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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF COLUMBIA**  
11

12 UNITED STATES OF AMERICA,  
13 Plaintiff,  
14 v.  
15 JEFFREY SCOTT BROWN,  
16 Defendant.  
17

Case No. 21-mj-565


**OPPOSITION TO GOVERNMENT'S  
BAIL APPEAL; MEMORANDUM  
OF POINTS AND AUTHORITIES;  
EXHIBIT A**

18 Defendant Jeffrey Brown, by and through his counsel of record, Deputy Federal  
19 Public Defender Andrea Jacobs, opposes the government's motion for a bail appeal and  
20 requests that this Court affirm the bail order of Magistrate Judge Karen E. Scott from  
21 the Central District of California.  
22

23 Respectfully submitted,

24 CUAUHTEMOC ORTEGA  
Federal Public Defender

25  
26 DATED: August 30, 2021

27 By   
ANDREA JACOBS  
28 Deputy Federal Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Mr. Brown, along with thousands of others, was drawn to the Capitol on January  
4 6th of this year to protest the election results at the encouraging of former President  
5 Trump. Prior to this event, Mr. Brown never acted out in violence. He has no prior  
6 convictions.<sup>1</sup> Mr. Brown’s history and characteristics demonstrate that he is neither a  
7 risk of nonappearance nor a danger to the community. His participation in the events of  
8 January 6th was an aberration, stoked by the flames of misinformation and an  
9 overwhelming crowd. He was one of many who were driven to act out of their  
10 otherwise law-abiding behavior. For this single transgression, he should not be deemed  
11 a flight risk or danger to the community requiring pretrial detention.

12 Moreover, the Bail Reform Act itself supports bail pending trial in this case. *See*  
13 *United States v. Salerno*, 481 U.S. 739, 755 (1987) (“[i]n our society, liberty is the  
14 norm, and detention prior to trial . . . is the carefully limited exception”); *United States*  
15 *v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985) (“Only in rare circumstances should  
16 release be denied,” and “[d]oubts regarding the propriety of release should be resolved  
17 in favor of the defendant”). The government cannot not overcome the presumption of  
18 release by showing with clear and convincing evidence that no condition or  
19 combination of conditions can reasonably assure the safety of the community, or by a  
20 preponderance of the evidence that no condition or combination of conditions can  
21 reasonably assure Mr. Brown’s presence.

22 **II. FACTUAL AND PROCEDURAL HISTORY**

23 On August 26, 2021, Mr. Brown was arrested and brought into federal custody  
24 for his initial appearance and bail hearing. After being interviewed by Probation and  
25 Pretrial Services, a report was issued recommending bail in the amount of \$100,000.00  
26 with conditions of pretrial release. After hearing argument from the parties, the  
27

28 <sup>1</sup> The Pretrial Services Reports lists one prior conviction from 1987 when Mr. Brown was in high school. This conviction was expunged.

1 Honorable Karen E. Scott granted bail with conditions including location monitoring.  
2 *See* Exh. A. Mr. Brown’s girlfriend and a surety, Kathy Gaughran, was present at the  
3 hearing and signed a \$10,000.00 bond the same day. It is expected that Mr. Brown’s  
4 mother will sign an affidavit of surety for the remaining amount. Mr. Brown was given  
5 until the following day, August 27th, to turn in his United States passport to Pretrial  
6 Services; he did so. Government counsel asked for a stay of the Court’s bail order,  
7 which was denied. Mr. Brown was released on August 26th and placed on location  
8 monitoring. He is presently residing with his girlfriend and surety.

9 Government counsel next applied for an Emergency Stay and filed this Bail  
10 Appeal. On August 27th, the Honorable Amy Berman Jackson denied the Emergency  
11 Stay as Moot. This Bail Appeal remains pending and should also be denied. The  
12 Honorable Karen E. Scott, Magistrate Judge, set suitable conditions of release that  
13 reasonably assure both Mr. Brown’s appearance and the safety of the community.

### 14 III. LEGAL STANDARD

15 As stated above, “[i]n our society, liberty is the norm, and detention prior to trial  
16 . . . is the carefully limited exception.” *Salerno*, 481 U.S. at 755.<sup>2</sup> Therefore, the Bail  
17 Reform Act places a heavy burden on the government to show that detention is  
18 warranted. The government must prove by clear and convincing evidence that an  
19 individual is a risk of danger to the community, by a preponderance of the evidence that  
20 the individual is a risk of flight, and that no conditions or combination of conditions  
21 will ensure the individual’s appearance. *Id.* at 1406-07.<sup>3</sup>

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23 <sup>2</sup> *See also, e.g., United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987) (“In applying  
24 the [§ 3142(g)] factors to any particular case, the court should bear in mind that it is only a ‘limited  
25 group of offenders’ who should be denied bail pending trial.” (quoting S. Rep. N. 98-225 at 7 (1984),  
reprinted in 1984 U.S.C.C.A.N. 3182, 3189)); *United States v. Byrd*, 969 F.2d 106, 109 (5th Cir.  
1992) (“There can be no doubt that this Act clearly favors nondetention.”).

26 <sup>3</sup> Data collected by the Administrative Office of the Courts demonstrates that there is a  
27 negligible risk that a released defendant will flee. Of federal defendants released on bond in 2019,  
28 ninety-eight percent did not fail to appear and did not commit new crimes. *See* ADMIN. OFF. U.S.  
COURTS, Judicial Business: Federal Pretrial Services, Table H-15, FY 2020 First Quart, available at

1           When making a determination as to whether the government has met its burden,  
2 the court is to consider the following factors:

- 3                   (1) the nature and circumstances of the offense charged,  
4                   including whether the offense is a federal crime of terrorism;  
5                   (2) the weight of the evidence against the person;  
6                   (3) the history and characteristics of the person, including the  
7                   person’s character, physical and mental condition, family and  
8                   community ties, employment, financial resources, past  
9                   criminal conduct, and history relating to drug or alcohol  
10                  abuse; and  
11                  (4) the nature and seriousness of the danger to any person or  
12                  the community that would be posed by the defendant's  
13                  release.

14 18 U.S.C. § 3142(g)(1)-(4).

15           The “weight of the evidence” is the least weighty factor. *See United States v.*  
16 *Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991) (explaining that the Bail Reform Act  
17 neither “requires nor permits a pretrial determination of guilt”). The Complaint alleges  
18 that Mr. Brown participated in a Telegram group chat by posting a photo of himself at  
19 LAX airport boarding a flight to Washington D.C. on January 5, 2021. *See Complaint*  
20 *at 2*. Notably *absent from* the Complaint are any posts made by Mr. Brown urging or  
21 suggesting violence, taking back the government by force, etc. The Complaint also  
22 shows various photos of someone identified as Mr. Brown by a witness capturing the  
23 crowds at the Capitol on a cell phone (Complaint at 5) and with an object in his hand  
24 that the government alleges is pepper spray (Complaint at 6). The Complaint then

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26 <https://jnet.ao.dcn/court-services/probation-pretrial-services/caseload-tables>, public link available at  
27 <https://perma.cc/LYG4-AX4H>. In this district, in 2019, of 2,205 defendants released on bond, 0.9%  
28 were rearrested (20 people) and 1.13% failed to appear (25 people). *Id.* To overcome this data, the  
government must provide the Court with very specific, concrete facts to show that this particular  
defendant presents a flight risk.

1 states that an MPD Officer’s gas mask was ripped off “*by another rioter,*” not Mr.  
2 Brown, resulting in a bloody mouth. *See* Complaint at 7. It is *not alleged* in the  
3 Complaint that Mr. Brown, specifically, caused any physical harm to this officer by use  
4 of pepper spray or otherwise.

5 With respect to the seriousness of the offense, Mr. Brown is charged with a  
6 crime of violence, 18 U.S.C. § 111, which is one of few federal wobbler statutes that  
7 acts as either a felony or misdemeanor. It is alleged that Mr. Brown possessed and used  
8 pepper spray. It is *not alleged* that Mr. Brown possessed any other dangerous weapon  
9 such as a firearm or knife. In addition, he is charged along with thousands of others in  
10 this District with obstruction of law enforcement, entering and remaining in a restricted  
11 building or grounds, and disorderly conduct in the a Capitol building. 18 U.S.C. §  
12 231(a)(3), § 1752(a)(1), (2) and (4), 40 U.S.C. § 5104(e). The large majority of  
13 individuals so charged are presently on bond.

14 As discussed in more detail below, Mr. Brown’s history and characteristics  
15 strongly support that he is not a risk of nonappearance and certainly not a danger to the  
16 community.

#### 17 IV. ARGUMENT

##### 18 A. Mr. Brown Does Not Pose a Flight Risk.

19 As Magistrate Judge Scott properly found, Mr. Brown does not pose a risk of  
20 flight for the following reasons:

- 21 1. Commitment of Support through Affidavits of Surety: Mr. Brown’s  
22 girlfriend and mother represented to undersigned counsel their immediate  
23 willingness to sign an affidavit of surety. Ms. Kathy Gaughran signed an  
24 affidavit in the amount of \$10,000.00 and Mr. Brown’s mother is expected  
25 to sign for the remaining amount of \$90,000.00 before the Court’s  
26 deadline of 9/3/2021. *See* Exh. A.
- 27 2. Established Record of Residency in the Central District of California: Mr.  
28 Brown was born and raised in the Central District of California until high

1 school. After completing high school in Idaho, Mr. Brown returned and  
2 thereafter remained in the Central District of California. His mother  
3 resides in nearby Menifee, CA. His surety girlfriend lives in the same city  
4 as him, Santa Ana, CA, mere miles from the federal courthouse and  
5 undersigned counsel's office.

6 3. Record of Regular Employment: Mr. Brown obtained a degree in business  
7 from the University of Phoenix. He has maintained regular employment  
8 throughout his life. For the last five years, Mr. Brown worked for System  
9 Pavers doing in home sales.

10 4. Positive Record Concerning Appearance at Court Proceedings: Mr. Brown  
11 has one prior, albeit expunged, conviction, from 1987 when he was in high  
12 school. He has no other convictions or failures to appear. There is no  
13 concern that he will not make his court appearances here.

14 5. Limited Foreign Travel: Whereas Mr. Brown has traveled abroad in the  
15 past, his last international trip was in 2014. *See* Pretrial Services Report at  
16 3. On Friday, August 27th, Mr. Brown turned in his United States  
17 passport to the custody of Probation and Pretrial Services. He already  
18 completed and filed a declaration that he will not apply for a passport  
19 during the pendency of this case.

20 6. Location Monitoring Condition: Judge Scott made it a condition of Mr.  
21 Brown's release that he participate in the Location Monitoring Program  
22 and have a curfew. Therefore, his Supervision Officer will always know  
23 his whereabouts whether he is working or at home at the end of the work  
24 day.

25 **B. Mr. Brown's Release on Conditions Would Not Threaten the Safety of**  
26 **the Community.**

27 Although he is currently charged with a crime of violence, Mr. Brown is not a  
28 danger to any person or the community. The government is unable to show by clear

1 and convincing evidence that Mr. Brown is a danger to the community for the  
2 following reasons:

- 3 1. No Prior Actions or Convictions for Crimes of Violence: Notably,  
4 Mr. Brown has no convictions. Aside from the alleged incident on  
5 January 6, 2021, Mr. Brown has no prior acts of violence. The  
6 government places emphasis on an incident in December 2020 when  
7 Mr. Brown protested California’s mask mandate at a Costco. This  
8 incident was an act of free speech that neither promoted nor resulted  
9 in violence. Mr. Brown was also not arrested or charged with a  
10 crime. Because of the Costco mask protest, Magistrate Judge added  
11 conditions of release that Mr. Brown comply with posted COVID-  
12 related requirements at all public buildings. *See* Exh. A, Bond Order  
13 at p. 4 of 5. Moreover, prior to his trip to Washington D.C., Mr.  
14 Brown did not promote or encourage violence at the Capitol on social  
15 media or otherwise.
- 16 2. Objects Found in Search of Home Were Not Weapons Beyond Self-  
17 Protection: Prior to his arrest on August 26th, Mr. Brown was packing  
18 for a camping trip. Amongst the belongings found by law  
19 enforcement at his home, therefore, were pepper spray, zip ties, a  
20 receipt for bear spray, a broad tip arrow, and a warm jacket. *See* Govt  
21 Bail Appeal, Dkt. 6 at 13. In his vehicle, Mr. Brown kept a taser gun  
22 for self-protection because his work brings him to unknown areas and  
23 neighborhoods in the late evening hours as a salesman. *He does not*  
24 *own or possess an actual firearm or ammunition*. A condition of his  
25 release on bond is that Mr. Brown cannot “possess pepper spray, bear  
26 spray, or any spray chemical irritant.” *See* Exh. A, Bond Order at p. 4  
27 of 5.
- 28 3. Aside from Marijuana Use, Mr. Brown is Sober: Mr. Brown self-

1 disclosed his marijuana use to Pretrial Services and that he has been  
2 sober from alcohol for five years. He has no other substance abuse  
3 issues. A condition of release was set that Mr. Brown not use or  
4 possess any drugs, including marijuana, and submit to drug testing.  
5 *See* Exh. A. It was also ordered that he attend mental health  
6 counseling. *Id.*

7 The government is essentially labeling Mr. Brown a danger to the community because  
8 of one incident that occurred in his 54 years of life. This record does not establish by  
9 clear and convincing evidence that Mr. Brown is a danger to the community. It also  
10 does not establish that no conditions or combination of conditions can assure the safety  
11 of the community.

12 **C. Conditions of Release Can Reasonably Assure Mr. Brown's Appearance**  
13 **and the Safety of the Community.**

14 Given the 18 U.S.C. § 3142(g) factors and facts discussed above, the government  
15 cannot meet its heavy burden to compel Mr. Brown's detention. As Magistrate Judge  
16 Scott found, there are conditions that can reasonably assure Mr. Brown's appearance  
17 and the safety of the community. *See* Exh. A. With respect to detention, the Court must  
18 look at the big picture of Mr. Brown's life and characteristics, not just one aberrational  
19 event that, although serious, was unfortunately also encouraged by a former President  
20 of the United States and other government officials. Although undersigned counsel is  
21 not yet up to speed on the totality of cases charged in the District of Columbia resulting  
22 from the January 6th insurrection, a significant number of defendants charged  
23 specifically with assault pursuant to 18 U.S.C. § 111 were released on bond with  
24 various conditions set by the Court. *See e.g., U.S. v. Wilmar Jeovanny Montano*  
25 *Alvaardo*, 21-CR-154-RJL; *U.S. v. John Steven Anderson*, 21-CR-215-RC; *U.S. v.*  
26 *Bryan Glenn Bingham*, 21-mj-430; *U.S. v. David Alan Blair*, 21-CR-186-CRC; *U.S. v.*  
27 *Michael Leon Brock*, 21-CR-500-CJN; *U.S. v. Jamie N. Buteau*, 21-CR-489-RDM; *U.S.*  
28 *v. Luke Coffee*, 21-CR-327-RC; *U.S. v. Bruno Joseph Cua*, 21-CR-107-RDM; *U.S. v.*



1 *Matthew DaSilva*, 21-mj-520; *U.S. v. James Russell Davis*, 21-mj-536; *U.S. v. Joshua*  
2 *Christopher Doolin*, 21-CR-447-CJN; *U.S. v. Joseph Daniel Hutchinson III*, 21-CR-  
3 00447-CJN; *U.S. v. Kevin Louis Galetto*, 21-CR-517-CKK; *U.S. v. Richard L. Harris*,  
4 21-CR-189-CJN; *U.S. v. Emanuel Jackson*, 21-CR-00395-TJK; *U.S. v. Taylor James*  
5 *Johnatakis*, 21-CR-00091-RCL; *U.S. v. David Lee Judd*, 21-cr-00040-TNM; *U.S. v.*  
6 *Clifford Mackrell*, 21-cr-00276-CKK.<sup>4</sup>

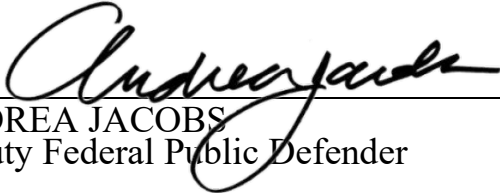
7  
8 **V. CONCLUSION**

9 For all of the reasons described above, Mr. Brown respectfully requests that this  
10 Court deny the government's bail appeal and uphold Magistrate Judge Scott's bail  
11 order and conditions of release.

12 Respectfully submitted,

13 CUAUHTEMOC ORTEGA  
14 Federal Public Defender

15  
16 DATED: August 30, 2021

17 By   
18 ANDREA JACOBS  
19 Deputy Federal Public Defender

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<sup>4</sup> This is a non-exhaustive list and defense counsel expects to find additional examples but wanted to get this brief filed for the Court's consideration with sufficient time prior to the hearing on August 31st at 12:00 p.m. EDT.