

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

UNITED STATES OF AMERICA :
 :
v. : **No. 21-CR-119**
 :
GARRET MILLER, :
Defendant. :

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION TO REVOKE
MAGISTRATE JUDGE’S DETENTION ORDER**

Defendant Garret Miller not only enthusiastically participated in the storming of the U.S. Capitol on January 6, 2021, with video showing him interfering with and obstructing law enforcement, but also threatened to kill a United States Congresswoman and United States Capitol Police Officer after the riots. As a result of his conduct, a grand jury of this Court charged Miller in a twelve count indictment. Following a hearing in the Northern District of Texas a magistrate judge ordered Miller detained. Miller’s statements and actions show that there are no conditions of release that would reasonably assure the safety of the community or his return to court.

Factual Background

1. 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 (“USCP”). Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by the USCP. Only authorized individuals with appropriate identification are allowed 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 votes 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, at approximately 1:30 p.m., the House and Senate adjourned to their respective chambers to resolve an objection. Vice President Michael Pence, who is also the President of the Senate, was present and presiding, first in the joint session, and then in the Senate chamber.

While the House and Senate proceedings continued, and with Vice President Michael 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, and USCP officers were present and attempting to keep the crowd away from the building while the proceedings were underway. 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.

While the certification proceedings were underway, the U.S. Capitol’s exterior doors and windows were locked or otherwise secured. As the crowd outside grew, police officers 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 Michael 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, several individuals were armed with weapons including bats, pepper spray, sticks, zip-ties, as well as bulletproof vests and gas masks. More than 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 of the Capitol, as and elsewhere on the grounds of the Capitol. The defendant, as detailed below, has been indicted for interfering with law enforcement officers, as well as other criminal violations, including civil disorder, obstruction of an official proceeding, and interstate communication of threats.

2. Garret Miller’s Criminal Conduct

a. Garret Miller’s Entry into the U.S. Capitol Building

Garret Miller was angry about the outcome of the 2020 presidential election. On January 2, 2021, he posted a message on Facebook in which he shared his belief that “[s]ome crazy shit going to happen this week. Dollar might collapse . . . civil war could start . . . not sure what to do in DC.” Despite fearing civil war and the collapse of the economy, Miller drove to Washington, D.C. to attend the “Stop the Steal” rally on January 6, 2021. In a Facebook chat,

he wrote that he was traveling with “a grappling hook and rope and level 3 vest. Helmets mouth guard and bump cap.”¹ He also stated that he was bringing guns with him but “might just keep 1 hidden one and store the rest in Virginia” because he learned “it’s a federal crime” to carry guns in D.C.

After the “Stop the Steal” rally, Miller forcibly entered the Capitol at about 2:43 p.m. Surveillance video from inside the Capitol shows Miller entering the building by pushing past officers who were trying to keep rioters from entering. When asked in a Facebook chat, “[W]ere you in the building?,” Miller admitted, “Yah . . . we charged . . . We where [*sic*] going in . . . No matter what . . . Decided before the trump speech . . . I charged the back gates myself with an anti masker.”

Body-worn camera video from MPD shows Miller inside the Rotunda at about 3:07 p.m. A large crowd had formed and officers were attempting to control the crowd. Miller went to the police line, at the front of the crowd, and refused to move. When officers attempted to push him back Miller fell to the ground but quickly got up and again refused to move. He yelled, “Hooah! Hooah!” at the officers. He then got into a fighting stance with one of his legs in front of the other and yelled, “OOOH! OW! OW! OW!” Officers eventually pushed him back.

On January 11, 2021, Miller sent a photograph of himself with another unidentified individual inside the Capitol Rotunda to another Facebook user. After seeing the photograph, the Facebook user commented, “bro, you got in?! Nice!” to which Miller replied, “[J]ust wanted to incriminate myself a little lol.”

¹ A level 3 vest is a ballistics vest that stops most bullets from passing through the vest. A bump cap is a hat that looks like a regular hat but it has a plastic shell on the inside that protects an individual’s head, usually from a shot fired.

b. Garret Miller Threatened to Kill a Congresswoman and USCP Officer

On the day of the riots, Miller posted several messages on Twitter directed at Congresswoman Alexandria Ocasio-Cortez. In one he wrote, “We acted with honor and we where [sic] not armed. We where [sic] gentle with the police. They murdered a child.”² After Congresswoman Ocasio-Cortez tweeted on her Twitter page, “Impeach,” Miller tweeted back to her, “Assassinate AOC.”

After the riots, Miller returned to Texas but was consumed with identifying the USCP officer involved in the fatal shooting of a rioter, Ashli Babbitt, on January 6, 2021. On January 10, 2021, Miller asked on Instagram about the USCP officer, “How could he execute an unarmed woman feet away. His execution must be televised.” Later in the conversation, Miller states, “I’m threatening justice on criminals,” and sent a picture of a rope tied to a noose. He then stated about the USCP officer, whom Miller believed to be African-American, “He’s a prize to be taken” and “He will swing. . . . I had a rope in my bag on that day,” meaning January 6, 2021.

In a January 11, 2021, Facebook chat Miller wrote, “Hey im [sic] banned on [Facebook] but I wanted to share a lead on the Babbit murder. Im [sic] not positive but it can be confirmed.” He then sent several photographs of a police officer whom he believed killed Ms. Babbitt. Later that day he circulated the photographs to another Facebook user and stated, “Think this might be the guy . . . He’s part of the swamp. Gay police officer[.] Thats [sic] why they are protecting him.”

² Although the defendant claims in his motion that he thought Babbit was a child, see Def. Mot. at 12, his opinion at some point likely changed. Other statements on social media show that he repeatedly referred to Ms. Babbit as a “woman,” not a child.

Later in a Facebook chat on January 18, 2021, Miller asked, “Who killed Ashli Babbitt?” The other Facebook user responded, “Well it was her fault [because] she entered the building to try to stop a constitutional process but I’ve seen reports it was a cop that killed her.” Miller then said, “Yah but notice they won’t tell you his name or release a picture of him. Some people are more equal than others. You see right?” During the chat, Miller wrote, “He’s everyone’s favorite cop now. We going to get a hold of him and hug his neck with a nice rope.” He then threatened, “[A]nyways that cops [*sic*] not going to survive long,” to which the other Facebook user responded, “That lady deserved to die.” Miller retorted, “nah but he does lol.” Miller then said, “[S]o its huntin season” and told the Facebook user that, “Ashli was a sister in battle were bravery achieve victory and she paid the ultimate price. . . Dead serious she fought fir me now I fight fir her.”

Prior to the riots, on November 7, 2020, Miller stated on Instagram, “Never been shot at in school. Been shot near at work [emoji] but some people need to be shot and in America [emoji] you get to decide who deserves to be shot.”

3. Miller’s Arrest

On January 16, 2021, Miller chatted on Facebook with another user who expressed concern that Miller may be arrested for his actions at the U.S. Capitol on January 6, 2021. In response, Miller stated, “[I don’t know] . . . it might be time for me to.... be hard to locate.” Four days later, Miller was arrested at his home in Dallas, Texas. At the time of his arrest, Miller was wearing a t-shirt with a photograph of President Trump that said, “Take America Back” and “I Was There, Washington D.C., January 6, 2021.”

A search warrant executed at Miller’s home produced, among other things:

- Two ropes and a grappling hook
- Mouth guard
- Body armor
- Oakley mods helmet and night vision goggles
- Several firearms
- Crossbow with scope and arrows
- Various ammunition

Miller did not provide a statement to law enforcement at the time of arrest. On a call, recorded by the department of corrections, immediately after his arrest, however, Miller stated to his mother, “I don’t feel that I’ve done anything wrong and now I’m being locked up.”

4. Magistrate Judge’s Findings

On January 19, 2021, Miller was charged by complaint with five counts. He was arrested in Texas pursuant to an arrest warrant the next day. At his initial appearance in the Northern District of Texas, the government moved for his detention pending trial pursuant to 18 U.S.C. §§ 3142(e) and (f), asserting that Miller committed both a crime of violence and presents a serious risk of flight. Following a detention hearing, the Magistrate Judge ordered him detained.

The Magistrate Judge made two independent findings. First, she found that Miller is a flight risk. She explained that she was making that finding because Miller “made statements that perhaps he should be difficult to find,” Def. Mot., Att. A (104:24-25). He also “had means in the form of his van, which was outfitted to be able to be off the radar.” Id. 104:25, 105:1-2. She further found that “conditions such as electronic monitoring or third-party custodian would [not] adequately guard against [fleeing].” Id. 105:3-8. And she found that the phone call between Miller and his parents from the jail in which he showed no remorse demonstrated that he “has not fully embraced the severity of what he’s facing and would not cooperate and appear.” Id. 105:15-18.

The Magistrate Judge also found that Miller is a danger to the community. She reasoned that “[t]he threats that the Defendant made, specifically the threats to the Capitol Police officer, are very serious and pose a very high risk of danger to the community and to people in particular, specifically Capitol Police officers.” Id. 105:22-25, 106:1. She found that “the evidence before me is clear and convincing that [he was] hunting a Capitol Police officer, a law enforcement officer, and [he was] prepared to commit Capitol murder that [he was] going to assassinate. So that threat is very serious.” Id. 106:7-14. She also based her finding on the fact that Miller had access to numerous firearms and other weapons, like ropes, which she found he intended to use to murder the USCP officer. Id. 106:21-25, 107:1-5.

5. Procedural History

On February 12, 2021, a District of Columbia Grand Jury returned a twelve-count indictment charging Miller with:

- (Counts 1 & 2) two counts of Civil Disorder, 18 U.S.C. § 231(a)(3)—one count for his entry into the Capitol building and one count for his actions in the Capitol Rotunda;
- (Count 3) one count of Obstruction of an Official Proceeding and Aiding and Abetting, 18 U.S.C. 1512(c)(2) & (2);
- (Count 4) one count of Assaulting, Resisting, or Impeding Certain Officers, 18 U.S.C. 111(a)(1);
- (Counts 5 & 6) two counts of Interstate Threats to Injure or Kidnap, 18 U.S.C. 875(c)—one count for threatening to kill Congresswoman Ocasio-Cortez and one count for threatening to kill a USCP officer;
- (Count 7) one count for Entering and Remaining in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(1);
- (Count 8) one count for Disorderly and Disruptive Conduct in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(2);
- (Count 9) one count for Impeding Ingress and Egress in a Restricted Building or Grounds, 18 U.S.C. § 1752(a)(3);

- (Count 10) one count for Disorderly Conduct in a Capitol Building, 40 U.S.C. § 5104(e)(2)(D);
- (Count 11) one count for Impeding Passage Through the Capitol Grounds or Buildings, 40 U.S.C. § 5104(e)(2)(E);
- (Count 12) one count for Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

Miller is currently detained at the Federal Transfer Center in Oklahoma City. He broke his collarbone while playing in the recreation yard at the facility in Dallas. After he was transferred to the FTC, he was seen by an orthopedist, who has recommended significant medical services, including possible surgery. For that reason, Miller’s transport to D.C. has been put on hold.

ARGUMENT

A. The Magistrate Judge’s Ruling was Legally Sufficient

As an initial matter, Miller incorrectly asserts in his motion that because the Magistrate Judge made findings orally on the record—and not in writing—the Court is “compelled” to release him. But the law is clear: a detention hearing transcript satisfies the requirement of 18 U.S.C. § 3142(i) if that transcript “evinces a clear and legally sufficient basis for the court’s determination.” United States v. Peralta, 849 F.2d 625, 626 (D.C. 1988). Following Peralta, Rule 9(a)(1) of the Federal Rules of Appellate Procedure were amended to clarify that a district court must state in writing “or orally on the record” the basis for detention. See United States v. Nwokoro, 651 F.3d 108, 109 n.1 (D.C. Cir. 2011) (noting the amendment).

The Magistrate Judge’s detention ruling was clear and legally sufficient. In fact, nowhere in his motion does Miller challenge the clarity or legal sufficiency of the Magistrate Judge’s oral findings—nor could he. The Magistrate Judge clearly and thoroughly addressed the bases for detaining Miller, reasoning that he is both a flight risk and danger to the community. She made

specific findings about his flight risk, finding that his statement about being hard to locate coupled with the seriousness of the charges that he is facing “suggest, at least by a preponderance of the evidence, that he would be willing to cut off a location monitor.” Def. Mot., Att. A at 104:24-25, 105:1-2. She also made specific findings about his dangerousness, stating, among other things:

With respect to danger, the nature and circumstances of the offense and the intrusion into the Capitol is only part of what we’re looking at. The threats that the Defendant made, specifically the threats to the Capitol Police officer, are very serious and pose a very high risk of danger to the community and to people in particular, specifically Capitol Police officers. And threats, specific threats against law enforcement are taken very seriously. And the Government proved by clear and convincing evidence that you are a danger.

Id. 105:19-25, 106:1-4. She further found that Miller was “hunting a Capitol Police officer, a law enforcement officer” and that he was “prepared to commit Capitol murder . . . So that threat is very serious.” Id. 106:5-14. Finally, she found that Miller is armed—not only with firearms but also ropes, which he intended to use to murder the USCP officer by “hanging him with a rope.” Id. 106:21-25, 107:1-5.

B. There are No Conditions or Combination of Conditions Which Will Reasonably Assure Miller’s Appearance at Court or the Safety of the Community.

When considering whether pretrial detention is appropriate due to dangerousness, the Court must consider: (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). When applied to the defendant, these factors establish that there are no conditions or combinations of conditions which can effectively ensure the safety of any other person and the community. Further, there are no conditions that would reasonably assure the

defendant's appearance if he were to be released.

1. *Nature and Circumstances of the Offenses Charged*

During the January 6, 2021, siege of the U.S. Capitol, more than 100 law enforcement officers were assaulted by an enormous mob. Among them were numerous people armed with a variety of weapons many of which were used against police officers tasked with protecting the Capitol and the elected officials performing their constitutionally mandated responsibilities. Many in the riotous and violent crowd overwhelmed law enforcement and gained unlawful entry into the U.S. Capitol. Miller was no exception.

By bringing tactical gear, ropes, and potentially, by his own admission, a gun to the Capitol on January 6, 2021, Miller showed that he was not just caught up in the frenzy of the crowd but instead came to D.C. with the intention of disrupting the democratic process of counting and certifying Electoral College votes. He was a determined participant in breaching the Capitol and the aggression he exhibited toward officers in the police line was concerning, particularly in light of the threats he later made to a USCP officer.³

As described above, Miller is captured on surveillance video first appearing at the entrance to the Capitol at approximately 2:43 p.m. At that point, he was with a large crowd that was attempting to breach the doors that lead into the Capitol Rotunda. Undeterred Miller persisted and eventually pushed his way into the building. By about 3:08 p.m. MPD officers had arrived and were attempting to get the rioters out of the building. Rather than leave peacefully, Miller refused to leave. Instead he went to the front of the police line, planted his

³ When the Magistrate Judge ordered Miller detained, the government was not aware of Miller's actions toward police inside the building and thus no evidence was presented about this conduct. The government later obtained MPD body-worn camera footage showing him interfering with police inside the Rotunda.

feet, got into a fighting stance, and pushed up against officers while yelling at them. Miller stated on Facebook that he did not leave until “Trump put out his go home order,” even though he “didn’t want to leave.” Later that night, Miller boasted on Twitter that “we where [sic] gentle with the police.” He then threatened to assassinate a United States Congresswoman—only a few hours after, by own admission, he stormed the Capitol.

Once home in Texas, Miller turned his attention to identifying the USCP officer who fatally shot rioter Ashli Babbitt as she attempted to access a restricted area inside the Capitol on January 6, 2021. Miller viewed Babbitt as a “sister in battle” who “fought f[o]r [him]” at the Capitol. He became consumed with her death and circulated photographs on Facebook of an African-American police officer that he believed was responsible for her death. Miller threatened to kill that officer, stating that he wanted to “hug his neck with a nice rope” and that “he will swing.” He also said that the officer deserved to die and that “it’s huntin season.”

His fixation with hunting down and hanging a USCP officer is extremely concerning. He showed no respect for law enforcement at the Capitol on January 6, 2021; he ignored their commands to leave the building and even attempted to fight them. The FBI recovered numerous ropes from his house. Immediately after stating on social media that the USCP officer “will swing,” Miller stated that he brought ropes with him to D.C. on January 6, 2021.

This factor weighs heavily in favor of detention.

2. Weight of the Evidence Against the Defendant

The evidence against Miller is strong and compelling. Miller’s forced entry into the Capitol was recorded by surveillance cameras and once inside body-worn cameras captured him interfering with police and obstructing officers as they tried to control the crowd. His threats to Congresswoman Ocasio-Cortez and the USCP officer are also well-documented on social

media.

In addition to the video footage, Miller openly admitted on social media that he “stormed” the Capitol building on January 6, 2021. To bolster his claim he sent a selfie that shows him inside the Capitol building to another Facebook user explaining that he “just wanted to incriminate myself a little lol.” The Facebook and Twitter accounts are linked to him through his phone number and while on Facebook, he shared his home address—where he ultimately was arrested—with another Facebook user.

Physical evidence also corroborates Miller’s own statements. He stated on Facebook that he was bringing to D.C. riot gear and ropes and grappling hooks. He also stated that he may bring a gun with him to D.C. and would stash the rest of his guns in Virginia. Law enforcement recovered each of these items from his house.

The evidence against Miller is very strong, and accordingly, the weight of the evidence weighs heavily in favor of detention.

3. Defendants’ History and Characteristics

Miller does not have any adult convictions. He is unemployed and, according to statements he made on Facebook, living off of savings.⁴ He claimed on Facebook that he is “self employed now because I aint taking another second of forced mask mandates or any other unconstitutional bullsh__.” According to him, he was denied unemployment benefits because he quit his job. The last time he came to D.C.—which was for a similar rally—he claimed to have brought guns with him.

⁴ In a Facebook chat, Miller stated, “I been chewing glass from the factory f[l]oor for 7 years to pay off debts. They money I have was saved from my college loans being put on the back burner this year. 1 job 1 business and weed on the side. Saving and scraping.”

After the January 6, 2021, riots Miller showed no remorse for his actions. Instead, he defended himself and the actions of the other rioters. He repeatedly stated that he and the other rioters were “gentle with police.” But, at the same time, he admitted, “We charged . . . We where [sic] going in . . . No matter what.” In response to receiving an article from Fox News titled, “FBI seeking help from public to identify those in Capitol breach,” Miller stated, “Yeah . . . guess the gestapo is on the job.” About a week later in a text message he asked an individual how to find out if there is a warrant for his arrest. The individual sent him a link to the FBI’s Capitol Riots “wanted” website. Miller responded, “What a waste of time fir federal employees.” After his arrest, when speaking with his mom on the phone from jail he told her, “I don’t feel that I’ve done anything wrong and now I’m being locked up.”

Even more telling, after the January 6, 2021, riots, Miller threatened Congresswoman Ocasio-Cortez and a law enforcement officer. He spent considerable time on social media circulating photographs of a police officer and stated that he wants to “hang [the officer] with a nice rope” and believed the officer deserved to die. These actions are not the actions of someone with any remorse—instead they show the depth of Miller’s disregard for the safety of others, for our democratic institutions, and for the rule of law.

4. *Danger to the Community and Flight Risk*

The fourth factor, the nature and seriousness of the danger to any person or the community posed by a defendant’s release, also weighs in favor of Miller’s detention. Miller’s conduct during the January 6 riots show that he is willing and able to use violence to achieve his goals. And his comments about the USCP officer and Congresswoman Ocasio-Cortez demonstrate his desire to do so.

As stated above, Miller came to D.C. for a fight. He brought tactical gear (and potentially

a gun); he believed that he may be participating in a “civil war;” and after the riots, he commented that the death of Ashli Babbitt is “the first shot man of Civil war I think.” Moreover, his persistent and aggressive entry into the Capitol building along with his refusal to leave—and interference with and obstruction of law enforcement while there—show a particular disregard for the courageous men and women who risked their safety to defend the Capitol. He then threatened to kill a law enforcement officer by hanging him.

The defendant contributed to the violence that took place on January 6, 2021, and he showed through his actions that he is a danger to our society and a threat to the peaceful functioning of our democracy. The defendant’s actions should give this Court great concern about the danger he would pose to the community if released.

Finally, the United States is concerned that the defendant poses a risk of flight because he threatened to “be hard to locate,” when he thought he may be identified by the police. Now that he is facing considerable penalties for his crimes, he has even more incentive to flee.

C. Miller’s Transport to D.C.

In its Minute Order dated March 23, 2021, the Court directed the government to “clarify how and whether it plans to transport Defendant to the District of Columbia.” The government has contacted the U.S. Marshals Service and Bureau of Prisons about Miller’s transport to D.C. Miller was on his way to D.C. at the Federal Transport Center in Oklahoma City when he complained of shoulder pain from an injury that happened in the recreation yard at the detention facility in Dallas. An orthopedist examined Miller and determined that his collarbone is broken. The doctor recommended extensive medical services, including the possibility of surgery. Therefore, Miller’s transportation to D.C. has been delayed until the medical concerns can be

resolved.

The government has been in contact with the FTC and they can make Miller available for remote hearings, including the one scheduled on April 1, 2021. Given Miller's current medical condition, and need for additional medical treatment before transport, the United States would ask that any future hearings be held virtually until Miller arrives in D.C.

CONCLUSION

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 Miller, pursuant to 18 U.S.C. § 3142(f).

WHEREFORE, the United States respectfully requests that the Court order the defendant to remain in the custody of the Attorney General for confinement pending a final disposition in this case.

Respectfully submitted,

CHANNING PHILLIPS
Acting United States Attorney
D.C. Bar No. 415793

By: /s/ Elizabeth C. Kelley
ELIZABETH C. KELLEY
Assistant United States Attorney
D.C. Bar Number 1005031
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 252-7238
Elizabeth.Kelley@usdoj.gov

CERTIFICATE OF
SERVICE

I hereby certify that on March 29, 2021, I caused a copy of the foregoing opposition motion to be served on counsel of record via electronic filing.

/s/ Elizabeth Kelley
ELIZABETH C. KELLEY
Assistant United States Attorney