

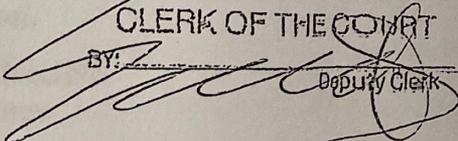
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FILED
San Francisco County Superior Court

NOV - 1 2022

CLERK OF THE COURT

BY:  Deputy Clerk

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 CITY AND COUNTY OF SAN FRANCISCO

16 PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiff,

19 v.

20 DAVID DePAPE,

21 Defendant.

Case No. 22012966

**NOTICE OF MOTION AND
MOTION TO DETAIN; REQUEST
FOR JUDICIAL NOTICE**

Date: November 1, 2022
Time: 1:30 p.m.
Dept.: 9

22 TO DEFENDANT BY AND THROUGH HIS ATTORNEY AND TO THE HONORABLE
23 COURT:

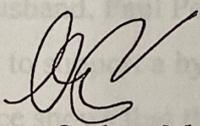
24 PLEASE TAKE NOTICE THAT on November 1, 2022 at 1:30 p.m., or as soon
25 thereafter as the matter may be heard before the court in Department 9 of the above-titled
26 Court, located at the Hall of Justice, 850 Bryant Street, San Francisco, California, the People
27 of the State of California will move to detain under the California Constitution.

28 This motion will be based on the following memorandum of points and authorities,
and on any subsequent exhibits hereinafter lodged or filed with the Court, on such

1 supplemental memoranda of points and authorities as may hereafter be filed with the Court
2 or stated orally at the conclusion of the hearing on the motion, on the following declaration,
3 on all the papers and records on file in this action, and on such oral and documentary
4 evidence as may be presented at the hearing of the motion.

5 November 1, 2022

BROOKE JENKINS
District Attorney

6
7
8 By: 
9 Allison Garbutt Macbeth
10 Assistant District Attorney
11 *Attorneys for the People*

12 STATEMENT OF THE CASE

13
14 The Felony Complaint charges Defendant with attempted murder (Pen. Code, §§ 664,
15 437, Count 1) with allegations that the attempted murder was willful, deliberate and
16 premeditated, that Defendant personally used a deadly or dangerous weapon (Pen. Code, §
17 12022, subd. (b)(1)), and that Defendant inflicted great bodily injury on a person 70 years of
18 age or older (Pen. Code, § 12022.7, subd. (c)). The Complaint also charges Defendant with
19 first degree residential burglary (Pen. Code, § 459, Count 2) with an allegation that another
20 person was present in the residence during the commission of the burglary (Pen. Code, §
21 667.5, subd. (c)(31)), assault with a deadly weapon (Pen. Code, § 241, subd. (a)(1), Count 3)
22 with an allegation that Defendant inflicted great bodily injury on a person 70 years of age or older
23 (Pen. Code, § 12022.7, subd. (c)), inflicting significant or extreme physical suffering
24 on an older adult (Pen. Code, § 368, subd. (b)(1), Count 4) with an allegation that Defendant
25 inflicted great bodily injury (Pen. Code, §§ 368, subd. (b)(1) and 12022.7) and that Defendant
26 personally used a deadly or dangerous weapon (Pen. Code, § 12022, subd. (b)(1)), false
27 imprisonment of an elderly by violence or means (Pen. Code, § 261, subd. (1), Count 5) with
28 an allegation that Defendant inflicted great bodily injury (Pen. Code, § 368, subd. (b)(1)) and that Defendant per-
sonally used a deadly or dangerous weapon (Pen. Code, §

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3
4 Defendant forcefully broke into the Pelosi home intending to take the Speaker of the
5 United States House of Representative, Nancy Pelosi, as his hostage. But when Defendant
6 learned that he could not execute his plan, he proceeded instead to attack the 82-year-old
7 man that stood in his way, Speaker Pelosi's husband, Paul Pelosi.

8 There is clear and convincing evidence to support a hypothetical verdict of guilty for
9 the charges here; clear and convincing evidence shows that there is a substantial likelihood
10 that Defendant, if released, would cause great bodily injury to others; and clear and
11 convincing evidence demonstrates that no less restrictive alternative is sufficient to protect
12 victim and public safety. This case demands detention. Nothing less.

13 STATEMENT OF THE CASE

14 The Felony Complaint charges Defendant with attempted murder (Pen. Code, §§ 664,
15 187, Count 1) with allegations that the attempted murder was willful, deliberate, and
16 premeditated, that Defendant personally used a deadly or dangerous weapon (Pen. Code, §
17 12022, subd. (b)(1)), and that Defendant inflicted great bodily injury on a person 70 years of
18 age or older (Pen. Code, § 12022.7, subd. (c)). The Complaint also charges Defendant with
19 first degree residential burglary (Pen. Code, § 459, Count 2) with an allegation that another
20 person was present in the residence during the commission of the burglary (Pen. Code, §
21 667.5, subd, (c)(21)), assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1), Count 3)
22 with an allegation that Defendant inflicted great bodily on a person 70 years of age or older
23 (Pen. Code, § 12022.7, subd, (c)), inflicting unjustifiable physical pain or mental suffering
24 on an elder adult (Pen. Code, § 368, subd. (b)(1), Count 4) with allegations that Defendant
25 inflicted great bodily injury (Pen. Code, §§ 368, subd. (b)(2)(B)) and that Defendant
26 personally used a deadly or dangerous weapon (Pen. Code, § 12022, subd. (b)(1)), false
27 imprisonment of an elder by violence or menace (Pen. Code, § 368, subd. (f), Count 5) with
28 an allegations that Defendant inflicted great bodily injury (Pen. Code, § 368, subd.
(b)(2)(B)) and that Defendant personally used a deadly or dangerous weapon (Pen. Code, §

1 12022, subd. (b)(1)), and threatening the life of or threatening serious bodily harm to an
2 elected public official or their immediate family (Pen. Code, § 76, Count 6) with allegations
3 that Defendant inflicted great bodily injury (Pen. Code, § 12022.7, subd. (c)) and that
4 personally used a deadly or dangerous weapon (Pen. Code, § 12022, subd. (b)(1)).

5 Among the circumstances in aggravation alleged in the Complaint are: the crime
6 involved great violence, great bodily harm, threat of great bodily harm or other acts
7 disclosing a high degree of cruelty, viciousness, or callousness; the defendant was armed
8 with or used a weapon at the time of the commission of the crime; the victim was
9 particularly vulnerable; the manner in which the crime was carried out indicates planning,
10 sophistication, or professionalism; and the defendant has engaged in violent conduct that
11 indicates a serious danger to society. Based on the charges in the Complaint, Defendant
12 faces between 13 years, 8 months and life in prison.

13 **STATEMENT OF THE FACTS¹**

14 In the middle of the night, Defendant smashed through a window in a back door of the
15 Pelosi home in search of the Speaker of the United States House of Representatives, Nancy
16 Pelosi. But Speaker Pelosi was not home, only her 82-year-old husband, Paul, who slept
17 upstairs in his pajama top and boxer shorts.

18 Standing over Mr. Pelosi's bedside just after 2:00 a.m., Defendant startled Mr. Pelosi
19 awake by asking "Are you Paul Pelosi?" Defendant carried a large hammer in his right
20 hand and several white, plastic zip ties in his left hand. Defendant then repeated, "Where's
21 Nancy? Where's Nancy?" Still groggy from being suddenly awoken, Mr. Pelosi responded,
22 "She's not here." Defendant then demanded, "Well, when is she going to be back?" "She's
23 in Washington, she's not going to be back for a couple of days." Defendant responded,
24 "Okay, well, I'm going to tie you up."²

25 _____
26 ¹ The following Statement of Facts is based on San Francisco Police Department
27 Incident Report number 220 741 717, the Chronological of Investigation, body worn camera
28 footage, the 911 call, and law enforcement interviews, exhibits to this motion, to be filed
under seal.

² In total, Defendant threatened to tie up Mr. Pelosi about 10 times.

1 Mr. Pelosi stood up and tried to leave by the elevator near the bedroom, but Defendant
2 held the door, preventing Mr. Pelosi from escaping. Mr. Pelosi then returned to the
3 bedroom, sat on the bed, and asked Defendant why he wanted to see or talk to Nancy.
4 "Well, she's number two in line for the presidency, right?" When Mr. Pelosi agreed,
5 Defendant responded that they are all corrupt and "we've got to take them all out." When
6 Mr. Pelosi asked if he could call anyone for Defendant, Defendant ominously responded
7 that it was the end of the road for Mr. Pelosi.

8 Still trying to escape from Defendant, Mr. Pelosi asked to use the bathroom;
9 Defendant allowed him to do so. Mr. Pelosi stood up and walked to the bathroom where his
10 phone was charging. Standing in the bathroom, Mr. Pelosi grabbed his phone, turned it on,
11 called 911, and put the phone on speaker. Watching Mr. Pelosi, Defendant stood about
12 three feet away, still holding the large hammer and the zip ties. During the 911 call itself,
13 Mr. Pelosi said that there was a gentleman there waiting for his wife—Nancy Pelosi—to
14 come back. But Mr. Pelosi said they would have to wait because his wife would not be
15 coming back for about a day. Mr. Pelosi could see Defendant gesturing and heard
16 Defendant tell him to get off the phone. To diffuse the situation, Mr. Pelosi told the
17 dispatcher that he did not need police, fire, or medical assistance. Trying to be calm and
18 discreet while also trying to help dispatch to understand the situation, Mr. Pelosi then asked
19 for the Capitol Police because they are usually at the house protecting his wife. The
20 dispatcher clarified that Mr. Pelosi was calling San Francisco police; Mr. Pelosi said that he
21 understood and then asked someone, "I don't know, what do you think?" Another man
22 responded, "Everything's good." Mr. Pelosi then stated, "Uh, he thinks everything's good.
23 Uh, I've got a problem, but he thinks everything's good."

24 When the dispatcher told Mr. Pelosi to call back if he changed his mind, Mr. Pelosi
25 quickly responded, "No, no, no, this gentleman just uh came into the house uh and he wants
26 to wait for my wife to come home[.]" The dispatcher then asked Mr. Pelosi if he knew the
27 person and Mr. Pelosi said that he did not. Mr. Pelosi then said that the man was telling him
28 not to do anything. The dispatcher then asked Mr. Pelosi for his name and address and Mr.
Pelosi gave the dispatcher both. Mr. Pelosi then said that the man told him to put the phone

1 down and just do what he says. The dispatcher then asked for the man's name and the man
2 responded, "My name is David." When the dispatcher asked who David is, Mr. Pelosi said,
3 "I don't know," but David said, "I'm a friend of theirs." Mr. Pelosi then confirmed with the
4 dispatcher that he did not know the man. "He's telling me I am being very lazy, so I've
5 gotta to stop talking to you, okay?" When the dispatcher offered to stay on the line with Mr.
6 Pelosi to make sure everything is okay, Mr. Pelosi said, "No, he wants me to get the hell off
7 the phone." The call ended. Based on her training and what she heard, dispatcher Heather
8 Grives issued an "A" priority well-being check.

9 After the call, Defendant said that he was tired and needed to sleep; he also told Mr.
10 Pelosi that he had a backpack downstairs with a whole bunch of stuff inside. They
11 proceeded downstairs with Defendant walking behind Mr. Pelosi still holding the large
12 hammer and the zip ties. Turning on the lights, Mr. Pelosi could see where Defendant
13 entered the house; Defendant commented that he had to bash the window several times to
14 break through and enter. Defendant also said that the police would be there any minute; Mr.
15 Pelosi tried to calm Defendant by saying that they would not. But Defendant responded, "I
16 can take you out." Defendant came around to Mr. Pelosi's right with the large hammer
17 upright in his hand. Afraid that Defendant would strike him with that hammer, Mr. Pelosi
18 reached out and put his hand on the handle of the hammer.

19 Shortly after the initial call, Officers Kolby Wilmes and Kyle Cagney responded to the
20 residence. When Off. Wilmes rang the doorbell, Defendant directed Mr. Pelosi not to open
21 the door. But Mr. Pelosi opened the door with his left hand. As the door opened, the two
22 men stood in the dimly lit foyer facing the officers. Mr. Pelosi nervously but calmly greeted
23 them. When the officer asked what was going on, Defendant smiled and said, "everything's
24 good" and pulled his hands toward his body. When an officer turned on his flashlight,
25 Defendant could be seen holding the bottom handle of the hammer with one hand and Mr.
26 Pelosi's right arm with the other. Mr. Pelosi had his hand on the top of the handle near the
27 hammer itself. One officer ordered, "Drop the hammer!" At the same time, Defendant
28 raised the hammer and said, "um, nope." Defendant tried to pull the hammer away from
Mr. Pelosi, which twisted Mr. Pelosi's arm back. Simultaneously, Mr. Pelosi pleaded, "hey,

1 hey, hey!" The officer asked again, "what is going on here?" But Mr. Pelosi could not
2 maintain his grip on the hammer. A second later, Defendant wrenched the hammer away
3 from Mr. Pelosi, immediately stepped back, and lunged at Mr. Pelosi, striking Mr. Pelosi in
4 the head at full force with the hammer, which knocked Mr. Pelosi unconscious. The officers
5 rushed into the house, tackled Defendant, and disarmed him. Mr. Pelosi remained
6 unresponsive for about three minutes, waking up in a pool of his own blood.

7 While on scene, Off. Wilmes asked Defendant if there were any more suspects.
8 Defendant said that he acted alone; Defendant then looked at the glass door and said that
9 was where he broke into the house. Officers later recovered Defendant's bag outside the
10 damaged glass doors. Inside, there was another hammer, a laptop, and more bags of zip ties.

11 Without any questioning, Defendant told officers and medics at the scene, "I'm sick of
12 the insane fucking level of lies coming out of Washington, D.C. I came here to have a little
13 chat with his wife." Defendant added: "I didn't really want to hurt him, but you know this
14 was a suicide mission. I'm not going to stand here and do nothing even if it cost me my
15 life." "Hurting him was not my goal. I told him before I attacked him, that he's escalating
16 things, and I will go through him if I have to."

17 San Francisco Fire Department Medics responded immediately, rendered aid to Mr.
18 Pelosi, and transported him to San Francisco General Hospital. At SFGH, Mr. Pelosi
19 underwent emergency surgery to repair a skull fracture and serious injuries to his right arm
20 and hands. Mr. Pelosi remains hospitalized.

21 Upon arrest, Defendant admitted that he intended to enter the home to take Speaker
22 Nancy Pelosi hostage and, if Speaker Pelosi lied to him, he intended to break her kneecaps.
23 Seeing Ring security cameras everywhere, Defendant knew he would be caught on camera.
24 Defendant was surprised when he found Mr. Pelosi still asleep after making some so much
25 noise to gain entry. When Mr. Pelosi attempted to enter the elevator near the bedroom,
26 Defendant held the elevator door, thinking it would lead to a saferoom. When Mr. Pelosi
27 called 911, Defendant knew the call was being recorded. But by calling 911, Defendant
28 believed that Mr. Pelosi pushed him into a corner. Back in the bedroom, Defendant told Mr.
Pelosi that he cannot be stopped; he has other targets. And later when police arrived,

1 Defendant, not willing to surrender, yanked the hammer away and hit Mr. Pelosi with full
2 force. When asked if he had any other plans, Defendant named several targets, including a
3 local professor, several prominent state and federal politicians, and relatives of those state
4 and federal politicians.

5
6 **REQUEST FOR JUDICIAL NOTICE**

7 The People request that this Court take judicial notice of the statutes listed in the
8 charging document(s) and court records offered as exhibits. (Evid. Code §§ 451, subd. (a),
9 452, subd. (d).) The People notice their intent to request that this Court to take judicial
10 notice of the court records attached as exhibits to this motion. (Evid. Code § 453.)

11 **ARGUMENT**

12 **I. The California Constitution Authorizes Courts to Detain Persons Charged with**
13 **Violent Felony Offenses Pending Trial.**

14 Under the California Constitution, a court may detain a person pending trial for
15 felony offenses involving violence “when the facts are evident or the presumption great and
16 the court finds based on clear and convincing evidence that there is a substantial likelihood
17 the person’s release would result in great bodily harm to others[.]” (Cal. Const., art. I, § 12,
18 subd. (b).) A pretrial detention order under Article I, section 12 requires the trial court make
19 three specific factual findings. (*In re White* (2020) 9 Cal.5th 455, 471; *In re Harris* (2021)
20 71 Cal.App.5th 1085, 1105-1106, review granted, Mar. 9, 2022, S272632.) First, the record
21 must contain evidence of a qualifying offense sufficient to sustain a hypothetical verdict of
22 guilt on appeal. (*In re White, supra*, 9 Cal.5th at p. 471.) Second, a trial court must find by
23 clear and convincing evidence of a substantial likelihood that the defendant’s release would
24 result in great bodily harm to others. (*Ibid.*) Third, a trial court must find by clear and
25 convincing evidence that no less restrictive alternative will ensure the compelling
26 government interest. (*In re Harris, supra*, 71 Cal.App.5th at pp. 1105-1106.) These
27 findings may be satisfied by a proffer of evidence. (*In re Harris, supra*, 71 Cal.App.5th at
28 p. 1101.)

A trial court’s decision to deny bail is reviewed for abuse of discretion. (*White*,

1 *supra*, 9 Cal.5th at p. 469.) In exercising its discretion, the trial court must consider, “at a
2 minimum, ‘the protection of the public, the seriousness of the offense charged, the previous
3 criminal record of the defendant, and the probability of his or her appearing at [the] trial or
4 at a hearing of the case’—and among those factors, ‘public safety shall be the primary
5 consideration.’” (*White, supra*, 9 Cal.5th. at p. 470, quoting Pen. Code § 1275, subd.
6 (a)(1).) For the qualifying offense, the reviewing court considers whether any reasonable
7 trier of fact could find the defendant guilty beyond a reasonable doubt, drawing all
8 reasonable inferences in favor of the prosecution. (*White, supra*, 9 Cal.5th at pp. 463–464,
9 472.) “That the circumstances might also reasonably be reconciled with the defendant’s
10 innocence does not render inadequate the evidence pointing towards guilt.” (*Id.* at p. 464.)
11 A trial court must also address any less restrictive alternatives and articulate its analytical
12 process as to why such alternatives are insufficient to protect the government’s interest of
13 protecting public safety. (*In re Harris, supra*, 71 Cal.App.5th at pp. 1096, 1105-1106.)

14 **II. Defendant’s Brutal, Early-Morning Attack of the 82-Year-Old Victim in His**
15 **Own Home and in Front of Law Enforcement Justifies Detention Here.**

16 The violent nature of the attack in the victim’s own home in front of law enforcement
17 justifies detention in this case. First, as set forth in *White*, sufficient evidence supports the
18 qualifying offenses here. Not only did body worn camera footage capture Defendant’s
19 unprovoked and brutal attack on Mr. Pelosi, but Defendant himself admitted to committing
20 the attack. Defendant planned this early-morning break in, bringing a hammer and zip-
21 ties—with more to spare. And so determined was Defendant to enter the house, he slammed
22 his body through the window to gain entry. Defendant also admitted that he intended to
23 enter the house to take Speaker Pelosi hostage and cause great bodily harm to her, making
24 her an example for all to see. More than sufficient evidence supports a hypothetical verdict
25 of guilt.

26 Second, clear and convincing evidence shows that if released, there is a substantial
27 likelihood that Defendant would inflict great bodily injury to others. Defendant’s intent
28

1 could not have been clearer: he forced his way into the Pelosi home intending to take the
2 person third in line to the presidency of the United States hostage and to seriously harm her.
3 Thwarted by Speaker Pelosi's absence, Defendant continued on his quest and would not be
4 stopped, culminating in the near fatal attack on Mr. Pelosi. Defendant also described other
5 persons who served as his targets. But Defendant repeated, nothing would stop him.
6 Defendant's self-proclaimed determination, execution, and other planned targets illustrates
7 his danger to public safety. Therefore, clear and convincing evidence shows that there is a
8 substantial likelihood that Defendant's release will result in great bodily harm to others.

9 Third, less restrictive alternatives to detention are insufficient to protect public or
10 victim safety. Defendant knew that the Ring cameras outside the house captured his entry
11 and that the 911 phone call was being recorded. But Defendant remained undeterred. In
12 fact, Defendant knew law enforcement officers were watching him when brutally attacked
13 Mr. Pelosi with the hammer. All of this shows that nothing will prevent Defendant from
14 engaging in the same dangerous activity. Thus, less restrictive alternatives like home
15 detention, electronic monitoring, or a criminal protective order simply cannot protect public
16 safety.

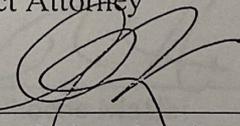
17 **CONCLUSION**

18 For the foregoing reasons, this Court should detain Defendant pending trial.

19
20 November 1, 2022

Respectfully submitted,

21 BROOKE JENKINS
22 District Attorney

23 By: 
24 Allison Garbutt Macbeth
25 Assistant District Attorney
26 *Attorneys for the People*