

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

Case No. 21-mj-269 (GMH)

FEDERICO GUILLERMO KLEIN,
also known as “Freddie Klein,”

Defendant.

GOVERNMENT’S MEMORANDUM
IN SUPPORT OF PRE-TRIAL DETENTION

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in support of its oral motion that the defendant, Federico Guillermo Klein, be detained pending trial pursuant to 18 U.S.C. §§ 3142(f)(1)(A) [Crime of Violence] and 3142(f)(1)(E) [Dangerous Weapon].¹ The United States opposes release because, in view of the factors outlined in 18 U.S.C. § 3142(g), there are no conditions or combinations of conditions that can effectively ensure the safety of any other person and the community and reasonably assure the appearance of the defendant, 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.

¹ At Klein’s Initial Appearance on March 5, 2021, the government requested a hold under 18 U.S.C. § 3142(f)(1)(A). However, the defendant is charged with using a dangerous weapon during his efforts to obstruct Congress and commit civil disorder, and the government is also requesting that the Court consider detention under 18 U.S.C. § 3142(f)(1)(E).

Factual Background

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

The United States Capitol is secured 24 hours a day by the U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized individuals with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the U.S. Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the U.S. Capitol to certify the vote count of the Electoral College for the 2020 Presidential Election, which had taken place on November 3, 2020. The 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. Then-Vice President Michael Pence, who was also the President of the Senate, was present and presiding, first in the joint session, and then in the Senate chamber.

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 U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol Building, and U.S. Capitol Police (“USCP”) were present and attempting to keep the crowd away from the U.S. Capitol Building and the proceedings underway inside. Officers from the

Metropolitan Police Department of the District of Columbia (“MPD”) also responded to the U.S. Capitol to assist USCP in protecting the Capitol.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and keep the crowd from entering the U.S. Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of both USCP and MPD, as others in the crowd encouraged and assisted those acts.

At approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, and Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the U.S. Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During the course of the violent protests, many individuals were armed with weapons including bats, pepper spray, sticks, zip ties, as well as bulletproof vests and anti-tear gas masks. Other individuals stole items from officers protecting the Capitol – including pepper spray and riot shields – and turned those items into makeshift weapons to be used against the officers. During the course of the violent protest, over 100 law enforcement officers reported being assaulted or injured by these violent protesters while attempting to protect the U.S. Capitol and the individuals inside of the building. These assaults occurred both inside the Capitol, as well as on the steps just outside the Capitol Building and throughout the grounds of the Capitol. The defendant, as detailed

below, is charged with assaulting federal officers with a dangerous weapon, civil disorder, obstruction of Congress, and other criminal violations for unlawfully entering the Capitol Grounds.

Klein's Violent Conduct and Officer Assaults on January 6, 2021

The Lower West Terrace, which is a widely recognizable area of the Capitol Building, is located directly in the front-center of the building, facing the Washington Monument. The Lower West Terrace is a very visible area of the Capitol Building that, in public perception, is often used for symbolic or patriotic events, such as presidential inaugurations or the "Capitol Fourth" concert that is annually held on the Fourth of July. Indeed, on January 6, 2021, the Lower West Terrace was undergoing preparation for the inauguration of now-President Biden. Scaffolding had been erected for the media, and stairs, risers, and other flooring was in place to create the stage area upon which the inauguration would take place.

In the center of the Lower West Terrace is an archway with a short set of stairs that leads to a set of double doors; those doors permit entrance directly into the Capitol Building.² At around 2:30 p.m., a large group of MPD and USCP officers assembled to protect the Lower West Terrace entrance from an advancing mob. That specific entrance was the site of some of the heaviest violence on January 6, 2021, as the mob of rioters battled with police officers on-and-off from approximately 2:40 p.m. to 5:15 p.m. Over a period of about two-and-a-half hours, groups of rioters came in waves and gathered in the archway and tunnel as they attempted to violently breach the police line to gain entrance into the Capitol. On multiple occasions throughout that period,

² Since January 6, 2021, this area has become colloquially known as "the tunnel." On January 6, 2021, the stairs leading from the Capitol doors down to the Lower West Terrace had been covered by a platform so that the tunnel floor was flush. At the entrance to the tunnel, stairs then led down to the Lower West Terrace itself. In the past, President-elects, including now-President Biden, walked through the Lower West Terrace entrance doors and the tunnel, and then down the stairs to the inauguration stage.

rioters overran the archway and physically battled with police officers inside the tunnel, directly at the Capitol entrance. At other times, officers were able to push the group of rioters out of the tunnel – away from the doors – and out onto the Lower West Terrace.

Federico Klein chose to put himself in the thick of the violence aimed at breaking through the center doorway on the Lower West Terrace to gain entrance to the Capitol Building. He used physical violence against officers who were protecting the entrance, and his individual participation in the larger mob heightened the overall violence and dangerousness of the day. Klein was among the first wave of rioters to enter the center archway attempting to breach the door; he first entered the archway at approximately 2:43 p.m., and formed part of the mob inside the tunnel battling officers. He remained inside the tunnel until approximately 3:21 p.m., when officers were able to push the first wave of rioters out of the tunnel and back out onto the terrace.

While inside the tunnel, Klein made his way to the front of the mob to fight directly at the doors to the Capitol Building where a line of officers had formed to protect the entrance. As is detailed in the Complaint (*see* ECF No. 1), which is incorporated herein by reference, he repeatedly ignored police orders to “back up,” and physically attempted to break through the line, including by engaging in hand-to-hand violence against police officers while wielding an apparently stolen police riot shield. During the approximately thirty minutes that Klein spent trying to breach the police line, he was captured on the Body Worn Camera (“BWC”) of multiple officers. At approximately 2:55 p.m., video showed him near the front of the mob reaching out with his hand, apparently attempting to grab something near the police line. BWC also captured Klein yelling “we just want a fair election,” demonstrating Klein’s apparent belief that the election was fraudulent. Five minutes later, at approximately 3:00 p.m., Klein was captured ignoring orders to

“Back up” and “Let it go.” Instead of complying, Klein shoved a riot shield in between the entryway doors, preventing officers from closing the doors.

Despite the police orders and the obvious and relentless violence occurring at the front of the line, Klein continued his efforts to break into the Capitol Building. The evidence establishes that for an additional fifteen minutes, Klein remained at the front of the mob battling the officers who were protecting the entryway. At approximately 3:15 p.m., Klein was again captured on BWC fighting with officers and still holding the apparently stolen police riot shield. At that point, Klein used the riot shield to assault the front-line officers by violently shoving the shield into their bodies. Only after a Sergeant deployed a chemical irritant did Klein finally leave the front line of the mob and move to the back of the crowd.

Open-source videos also confirmed that Klein was in the tunnel physically fighting against the front line of officers. Notably, one video captured Klein encouraging other rioters to attempt to breach the Capitol by shouting, “We need fresh people, we need fresh people” multiple times. At approximately 3:21 p.m., after approximately *thirty-minutes* of what can only be described as hand-to-hand combat, the officers at the doorway were finally able to clear the tunnel of the first wave of rioters; Klein was forced out of the tunnel with that group. However, even after being forced out of the tunnel, he lingered on the Lower West Terrace with the mob of rioters who remained there. While out on the Terrace, Klein was again captured on video hindering an officer seeking to help another officer who had been dragged into the mob on the Lower West Terrace.³

For his conduct on January 6, 2021, Klein is now charged by Complaint with: (1) Assaulting an Officer of the United States with a Deadly or Dangerous Weapon, in violation of 18

³ A few moments later, however, Klein was captured attempting to aid the officer who had been dragged down the steps to the Lower West Terrace.

U.S.C. §§ 111(a)(1) and (b); (2) Civil Disorder, in violation of 18 U.S.C. § 231(a)(3); (3) Obstruction of Congress, in violation of 18 U.S.C. §§ 1512(c)(2) and 2; (4) Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority in violation of 18 U.S.C. § 1752(a)(1), and; (5) Disorderly Conduct and Physical Violence on the Capitol Grounds, in violation of 40 U.S.C. §§ 5104(e)(2)(D) and (F). After his arrest on March 4, 2021, the Court conducted Klein's initial appearance on March 5, 2021, at which the United States requested detention pursuant to 18 U.S.C. § 3142(f)(1)(A). A detention hearing is scheduled for March 9, 2021.

ARGUMENT

The government respectfully requests that Klein be detained pending trial because there is no condition or combination of conditions that will ensure the safety of the community if Klein were to be released. 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). The government submits that each of these factors weighs in favor of Klein's detention.

Nature and Circumstances of the Offenses Charged

Klein's violent and enthusiastic participation in the mob's efforts to break into the Capitol Building by assaulting police officers on the Lower West Terrace weighs heavily in favor of detention. During the course of the January 6, 2021, siege of the U.S. Capitol, over 100 law enforcement officers were assaulted by an enormous mob, which included numerous individuals

with weapons, bulletproof vests, and pepper spray who targeted the officers protecting the Capitol. Additionally, the violent crowd encouraged others in the mob to work together to overwhelm law enforcement and gain unlawful entry into the U.S. Capitol. In the Lower West Terrace tunnel that day, USCP and MPD officers worked for almost three hours defending the U.S. Capitol Building. Officers spent much of that time under physical attack by a violent crowd – including Klein – that fanatically and repeatedly assaulted officers at the front of the police line in an effort to break through the line and into the Capitol Building. The officers in that line were in full uniform, with clear and visible markings identifying themselves as officers.

Klein chose to unlawfully enter the Capitol Grounds on January 6, 2021, for the stated purpose of preventing Congress from completing its constitutional duty of certifying the results of a lawful election. He selected one of the most visible and violent locations in which to do so. He stationed himself with the violent mob on the Lower West Terrace, and moved to the very front of the group of rioters battling to break through the police line. He did not hang back. He did not consign himself to the role of just a bystander. Rather, for more than thirty minutes, Klein actively engaged in violence and demonstrated a whole-hearted commitment to breaking through the police line to disrupt the legitimate functions of the United States Congress. He was persistent and unrelenting. In the videos capturing his actions, he never appeared to turn back or to change his mind about engaging in violence with the police. It was not until police deployed O.C. spray in his direction – and Klein was physically forced to stop fighting – that he moved away from the front line.

Moreover, Klein's conduct did not stop at his own individual decision to engage in physical violence. It extended to his active encouragement of other rioters to continue to try to break

through the police line and into the building. Notably, Klein was captured on video shouting, “We need fresh people, we need fresh people,” multiple times. Klein thus incited other members of the crowd to violence, encouraging them to battle with the police in the tunnel after others were unable to continue fighting.

Klein’s willing and enthusiastic participation in violence against police officers protecting a lawful proceeding of Congress, for which he is charged with multiple felonies – including a crime of violence – weighs heavily in favor of detention. Not only was his individual conduct and encouragement to other rioters violent and dangerous, but his actions heightened the overall violence and dangerousness of the day. As stated by Chief Judge Beryl A. Howell, “[t]he actions of this violent mob, particularly those members who breached police lines and gained entry to the Capitol, are reprehensible as offenses against morality, civic virtue, and the rule of law.” *See United States v. Chestman*, 21-mj-218 (BAH), ECF No. 23, at *13, 16 (D.D.C. Feb. 26, 2021) (“Grave concerns are implicated if a defendant actively threatened or confronted federal officials or law enforcement, or otherwise promoted or celebrated efforts to disrupt the certification”). Here, the defendant attempted to breach the police line but, due to the heroic efforts of law enforcement, thankfully failed.

Weight of the Evidence against the Defendant

The second factor to be considered, the weight of the evidence, also weighs in favor of detention. The evidence against Klein is strong and compelling. Significantly, Klein was captured in multiple BWC and open-source videos that clearly showed him violently engaging with officers who were defending the Capitol that day. He also was captured on surveillance footage that showed his entry into and exit from the thick of the mob in the Lower West Terrace tunnel. Klein’s

face is visible in multiple videos, as are the red hats and green jacket that he wore on January 6, 2021.

In addition, two separate witnesses identified Klein as the individual captured in the videos. In one instance, a concerned citizen, Witness 1, observed multiple different videos posted on social media and online, recognized Klein as involved in the assault on officers and attempts to storm the Capitol Building, and sent the information to the FBI. Witness 1 even provided links to the locations of the videos online so the FBI could fully investigate. Witness 1 also provided Klein's Linked In and Facebook accounts to the FBI. In a follow-up interview with Witness 1, they stated that on a scale of one-to-ten, with ten being absolute certainty, their certainty that Klein was depicted in the videos was a "nine." This level of certainty is notable given that Witness 1 had not seen Klein in approximately three to four years.

As stated in the Complaint (*see* ECF No. 1), other individuals – both identified and anonymous – provided tips that the individual labeled as 136-AFO by the FBI,⁴ was someone other than Klein. The majority of those tips were vague and of low certainty level. The one tip with some degree of certainty was refuted by cell site evidence, which indicated that the individual at issue was not at the Capitol on January 6, 2021.

Moreover, a former colleague who worked with Klein at the Department of State for approximately two years, and who observed him in-person multiple times a week, identified Klein as the person in the open-source videos discussed above. Thus, the evidence against Klein is compelling, and the strength of the evidence weighs heavily in favor of detention.

⁴ As described in the Complaint, ECF No. 1, Klein was included in a "Seeking Information" flyer that was disseminated to the public by the FBI. He was given the moniker "136-AFO".

Defendant's History and Characteristics

The United States submits that Klein's history and characteristics demonstrate that he would be a danger to the community if released. The government acknowledges that Klein's criminal history is limited, and – at first blush – appears to favor release. Nevertheless, his actions on January 6, 2021, appear to be a considered decision to place himself above the law; not only did he demonstrate an unwillingness to follow lawful orders, but he also showed a blatant disregard for his commitments to those in authority.

The United States submits that Klein's conduct on January 6, 2021, demonstrated an utter disregard for the law and the legitimate functions of government, providing clear and convincing evidence that he is unwilling to follow lawful orders or defer to the legitimate authority of the government. When Klein assaulted federal officers in his attempt to storm the Capitol, he did so in the presence of hundreds of USCP and MPD officers who were working to protect both the constitutionally-mandated Certification proceeding and the members of Congress duty-bound to hold that proceeding. Klein blatantly assaulted officers in full view of other law enforcement, without even the pretense of following the law. Inside of the tunnel, Klein also ignored multiple police commands to "Back up." The presence of and the lawful orders of the USCP and MPD officers that day were immaterial to Klein's decision to engage in a violent attempt to breach the Capitol Building.

The dangerousness of Klein's participation in the mob that day is only heightened by the fact that, at that time, he was an employee of the Department of State, with an obligation to uphold the Constitution. By law, federal employees are required to take an oath of office, swearing to "support and defend the Constitution of the United States against all enemies, foreign and

domestic...” 5 U.S.C. § 3331. Presumably, Klein took that same oath of office when he entered federal employment. Despite his oath to support and defend the Constitution, Klein demonstrated his contempt for that oath, the legitimate functions of the government, and for the Constitution itself when he assaulted officers in an attempt to stop the certification of a lawful election. By his actions on January 6, 2021, Klein abdicated his responsibilities to the country and the Constitution. Despite the trust the country and government placed in Klein’s character, stability, trustworthiness, reliability, discretion, honesty, judgment, and unquestionable loyalty to the United States,⁵ Klein’s behavior revealed that his true allegiance lies elsewhere. Rather, Klein’s actions established that his own personal beliefs override the rule of law and that he will use violence in an attempt to halt the legitimate functions of the United States government with which he disagrees. Such blatant disregard of the law and the authority of a lawful government, along with his indifference to keeping his own commitments – even when made under oath – weigh in favor of detention. If Klein is unwilling to obey orders while in full view of law enforcement, or to conform his behavior to the law even when he disagrees with it, despite his oath to the Constitution, it is unlikely that he would adhere to this Court’s directions and release orders.

Danger to the Community

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 Klein’s detention. Klein’s dangerousness is illustrated by his highly-public assault of officers at the U.S. Capitol Building and is amplified by his position as a federal employee at the time of the assaults. *See Chestman*, at *30 (“Nearly

⁵ *See* U.S. Department of State, Bureau of Diplomatic Security, Security Clearances, at <https://www.state.gov/security-clearances> (last visited Mar. 8, 2021) (listing requirements for Top Secret security clearance).

as significant is defendant's use of force to advance towards the Capitol and his use of words to lead and guide the mob in obstructing the police and pushing against police barriers"). While Klein remains innocent until proven guilty, the United States is gravely troubled by the nature of the allegations against him, and his potential threat to others if released.

Given the above assessment of all four relevant factors, there is clear and convincing evidence that there are no conditions or combinations of conditions which can effectively ensure the safety of any other person and the community and reasonably assure the appearance of the defendant, pursuant to 18 U.S.C. § 3142(e).

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2021, I caused a copy of the foregoing omnibus opposition and detention memorandum to be served on counsel of record via electronic filing.

/s/ Jocelyn Bond
JOCELYN BOND
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