, 2020, Milstreed posted additional photos of his collection of assault rifles, guns, and ammunition. In a conversation with Facebook friend Marsha, who was upset about the results of the election, he reassured her, “Don’t give up on Trump. This man is a beast of a patriot. He won’t be giving our country up to a crook. FACT. GONNA BE EPIC.” Exhibit 5. He predicted that “it” would be “[v]ery messy in the big cities, but that ain’t shit compared to socialism. We will fuck these punks up[.]” He showed her these photos:





The same blue plaid pattern bedsheet that was in Milstreed’s November 9 selfie to Trent can be seen prominently in the second photo. He also sent Marsha the same two photos of his weapons array that he had shared with Trent on November 9. As he had the previous month, Milstreed described these weapons to Marsha as “Just a peice of my second Amendment[.]”

This curated selection of his armory apparently did not satisfy Milstreed’s desire to amass more weapons, and on December 22, 2020, Milstreed lamented to Facebook friend Jeremy that he

“[c]an’t get any good guns or ammo . Something brewing[.]” Exhibit 6. He said he needed to get a forge to make his own weapon – “Something that will take a limb. 😁 Just in case it comes hand to hand[.]” (He was considering alternatives to firepower; as Milstreed had put it in one Facebook comment on December 8, 2020, “Thing is dont need no gun just a ball bat will do the trick. The sound 🗡️.” Exhibit 7.)

On December 23, 2020, he commented on a post by then-President Trump, “To hell with them Trump don’t hand over the keys. We will handle the outside u handle the inside.” Exhibit 8. He hoped and expected that Trump would continue to occupy the White House, and he was willing to use violence to assist that goal. Around this time, according to a note he sent Facebook friend Vanessa, Milstreed “put a bid in to join proud boys[.]” He joked about who he needed to punch to get admitted. Vanessa warned him about saying too much over email, for fear of sting operations. Exhibit 9.

Milstreed believed Trump would prevail and that plans were afoot for a big event on January 6. At the end of December, he began, unsuccessfully, looking for a friend to join him in D.C. for the riot. On December 27, 2020, Milstreed invited his friend Bob, and offered, “If u wanna go I got an extra flag and flag pole.” Exhibit 10. One of the three flags he showed off to Bob in the photo he shared, shown below, was a Confederate flag.



Apparently referring to the divisiveness of Confederate flag symbolism, Milstreed told Bob, “I got these for bait. This is what their [sic] biting on. 🤪” *Id.* A couple of days later, he sent Bob a link to a YouTube video purporting to be a news report about voting irregularities. He reiterated that he was going to D.C. on the 6th “with some hard hitting hillbillies. 🤪. We won’t be tolerating any resistance. 🏆% FACT.” Milstreed followed up with a selfie he took in front of a mirror in what appears to be a Planet Fitness gym locker room, wearing weight lifting gloves, and noted, “Might be old but I got some life left. Enough to crack some skulls.” He added, “Its a shame our government has put us in a very bad time.” His comments suggest his ideology was based in part on racism and a concern about government officials with “brown skin.” *Id.* at 5.

Milstreed also tried to recruit his Facebook friend James to join him in D.C. on January 6. Exhibit 11. When James declined, Milstreed begged, “Come on bro. I got steroids... Powerful shit... I got flags too[.] Pick handles[.] With flags[.]” *Id.* at 3. He told James, “Come on I need another animal with me.” *Id.* at 4. Milstreed sent pictures of his steroids, which he claimed, “got

me jacked.” He sent photos of his own body to prove it, including a selfie Milstreed took in his undershirt that caused James to warn, “holy fuck be careful with that shit[.]” *Id.* at 8. Milstreed’s response was simply, “I’m gonna skull bust some antifa. 🤪” *Id.* He showed similar pictures to Facebook friend Patrick, and told him, “Its a steroids stacker. Its got me jacked[.] Ready for DC[.]” Milstreed explained, “Someone needs to hang for treason[.]” Exhibit 12.

On December 29, 2020, in a conversation with Facebook friend Jerry, Milstreed revisited his comment from a week earlier about guns and ammunition. Exhibit 13. When Jerry asked him “you try buying ammo, lately ??????” Milstreed responded, “Can’t get any[.]” He said he knew someone with 300,000 rounds but wouldn’t sell it. Then he sent a selfie photo with the caption, “Jacked[.]” and a picture of his injectable steroids. He told Jerry, “Got some juice also[.] I ain’t playing.” *Id.* at 6.

Milstreed continued his effort to recruit friends to join him. On December 30, 2020, he asked Facebook friend Jim to come with him to D.C. on January 6, and showed a photo of the sturdy wooden poles he had procured for the occasion, with his foot to provide scale.



Exhibit 14. Milstreed made it clear to Jim that he bought the pick handles for their use as weapons: “I got two pick handles and flags for them[.] Take the flag take a licking[.]” *Id.* at 4. He resolved, “Wont be no refugee here. I’m cracking skulls.” He advised his friend, “Might wanna bring a good knife[.]” *Id.* at 6. Ultimately, Jim did not join Milstreed for the event.

After the new year, Anne sent Milstreed a link to a video titled “Biden, Obama, Hillary EXECUTED Seal Team 6.” Milstreed responded, “Wow[.] There all gonna hang[.]” He sent a selfie in which he wore weight lifting gloves and stood in front of what appears to be a tanning bed, and said, “I’ll be cracking skulls on January 6[.] YEE YEE LMAO[.]” Exhibit 15. Then on January 5, he sent another selfie, this time showing him in the middle of the gym straining his muscles. The message read, “Dc tomorrow. I’m punching the first BLM I see. 🍌 fact. Shhh[.]” Exhibit 16. He said he expected “a real show” and that “People are going down right on the congress floor[.]” or at least that was his hope. *Id.* at 2.

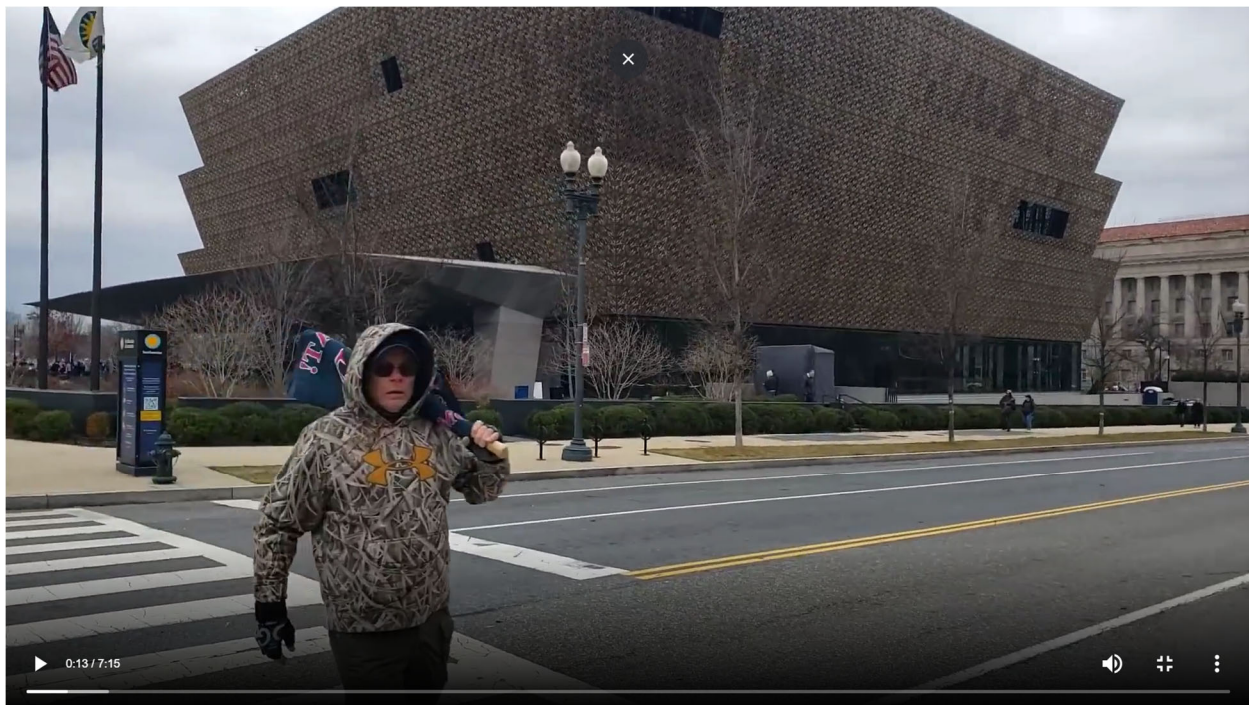
Milstreed’s prediction that rioters would take over Congress were correct, though the “BLM” he thought he saw—and assaulted—was in fact a member of the news media there to report for the Associated Press.

b) Milstreed’s Violence on January 6, 2021

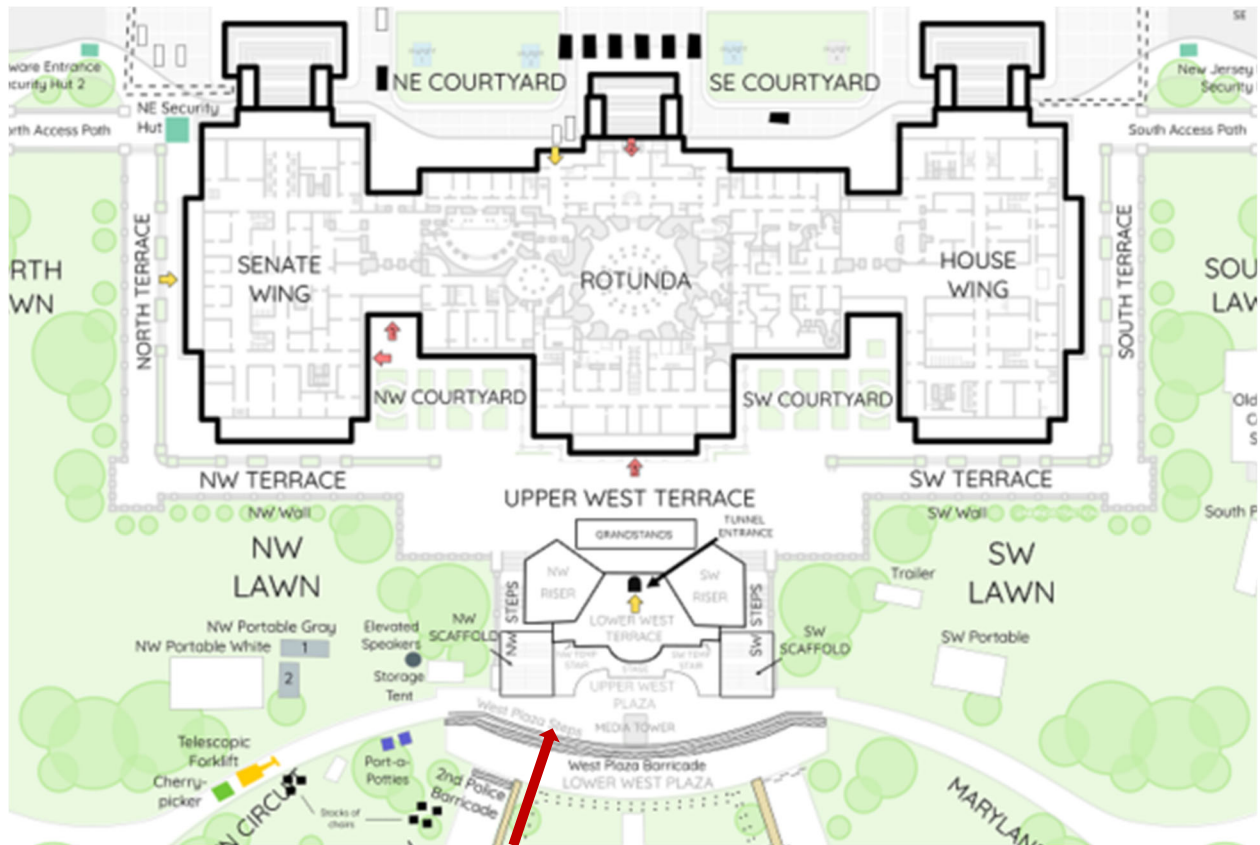
On the morning of January 6, 2021, Milstreed took the train from his home in Maryland to Washington, D.C. He told his online associates that he planned to stage at Harry’s Bar near Union Station, which he chose because he read it was a “PROUD BOYS BAR.” *See* Exhibit 17.

Milstreed went to the Trump rally at the Ellipse, apparently by himself. He then moved with the crowd to the Capitol building, carrying his makeshift pick handle/flag pole with him, as seen in this still frame:³

³ Available at <https://ia902302.us.archive.org/31/items/znDr3y4dE6mcWhSoo/znDr3y4dE6mcWhSoo.mpeg4>.



Around 1:00 pm, Milstreed was just behind initial breach of the Capitol grounds at the Pennsylvania Avenue walkway. He quickly approached the police line at the West Plaza steps, shown below with the red arrow:



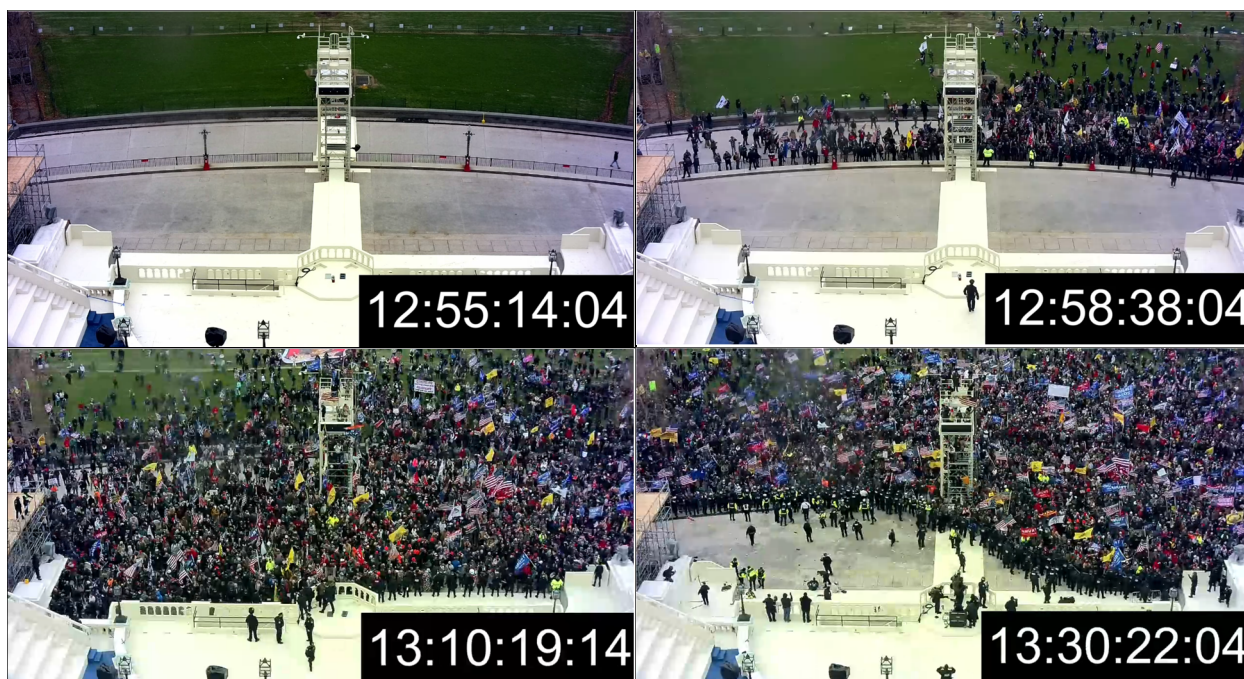
Open-Source Rendering of Capitol Building and Grounds as they appeared on January 6, 2021

Milstred placed himself at the front line of the mob and broke through the line. As he passed the overwhelmed police, he shouted obscenities and kept pressing forward, as seen in this still frame:⁴

⁴ Available at <https://www.youtube.com/watch?v=V3KpiJzBM6M&t=505s>.



Milstreed and the rest of the crowd quickly overwhelmed the U.S. Capitol Police (USCP) force and took over the plaza. Still frame images from surveillance cameras pointing down and eastward at the plaza from above the Capitol building show how quickly the mob descended on the area:



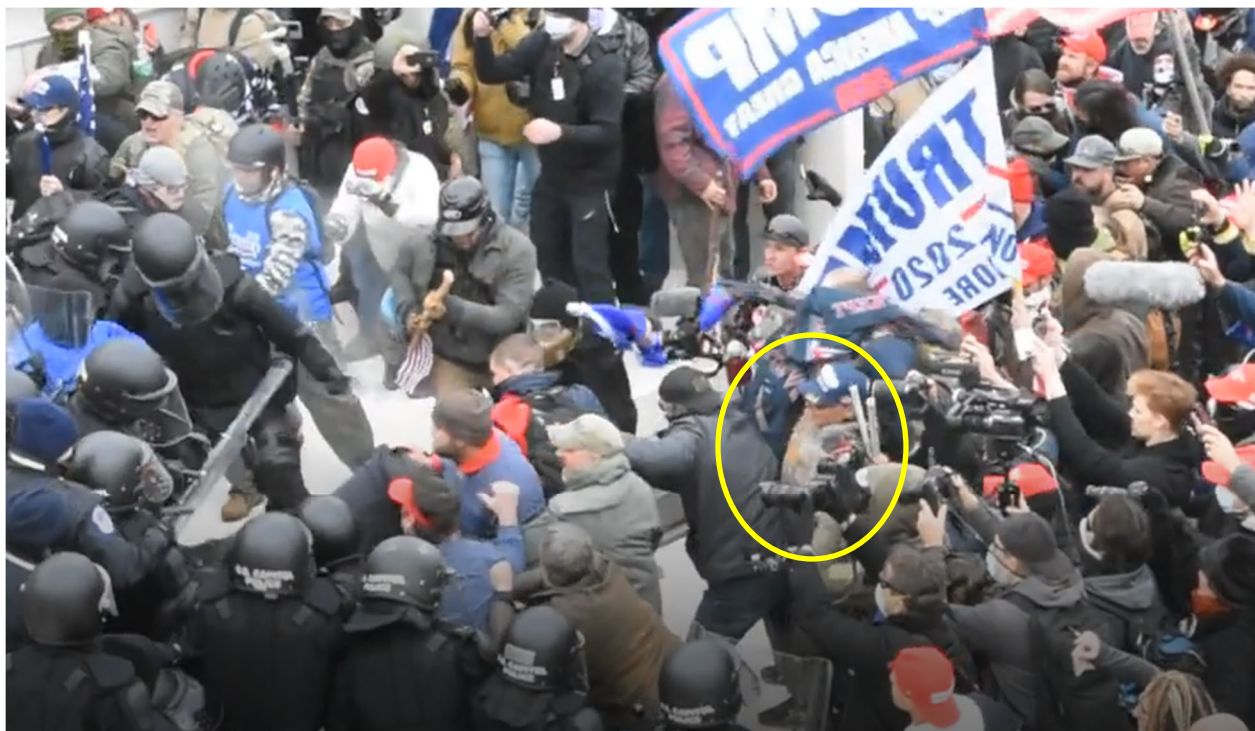
USCP officers lost the line quickly, and were only able to regain some ground when D.C. Metropolitan Police (MPD) officers arrived as backup along with bike rack-style barricades. By around 1:30 pm, the officers had gained some territory and kept the crowd back near the West Plaza Steps.

Between 1:00 pm and 1:30 pm, however, a battle raged for control of the West Plaza, and Milstreed was front and center of the fight. He can be seen surveying the crowd, still holding his wooden pole, at the front of the line near already-beleaguered police officers:⁵



In overhead surveillance camera footage, attached as Exhibit 18 (video from USCP surveillance), Milstreed can be seen in the same area, at the southeast corner of the Upper West Plaza. As the crowd grew more agitated, so did Milstreed, and he launched his 4-foot wooden club into the line of officers. The pick handle, with the flag still attached, hit an officer on the head and glanced off the officer's helmet at high speed.

⁵ Available at <https://www.youtube.com/watch?v=wUmontBJg0U>.



The MPD reinforcements arrived shortly after this, and began quickly constructing a makeshift fence out of bike rack-style barriers. Milstreed found himself behind the police line with

the rest of the crowd. Milstreed took some video footage, which he shared with some of his Facebook friends. In one, Milstreed surveys the crowd and yells, “Let’s take ‘em! C’mon! Let’s fucking drag ‘em out! ... Let’s drag ‘em out. There ain’t enough of them!” *See* Exhibit 19 (video recovered from Milstreed’s Facebook records). It seems, based on this and Milstreed’s related Facebook comments, that he is inciting the crowd to drag out the legislators working in the building.

After the police established their precarious line, an individual high up on the media tower—presumably another rioter—captured footage of Milstreed using a smoke grenade against the police. In this video, which was published to YouTube, USCP and MPD officers behind the barricade can be seen picking up a smoke grenade and throwing it into the crowd they were attempting to disburse. The object lands in the crowd of rioters, and Milstreed runs towards it. Milstreed then picks up the smoke grenade and launches it back towards the police officers across the barricade. Still frame shots from the video are shown below.⁶

⁶ Available at <https://www.youtube.com/watch?v=Qdr3mltKHA0&t=1633s>, at approximately 27:00.



Police officers with the smoke grenade on west side of barricade



On east side of barricade, smoke grenade lands and Milstreed, circled, runs toward it



Milstreed picks up the smoke grenade and launches it toward the police line

At around 1:35 pm, Milstreed found the opportunity he had been looking for to “skull bust some antifa” and “punch[] the first BLM I see.” See Exhs. 11, 16. A photographer from the Associated Press was in the crowd on the Upper West Plaza. Based on video taken by his colleague, it appears the crowd may have believed he was a member of antifa, and he came under

attack. Milstreed was among the first to assault him, grabbing on to his backpack and yanking him down the steps. After the photographer stumbled to the bottom of the stairs, Milstreed shoved him and advanced toward him in a threatening fashion, as these still frames show:⁷



⁷ Available at <https://www.instagram.com/p/CJxKMarpN0/>.



Later in the same video, the crowd can be heard asking, “Who is he?” and answering, “Antifa.”

Milstreed continued his assaults on the police officers working hard to maintain their position on the plaza. He moved south and mounted an attack on the bike racks themselves, hoping to break through. Officers were standing watch behind this line and fending off repeated attempts by the rioters to pull on the bike racks and assault the officers. Video posted online shows that an MPD officer yelled the crowd to “back off” or “back up.” At around 2:05 pm, Milstreed approached the barricade, grabbing the bike rack. When he attempted to yank it free, the officer sprayed Milstreed with pepper spray. Only then did he back off. Still frames from the video and a close-up view are shown below:⁸

⁸ Available at <https://ia904505.us.archive.org/5/items/p3CpCyeHTughshQB/p3CpCyeHTughshQB.mpeg4>.



Milstreed filmed his approach to this line, as he watched other rioters joining in the effort to break down the barricade. As video recovered from his Facebook records shows, Milstreed shouted to the crowd, “Let’s get ‘em! Let’s fucking get ‘em!” several times. This time, in context, it seems Milstreed was referring to the law enforcement officers trying to regain order.

Soon after this, Milstreed moved north, joining the crowd at the bottom of the Northwest Stairs. As he watched rioters swarm the steps and take over the exterior of the building, he cheered, “Let’s make history!” *See* Exhibit 20 (video recovered from Milstreed’s Facebook records). From the same area, he filmed himself cheering, “They’re taking the building. Hallelujah! Merica! Fuck yeah, I’m getting in on them fucking [unintelligible]. Fuck yeah, let’s go to the top.” Exhibit 21 (video recovered from Milstreed’s Facebook records). He made his way upstairs to the Upper West Terrace where the building had been breached by fellow rioters. While there, a voice that sounds similar to Milstreed’s shouted at the police, “Stand down, LEOs! Our country needs you! They’re evil!” Then they added, “You’re all fucking evil.” Exhibit 22 (video recovered from Milstreed’s Facebook records). Milstreed was up on the Upper West Terrace at around 2:50 pm. By this time, police had secured the breach point and Milstreed was unable to enter the Capitol building.

Milstreed kept several of his Facebook friends up to date in real time on the afternoon of January 6, and described his euphoria at the events. At around 1:30 pm, while Milstreed was essentially engaged in battle on the West Plaza, he reported to Anne that “one of us” had been shot. He told her, “We are gonna take the building[.] Shit is real. I feel so alive[.]” *See* Exhibit 23. To Facebook friend Chuck, he reported, “Getting ready to take the building[.]” *See* Exhibit 24. He sent photos of blood on the floor in what appears to be the Upper West Plaza and then later added, “Man I’ve never seen anything like this . I feel so alive.” *Id.* at 8. That evening, at around 5:00 p.m., Milstreed messaged Facebook friend Lisa, “We fucked them federal cops up. They all ran

when we got physical. LMFAO[.]” He then added, “Time for war.” Exhibit 25. Milstreed sent similar messages to other Facebook friends, for example, reporting to Tyler that the fact “[t]hey had to shot one of us” was “[b]ad ass son[.]” Exhibit 26.

c) Milstreed’s Celebration After the January 6 Riot

Milstreed’s experience at the Capitol only seems to have heightened his resolve for violence and civil war, and he repeatedly boasted to friends about his acts of violence during the riot that day. In particular he congratulated himself for his assault on the cameraman, claiming several times that it was “worth it” even if he might get it trouble as a result.

In the early morning hours of January 7, 2021, Milstreed told Facebook friend Thelma, “I’m home what a blast. We got there attention. Those federal cops were no match for angry Americans[.]” Exhibit 27. When Thelma lamented about the violence, Milstreed responded, “This is beyond peace[.]”

On January 8, he touted his assault when he told his Facebook friend Randy, “I did get to punch a camera man with everything I had brother I felt good.” Exhibit 28. He sent a copy of video he took at the riot which showed another rioter who had been hit with a rubber bullet and was bleeding from the cheek. Milstreed told Randy, Watch till the end[.]” He said, “brother war will.make u feel so alive.” *Id.*

Three days after the riot, on January 9, 2021, Milstreed messaged Chuck to describe his participation in the violence and his intention to “crack some heads” while he was there, as follows:

Author Rodney Milstreed (Facebook: 100007297448244)
Sent 2021-01-09 12:34:32 UTC
Body Anybody thats thinks I went to D.C. and was gonna start there with a sign is just foolish . I went with a 4 ft club and intended to crack some heads . I'm not ever sorry some got hurt , could have been me . My only intentions were to drag these fucking criminals onto constitution blvd and pound their head in. 🗿 Fact. I'm surrounded by a bunch of pantie waste people with mouths and no action . This aint over these fucks will go down. FACT.

Author Rodney Milstreed (Facebook: 100007297448244)
Sent 2021-01-09 12:43:42 UTC
Body I make a charge for punching the camera guy but it was worth it. Hit him with everything god give. The crowd cheered. 🗿

Exhibit 29. He made a slew of similar comments that day. To Anne, he stated, “When I went to DC I didn’t go there to be peaceful. In dont think most us wanted any damage. We want to get our hands on the politicians. We want to drag them in the street and put the fear of God in their soul. 🗿 FACT.” Exhibit 30. To his friend Jerry, Milstreed boasted, “I didn’t go to be peace Jerry I took a 4 ft club and was looking to crack some skulls[.] I wanted to drag these fucks on constitution blvd and put the fear of God in them.” He added, “People want blood and I’m one of them... We are at war, its just cold at the moment.” Exhibit 31. To his Facebook friend Edward, he reported, “I punched a camera man with everything God gave me.” Exhibit 32, at 5. He sent video of the riot, and a string of impassioned remarks:

Anybody that thinks I went to hold a sign and say stop the steal is foolish .

I went to crack some heads

I think it is time for the use of the 2nd amendment for what it was designed for

These fucks need to be dragged out on construction [sic] blvd and hung.

I’m not ever sorry people got hurt .

Could have been me

This is what happens in time of war
Martial Law needs to be in acted [sic]

Id. at 6. When Edward told Milstreed that he hadn't gone to the Capitol on January 6, Milstreed chided him, "Get your gun and enact the amendment. Talk is cheat [sic] and gets nothing done its worthless and meaningless to talk..." He bragged, "I took a 4 ft club with me. They knew I wasn't taking any shit. Very lucky I didn't get shot." *Id.* at 7.

Milstreed sent several of his Facebook friends selfies, pictures, and video he took at the Capitol. In some of these photos, Milstreed highlighted the blood he saw there, shown below:



See, e.g., Exhibit 24 at 8. Based on videos Milstreed shared and other footage taken by other rioters and surveillance cameras, it is clear that this blood came from an incident very close to where Milstreed was standing on Upper West Plaza at around 1:10 pm on January 6. When Milstreed recounted this to Facebook friend Jeremy on January 10, 2021, he reported he was at the Capitol "front and center" and described the event as "Very violent[.]" Exhibit 33, at 5. He boasted to Jeremy in terms that echoed his earlier comments: "I didn't go to make peace or hold a sign lol. I

wanted these fucks on constitution bvld and smash their heads[.] 🍷 I took a 4 ft club[.]” He claimed “Obama clintons gonna die[.] Bush also[.] Can’t wait .” *Id.* at 5-6.

Also on January 10, Milstreed sent a series of photos and videos to Facebook friend Lanny, and again described his position at the riot as “front and center. We wanted to drag these criminals onto constitution blvd. Then pound there [sic] heads in.” He referred to Democrats as “the enemy” and predicted, “There all going down that’s they are criminal. You will soon learn. New is evil[.]” When Lanny said he was worried about Milstreed, Milstreed reassured him, “Couldn’t be better[.] I feel so alive. Big history coming[.]” Exhibit 34.

D. Milstreed’s Arrest, Search, and FBI Interview

Milstreed was arrested on May 24, 2022, after a warrant was issued by the U.S. District Court for the District of Columbia. Although he lives in Maryland, he was located and arrested in Colorado, where he works. Simultaneous with his arrest, agents executed court-authorized searches of his Maryland home and his Colorado hotel room.

In Maryland, agents discovered the blue hat and camouflage hoodie Milstreed was wearing on January 6, 2021. They also found a trove of weapons, much like those described above that Milstreed had shown off to his Facebook friends. Milstreed’s firearms cache was not locked away for safekeeping, but was strewn out on a bed in a spare room, available for anyone to find. There were few serial numbers on any of the weapons, and agents have not yet been able to locate information about their origins or ownership. Moreover, agents found no indication that any of these weapons is registered to Milstreed in Maryland police databases.

In sum, the firearms agents found at Milstreed’s home consisted of the following, based on a description provided by the Maryland-based search team:

- 1 AR-Style Weapon, fully assembled, but with no bolt carrier group or serial numbers (Appeared to have been shot before due to the barrel being dirty and

self-assembled. Also, it was pointed out the weapon may have been fully automatic capable)

- 1 Black in Color Lower Receiver for an AR-Style Firearm (No serial number, appeared to be handmade)
- 1 Black in Color Lower Receiver for an AR-Style Firearm with silver interior coating (No serial number, appeared to be handmade)
- 1 Upper Receiver for an AR-Style Firearm, with bolt carrier group and no serial number
- 3 Upper Receivers for an AR-Style Firearm, without a bolt carrier group or serial numbers
- 1 Improvised Suppressor (Appeared Hand-Made)
- 2 Weapon Suppressors, with serial numbers.
- 4 Black AR-Style Firearm Scopes, 1 with serial number
- 1 Mounted Weapon Optic
- 2 Buffer Springs
- Multiple Boxes of Ammunition (Approximately, 2,000-2,500 rounds in total)
- 11 Rifle Style Magazines (Some loaded/Some empty)
 - 7 (30 round capacity, 5.56 caliber) magazines
 - 2 (40 round capacity, 5.56 caliber) magazines
 - 2 (7.62 caliber) magazines

In Milstreed's hotel room in Colorado, agents discovered approximately 94 vials of a liquid substance they believe to be illegal injectable steroids.

After agents placed Milstreed in custody and advised him of his rights, and after they had transported him to the FBI Denver Field Office, he agreed to an interview. Milstreed downplayed his thirst for violence and his participation in the riot on January 6, 2021. He described that he was unhappy with the results of the 2020 Presidential election. After hearing about the rally scheduled for January 6, 2021, he made plans to go. He told agents he brought a flag attached to a shovel handle, which he claimed to have found at his home. He denied that he had any intention to engage

in violence at the rally—though later, he acknowledged that he brought the shovel handle in case he encountered rowdy or violent counter-protestors with BLM. He claimed—contrary to any known evidence, and contrary to the video—that a law enforcement officer confiscated his flag and the wooden handle while he was on the Capitol grounds. He did not acknowledge his assault with the pole until after agents confronted him with that information. Then, he minimized his behavior by describing his assault as simply the result of the heat of the moment. When asked about the smoke grenade, Milstreed denied throwing anything, and again only acknowledged his behavior after he was confronted with the fact that he was captured on video. Then, he admitted only that he may or may not have done it.

In the interview, Milstreed admitted that the guns found at his Maryland home were indeed his. He reported that he kept them in the spare bedroom, and not in either of two safes he keeps on his property. He said he had shotguns, which he had owned since he was a kid. In fact, the agents in Maryland did not recover any shotguns. He admitted that he owned an AR-15. When agents explained they had seen his Facebook comments about his weapons, he minimized again, claiming simply that he never intended to use them. He chalked up his Facebook comments to idle talk.

III. ARGUMENT

A. Legal Framework

Title 18, U.S.C. § 3145(a) states:

(a) Review of a release order – If a person is ordered released by a magistrate, ...

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release

...

The motion shall be determined promptly.

On the government's motion to review a release order, this Court considers *de novo* the

magistrate judge’s denial of pre-trial detention. In its discretion, the Court may proceed to rehear the evidence by recalling the witnesses, reviewing transcripts, or by proceeding through proffer and argument. It may take additional evidence from new witnesses or consider arguments not previously raised. In short, the Court may proceed as best enables it to resolve the question posed: whether any condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. As the legislative history of the 1984 Bail Reform Act amendments shows:

[T]he language referring to the safety of the community refers to the danger that the defendant might engage in criminal activity to the detriment of the community. The committee intends that the concern about safety be given a broader construction than merely danger of harm involving violence. . .

See S.Rep. No. 225, 98th Cong., 2d Sess. 307, reprinted in 1984 U.S. Code Cong. & Ad. News 3182, 3195-3196.⁹

The defendant is subject to detention pursuant to 18 U.S.C. § 3142(f)(1)(A) because the case involves a crime of violence—that is, the defendant’s assaults on law enforcement officers

⁹ To that end, it is worthwhile recalling Congress’ intent in 1984 when it enacted the current version of the Bail Reform Act:

Many of the changes in the Bail Reform Act reflect the . . . determination that Federal bail laws must . . . give the courts adequate authority to make release decisions that give appropriate recognition to the danger a person may pose to others if released. . . . The constraints of the Bail Reform Act fail to grant the Courts the authority to impose conditions of release geared toward assuring community safety, or the authority to deny release to those defendants who pose an especially grave risk to the safety of the community. . . . *This broad base of support for giving judges the authority to weigh risks to community safety in pretrial release decisions is a reflection of the deep public concern, which the Committee shares, about the growing problem of crimes committed by persons on release.*

See S.Rep. No. 225, 98th Cong., 2d Sess. 307, reprinted in 1984 U.S. Code Cong. & Ad. News 3182, 3486-3487 (emphasis added).

with dangerous weapons, a wooden club and a smoke grenade. The facts used to make this determination shall be supported by clear and convincing evidence. *Id.* at 3142(f)(2).

B. The Statutory Factors Weigh Heavily in Favor of Milstreed’s Detention

Section 3142(g) sets out the factors that the Court must consider and weigh in determining whether to detain a defendant pending trial. Considering all of these factors, the government respectfully submits that there are no conditions or combinations of conditions which can reasonably assure the safety of the community if Milstreed were released. His detention is required.

1. The Nature and Circumstance of the Offense Charged
(18 U.S.C. § 3142(g)(1))

This crime of violence took place during one of the most serious and impactful offenses in the country’s history. During the January 6 siege of the U.S. Capitol, multiple law enforcement officers were assaulted by an enormous mob, which included numerous individuals with weapons, bulletproof vests, and bear spray who were targeting the officers protecting the Capitol. The violent crowd outside encouraged others in the crowd to work together to overwhelm law enforcement and gain unlawful entry into the U.S. Capitol. Milstreed was an active and aggressive member of this mob and his violence contributed to the crowd’s ability to overcome the police.

Milstreed faces steep consequences for this dangerous and serious conduct. He is charged with assaulting law enforcement using a deadly or dangerous weapon, assaulting a member of the news media, obstructing law enforcement from performing their duties during a civil disorder, and obstruction of justice. These felonies carry statutory maximum penalties that stack up to decades of time in custody. And the advisory U.S. Sentencing Guidelines suggests the very real possibility he will be sentenced to a lengthy period of incarceration upon conviction. *See* U.S.S.G. §2A2.2. As the Honorable Royce C. Lamberth noted in a similar case arising out of the January 6 riot, “[o]ther defendants convicted of assaulting officers on January 6 have each been sentenced to a

minimum of forty-one months in prison.” *United States v. Neefe*, D.D.C. Case No. 1:21-cr-00567-RCL, ECF 56 (Mar. 9, 2022), at 10. The court concluded, “The crimes alleged here are serious. So is the potential punishment.” *Id.* at 11.

Milstreed’s actions in this case—repeatedly assaulting and obstructing police officers as part of a violent mob, in order to prevent Congress from certifying the 2020 election, and attacking a member of the news media with obvious credentials marking his clothing—demonstrate Milstreed’s lack of regard for laws and authority and demonstrate that he poses a risk of danger to the community.

2. The Weight of Evidence Against the Person
(18 U.S.C. § 3142(g)(2))

The evidence against Milstreed is overwhelming. 18 U.S.C. § 3142(g)(2). He is on video on multiple occasions attacking police officers desperately trying to fulfill their crucial law enforcement duties. He is also on video attacking—unprovoked—a citizen who was present to photograph and document the events. He then sent photos of blood and more violence, bragging to his friends online that he “g[ot] to” punch a cameraman, Exh. 28, and that the risk of getting charged for his assault was “worth it,” Exh. 29. He also admitted to the FBI that he committed assaults at the Capitol on January 6. Not only does this evidence demonstrate Milstreed’s guilt, but it shows his dangerousness, and his willingness to make good on his harrowing threats. *See United States v. Gassaway*, D.D.C. Case No. 1:21-cr-550 (RCL), 2021 WL 4206616, at *4 (D.D.C. Sept. 16, 2021) (citing *United States v. Taylor*, No. 1:21-cr-392 (RCL), 2021 WL 3552166, at *5 (D.D.C. Aug. 11, 2021)).

3. The History and Characteristics of the Person
(18 U.S.C. § 3142(g)(3))

Milstreed’s history and characteristics, including his chilling comments about civil war, his preparation and planning for violence, his stockpile of weapons and ammunition, and his

eagerness to commit violence against those who do not share his political views, all demonstrate his danger to the community and weigh strongly in favor of detention in this case. It is particularly concerning that Milstreed was undeterred by the fact that he might “[t]ake a charge” for his assault on the cameraman, Exh. 29. If he is not deterred from violence by even these serious consequences facing the prospect of years or decades in prison, it is clear that pretrial custody is the only way to ensure he does not strike again.

Milstreed’s firearms collection provides another troubling basis to conclude that he cannot and will not follow the Court’s instructions if he were released pending trial. It appears that Milstreed, a resident of Maryland, declined to follow his state’s rules requiring the proper registration of regulated firearms. Milstreed admitted to the FBI that he owns an AR-15 and keeps it at his Maryland home. Maryland defines the AR-15 as a regulated firearm under its law. *See* Md. Public Safety Code Ann. § 5-101(r)(2)(xv). Many of his weapons had no serial numbers, indicating they may be prohibited under Federal law as well. Agents are currently working to determine the precise nature of these weapons and any additional violations.

Moreover, Milstreed is an active and ongoing user of illegal steroids. This is particularly concerning because it indicates more than a recreational interest in drug use. His social media comments about his steroid use, and his eagerness to share with friends, demonstrates that he sees steroids as a tool that will help achieve his violent political aims. He began a course of steroids in preparation for the attack on January 6, 2021. And the large quantities found in his hotel room on May 24, 2022, suggest that he is using them in large quantities even to this day. If Milstreed uses steroids to prepare for hand-to-hand combat in what he describes as an “up coming civil war,” Exh. 4, it indicates he may be preparing for battle even now, in the middle of 2022.

While the extent of Milstreed’s other drug use is unknown, it is clear he has a history of

using cocaine. He mentioned his prior cocaine use to his Facebook friends, implicitly acknowledging that cocaine made him dangerous when—of the politicians he disliked or voters he disagreed with—he told his friends, “these fucks don’t want me to start doing cocaine again.” Exh. 3, *see also* Exh. 2. His criminal record shows that in 2006, he was arrested and then convicted for purchasing cocaine from an undercover police officer. *See* Exhibit 35 (probable cause statement). As long ago as 1987, NCIC records show, Milstreed was charged with a host of cocaine distribution-related offenses, and was convicted of possession with intent to distribute. His three-year custodial sentence was suspended. (No further information has yet been located about this offense.) In 1985, he was arrested and charged with possession of cocaine, marijuana, and drug paraphernalia. The disposition of this arrest is unknown. It appears from the long span of time between these events that Milstreed’s use of cocaine has been a lifelong pattern.

In addition, Milstreed has had other criminal convictions and contacts with law enforcement. In 2004, according to NCIC records, he was convicted of theft of less than \$500, and sentenced to three months of probation. In 1986, he was charged with malicious destruction of property, with a disposition unknown but an apparent bench warrant issued. In sum, while Milstreed’s criminal record does not show a pattern of serious crimes, it is longstanding and concerning.

Milstreed appears to have a stable residence and family life in Maryland, where he is a longtime resident and lives with his father and girlfriend. He also appears to have stable employment as a machinist, which calls for frequent travel around the country. Yet despite this, he may have secrets that he keeps from his more mainstream associates. His employer, for example, may have no idea that Milstreed injects illegal steroids in preparation for “civil war.” His employer also may have no idea that Milstreed intended to help overturn the results of the 2020

election by dragging lawmakers from their offices into the streets to “pound their head[s] in” and “put the fear of God in their soul.” Exhs. 29, 30, 31; *see also* Exh. 32 (“[t]hese fucks need to be dragged out...and hung”).

Finally, the available evidence of Milstreed’s violent social media commentary ends in March 2021, the last date the search warrant called for Facebook to produce records. There is no indication that Milstreed ceased his threatening and alarming preparations or discussions after that date.

4. The Nature and Seriousness of the Danger Posed by Release (18 U.S.C. § 3142(g)(4))

The nature of the danger to the community that would be posed by Milstreed’s release is severe and self-evident. 18 U.S.C. § 3142(g)(4). Among the most troubling aspects of his behavior is his ownership of multiple unregistered assault rifles, suppressors, and a vast quantity of ammunition, which he claims to possess for the very purpose of helping “overturn these v[o]tes”—that is, to achieve his desired political outcome. Exh. 2. He reported to friends, after the riot and after time to reflect, his desire to “use...the 2nd amendment for what it was designed for[.]” Exh. 32, at 6. This shows that even after January 6, Milstreed intended to use his amassed assault weapons to support the invocation of “Martial Law” with the goal of dragging his opponents into the streets to be “hung.” *Id.* Milstreed would not be the first to use an AR-15 assault weapon to wreak utter destruction upon a community.

But even if all his firearms, receivers, suppressors, scopes, and ammunition were safely surrendered as a condition of release here, that could not abate the risk of danger he poses. As Milstreed himself put it, “Thing is dont need no gun just a ball bat will do the trick. The sound 😁.” Exh. 7.

In short, the risk to the community if Milstreed is released is very real and very serious,

and cannot be avoided by any combination of conditions of release.

IV. CONCLUSION

For the foregoing reasons, having established by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community, the United States respectfully requests that this Court stay the order releasing defendant Rodney Kenneth Milstreed, schedule a hearing to review the decision to release the defendant, and order instead that he be held without bond pending trial.

Respectfully submitted,

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