

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

UNITED STATES OF AMERICA :

v. : **1:21-CR-204-BAH**

ERIC CHASE TORRENS :

DEFENDANT’S RESPONSE TO GOVERNMENT’S SENTENCING MEMORANDUM

The government requests that the Court impose a sentence of two weeks of incarceration and \$500 in restitution.¹ The defense respectfully disagrees with the government’s request, which does not adequately account for Eric Torrens’ history and character and which, in incarcerating him, would be an unnecessary, unwarranted disparate sentence from others who were convicted of parading, demonstrating, or picketing in a Capitol Building with substantial aggravating conduct by those defendants that is absent here. Counsel respectfully asks the Court to impose a sentence of one year of probation, with specific conditions that include community service, drug testing and monitoring as required by probation, and a period of home confinement if deemed necessary by the Court, together with \$500 in restitution.² Such a sentence is a reasonable, sufficient, and no more than necessary to provide accountability for Mr. Torrens’ offense and to protect the community.

¹ Gov’t Sentencing Memo at 1.

² Mr. Torrens agreed to \$500 restitution as part of his plea. He both agrees with the government’s request and its analysis at pages 15-21.

I. **A probationary sentence is appropriate.**

A probationary sentence is appropriate in this case. Such a sentence serves the Section 3553(a) factors.

The government contends that “all of the Section 3553(a) factors weigh in favor of incarceration.”³ The government further contends, “A sentence of probation or home confinement would be insufficient here,” given the need for the sentence to reflect the seriousness of the offense and promote respect for the law.⁴ In avoiding disparate sentences for similar conduct, the government acknowledges that “each offender's case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment.”⁵ Despite its acknowledgement that some cases merit a probationary sentence, the government rejects a probationary sentence in principle but for a handful of so-called fast-tracked plea cases.⁶ For “those who trespassed, but engaged in less serious aggravating factors,” the government contends that they “deserve a sentence more in line with minor incarceration or home confinement.”⁷ Mr. Torrens trespassed. His case is without aggravating factors, never mind less serious ones.⁸ Even under the government’s matrix, home detention is sufficient. And counsel recommends supervised probation, absent home detention, as the proper sentence.

³ *Id.* at 8.

⁴ *Id.* at 12.

⁵ *Id.* at 14.

⁶ *Id.* at 14 n.4.

⁷ *Id.* at 15.

⁸ Undersigned counsel appreciates and commends the government for its full recitation of Mr. Torrens’ statements to the FBI. Mr. Torrens said he thought the attacks on the police were “f-ed up.” He said he thought the crowd, not the police, were antagonizing and trying to start a riot. He said he left the Capitol when his commonsense kicked in. He praised the police as helpful to him and others as he left.

Once Mr. Torrens and Mr. Griffith were outside, Mr. Griffith kept saying they should return inside. Mr. Torrens had enough, dissuaded Mr. Griffith and said that they should just leave. And they did.

The nature and circumstances of the offense and the need for the sentence imposed to reflect the seriousness of the offense and promote respect for the law merit Mr. Torrens' arrest, prosecution, and conviction. Given his specific conduct, however, they do not merit a period of incarceration. Mr. Torrens' participation in the mob at the Capitol on January 6th is serious; however, the crime to which he is being sentenced is a Class B petty misdemeanor that under normal circumstances does not result in jail time.⁹ Consequently, the majority of the individuals sentenced to the same January 6 offense have received probationary or home confinement sentences, not incarceration. These non-incarceration sentences make sense for those persons like Mr. Torrens whose entry to the Capitol following the crowd was short in duration. If he had gone to the Capitol, walked around the outside, and stopped himself before going in, he would not even have been charged with any offense. He *did* enter the Capitol. Those 10 minutes of walking to the Crypt and reversing course the same way out led him to get charged, get convicted, and be sentenced. Jail time – particularly in a time of COVID-19 where inmates are both at greater risk of infection and held in restrictive quarantine isolation status for 10-14 days – risks multiple unintended collateral effects on stability in his life and is greater than necessary.

The consideration of Mr. Torrens' background and character clearly militates strongly against a jail sentence. Courts sentence the offender, not the offense. Mr. Torrens has no prior

⁹ Those persons who commit the offense of parading inside the U.S. Capitol as *non-violent* protest and demonstration never see a courthouse. They are either removed with a warning or given a notice that they can post-and-forfeit \$50 for dismissal of the charge. *See, e.g., Religious leaders arrested in Capitol while demanding restoration of Voting Rights Act – ThinkProgress*.(Capitol Rotunda); *see also Revs. Jesse Jackson, William Barber Arrested at Capitol Protest Aimed at Joe Manchin, Mitch McConnell (msn.com); Jane Fonda, Sam Waterston arrested at U.S. Capitol climate protest (nbcnews.com)*. Those factual circumstances are very different, of course, but they show that the offense itself is one that typically does not even warrant arrest, never mind prosecution, conviction, and sentence. The exceptional circumstances of Mr. Torrens' offense have already resulted in exceptional consequences.

record, works full-time, takes care of his daughter, suffers anxiety, proactively addresses his own anxiety-induced relapse concerns by participating with an addiction clinic, is a young, immature adult, benefits from family support, gives community service, and has expressed deep and true contrition, remorse, and shame. The imposition of a jail sentence does not yield specific deterrence as to Mr. Torrens. To the contrary, court supervision – both the 9 months that he has been on pretrial supervision and a probationary sentence, with prison time suspended, is unquestionably the best form of specific deterrence.

General deterrence does not require a jail sentence in this case. A message that even the least culpable must be separated from their family and jailed will disincentive future acceptances of responsibility among the hundreds of misdemeanor defendants still on the docket. A jail sentence here will not deter violent acts against the government in the future by those who are angrily minded to distrust the government and the courts. To the contrary, it will have the counter, unintended effect of feeding conspiracy theories and heightening opposition to democratic institutions and the rule of law. To advance the aim of general deterrence of others, history has shown that the best way to avoid reciprocal recriminations is to avoid perceived retribution. Sending a message of punishment, as the government suggests, will result not in deterrence but in resentment for those resistant to the well-intended message and the conscientious messenger. Finally, the general deterrence argument disregards that the government's request is to engage a particular human being in order to influence a hypothetical class of persons, without any evidence that others will in fact be influenced as the government wishes them to be.

The government cites three cases in which *the government itself* requested probation.¹⁰ It is impossible to square the government's request of prison time for Mr. Torrens with those recommendations. The conduct of each of those defendants and their post-January 6 conduct were far more aggravating than that of Mr. Torrens.¹¹ In short, Valerie Elaine Ehrke, whose social media profile identified with QAnon, *intended* to storm the Capitol. She had returned to her hotel after attending the Trump rally, saw the breach of the Capitol on TV, and elected to leave the hotel to join the mob to enter the Capitol. Inside the Capitol, officers tear-gassed and pushed her out. On September 17, 2021, Ms. Ehrke was sentenced to three years of probation with the conditions of 120 hours of community service and the requirement that she stay out of the District of Columbia.

Anna Morgan-Lloyd and Donna Sue Bissey went to the Trump rally together. They followed the crowd to the Capitol. Once there, Ms. Morgan-Lloyd rejoiced in being one of “the first 50 people” to have “stormed” in the Capitol. Ms. Morgan-Lloyd was sentenced to three years of probation, with 100 hours of community service. On social media, Ms. Bissey touted that their “breach” was the first of its magnitude since the British in 1812, and she posted photographs documenting the crowd's damage and theft of property from the Speaker's Office. She aggrandized that she had “no shame.” Based upon specific facts, for this unrepentant, joyous participant in acts of violence, Judge Chutkan exceeded the government's request and sentenced Ms. Bissey to 14 days of incarceration and 60 hours of community service on October 12, 2021.

¹⁰ *See id.* at 14, n.4 (“Early in this investigation, the Government made a very limited number of plea offers in misdemeanor cases that included an agreement to recommend probation, including in *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164(RCL); *United States v. Valerie Elaine Ehrke*, 1:21-cr-00097(PFF); and *United States v. Donna Sue Bissey*, 1:21-cr-00165 (TSC)).

¹¹ The details are contained in the statements of offenses and the government sentencing memos for each of those defendants, which are attached cumulatively as Exhibit 1.

While the government suggests that its request of probationary sentences for these defendants is explained by “early” pleas, the timing of their pleas alone cannot explain the obvious disparate sentencing treatment. Mr. Torrens was offered a plea on July 14, 2021 and accepted it on July 28, 2021. Ms. Bissey entered her plea *the next day*, on July 29, 2021. Ms. Morgan-Lloyd and Ms. Ehrke entered their pleas on June 23 and June 30, respectively. A month’s difference in time is too short a period of time as to warrant an incarceration sentence for a defendant whose intent and conduct were demonstrably less serious and offensive and whose remorse is greater by orders of magnitude.

In any event, these three women’s cases that the government identifies as examples of *its* recommending probation are just a sub-set of more aggravated and/or similar cases in which for January 6 defendants convicted of the same offense as Mr. Torrens, in which the government recommended, and the District Judge imposed, non-lacerative, community-based sentences. Counsel provides an illustrative list in case number order of sentencing outcomes of 40 U.S.C. § 5104(e)(2)(G) defendants who shared Mr. Torrens’ facts of traveling to Washington, D.C. for a lawful rally, going to the Capitol where they had to have observed the civil disturbance, entered the building without permission, spent time in the building, and left without themselves engaging in any violence or causing any damage. Some, but not all, of these defendants expressed contrition. Strikingly, while these non-incarcerative cases share the baseline conduct of Mr. Torrens, each also demonstrates aggravating conduct well beyond that of Mr. Torrens.¹²

¹² While quoting *Mazzocco*, 21-CR-54 and *Hodgkins*, 21-CR-188 for the proposition that the January 6 event was a serious one and that probation is not a default sentence, the government commendably does not ask the Court to rely upon the sentences in those cases in imposing an incarceration sentence for Mr. Torrens as each of those defendants engaged in obstruction of justice in some fashion. In *Mazzocco*, the defendant had posted, “the capital [sic] is ours,” among other offending conduct, such as entry within the Spouse’s Lounge. More so, he obstructed the investigation. When he learned that his social media photographs and comments could draw law

- *Thomas Gallagher*, 21-CR-41:¹³ Mr. Gallagher carried a chair down a stairwell in the direction of police officers who had retreated after chairs had been thrown at them, faced off with a line of officers, and later appeared to admonish another person to put down a chair. Mr. Gallagher did not leave the building when instructed and was arrested inside the Capitol. Mr. Gallagher expressed contrition after the event. On October 13, 2021, Mr. Gallagher was sentenced to two years of probation, with conditions, restitution, and no fine.
- *Eliel Rosa*, 1:21-CR-68:¹⁴ Mr. Rosa had attended the Trump rally, returned to his hotel room, and, learning of the events at the Capitol, elected to leave his room to go to the Capitol. Mr. Rosa went to the Capitol “after learning that Vice President Pence was not going to take action.” Mr. Rosa consciously and thoughtfully *intended* to join the violent protest and unlawfully breach the Capitol. He entered the Capitol amidst the chaos and travelled throughout it for about 20 minutes, reaching two separate doors to the House Chamber. Mr. Rosa turned himself in to law enforcement voluntarily. On October 13, 2021, Mr. Rosa was sentenced to 1 year of probation, with 100 hours of community service.

enforcement’s attention, he deleted and destroyed the evidence. And although wearing a body-worn camera on January 6, he claimed to the FBI on January 17 that he did not know where it was. In *Hodgkins*, Judge Moss sentenced the defendant for the felony conviction of obstruction of an official proceeding.

¹³ The signed statement of offense and the government’s October 5, 2021 sentencing memorandum are attached as Exhibit 2. The government requested “one month of home confinement, a probationary term of three years, 60 hours of community service, a fine, and \$500 in restitution.”

¹⁴ The signed statement of offense and the government’s sentencing memorandum are attached as Exhibit 3. On October 4, 2021, the government recommended “one month of home confinement, a probationary term of three years, 60 hours of community service, and \$500 in restitution.”

- *Andrew Bennett*, No. 21-CR-227:¹⁵ Two days prior to January 6th, Mr. Bennett posted on his Facebook page, “You better be ready chaos is coming and I will be in DC on 1/6/2021 fighting for my freedom.” Mr. Bennett personally observed and videotaped other persons’ engaging in physical violence toward police officers. Mr. Bennett was inside the Capitol for almost 30 minutes, wearing his Proud Boys ballcap. He both told others not to fight with officers and taped officers being outnumbered and falling back. He also videotaped as other demonstrators attempted to breach the doors near the Speaker’s lobby. Mr. Bennett was notably ambiguous as to contrition for his actions. On October 1, 2021, Mr. Bennet was sentenced to two years of probation, with the first three months to be served on home confinement and 80 hours of community service.
- *Joshua and Jessica Bustle*, 21-CR-238:¹⁶ After Ms. Bustle had entered the Capitol for 20 minutes, she called Vice President Pence a “traitor” on her social media page and confirmed “we stormed the Capitol.” After leaving the Capitol, Mrs. Bustle wrote, “We need a Revolution!” Mr. Bustle was with his wife throughout the time. When they reached the Rotunda, they were corralled by police officers and forced to leave the Rotunda, eventually exiting the building. He did not have other aggravating conduct. Mr. Bustle is the defendant whose limited conduct most closely tracks Mr. Torrens. On August 4, 2021, Judge Hogan sentenced Mr. Bustle to serve 30 days of

¹⁵ The signed statement of offense and the government’s sentencing memorandum are attached as Exhibit 4. On September 17, 2021, the government recommended “three months of home confinement, a probation term of three years, 60 hours of community service, and \$500 in restitution.”

¹⁶ The signed statement of offense and the government’s sentencing memoranda are attached as Exhibit 5. The government recommended home confinement, probation, and community service for each.

home detention and two years of supervised probation, and Mrs. Bustle to serve 60 days of home detention and two years of supervised probation. Each was ordered to complete 40 hours of community service.

- *Danielle Doyle*, 1:21-CR-324:¹⁷ Ms. Doyle entered the Capitol through a broken window, stayed inside for approximately 24 minutes, photographed others including one holding a sign, “The Storm is Here,” and continued to write proudly about her presence and actions several weeks after January 6th. On October 2, 2021, Judge McFadden engaged in his own disparate sentence analysis and sentenced her to 2 *months* of probation and a \$3000 fine.

Of these nine cases, each with offense facts very similar or worse than those of Mr. Torrens, eight of the defendants received non-incarceration sentences and one, with a markedly worse sentencing posture, received 14 days in jail. While every case is different, this Court seeks to avoid unwarranted sentencing disparities. Counsel does reference the facts of the above cases to minimize the seriousness of the January 6, 2021 riot, Mr. Torrens’s conduct in entering the Capitol, and the conduct of the above individuals. The offenses are serious. Being convicted of a crime is serious. Being put on probation is serious. Having to follow conditions of probation is serious. Having to limit activities under a condition of home detention is very serious. A sentence that deliberately avoids immediate incarceration and the known and potential incidents associated with it is serious – and reasonable.¹⁸

¹⁷ The signed statement of offense and the government’s sentencing memorandum are attached as Exhibit 6. The government recommended home confinement, probation, and community service.

¹⁸ If the Court does impose an incarceration sentence, undersigned counsel asks that the Court order that Mr. Torrens may self-surrender at a specific date to a local facility in the Middle District of Tennessee to address child care and work obligations. Mr. Torrens further requests that the Court then also recommend that Mr. Torrens serve his sentence at a facility in the Middle

The imposition of a sentence of probation is neither light nor lenient; it is true and proper. It also is a far better way to influence and monitor a person's behavior. Mr. Torrens has already proven himself under court supervision, and he will succeed under probation. Accordingly, this Court should sentence him to one year of probation, with special conditions that include community service, drug testing and monitoring as required by probation, and a period of home confinement if the Court deems such community-based detention necessary and appropriate. Mr. Torrens requests that probation is transferred to the Middle District of Tennessee.

Respectfully Submitted,

/s/ EDWARD J. UNGVARSKY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Response was served ECF to the government and all registered recipients on this 20th day of October, 2021.

/s/ EDWARD J. UNGVARSKY

Edward Ungvarsky

District of Tennessee. Undersigned counsel is investigating BOP facilities and private facilities that have a contract with the USMS in Tennessee.

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

VALERIE EHRKE,

Defendant.

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Case No. 1:21-cr-00097 (PLF)

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence Valerie Ehrke to a probationary term of three years, 40 hours of community service, and \$500 in restitution.

I. Introduction

The defendant, Valerie Ehrke, participated in the January 6, 2021 attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred law enforcement officers, and resulted in more than a million dollars’ worth of property damage. The government is requesting a probationary sentence in this unusual case based on the fact that the defendant was inside of the Capitol for only about a minute; entered only about fifteen feet into the building; did not engage in any destruction of property or violence; and had limited social media activity regarding the event.

The defendant stands before this Court to be sentenced on a misdemeanor conviction, but her conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement, breach the

Capitol, and disrupt the proceedings. But for her actions alongside so many others, the riot likely would have failed.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the U.S. Capitol. *See* ECF No. 15, at 1-3. As this Court knows, a riot cannot occur without rioters, and each rioter's actions—from the most mundane to the most violent—contributed, directly and indirectly, to the violence and destruction of that day. With that backdrop we turn to the defendant's conduct and behavior on January 6.

Valerie Ehrke's Role in the January 6, 2021 Attack on the Capitol

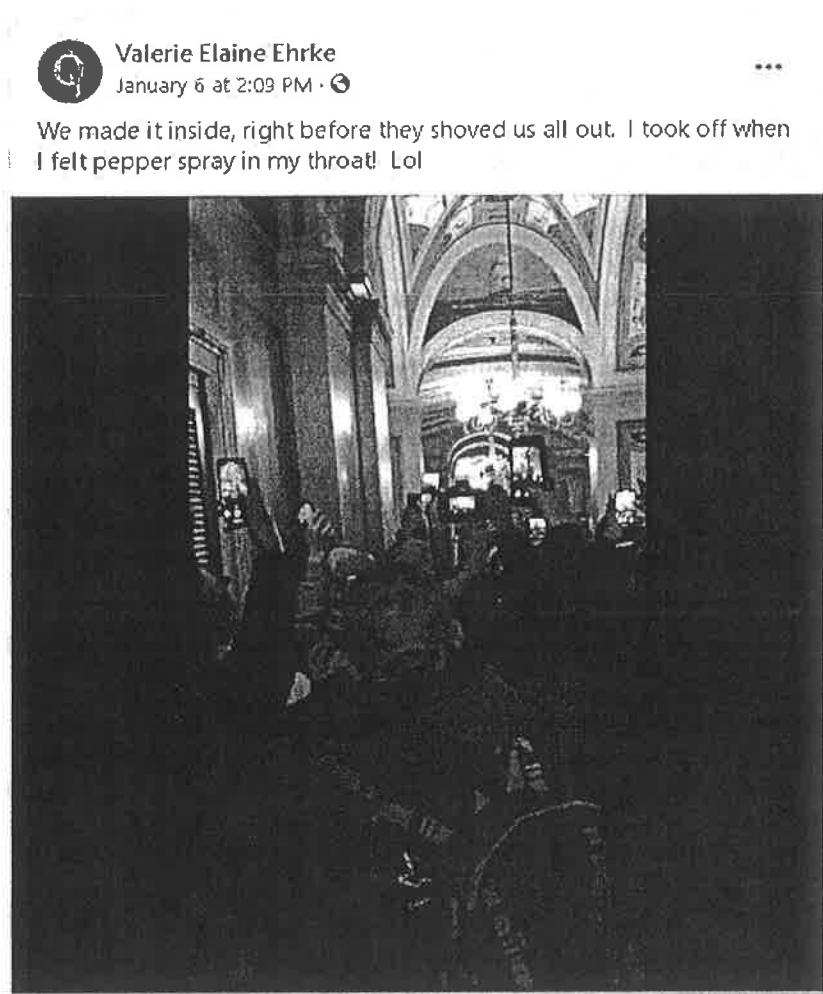
On January 5, 2021, Ms. Ehrke traveled to Washington, D.C., from her home near Sacramento, California. The next day, she and a friend attended a rally for former President Donald Trump, where they heard Mr. Trump speak. She heard Mr. Trump tell the crowd to go to the U.S. Capitol. At first, the defendant instead went back to her hotel room. However, when she saw a news story about how people were going to the U.S. Capitol, she decided she wanted to be part of the crowd. She began walking to the Capitol. As she walked to the Capitol, she began recording videos and uploading them to Facebook, including a video showing other people walking to the Capitol. In a caption to that video, she wrote that she was “on the way to the breached capitol building [sic].”

The defendant eventually made it to the Capitol building. At approximately 3:11 p.m.,¹ she entered the building through the North Door, which is on the first floor of the Senate wing of

¹ In the Statement of Offense, the time given is approximately 2:09 p.m. That time was based on a video in which the time stamp was not Eastern Standard Time. Other video, which has been disclosed to the defense, subsequently established that the time was approximately 3:11 p.m. EST.

the building. It is a set of double doors. The doors were already open at the time, and the defendant followed many others through the entrance. That door opens into a hallway. The defendant filmed her entrance through this door and into the hallway. As Ms. Ehrke is entering the building, one can hear an alarm sounding throughout the Capitol: a loud, high-pitched, continuous beeping, similar to a smoke alarm. Surveillance video also shows Ms. Ehrke's entrance. The defendant travels a very short distance—she later estimated about fifteen feet—before she had to stop at the back of the crowd. The police then confront the front of the crowd and begin pushing everyone back through the hallway back towards the North Door. During that time, everyone is pushed back through the door, including the defendant, who was still near the back of the crowd, behind multiple rows of rioters. The force of the crowd pushes her back out the North Door and out of the building. All told, the defendant was in the building for approximately one minute.

After she left the building, Ms. Ehrke wrote on Facebook about the events at the Capitol and posted videos for others to see. When she posted the above-referenced video that she took of her and others in the hallway, she added this caption: "We made it inside, right before they shoved us all out. I took off when I felt pepper spray in my throat! Lol." A screenshot of that post is reproduced below. The government would note that the defendant's Facebook profile picture in the screenshot below is a flaming "Q," which is commonly associated with QAnon, a far-right conspiracy group:



On January 12, 2021, the defendant voluntarily interviewed with the FBI. She gave a detailed description of her travel to Washington, D.C. and of her involvement in the events of January 6. She admitted to the facts outlined above, including that she had traveled to Washington, D.C. to hear Mr. Trump speak, that she had originally gone back to her hotel room before deciding that she wanted to be part of the crowd at the Capitol, and that she had briefly entered the Capitol and traveled about fifteen feet inside of the building. Ms. Ehrke's statements to law enforcement are consistent with CCTV footage from the Capitol. She also stated that she did not see who breached the Capitol building or how they did so.

In a subsequent letter to the government, which was also submitted to the PSR writer, Ms. Ehrke also indicated remorse about what happened at the Capitol that day. She stated that she did not know about “the madness” that was happening inside of the Senate Chamber. She also stated that she does not condone the behavior of people who participated in that madness, and she is “deeply sorry that people lost their lives on that day.” Ms. Ehrke also submitted other materials that highlight her long-standing involvement in several community organizations in her town and the surrounding area in California, including letters of support from several residents of that area.

The defendant was one of the first defendants to plead guilty in connection with the events of January 6. At a change of plea hearing on June 30, 2021, the defendant admitted that she knew she did not have permission to enter the Capitol building and that she acted with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress. *See* Statement of Offense ¶ 10. She also admitted to writing the Facebook post that is depicted in the above screenshot, which is memorialized in the Statement of Offense.

The Charges and Plea Agreement

On January 16, 2021, Ms. Ehrke was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On January 19, 2021, she self-surrendered to authorities in the Sacramento area. On February 9, 2021, she was charged by Information with the same crimes. On June 30, 2021, she pled guilty to Count Four of the Information, charging her with a violation of 40 U.S.C. § 5104(e)(2)(G). In her plea agreement, she agreed to pay \$500 in restitution.

III. Statutory Penalties

The defendant now faces a sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, the defendant faces up to six months of imprisonment and a fine of up to \$5,000.² As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply to it. 18 U.S.C. § 3559; U.S.S.G. §1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. § 3553(a)(6). We therefore turn to these factors.

A. The Nature and Circumstances of the Offense

The attack on the U.S. Capitol on January 6, 2021 is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was the one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events. So, too, does the conviction this defendant now faces. Picketing, demonstrating, or parading at the Capitol as part of the riot on January 6 is not like picketing at the Capitol some other day, without other rioters present.

² Because Ms. Ehrke has pled guilty to a petty offense, a term of supervised release is not authorized. *See* 18 U.S.C. § 3583(b)(3).

While each defendant should be sentenced based on their individual conduct, as we now discuss, this Court should note that each individual person who entered the Capitol on January 6 did so under the most extreme of circumstances. As a person entered the Capitol, they would—at a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement and likely would have smelled chemical irritants in the air. Make no mistake, no rioter was a mere tourist that day.

Additionally, while looking at the defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical factors, to include: (1) whether, when, how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) the defendant's reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant's time inside of the building, and exactly where the defendant traveled; (7) the defendant's statements in person or on social media; (8) whether the defendant cooperated with, or ignored, law enforcement; and (9) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are not exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

In this case, Ms. Ehrke briefly entered the Capitol, with a larger crowd, through a set of double doors. Certainly, this conduct alone was wrong given the overall context that day. In the video in which Ms. Ehrke enters the building, one can hear the beeping alarm that is similar to a smoke alarm sounding throughout the Capitol. Ms. Ehrke also evidenced that she knew the general situation when she posted, on her way to the Capitol, that she was "on the way to the *breached*

capitol building [sic]" (emphasis added). Indeed, she would have known about the general situation at the Capitol because she decided to go there after watching a news report. In addition, once she started entering the Capitol, she was sufficiently excited to take out her cell phone and begin filming the event. Later that day, she posted the video online.

On the other hand, however, the defendant was in the building for only about a minute. She only made it about fifteen feet into the building. The entirety of Ms. Ehrke's entry in the Capitol is captured on CCTV and there is no evidence that the defendant engaged in any violence or destruction of property during her very brief entry of the Capitol; nor that she destroyed evidence after the riot. She voluntarily interviewed with the FBI and told them about her actions that day in detail. And she has stated to the government and to the PSR writer that she does not condone "the madness" that she now knows occurred in the Senate Chamber. She also has expressed remorse that people lost their lives that day.

Given Ms. Ehrke's brief and limited entry into the building, lack of participation in any assaultive or destructive conduct, cooperation with law enforcement, and expressions of remorse for what happened that day, this factor weighs in favor of a probationary sentence.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Ms. Ehrke's criminal history consists mostly of traffic violations and similar offenses. (ECF No. 18 ¶¶ 26-34.) She has one conviction for selling and/or transporting marijuana/hash. (ECF No. 18 ¶ 28.) If the Sentencing Guidelines did apply to her offense of conviction, she likely would have zero points. USSG §§ 4A1.1(c) & n.3; 4A1.2(c)(2). Accordingly, she would be in Criminal History Category I. USSG §§ 4A1.1, 5A. This factor supports a more lenient sentence.

In addition, the defendant has submitted numerous letters from members of her community that attest to her character and to her activities within the community. This activity includes involvement in many community organizations, including those that work on local projects, events, the design of community facilities, and town beautification initiatives. The defendant herself underscores these activities in her own letter and explains her motivations for doing so.

The government also notes that Ms. Ehrke expressed an interest in pleading guilty very early—she was one of the first defendants charged in connection with the Capitol riots to do so. She acknowledged her conduct in an interview with the FBI and a subsequent letter to the government. When recommending an appropriate sentence, the government gives significant weight to the defendant’s early resolution of this case.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the U.S. Capitol building and grounds, and all that it involved, was an attack on the rule of law. “The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process.”³ In most cases arising out of the riot on January 6, 2021, including in most misdemeanor cases, this factor supports a sentence of incarceration. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-238-TFH, Tr. at 3 (“As to probation, I don’t think anyone should start off in these cases with any presumption of probation. I think the presumption should be that these offenses were an attack on our democracy and that jail time is usually -- should be expected.”). Although this specific factor weighs in favor of incarceration,

³ Federal Bureau of Investigation Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter “FBI Director Wray’s Statement”), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>

the other factors identified in this memorandum indicate that probation is a more appropriate outcome in this unusual case.

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). The demands of general deterrence weigh in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the transfer of power. As noted by Judge Moss during sentencing, in *United States v. Paul Hodgkins*, 21-cr-188-RDM:

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

Tr. at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70.

The gravity of these offenses demand deterrence. This was not a protest. *See id.* at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”). And it is important to convey to future rioters and would-be mob participants—especially those who intend to improperly influence the

democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

On one hand, Ms. Ehrke’s words on January 6 highlight the need for deterrence. She acknowledged that she knew the Capitol building had been breached when she wrote that she was “on the way to the breached capitol building [sic],” yet she went there anyway. She posted a video for others to see in which she entered the building with other rioters, writing “Lol” at the thought that law enforcement had to pepper spray individuals in an attempt to try to control the situation. This course of conduct shows a troubling lack of understanding, at least at the time, regarding the extreme seriousness of the situation.

However, as discussed above, Ms. Ehrke’s actions at the Capitol that day were much more limited than most individuals, and she has since expressed remorse for what happened on January 6. She has stated that she does not condone “the madness” that others participated in and that she is “deeply sorry that people lost their lives on that day.” She has shown that she takes this incident seriously through her ready cooperation with the FBI and through her subsequent letter to the government. Although the need to deter what happened in general on January 6 favors incarceration, the facts of Ms. Ehrke’s specific case and her subsequent actions favor probation.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on their individual circumstances, but with the backdrop of January 6 in mind. Moreover, each offender’s case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor

defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the Capitol on January 6, 2021 were not minor crimes. A probationary sentence, although recommended here for the reasons stated above, should not necessarily become the default. Indeed, the government invites the Court to join Judge Lamberth's admonition that "I don't want to create the impression that probation is the automatic outcome here because it's not going to be." *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL), Tr. 6/23/2021 at 19. At this time, no unwarranted sentencing disparities exist, nor does the government's request create one. This is the rare case where a probationary sentence is appropriate.

V. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, some of those factors support a sentence of incarceration, but most of them support a more lenient sentence. Balancing these factors, the government recommends that this Court sentence Valerie Ehrke to three years of probation, 40 hours of community service, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on her liberty as a consequence of her behavior, while recognizing her very brief entry into the Capitol and her early acceptance of responsibility. It also allows continued monitoring of Ms. Ehrke in the event of future participation in similar conduct.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Case No. 21-CR-97
v.	:	
	:	40 U.S.C. § 5104(e)(2)(G)
VALERIE EHRKE,	:	
	:	
Defendant.	:	

STATEMENT OF OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Valerie Ehrke, with the concurrence of her attorney, agree and stipulate to the below factual basis for the defendant’s guilty plea—that is, if this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

The Attack at the U.S. Capitol on January 6, 2021

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by 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 people with appropriate identification are allowed access inside the U.S. Capitol.

2. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the United States 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 United States Capitol to certify the vote count



Valerie Elaine Ehrke

January 6 at 2:09 PM · 🌐

...

We made it inside, right before they shoved us all out. I took off when I felt pepper spray in my throat! Lol



9. On January 13, 2021, FBI agents interviewed the defendant. The defendant confirmed that she had traveled to Washington, D.C. on January 5, 2021. She stated that on January 6, 2021, she and a friend attended a rally for President Trump, where she listened to President Trump speak. The defendant then went back to her hotel room, turned on the television, and saw a news story about how people were going into the U.S. Capitol Building. The defendant decided she wanted to be part of the crowd, and she walked to the U.S. Capitol. She stated that when she arrived at the U.S. Capitol Building, she joined a group entering through a set of double doors and proceeded about fifteen feet into the building. The crowd then

started to push backward going out the doors through which they had entered. An unknown man grabbed her and pushed her outside.

10. The defendant knew at the time she entered the U.S. Capitol Building that she did not have permission to enter the building and the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress.

Respectfully submitted,


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

By: /s/ Kevin Birney
Kevin Birney
Assistant United States Attorney

DEFENDANT'S ACKNOWLEDGMENT

I, Valerie Ehrke, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

Date: 6-21-21

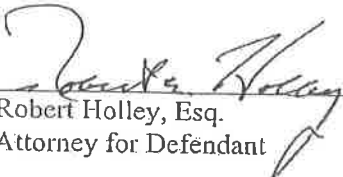


Valerie Ehrke
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: 6-21-21



Robert Holley, Esq.
Attorney for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

ANNA MORGAN-LLOYD,

Defendant.

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Criminal No. 21-cr-164 (RCL)

GOVERNMENT’S MEMORANDUM IN AID OF SENTENCING

If the Court accepts the guilty plea of defendant Anna Morgan-Lloyd (hereinafter “Defendant”), the United States of America respectfully files this memorandum in aid of sentencing. The Government recognizes that although the facts and the circumstances surrounding the actions of each rioter who breached the Capitol and its grounds differs, each rioter’s actions were illegal, and each rioter contributed – directly or indirectly – to the violence and destruction that day.

While the Defendant did not personally engage in physical violence against law enforcement or destroy any government property, her “storm[ing] of the Capitol,” was a serious violation of the law, and she must be held accountable. However, as further discussed below, the United States believes that a probationary sentence of three years, along with certain conditions, is an appropriate sentence in light of the facts and circumstances surrounding the Defendant’s actions, including that she: (1) did not engage in any preplanning or coordination prior to her entry into the Capitol; (2) did not personally engage in acts of violence or destruction of property, or incite the same; (3) only remained in the Capitol for a brief period of time and in a limited area of the building; (4) cooperated with law enforcement at the time of arrest, including submitting to a voluntary interview and search of her cell phone; (5) timely admitted to her actions and accepted

responsibility; (6) expressed contrition; and (7) does not have a criminal history.

I. BACKGROUND

January 6, 2021, will forever be an infamous day in American history – the day on which the temple of American democracy was overrun and desecrated by rioters seeking to disrupt the lawful and peaceful transition of power. On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol in order to certify the vote count of the Electoral College of the 2020 Presidential Election as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18. A large crowd began to gather outside the Capitol perimeter as the Joint Session got underway. Crowd members eventually forced their way through, up, and over U.S. Capitol Police barricades and advanced to the building’s exterior façade. U.S. Capitol Police officers attempted to maintain order and stop the crowd from entering the Capitol building, to which the doors and windows were locked or otherwise secured. Nonetheless, shortly after 2:00 p.m., crowd members forced entry into the Capitol building by breaking windows, ramming open doors, and assaulting law enforcement officers. Other crowd members encouraged and otherwise assisted the forced entry. Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers.

The Joint Session was halted while U.S. Capitol Police and other law enforcement officers worked to restore order and clear the Capitol of the unlawful occupants. Later that night, law enforcement regained control of the Capitol. At approximately 8:00 p.m., the Joint Session reconvened, presided over by Vice President Pence, who had remained within the Capitol building throughout these events. In the course of these events, approximately 81 members of the U.S. Capitol Police and 58 members of the Metropolitan Police Department were assaulted. The

Capitol suffered millions of dollars in damage—including broken windows and doors, graffiti, and residue from pepper spray, tear gas, and fire extinguishers deployed both by crowd members who stormed the Capitol and by law enforcement officers trying to restore order. Additionally, many media members were assaulted and had cameras and other news-gathering equipment destroyed.

On January 5th, the Defendant and her friend, Dona Sue Bissey¹, drove from Indiana to Washington, D.C. On January 6th, they attended the “Stop the Steal” rally on the Ellipse. When the speeches were over, the Defendant and Bissey walked with a crowd toward the Capitol building. After arriving at the Capitol and ascending the steps of the building, the Defendant joined with other members of a mob -- Bissey, who was with the Defendant, took photos of other members of the mob, including those in or around the scaffolding on the western front of the building.

The Defendant and Bissey then entered the Capitol building and walked through a hallway. While inside the Capitol building, the Defendant was photographed with Bissey and two other individuals, one of whom is holding a Trump campaign flag. Bissey later posted the photo on Facebook with the caption, “Inside the Capitol Building.”

On January 6, 2021, in response to a post by another rioter, the Defendant wrote, “I’m here. Best day ever. We stormed the capital building me and Dona Bissey were in the first 50 people in.”² On January 7, 2021, Bissey posted a photo on Facebook, tagging the Defendant and another individual, and wrote, “We are home. Thank You to ALL that messaged checking in and concerned. It was a day I’ll remember forever. I’m proud that I was a part of it! No Shame. BTW turn off the #FakeNews.” In a comment to this post, the Defendant wrote, “That was the most

¹ Dona Sue Bissey was charged by Information in Case No. 21-CR-165 (TSC).

² Based upon review of evidence, the government does not believe that the Defendant’s perception that she was one of the first fifty individuals inside the Capitol is accurate.

exciting day of my life.” The Defendant further commented, “Dona Bissey I’m so glad we were there. For the experience and memory but most of all we can spread the truth about what happened and open the eyes of some of our friends.”

On January 8, 2021, Bissey posted two photos from the western front of the Capitol building. The photo included images of members of the mob climbing the scaffolding and another of a rioter holding a stolen and broken sign that read, “Speaker of the House.” Bissey wrote on the post, “This really happened! Anna Morgan-Lloyd took the photo.”

On January 11, 2021, Bissey posted a photo on Facebook which showed individuals walking down the steps of the Capitol building. Bissey wrote, “On our way down” and tagged the Defendant.

On February 24, 2021, the Defendant was arrested pursuant to a criminal complaint and was interviewed by law enforcement. The Defendant admitted that she had entered the Capitol and remained for approximately five minutes.³ The Defendant also admitted that she used her phone to take photographs in and around the Capitol building and had a photograph taken of herself, Bissey, and two other individuals.

On March 1, 2021, a four-count Information was filed charging the Defendant with Entering and Remaining in a Restricted Building, in violation of Title 18, United States Code, Section 1752(a)(1); Disorderly and Disruptive Conduct in a Restricted Building, in violation of Title 18, United States Code, Section 1752(a)(2); Violent Entry and Disorderly Conduct in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(D); and

³Based upon review of evidence, the government does not believe that the Defendant’s perception that she was inside the Capitol for approximately five minutes is accurate – the government believes that she was inside the building for a little over ten minutes.

Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(G).

On May 27, 2021, the Defendant signed a plea agreement that she would enter a guilty plea to Parading, Demonstrating, or Picketing in a Capitol Building, in violation of Title 40, United States Code, Section 5104(e)(2)(G) and, in turn, the Government would recommend that the Court impose a term of probation, restitution in the amount of \$500, and 40 hours of community service.

II. STATUTORY PENALTIES

Parading, Demonstrating, or Picketing in a Capitol Building is a violation of Title 40, United States Code, Section 5104(e)(2)(G) and carries a maximum sentence of six (6) months of imprisonment, pursuant to Title 50, United States Code, Section 5109(b); a fine of not more than \$5,000, pursuant to Title 18, United States Code, Section 3571(b)(6); a term of supervised release of not more than one year, pursuant to Title 18, United States Code, Section 3583(b)(3); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

III. ADVISORY GUIDELINES

Parading, Demonstrating, or Picketing in a Capitol Building is a violation of Title 40, United States Code, Section 5104(e)(2)(G), a class B misdemeanor, as defined by Title 18, United States Code, Section 3559(a)(7). Accordingly, pursuant to Section 1B1.9 of the United States Sentencing Commission, *Guidelines Manual* (2018), the sentencing guidelines do not apply to this case.

IV. A SENTENCE OF PROBATION IS CONSISTENT WITH THE FACTORS SET FORTH IN 18 U.S.C. § 3553(a).

The goal of sentencing is to impose a sentence that is “sufficient, but not greater than necessary.” 18 U.S.C. § 3553(a). These factors include the nature and circumstances of the offense; the defendant’s history and characteristics; and the need for the sentence to promote

respect for the law and adequate deterrence. 18 U.S.C. § 3553(a). Here, the Section 3553(a) factors and the defendant's early acceptance of responsibility, contrition, and guilty plea support a sentence of probation.

A. Nature and Circumstances of the Offense

To be clear, what the Defendant initially described as “the most exciting day of [her] life” was, in fact, a tragic day for our nation – a day of riotous violence, collective destruction, and criminal conduct by a frenzied and lawless mob. The individuals the Defendant described as “Patriots” were, in fact, rioters breaking windows, destroying government property, and assaulting law enforcement officers. However, despite the Defendant's initial ill-considered and misguided commentary, for a variety of factors, a sentence of three years of probation is appropriate in this instance.

First, the Government is not aware of any evidence that Defendant's entry into the Capitol was preplanned or coordinated with anyone else, including any extremist or organized groups.

Second, the Government is not aware of any evidence that the Defendant incited others to commit acts of violence or destruction.

Third, the Government is not aware of any evidence that the Defendant engaged in any violence towards law enforcement.

Fourth, the Government is not aware of any evidence that the Defendant destroyed or stole any property from the Capitol.

Fifth, based on the Government's investigation, it appears that the Defendant remained in a limited part of the Capitol building for a limited period of time – *i.e.*, in one hallway for a little over ten minutes. The Government is not aware of any evidence that the Defendant entered any rooms or offices in the Capitol, the Capitol Rotunda, or the Senate or House Chamber.

B. Defendant's History and Characteristics

The Defendant is a 49-year-old woman with no prior criminal history. The Defendant is a graduate of Ivy Tech Community College. For 13 years following her graduation, the Defendant held full-time employment at Cook Medical, producing medical equipment used in minimally-invasive surgery. The Defendant appears to have strong familial support – she is married, with two stepdaughters, and five grandchildren, for whom she provides childcare. Based on a review of the Defendant's available social media and other investigative steps, the Government is not aware of the Defendant having an association with extremist groups, promoting violence or engaging in any other criminal conduct.

C. Need to Promote Respect for the Law, to Provide Just Punishment and Afford Adequate Deterrence

A sentence of three years of probation, restitution, and community service is consistent with the goals of promoting respect for the law, punishing the Defendant, and also providing both general and specific deterrence.

First, between the time of her arrest and her initial appearance on the complaint, the Defendant was incarcerated for approximately two days. As the Court knows, for an individual that has no prior criminal history or interactions with law enforcement and the penal system, any period of incarceration can be eye-opening and serve as a deterrent to future criminal conduct.

Second, the imposition of a term of probation and, therefore, supervision, will impose conditions upon the Defendant and serve to deter any future criminal conduct. Specifically, the Government requests that the Court impose a three-year term of probation. *See* 18 U.S.C. § 3561(c)(2). Notably, had the Government requested and the Court imposed a term of incarceration, the maximum term of government supervision would have been 18 months – six months' imprisonment and one year of supervised release. *See* 50 U.S.C. § 5109(b); 18 U.S.C. §

3583. Put simply, if the Court imposes a three-year term of probation, the Defendant would be supervised for an additional 18 months than she might otherwise not have been. In addition to the mandatory conditions of probation,⁴ the Government requests that the Court impose certain discretionary conditions,⁵ including that the Defendant:

- (1) refrain from possessing a firearm, destructive device or other dangerous weapon;
- (2) work in community service for 40 hours as directed by the Court;
- (3) report to a probation officer as directed by the court or probation;
- (4) permit a probation officer to visit her at her home or elsewhere as specified by the Court;
- (5) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;
- (6) notify the probation officer promptly if arrested or questioned by a law enforcement officer; and
- (7) satisfy such other conditions as the Court may impose.

See 18 U.S.C. §§ 3563(b)(8), (12), (15) – (18), (22).

Third, one important aspect of promoting respect for the law is encouraging cooperation and truthfulness with law enforcement. Here, following her arrest, the Defendant fully cooperated with law enforcement and admitted to the full scope of her actions. In addition to waiving her rights and agreeing to be interviewed by law enforcement, she also allowed her mobile phone to

⁴ Mandatory conditions of probation include, among other things, that the Defendant (1) not commit another Federal, State, or local crime during the term of probation; (2) not unlawfully possess a controlled substance; (3) refrain from use of a controlled substance and submit to at least one drug test within 15 days of release on probation and at least 2 periodic drugs tests thereafter (as determined by the court) for use of a controlled substance; (4) make restitution and pay the special assessment; and (5) notify the court of any material change in Defendant's economic circumstances that might affect the Defendant's ability to pay restitution, fines or special assessments. *See* 18 U.S.C. §3563(a).

⁵ The Defendant has agreed to the imposition of all of the requested discretionary conditions.

be downloaded for substantive analysis.

Fourth, the Defendant has expressed contrition for her conduct. In a letter to the Court, the Defendant stated that she was “ashamed that something meant to show support for the President had turned violent. . . . At first it didn’t dawn on me, but later I realized that if every person like me, who wasn’t violent, was removed from that crowd, the ones who were violent may have lost the nerve to do what they did. For that I am sorry and take responsibility. It was never my intent to help empower people to act violently.” The Defendant’s letter and early acceptance of responsibility indicate an important level of contrition for her actions on January 6th.⁶ Moreover, the Defendant’s seeming prior bravado, as set forth in her social media postings immediately after the breach of the Capitol, appears to have been tempered by a realization of the consequences of her actions.

Fifth, the imposition of restitution and 40 hours of community service is an important part of promoting respect for the law and imposing a just punishment. As of May 17, 2021, the Government has calculated that the defendant and her fellow rioters contributed to or caused approximately \$1,495,326.55 in physical damage to the Capitol. It is critical that those who caused or contributed to the destruction be responsible for the cost of repairing and restoring the Capitol. That fiscal burden should be borne by the rioters, not innocent taxpayers. In addition, by imposing the condition of completion of community service, the Defendant will have the opportunity to make a positive contribution to the community.

⁶ Although the Defendant’s letter states that “she didn’t see anything being broken [at the Capitol],” review of video footage taken by her on January 6th appears to show unidentified individuals breaking a pane of glass in a window. The government’s understanding from defense counsel is that the Defendant hadn’t reviewed her video and didn’t recall ever having noticed that particular action captured on her video.

D. Protect the Public

Based on the facts known to the Government, there is no evidence that the Defendant poses a continuing threat to the public or that she will engage in similar conduct in the future. In addition, if the Court imposes a term of three years of probation, the Defendant will be under government supervision for a significant period of time, thereby promoting public safety.

V. CONCLUSION

For the reasons set forth above, the United States respectfully requests that the Court impose a term of three years of probation, including the mandatory and discretionary conditions set forth above, restitution in the amount of \$500, and 40 hours of community service.

Respectfully submitted,

CHANNING D. PHILLIPS
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CERTIFICATE OF SERVICE

I certify that, by virtue of the Court's ECF system, a copy of the foregoing pleading was sent to defense counsel on June 17, 2021.

/s/ Joshua S. Rothstein
Joshua S. Rothstein
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Case No. 1:21-cr-00165 (TSC)
v.	:	
	:	
DONA SUE BISSEY,	:	
	:	
Defendant.	:	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the Government requests that this Court sentence Dona Sue Bissey (hereinafter “the Defendant”) to three years of probation, including the mandatory and discretionary conditions set forth below, \$500 in restitution and 40 hours of community service.

I. Introduction

The Defendant, Dona Sue Bissey, and her friend, Anna Morgan-Lloyd,¹ participated in the January 6, 2021 attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred law enforcement officers, and resulted in more than a million dollars’ worth of property damage.

The Defendant pleaded guilty to one count of 40 U.S.C. § 5104(e)(2)(G), Parading, Demonstrating, or Picketing in a Capitol Building. As described herein, the Government is

¹ Ms. Morgan-Lloyd was separately charged in *United States v. Morgan-Lloyd*, 21-cr-164 (RCL), and was sentenced to three years’ probation, \$500 in restitution, and 120 hours of community service.

recommending probation in this rare case in light of the Defendant's early acceptance of responsibility and agreement to plead guilty. Early in this investigation, the Government made a very limited number of plea offers in misdemeanor cases that included an agreement to recommend probation. This is one of those rare cases, along with *Morgan-Lloyd*. See *supra*, note 1. The Defendant accepted the Government's offer promptly, and the Government is abiding by its prior agreement to recommend probation.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the U.S. Capitol. See ECF 22 (Statement of Offense), at 1-9. As this Court knows, a riot cannot occur without rioters, and each rioter's actions – from the most mundane to the most violent – contributed, directly and indirectly, to the violence and destruction of that day. With that backdrop we turn to the Defendant's conduct and behavior on January 6th.

Dona Sue Bissey's Role in the January 6, 2021 Attack on the Capitol

On January 6, 2021, the Defendant and her friend, Anna Morgan-Lloyd, attended the rally on the Ellipse. When the speech finished the Defendant and Morgan-Lloyd walked with the crowd toward the Capitol building. After arriving at the Capitol and ascending the steps, the Defendant participated in the protest and took photos of the other protestors, including those in or around the scaffolding on the western front of the building.

The Defendant and Morgan-Lloyd then entered the Capitol building from the Eastern Front, walked through a single hallway, and remained in the Capitol for a little over ten minutes. While inside the Capitol building, the Defendant appeared in a photo with Morgan-Lloyd and two

other individuals, one of whom is holding a Trump campaign flag. The Defendant later posted the photo on Facebook with the caption “Inside the Capitol Building.”

The Defendant also posted a picture of an elderly woman with a “Make America Great Again” hat and wrote “This is Our Warrior Linda. We stayed with her and her daughter Stacey all day. They are somewhat locals. When we Marched to Capitol she said “I’m going in” and she lead the way. We went in [] This photo taken at Capitol entry right before[.]”

The Defendant also posted a screenshot of a Twitter post which stated, “This is the First time the U.S. Capitol had been breached since it was attacked by the British in 1814” and wrote “We were inside for reals! Linda led the way!! She is a True Patriot and Warrior!!!”

On January 7, 2021, the Defendant posted a photo on Facebook, tagging Morgan-Lloyd and another individual, and wrote “We are home. Thank You to ALL that messaged checking in and concerned. It was a day I’ll remember forever. I’m proud that I was a part of it! No Shame. BTW turn off the #FakeNews.”

On January 8, 2021, the Defendant posted two photos from the western front of the Capitol building. The photo included images of protesters climbing the scaffolding and another other with a protestor holding a stolen and broken sign that read “Speaker of the House.” The Defendant wrote on the post “This really happened! Anna Morgan-Lloyd took the photo.”

On January 11, 2021, the Defendant posted a photo on Facebook which showed individuals walking down the steps of the Capitol building. The Defendant wrote “On our way down” and tagged Morgan-Lloyd.

Dona Bissey's Interview

Early in the investigation, on February 24, 2021, the Defendant agreed to be interviewed by law enforcement. She accepted responsibility for her actions and admitted that she had entered the Capitol and remained for less than ten minutes. The Defendant also admitted that she had a photo taken of herself within the building. She claimed that while she saw “people pushing through the fencing at the bottom of the steps” and heard a window get broken, she and her friends that attended the rally were “shocked by what they saw on the news” and did not “have any idea of the other activities at the Capitol.” The Defendant further claimed that she would not have gone inside the building if she had known she was not allowed.

The Charges and Plea Agreement

On February 23, 2021, the Defendant was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On February 24, 2021, she was arrested outside her place of employment. On March 1, 2021, the Defendant was charged by Information with the same four offenses. On July 19, 2021, the Defendant pleaded guilty to a violation of 40 U.S.C. § 5104(e)(2)(G), Parading, Demonstrating, or Picketing in the Capitol Building. Under the plea agreement, the Defendant agreed to pay \$500 in restitution to the Department of the Treasury.

III. Statutory Penalties

The Defendant now faces a sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement² and the U.S. Probation Office, she faces up to six months of imprisonment and a fine of up to \$5,000.³ She must also pay \$500 in restitution under the terms

² The plea agreement is incorrectly dated March 18, 2021. The correct date is May 18, 2021.

³ Because Ms. Bissey has pled guilty to a petty offense, a term of supervised release is not authorized. *See* 18 U.S.C. § 3583(b)(3).

of her plea agreement. *See* 18 U.S.C. § 3663(a)(3); *United States v. Anderson*, 545 F.3d 1072, 1078-79 (D.C. Cir. 2008). As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply. 18 U.S.C. § 3559; U.S.S.G. §1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. § 3553(a)(6).

A. The Nature and Circumstances of the Offense

The attack on the U.S. Capitol, on January 6, 2021 is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was the one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events.

While each defendant should be sentenced based on their individual conduct, each person who entered the Capitol on January 6 did so under the most extreme of circumstances. As a person entered the Capitol, they would—at a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement and likely would have smelled chemical irritants in the air. Make no mistake: *no rioter was a mere tourist that day.*

Additionally, while looking at the Defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical factors, to include: (1) whether, when, how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) whether during or after the riot, the defendant destroyed evidence; (5) the length of the defendant's time inside of the building, and exactly where the defendant traveled; (6) whether the defendant cooperated with, or ignored, law enforcement; (7) the defendant's statements in person or on social media; and (8) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are not exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

The Government is recommending probation in this case in light of the Defendant's early acceptance of responsibility and agreement to plead guilty. As described above, early in this investigation, the Government made a very limited number of plea offers in misdemeanor cases that included an agreement to recommend probation. This is one of those rare cases, along with *Morgan-Lloyd*. See *supra*, note 1. The Defendant is a 53-year-old hairdresser who lacks any criminal history, remained in a limited part of the building for a short period of time, does not appear to have destroyed evidence, cooperated with law enforcement after her arrest, and has expressed remorse for her actions.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Dona Sue Bissey is a 53-year-old woman with no prior criminal history. The Defendant attended two years of higher education at the University of Indiana and then left college to attend the Hair Arts Academy in Bloomington, Indiana. The Defendant told

probation that she has been a hairdresser for over 20 years and owned a business, Hot Heads Hair Studio. The Defendant appears to have strong familial support -- she is married with a son and a stepson. The Government is not aware of the Defendant having an association with extremist groups, promoting violence, or engaging in any other criminal conduct. The Government has been informed that the Defendant has been compliant with her conditions of release. The Government notes, however, that there is evidence that the Defendant subscribes to and has made social media posts in support of Q-Anon.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the U.S. Capitol building and grounds, and all that it involved, was an attack on the rule of law. “The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process.”⁴ As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases arising out of the riot on January 6, 2021, including in misdemeanor cases. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-238-TFH, Tr. at 3 (“As to probation, I don't think anyone should start off in these cases with any presumption of probation. I think the presumption should be that these offenses were an attack on our democracy and that jail time is usually -- should be expected.”) (statement of Judge Hogan).

⁴ Federal Bureau of Investigation Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter “FBI Director Wray’s Statement”), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). Again, the government abides by its early agreement to recommend probation in this case. The following factors weigh in favor of that recommendation with respect to this particular defendant and the need for deterrence.

First, between the time of her arrest and her initial appearance on the complaint, the Defendant was incarcerated for approximately two days. As the Court knows, for an individual that has no prior criminal history or interactions with law enforcement and the penal system, any period of incarceration can be eye-opening and serve as a deterrent to future criminal conduct.

Second, the imposition of a term of probation and, therefore, supervision, will impose conditions upon the Defendant and serve to deter any future criminal conduct. *See* 18 U.S.C. § 3561(c)(2). In addition to the mandatory conditions of probation,⁵ the Government requests that the Court impose certain discretionary conditions, including that the Defendant:

- (1) refrain from possessing a firearm, destructive device or other dangerous weapon;
- (2) work in community service for 40 hours or as directed by the Court;
- (3) report to a probation officer as directed by the court or probation;

⁵ Mandatory conditions of probation include, among other things, that the Defendant (1) not commit another Federal, State, or local crime during the term of probation; (2) not unlawfully possess a controlled substance; (3) refrain from use of a controlled substance and submit to at least one drug test within 15 days of release on probation and at least 2 periodic drugs tests thereafter (as determined by the court) for use of a controlled substance; (4) make restitution and pay the special assessment; and (5) notify the court of any material change in Defendant's economic circumstances that might affect the Defendant's ability to pay restitution, fines or special assessments. *See* 18 U.S.C. §3563(a).

- (4) permit a probation officer to visit her at her home or elsewhere as specified by the Court;
- (5) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;
- (6) notify the probation officer promptly if arrested or questioned by a law enforcement officer; and
- (7) satisfy such other conditions as the Court may impose.

See 18 U.S.C. §§ 3563(b)(8), (12), (15) – (18), (22).

Third, one important aspect of promoting respect for the law is encouraging cooperation and truthfulness with law enforcement. Here, following her arrest, the Defendant cooperated with law enforcement. The Defendant waived her rights and agreed to be interviewed by law enforcement.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the Government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on their individual circumstances, but with the backdrop of January 6th in mind. Moreover, each offender's case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes warranting years of imprisonment. The misdemeanor defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the Capitol on January 6, 2021 were not minor crimes.

While the number of sentenced defendants is low, we have already begun to see meaningful distinctions between offenders. Those who engaged in felonious conduct are generally more dangerous, and thus, treated more severely in terms of their conduct and subsequent punishment. Those who trespassed, but engaged in aggravating factors, merit serious consideration of

institutional incarceration. While those who trespassed, but did not engage in aggravating factors, may merit the imposition of a significant term of probation along with restrictive mandatory and discretionary conditions. Based upon the Defendant's early acceptance of responsibility and cooperation with law enforcement, the Government has agreed to recommend a sentence in the latter category in this rare case. That sentence would not create an unwarranted sentencing disparity with any other cases. *Cf. United States v. Rosales-Gonzales*, 801 F.3d 1177, 1183 (9th Cir. 2015) (no unwarranted sentencing disparities under 18 U.S.C. § 3553(a)(3) between defendants who plead guilty under a "fast-track" program and those who do not given the "benefits gained by the government when defendants plead guilty early in criminal proceedings") (citation omitted).

V. Conclusion

For the reasons set forth above, the United States respectfully requests that the Court impose a term of three years of probation, including the mandatory and discretionary conditions set forth above, restitution in the amount of \$500, and 40 hours of community service. Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY
D.C. Bar Number 415793

/s/ Joshua S. Rothstein
Joshua S. Rothstein
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

ANNA MORGAN-LLOYD,

Defendant.

:
:
:
:
:
:
:

Case No. 21-cr-0164 (KBJ)

Rec
let this be filed
Regina C. Foulke
U.S. Dist. Ct. 4/23/21

STATEMENT OF OFFENSE IN SUPPORT OF GUILTY PLEA

1. The Government respectfully submits the following Statement of Offense in support of a plea of guilty by defendant Anna Morgan-Lloyd (“DEFENDANT”) to Count 4 of the Information in the above-captioned matter.

2. If this case were to go to trial, the government would prove the following facts beyond a reasonable doubt:

3. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by 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 people with appropriate identification are allowed access inside the U.S. Capitol.

4. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

5. On January 6, 2021, a joint session of the United States Congress convened at the United States 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 United States Capitol to certify the vote count of the Electoral College of 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. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

6. 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 were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

7. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

8. 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 U.S. Capitol Police attempted to maintain order and keep the crowd from entering the 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 law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the U.S. Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

9. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

10. On January 6, 2021, the DEFENDANT and her friend, Dona Sue Bissey, attended the rally on the Ellipse. When the speech finished the DEFENDANT and Bissey walked with the crowd toward the Capitol building.

11. After arriving at the Capitol and ascending the steps, the DEFENDANT participated in the protest. Bissey, who was with the DEFENDANT, took photos of the other protestors, including those in or around the scaffolding on the western front of the building. On Facebook, Bissey posted a picture of protestors, including two individuals in military battle dress, on the Capitol grounds.

12. The DEFENDANT and Bissey then entered the Capitol building and walked through a hallway. While inside the Capitol building, the DEFENDANT appeared in a photo with Bissey and two other individuals, one of whom is holding a Trump campaign flag. Bissey later posted the photo on Facebook with the caption “Inside the Capitol Building.”

13. On January 6, 2021, in response to a post by L.L.T.P., the DEFENDANT wrote “I’m here. Best day ever. We stormed the capital building me and Dona Bissey were in the first 50 people in.”

14. On January 7, 2021, Bissey posted a photo on Facebook, tagging the DEFENDANT and another individual, and wrote “We are home. Thank You to ALL that messaged checking in and concerned. It was a day I’ll remember forever. I’m proud that I was a part of it! No Shame. BTW turn off the #FakeNews.” In a comment to this post, the DEFENDANT wrote “That was the most exciting day of my life.” The DEFENDANT further commented “Dona Bissey I’m so glad we were there. For the experience and memory but most of all we can spread the truth about what happened and open the eyes of some of our friends.”

15. On January 8, 2021, Bissey posted two photos from the western front of the Capitol building. The photo included images of protesters climbing the scaffolding and another other with a protestor holding a stolen and broken sign that read “Speaker of the House.” Bissey wrote on the post “This really happened! Anna Morgan-Lloyd took the photo.”

16. On January 11, 2021, the Bissey posted a photo on Facebook which showed individuals walking down the steps of the Capitol building. Bissey wrote “On our way down” and tagged the DEFENDANT.

17. On February 24, 2021, the DEFENDANT was interviewed by law enforcement. The DEFENDANT admitted that she had entered the Capitol and remained for approximately five minutes. The DEFENDANT also admitted that she used her phone to take photographs in and around the Capitol building and had a photograph taken of herself, Bissey, and two other individuals.

19. The information contained in his proffer is not a complete recitation of all the facts and circumstances, but the parties admit it is sufficient to prove beyond a reasonable doubt a violation of Title 40, United States Code, Section 5104(e)(2)(G), that is, Parading, Demonstrating, or Picketing in a Capitol Building, as charged in Count Four of the Information.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY
D.C. Bar Number 415793

By: 

Joshua S. Rothstein
Assistant United States Attorney
N.Y. Bar Number 4453759
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Office: 202-252-7164
Joshua.Rothstein@usdoj.gov

DATED: May 19, 2021

DEFENDANT'S ACCEPTANCE

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to the charge against me. It does not include all of the facts known to me regarding these offenses. I make this statement knowingly and voluntarily and because I am, in fact, guilty of the crimes charged. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of Offense fully.

I have read every word of this Statement of the Offense. Pursuant to Federal Rule of Criminal Procedure 11, after consulting with my attorney, I agree and stipulate to this Statement of the Offense, and declare under penalty of perjury that it is true and correct.

Date: May 27, 2021


Anna Morgan-Lloyd
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of Offense and reviewed it with my client fully. I concur in my client's desire to adopt and stipulate to this Statement of the Offense as true and accurate.

Date: June 7, 2021



H. Heather Shaner, Esq.
Counsel for Defendant Anna Morgan-Lloyd

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 6:21-CR-41 (CJN)
	:	
THOMAS GALLAGHER,	:	
	:	
<i>Defendant.</i>	:	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence defendant Thomas Gallagher to one month of home confinement, a probationary term of three years, 60 hours of community service, a fine, and \$500 in restitution.

I. Introduction

Gallagher participated in the January 6, 2021, attack on the United States Capitol – a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured over 100 law-enforcement officers, and resulted in over \$1.4 million worth of property damage.

Gallagher stands before this Court to be sentenced on a misdemeanor conviction, but his conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement, breach the Capitol, and disrupt the proceedings. But for his actions alongside so many others, the riot likely would have failed.

The government is requesting a one-month term of home confinement and probation based on an assessment of the relevant sentencing factors. Gallagher entered the Capitol and remained until he was arrested, despite glaring evidence of a violent riot all around him inside the Capitol, including individuals hurling chairs at police officers. His conduct was, however, on the lower end of the spectrum of criminality on January 6, and he has demonstrated substantial contrition for participating in the riot. In addition, he moved a chair other rioters had thrown down a stairwell, video evidence is consistent with his assertion that he admonished another rioter not to throw a chair inside the building, and he consented to a voluntary interview with the Federal Bureau of Investigation (“FBI”) after his arrest on federal charges.

II. Factual and Procedural Background

The January 6, 2021, Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the Capitol in ECF No. 76, at 1-3. As this Court knows, a riot cannot occur without rioters, and each rioter’s actions—from the most mundane to the most violent—contributed, directly and indirectly, to the violence and destruction of that day.

Gallagher’s Role in the January 6, 2021, Attack on the Capitol

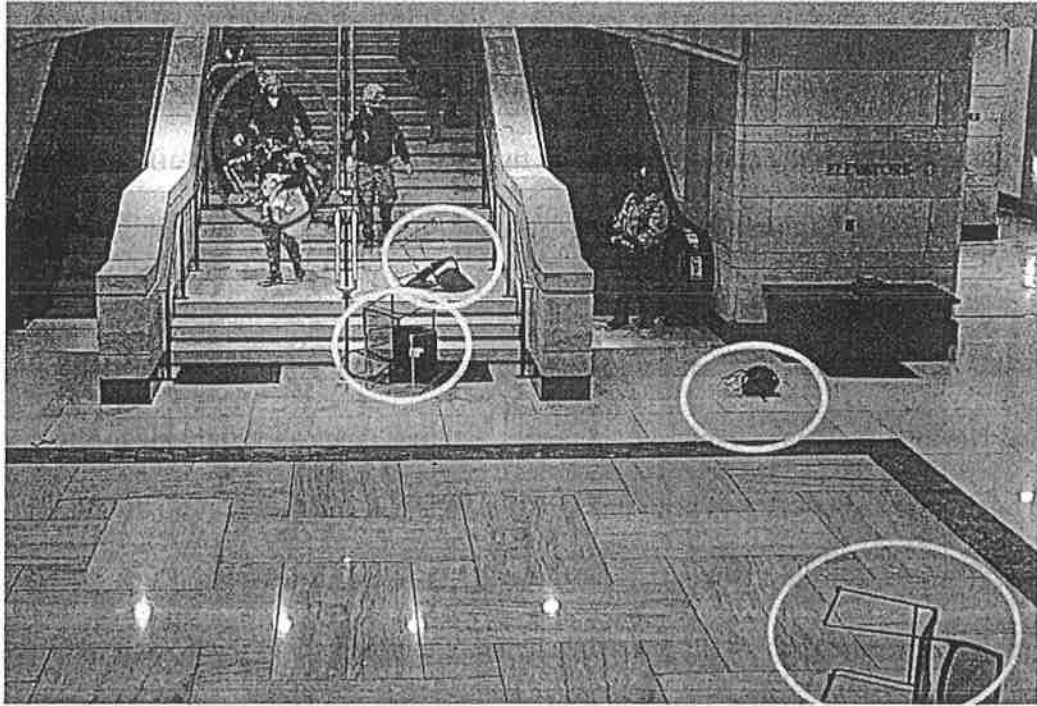
Gallagher traveled from New Hampshire to attend the rally the former president, Donald Trump, planned to hold in Washington, D.C., on January 6, 2021. After attending the rally that day, Gallagher made his way to the Capitol.

Around the time Gallagher entered the Capitol, U.S. Capitol Police (“USCP”) officers had already been under attack by rioters outside the building and fell back to a makeshift recovery area they had established in the Capitol Crypt. Before long, rioters also breached that recovery area, and began throwing objects and unknown liquid substances at the officers. The officers retreated

down a stairwell to the Capitol Visitor Center (“CVC”), which is also part of the Capitol. Some rioters threw chairs at the officers. At approximately 2:30 p.m., surveillance video captured officers retreating down the stairwell as chairs tumbled behind them. The officers then fell back to the end of a corridor in the CVC that led to an atrium on the House of Representatives side of the building.

Shortly after 2:30 p.m., within seconds of chairs plummeting down the stairwell and one escalator, video surveillance captured Gallagher walking down the stairwell to the CVC. He carried one of the chairs that had been blocking the stairwell and placed it on the floor in front of the stairs. These screenshots from the video show a 32-second sequence in which officers (circled in blue) hurriedly retreat down the stairwell as chairs tumble behind them, Gallagher (circled in red) descends the stairwell carrying a chair, and multiple chairs and an unknown object (circled in yellow) lie strewn about the CVC’s floor:





Gallagher and others proceeded to a corridor at the end of which U.S. Capitol Police officers had formed a defensive line. At approximately 2:31 p.m., Gallagher threw up his arms while looking in the direction of the officers' line, as depicted in the center of this screenshot:



At approximately 2:32 p.m., Gallagher walked with other individuals toward the end of the corridor. At one point, he reached out to another rioter who had picked up a chair, in a manner consistent with admonishing that person, as depicted in this screenshot (circled in red):



The other individual put the chair down seconds later.

Gallagher eventually made his way to the end of the corridor where the officers were positioned. The officers issued commands for the rioters to leave the building. Gallagher admitted hearing an officer tell him, “[Y]ou cannot remain in the building,” and claimed he did not know where to go after hearing the officer’s admonition. Presentence Report (“PSR”) at 8. When rioters refused the officers’ commands, the officers began arresting individuals who had unlawfully entered the building, including Gallagher, at about 2:39 p.m.

The FBI uncovered no evidence that Gallagher engaged in violent or disruptive conduct at the Capitol grounds or inside the building. Gallagher cooperated with law enforcement following his arrest, including consenting to be interviewed by the FBI.

Gallagher knew at the time he entered the Capitol that he did not have permission to enter the building and he paraded, demonstrated, or picketed inside the building.

The Charges and Plea Agreement

Gallagher was initially arrested at the Capitol on January 6, 2021, and issued a summons to return to D.C. Superior Court. On January 7, 2021, Gallagher was charged by complaint with violating 18 U.S.C. § 1752(a) and 40 U.S.C. § 5104(e)(2). On January 13, 2021, he was rearrested on the federal complaint in the District of New Hampshire. On January 15, 2021, he was charged by an initial information with four misdemeanor counts. On January 21, 2021, Gallagher was charged by an Amended Information with four counts, violations of 18 U.S.C. §§ 1752(a)(1) and (2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On July 15, 2021, he pleaded guilty to Count Four of the Amended Information, which charged a violation of 40 U.S.C. § 5104(e)(2)(G). In his plea agreement, Gallagher agreed to pay \$500 in restitution to the Department of the Treasury.¹

¹ The actual payee of the restitution should be the Architect of the Capitol, as indicated in the PSR at 18.

III. Statutory Penalties

Gallagher now faces sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, he faces up to six months of imprisonment and a fine of up to \$5,000. As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply to it. 18 U.S.C. § 3559(a)(7); U.S.S.G. §1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, § 3553(a)(6).

A. The Nature and Circumstances of the Offense

The attack on the Capitol on January 6, 2021, is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events. So too does the conviction this defendant now faces. Picketing, demonstrating, or parading at the Capitol as part of the riot on January 6 was not like picketing at the Capitol some other day, without other or with relatively few rioters present.

All defendants should be sentenced based on their individual conduct. But this Court should note that each individual person who entered the Capitol on January 6 did so under the most

extreme of circumstances, and Gallagher is no exception. As individuals entered the Capitol, they would—at a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement. Like many others who smelled chemical irritants, Gallagher admitted to the PSR writer that he “got hit with some stray pepper spray floating through the crowd” before he entered the building. PSR at 8.

Additionally, while looking at a defendant’s individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical factors, including: (1) whether, when, and how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) the defendant’s reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant’s time inside the building, and exactly where the defendant traveled; (7) the defendant’s statements in person or on social media; (8) whether the defendant cooperated with, or ignored, law enforcement; and (9) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are not exhaustive or dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

Gallagher also observed the disarray and disorderly conduct of a riot inside the building. He descended the stairwell to the CVC less than 30 seconds after USCP officers retreated down those same stairs as rioters threw chairs at them. Video evidence shows, and Gallagher admitted, he picked up a chair lying on its side in the stairwell landing. *Id.* at 8. He walked by the chairs thrown at the officers as they lay strewn by the base of the stairwell. The indications were clear that a riot was occurring around him, yet he did not turn back. He remained in the CVC for

approximately nine more minutes until officers tackled and arrested him. *Id* at 9. Make no mistake, neither Gallagher nor any other rioter was a mere tourist that day.

The government has no evidence that Gallagher engaged in any violence or destruction of property. The defense proffered to the government that Gallagher put his arm on a younger rioter and admonished him not to throw a chair in the CVC, and the video evidence is consistent with that representation. Nor does the government have reason to believe Gallagher destroyed evidence. To the contrary, he consented to a post-arrest interview with the FBI.

To his credit, Gallagher expressed an early desire to resolve his case. His attorney shared with the government a letter Gallagher wrote on April 5, 2021, in which Gallagher referred to the January 6 attack as a “terrible event.” He expressed great remorse for his actions and the impact they had on law-enforcement officials, and for contributing to the “disruption, fear, and evacuation of the Senate, Congress members, and other politicians during the certification of the election.” He also stated, “I regret my lack of judgment beyond anything I have ever felt.” Gallagher repeated this statement of contrition to the PSR writer. *Id.*

The nature and circumstances of the offense supports a sentence of incarceration. However, for misdemeanor defendants who, like Gallagher, engaged in conduct that was less egregious considering the nonexclusive factors listed above and demonstrate remorse for their actions, the government is more likely to recommend a more lenient sentence.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Gallagher does not have a prior criminal conviction. PSR at 10. He would likely have zero points if the Sentencing Guidelines did apply to his offense of conviction. USSG § 4A1.2(c)(2). Accordingly, he would be in Criminal History Category I. USSG §§ 4A1.1, 5A. Gallagher is a retiree and receives a pension following a 32-year career with the

Department of Defense. While a former federal employee should have known that participating in the riot was a grave crime—a factor that is arguably aggravating—his lack of criminal history supports a more lenient sentence.

The government also notes that from an early point in the case, Gallagher, through his attorney, expressed a desire to plead guilty and express remorse for his conduct. When recommending an appropriate sentence, the government gives significant weight to Gallagher's prompt resolution of this case and his contrition.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the Capitol building and grounds, and all that it involved, was an attack on the rule of law. “The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process.”² As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases arising out of the riot on January 6, 2021, including misdemeanor cases. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-00238 (TFH), Tr. 8/4/2021 at 3 (As Judge Hogan noted, “As to probation, I don’t think anyone should start off in these cases with any presumption of probation. I think the presumption should be that these offenses were an attack on our democracy and that jail time is usually – should be expected.”) Although this specific factor weighs in favor of incarceration, the other factors identified in this memorandum favor a more lenient sentence.

² FBI Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter “FBI Director Wray’s Statement”), available at: <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>.

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). The demands of general deterrence weigh in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the transfer of power. As noted by Judge Moss during sentencing in *United States v. Paul Hodgkins*, 21-cr-00188 (RDM):

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

Tr. 7/19/2021 at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70.

The gravity of these offenses demands deterrence. This was not a protest. *See id.* at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”). And it is important to convey to future rioters and would-be mob participants—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

On one hand, Gallagher knew that his entry in the Capitol was unlawful, and it was evident to him and anyone else at the Capitol that the situation outside and inside the building had devolved into a riot. On the other hand, his conduct falls toward the low end of the spectrum of criminality that occurred on January 6.

As discussed above, Gallagher's actions at the Capitol were limited, and he was willing to cooperate with law enforcement when he was rearrested in New Hampshire on January 15. Gallagher's expression of contrition and his shame for what he did suggest that he understands the gravity of his offense and that he will not reoffend – or at least he will think twice before engaging in further criminal conduct. Although the need to deter what happened in general on January 6 favors incarceration, the facts of Gallagher's specific case and his subsequent actions favor a more lenient sentence.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law-enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on his or her individual circumstances, but with the backdrop of January 6 in mind. Moreover, each offender's case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the Capitol on January 6, 2021, were not minor crimes. A probationary sentence should not necessarily become the default. Indeed, the government invites the Court to join Judge Lamberth's admonition that "I don't want to create the impression that probation is the automatic outcome here because it's not going to be." *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL),

Tr. 6/23/2021 at 19; *see also United States v. Valerie Ehrke*, 1:21-cr-00097(PFF), Tr. 9/17/2021 at 13 (“Judge Lamberth said something to the effect . . . ‘I don't want to create the impression that probation is the automatic outcome here, because it’s not going to be.’ And I agree with that. Judge Hogan said something similar.”) (statement of Judge Friedman).

After a review of the applicable § 3553 factors, the government believes that a one-month term of home confinement followed by probation, plus a fine and the agreed-upon restitution, is appropriate.

V. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, some of those factors support a sentence of incarceration, but most of them support a more lenient sentence. Balancing these factors, the government recommends that this Court sentence Gallagher to one-month of home confinement, 60 hours of community service, a fine, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on his liberty as a consequence of his behavior, while recognizing his relatively brief entry into the Capitol and his early acceptance of responsibility. It also allows continued monitoring of Gallagher in the event of future participation in similar conduct.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 5, 2021, I served a copy of the foregoing on all parties to this matter as listed in the Court's Electronic Case Files system.

/s/ Seth Adam Meinero

SETH ADAM MEINERO

Trial Attorney

Detailer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Case No: 6:21-CR-41 (CJN)
	:	
	:	
	:	40 U.S.C. § 5104(e)(2)(G)
	:	(Parading Demonstrating, or Picketing in
v.	:	a Capitol Building)
	:	
THOMAS GALLAGHER,	:	
	:	
Defendant.	:	
	:	

STATEMENT OF OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Thomas Gallagher, with the concurrence of his attorney, agree and stipulate to the below factual basis for the defendant’s guilty plea—that is, if this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

The Attack at the U.S. Capitol on January 6, 2021

1. The United States Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by 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 people with appropriate identification are allowed access inside the Capitol.

2. On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the Capitol. 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 Capitol to certify the vote count of the Electoral College of 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. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. 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 Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

6. At such time, the certification proceedings were still underway and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the Capitol, including by breaking

windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the Capitol, including the danger posed by individuals who had entered the Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

Gallagher's Participation in the January 6, 2021, Capitol Riot

8. Gallagher traveled from New Hampshire to attend the rally the former president, Donald Trump, planned to hold in Washington, D.C. on January 6, 2021. After attending the rally that day, Gallagher made his way to the Capitol.

9. Shortly after 2:30 p.m., video surveillance captured Gallagher walking in the Capitol Visitors Center, which is part of the Capitol building. At one point, Gallagher appeared to admonish another rioter not to throw a chair. Gallagher and others gathered in a corridor at the end of which U.S. Capitol Police officers had formed a defensive line. The officers issued commands for the rioters to leave the building. When rioters refused their commands, the officers

began arresting individuals who had unlawfully entered the building, including Gallagher. The FBI uncovered no evidence that Gallagher engaged in violent or disruptive conduct at the Capitol grounds or inside the building.

10. Gallagher cooperated with law enforcement following his arrest, including consenting to be interviewed by the Federal Bureau of Investigation (“FBI”), though the FBI did not interview him.

11. Gallagher knew at the time he entered the Capitol that he did not have permission to enter the building and he paraded, demonstrated, or picketed inside the building.

Respectfully submitted,

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

By: /s/ Seth Adam Meinero
SETH ADAM MEINERO
Trial Attorney
Detailee
D.C. Bar No. 976587

/s/ Susan Lehr
SUSAN LEHR
Assistant United States Attorney
Detailee
Nebraska Bar No. 19248

DEFENDANT'S ACKNOWLEDGMENT

I, Thomas Gallagher, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

Date: 9 July 2021


Thomas Gallagher
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: 7/9/21



Sebastian M. Norton, Esq.
Attorney for Defendant

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Case No. 1:21-cr-00068 (TNM)
v.	:	
	:	
ELIEL ROSA,	:	
	:	
Defendant.	:	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence Eliel Rosa to one month of home confinement, a probationary term of three years, 60 hours of community service, and \$500 in restitution.

I. Introduction

The defendant, Eliel Rosa, and his codefendant, Jenny Cudd,¹ participated in the January 6, 2021 attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred law enforcement officers, and resulted in more than a million dollars’ worth of property damage.

The government’s recommendation of one month of home confinement is based on a careful evaluation of the defendant’s participation in the January 6 attack on the United States Capitol, his individual conduct on that day, and his statements before and after January 6. Unlike the vast majority of other defendants, Mr. Rosa voluntarily contacted the FBI on January 9, just

¹ Co-defendant Jenny Cudd is charged in the same case, *United States v. Cudd*, 21-cr-68, and trial is scheduled for February 7, 2022.

three days after the attack on the Capitol, to admit that he was one of the individuals who entered the Capitol. However, there is no question that on January 6 Mr. Rosa watched the chaos unfolding in front of him outside the Capitol, yet he marched forward. He marched on the Capitol along with scores of others, he entered the United States Capitol where he knew the Congressional certification was underway, and he remained inside undeterred for at least 20 minutes.

Even though he stands before this Court to be sentenced on a misdemeanor conviction, the Court must also consider that the defendant's conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement, breach the Capitol, and disrupt the proceedings. But for his actions alongside so many others, the riot likely would have failed. Here, the defendant's participation in a riot that actually succeeded in halting the Congressional certification renders the recommended sentence of home confinement both necessary and appropriate in this case.

II. Factual and Procedural Background

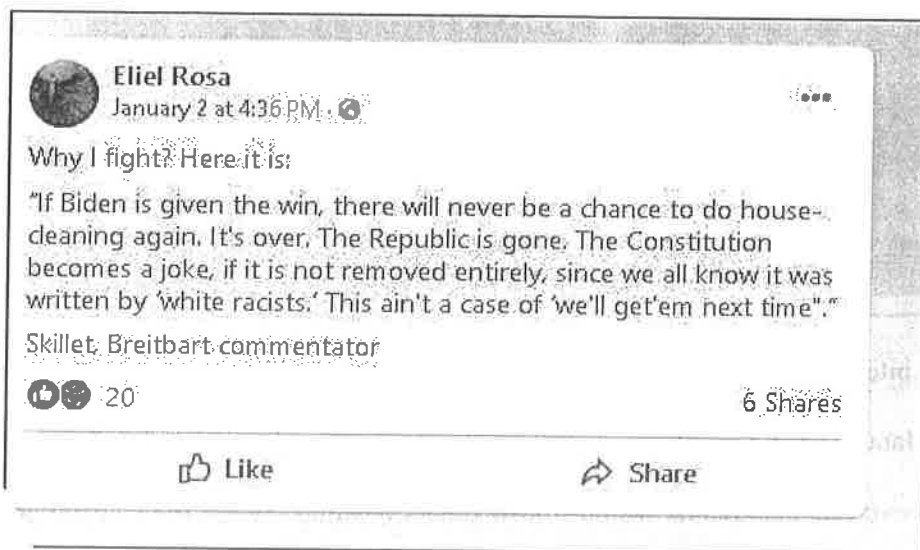
The January 6, 2021 Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the U.S. Capitol. *See* ECF 60 (Statement of Offense), at 1-7. As this Court knows, a riot cannot occur without rioters, and each rioter's actions – from the most mundane to the most violent – contributed, directly and indirectly, to the violence and destruction of that day. With that backdrop we turn to the defendant's conduct and behavior on January 6.

Eliel Rosa's Role in the January 6, 2021 Attack on the Capitol

Eliel Rosa and Jenny Cudd² traveled to Washington, D.C., from their homes in Texas to attend the “Stop the Steal” rally on January 6, 2021. *See* ECF 60 at ¶ 8. Mr. Rosa knew that on January 6, 2021, at the United States Capitol, elected members of the United States House of Representatives and the United States Senate were meeting to certify the vote count of the Electoral College of the 2020 Presidential Election. *Id.*

Mr. Rosa also demonstrated that he understood the Certification would take place at the Capitol on January 6 and that he supported the “fight” to stop “[President] Biden [from being] given the win,” through his posts on Facebook. For example, on January 2, 2021, Mr. Rosa posted the following explaining why he decided to participate.

Image 1

² the FBI, Mr. Rosa explained his relationship to his co-defendant Jenny Cudd. Ms. Cudd and her co-defendant Jenny Cudd held similar beliefs. Although the two are new friends, they both discussed their plans to travel to Washington, D.C. and stay in separate rooms.

On the morning of January 6, 2021, Mr. Rosa posted the below photo and caption, “And we fight!!!”

Image 2



In an interview with the FBI, Mr. Rosa admitted to his conduct on January 6. In the afternoon on January 6, 2021, after listening to President Trump’s speech, Mr. Rosa returned to his hotel, however, he decided he would follow others heading toward the Capitol after learning that Vice President Pence was not going to take action. Mr. Rosa met with his friend Ms. Cudd at the hotel and together they marched toward the United States Capitol where he knew the Congressional certification was taking place. He approached from the West. ECF 60 at ¶ 10. As in an interview with the FBI, Mr. Rosa admitted that he did not travel with the group that he was in the same hotel in

¶ 11. He heard people with megaphones shouting, “Go, Go, Go.” *Id.*

Mr. Rosa marched with the crowd that descended on the United States Capitol, and he heard bangs and acknowledged the smell and presence of pepper spray that had been deployed. *Id.* at ¶ 11. Based on these admitted observations, it is clear that he knew the rioters' conduct was escalating, and he knew the rioters were clashing against law enforcement officers who were protecting the Capitol – yet he continued to march toward the Capitol.

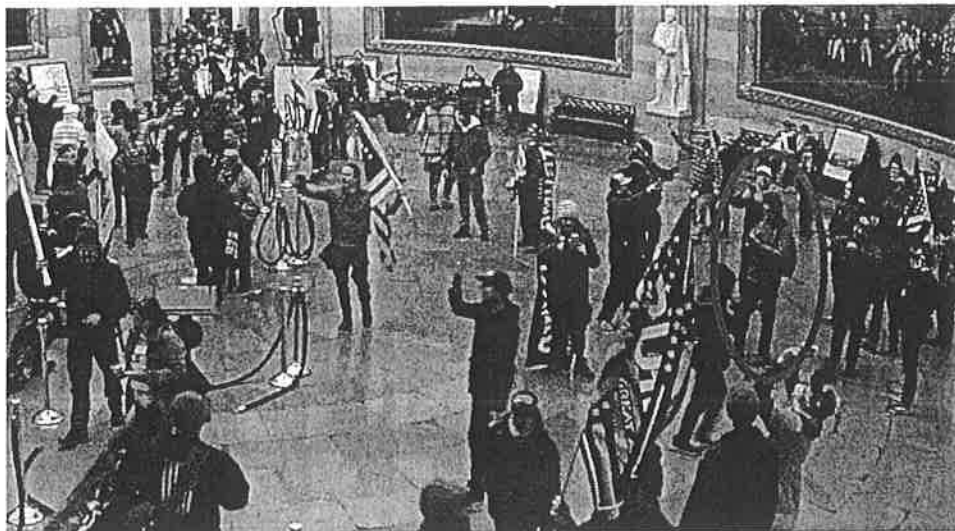
Mr. Rosa was inside the Capitol for 20 minutes, from 2:35 p.m. to 2:54 p.m. At approximately 2:35 p.m., Mr. Rosa and Ms. Cudd walked into the United States Capitol through the Upper West Terrace Door. Below is a screenshot from United States Capitol Police CCTV of Mr. Rosa's entry. Mr. Rosa is circled in red.

Image 3



At 2:36 p.m., Mr. Rosa entered and remained inside the Rotunda until approximately 2:39 p.m., where USCP CCTV captured him taking photos.

Image 4



Mr. Rosa also posted the following third party image on Facebook proudly documenting his time in the Rotunda.

Image 5



From 2:39 p.m. to 2:42 p.m., Mr. Rosa moved through Statuary Hall and the Statuary Hall Connector. At approximately 2:43 p.m., Mr. Rosa along with Ms. Cudd departed from a large crowd in front of the main door of the House Chamber and walked east. They passed the Upper House Door and walked toward the other entrance to the House Chamber.

At approximately 2:54 p.m., Mr. Rosa is observed at the Upper House Door before he exited the Capitol. In the below screenshot from USCP CCTV, law enforcement appears to be escorting the crowd to the exit.

Image 6



In total, Mr. Rosa spent 20 minutes inside of the Capitol. He knew the Certification was underway inside the Capitol, and he admitted that he knew at the time he entered the U.S. Capitol that he did not have permission to do so and that he unlawfully paraded, demonstrated, and/or picketed. *See* ECF 60 at ¶ 19.

Eliel Rosa's Interview

Following the events of January 6, 2021, Mr. Rosa decided to turn himself in. On January 9, 2021, he voluntarily went to the local FBI office to admit that he entered the United States Capitol and he agreed to a voluntary interview with the FBI. At the time, no arrest warrant had been obtained for Mr. Rosa. During the voluntary interview, Mr. Rosa described in detail his participation in the events of January 6 and expressed remorse for his conduct.

The Charges and Plea Agreement

As stated above, on January 9, 2021, Eliel Rosa voluntarily went to the FBI to admit to his unlawful conduct. On January 12, 2021, Mr. Rosa and Ms. Cudd were charged by complaint with violating 18 U.S.C. §§ 1752(a)(1)-(2), and 40 U.S.C. § 5104(e)(2). On February 3, 2021, both defendants were charged by a five-count Indictment with 18 U.S.C. §§ 1512(c)(2) and (2); 18 U.S.C. §§ 1752(a)(1)-(2); and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On July 29, 2021, Mr. Rosa pleaded guilty to Count Five of the Indictment, charging him with a violation of 40 U.S.C. § 5104(e)(2)(G), Parading, Demonstrating, or Picketing in the Capitol Building. By plea agreement, Mr. Rosa agreed to pay \$500 in restitution to the Department of the Treasury.

III. Statutory Penalties

The defendant now faces a sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, the defendant faces up to six months of imprisonment and a fine of up to \$5,000. As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply to it. 18 U.S.C. § 3559; U.S.S.G. §1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. § 3553(a)(6). We therefore turn to these factors.

A. The Nature and Circumstances of the Offense

The attack on the U.S. Capitol, on January 6, 2021, is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was the one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events.

While each defendant should be sentenced based on their individual conduct, as we now discuss, this Court should note that each individual person who entered the Capitol on January 6 did so under the most extreme of circumstances. As a person entered the Capitol, they would—at a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement and likely would have smelled chemical irritants in the air. Make no mistake, no rioter was a mere tourist that day.

Additionally, while looking at the defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical factors, to include: (1) whether, when, how the defendant entered the

Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) the defendant's reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant's time inside of the building, and exactly where the defendant traveled; (7) the defendant's statements in person or on social media; (8) whether the defendant cooperated with, or ignored, law enforcement; and (9) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are not exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

In this case, Mr. Rosa admitted that he knew the Certification was taking place at the Capitol on January 6. He also expressed his feelings on Facebook before January 6. On January 2, he posted a quote to describe why he was participating, in his words, in the "fight." His post is captured in above Image 1. Again, while in D.C. on the morning of January 6, he posted a photo as he walked to the rally stating, "And we fight!!!" as captured in Image 2 above. Further, when he later marched toward the Capitol, and as he got closer to the Capitol Building, he admitted that he heard yelling and chanting, heard bangs, and acknowledged the presence of pepper spray. Based on these observations, he knew that the crowd of individuals in front of him was clashing against law enforcement in front of him, yet he marched forward. Mr. Rosa entered the Capitol, with a larger crowd, through a set of double doors. Certainly, this conduct alone was wrong given the context that day.

While no police officers blocked his path to entry, there were clear signs of violent entry. As they moved through the Capitol, he would have seen broken glass. He would have heard the alarm sounding throughout the Capitol Rotunda and its antechamber: a loud, high-pitched, continuous beeping, similar to a smoke alarm. He was aware that tear gas had been deployed. He

did not stop at the Rotunda, but instead moved deeper into the U.S. Capitol. He remained in the Capitol for 20 minutes, and when he finally decided to leave law enforcement can be seen escorting the crowd toward the exit (see Image 6).

On the other hand, the entirety of Mr. Rosa's entry in the Capitol is captured on CCTV, there is no evidence that the defendant engaged in any violence or destruction of property, and there is no evidence that he destroyed evidence after the riot. Most notably, unlike the vast majority of defendants, he voluntarily contacted the FBI three days later to admit that he was one of the individuals who entered the Capitol, voluntarily interviewed with the FBI, and told them about his actions that day in detail. In the interview, he also expressed remorse for his actions. He stated that he blamed himself for his conduct, that he was ashamed of himself, and that it was the most stupid thing he has done. He stated that he broke the law. He said that he would not hide - Mr. Rosa demonstrated that he was prepared to face the consequences of his actions.

While the nature and circumstances of the offense support a sentence of incarceration, the government also considers Mr. Rosa's lack of participation in any assaultive or destructive conduct, early acceptance of responsibility, compliance with law enforcement, and expressions of remorse. For misdemeanor defendants who, like Eliel Rosa, engaged in conduct that was less egregious considering the nonexclusive factors listed above, the government is more likely to recommend a more lenient sentence. However, a full probationary sentence is not appropriate in this case because, on January 6, Mr. Rosa watched the chaos unfold in front of him outside the Capitol, yet he marched on. He marched on the Capitol along with scores of others, he entered the United States Capitol where he knew the Congressional certification was underway, and he remained inside undeterred for at least 20 minutes.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Eliel Rosa does not have any prior convictions. If the Sentencing Guidelines did apply to his conviction, he would have zero points and would be in Criminal History Category I. This factor supports a more lenient sentence.

In addition, the defendant provided information regarding his personal and family background in his interview with the Presentence Investigation Report writer. *See* ECF 64 (Draft, Presentence Investigation Report) at 11-17. The defense also provided the government with numerous character references and a letter from Mr. Rosa.³ Mr. Rosa's letter to the government described his remorse for his actions on January 6, 2021. Mr. Rosa wrote:

I [Eliel Rosa] want to state, once again, that I am aware of my guilty of trespassing the Capitol facility on January 6, a day of infamy to me for the rest of my brief life on this earth. Yes, I learned the lesson of reaping the fruits of my stupidity in the most painful way. . . . I promise you that I have learned the lesson. . . . I only have good intentions toward this nation in my heart and future plans.[]

. . . I am not asking you to give me mercy. I do deserve my punishment. . . . I never wanted to hurt this nation.

. . . After three months I had, this past week, the courage to watch the videos of that day. The voices of desperation coming from the Capitol Police officers will forever be engraved in my memory. I look forward to the day when I will be able to go to DC again and personally ask for their forgiveness for sadly being apportioned with those who brought so much chaos and pain to them, emotionally and physically.

The government notes that Mr. Rosa voluntarily interviewed with the FBI on January 9 – three days after the Capitol Breach on January 6 – and readily acknowledged his conduct and remorse. While on pretrial release, he complied with his conditions of release, and he expressed

³ Although the defense provided these materials to the government during the course of plea negotiations, the defense agreed that the government could refer to these materials in its sentencing memorandum. Due to the extent of the personal information contained within these materials, the government does not intend to attach these materials to its public filing. The government anticipates the defense will submit these materials in connection with the defense sentencing memorandum.

an interest in pleading guilty early and accepted a plea offer from the government once given the opportunity. When recommending an appropriate sentence, the government gives significant weight to the defendant's early resolution of this case.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the U.S. Capitol building and grounds, and all that it involved, was an attack on the rule of law. "The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process."⁴ As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases arising out of the riot on January 6, 2021, including in misdemeanor cases. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-238-TFH, Tr. at 3 ("As to probation, I don't think anyone should start off in these cases with any presumption of probation. I think the presumption should be that these offenses were an attack on our democracy and that jail time is usually -- should be expected.") (statement of Judge Hogan).

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010).

⁴ Federal Bureau of Investigation Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter "FBI Director Wray's Statement"), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>

General Deterrence

The demands of general deterrence weigh in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the transfer of power. As noted by Judge Moss during sentencing, in *United States v. Paul Hodgkins*, 21-cr-188-RDM:

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

Tr. at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70.

The gravity of these offenses demand deterrence. This was not a protest. *See id.* at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”). And it is important to convey to future rioters and would-be mob participants—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

Specific Deterrence

On the one hand, Mr. Rosa’s actions on January 6, highlight the need for deterrence. He knew the Certification was underway at the Capitol. He acknowledged that through his

observations he knew that the crowd in front of him was clashing against law enforcement protecting the Capitol, yet he continued to march toward the Capitol. And when he entered the Capitol, he proceeded to take out his phone to document what he and his fellow rioters had accomplished. This course of conduct shows a troubling lack of understanding, at least at the time, regarding the extreme seriousness of the situation.

However, as discussed above, Mr. Rosa's actions at the Capitol that day were much more limited than most individuals, and within three days, on January 9, he decided to voluntarily go to the FBI to admit to his conduct. He interviewed with the FBI readily acknowledging his unlawful behavior and his remorse. On January 9, in the interview with the FBI, he stated that he felt it was the most stupid thing he has done, he acknowledged that he messed up big time, and he would take responsibility and not hide. He has shown that he takes this incident seriously through his ready compliance with the FBI and through his subsequent letter to the government.

In short, the question of deterrence, here, is multi-faceted. The demands of general deterrence favor incarceration, but the need for specific deterrence may be met with a less severe sentence.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on their individual circumstances, but with the backdrop of January 6 in mind. Moreover, each offender's case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the

Capitol on January 6, 2021 were not minor crimes. A probationary sentence should not necessarily become the default. Indeed, the government invites the Court to join Judge Lamberth's admonition that "I don't want to create the impression that probation is the automatic outcome here because it's not going to be." *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL), Tr. 6/23/2021 at 19; *see also United States v. Valerie Ehrke*, 1:21-cr-00097 (PFF), Tr. 9/17/2021 at 13 ("Judge Lamberth said something to the effect . . . 'I don't want to create the impression that probation is the automatic outcome here, because it's not going to be.' And I agree with that. Judge Hogan said something similar.") (statement of Judge Friedman).

While the number of sentenced defendants is low, we have already begun to see meaningful distinctions between offenders. Those who engaged in felonious conduct are generally more dangerous, and thus, treated more severely in terms of their conduct and subsequent punishment. Those who trespassed, but engaged in aggravating factors, merit serious consideration of institutional incarceration. While those who trespassed, but engaged in less serious aggravating factors, deserve a sentence more in line with minor incarceration or home confinement. After a review of the applicable Section 3553(a) factors, the government believes that the defendant's conduct falls in the latter category for the reasons articulated above.

V. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, some of those factors support a sentence of incarceration and some support a more lenient sentence. Balancing these factors, the government recommends that this Court sentence Eliel Rosa to one month of home confinement, three years of probation, 60 hours of community service, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on his liberty as a

consequence of his behavior, while recognizing his early acceptance of responsibility. Additionally, such a sentence recognizes that some, but not all of the factors enumerated in Section IV.A., above, apply to his case. It also allows continued monitoring of Mr. Rosa in the event of future participation in similar conduct.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Case No: 21-cr-68 (TNM)

v.

40 U.S.C. § 5104(e)(2)(G)

ELIEL ROSA,

Defendant.

STATEMENT OF OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Eliel Rosa, with the concurrence of his attorney, agree and stipulate to the below factual basis for the defendant’s guilty plea—that is, if this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

The Attack at the U.S. Capitol on January 6, 2021

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by 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 people with appropriate identification are allowed access inside the U.S. Capitol.

2. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the United States 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 United States Capitol to certify the vote count of the Electoral College of 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. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. 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 were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

6. 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 U.S. Capitol Police attempted to maintain order and keep the crowd from entering the 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 law enforcement, as others in the

crowd encouraged and assisted those acts. The riot resulted in substantial damage to the U.S. Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

Eliel Rosa's Participation in the January 6, 2021, Capitol Riot

8. Eliel Rosa and Jenny Cudd traveled from Texas to Washington, D.C. to participate in “Stop the Steal” rallies or protests and to connect with other “Patriots.” Mr. Rosa and Ms. Cudd understood that on January 6, 2021, in Washington, D.C. at the United States Capitol, elected members of the United States House of Representatives and the United States Senate were meeting to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020.

9. After Mr. Rosa saw President Trump’s Tweet telling people to go to D.C., Mr. Rosa booked his airline and hotel to attend the rally on January 6. Mr. Rosa wanted to be there for the historical day and defend the Constitution believing the electoral process was not fair and

clean. Mr. Rosa wanted to join in with his voice for a recount and have the electors be presented with evidence.

10. On January 6, 2021, prior to 2:35 p.m., Eliel Rosa and Jenny Cudd approached the United States Capitol from the West.

11. In front of them, Mr. Rosa observed a large group of individuals shouting and Mr. Rosa heard people with megaphones shouting, "Go, Go, Go." Mr. Rosa heard bangs and acknowledged the smell and presence of pepper spray that had been deployed. Because of these observations, he knew law enforcement was present and in front of the advancing group.

12. At approximately 2:35 p.m., Eliel Rosa and Jenny Cudd walked into the U.S. Capitol through the Upper West Terrace Door. At approximately 2:36 p.m., Jenny Cudd and Eliel Rosa entered the Rotunda of the U.S. Capitol from the west side doorway that leads into the Rotunda. They remained inside the Rotunda until approximately 2:39 p.m. They took pictures of the Rotunda and the surrounding area. They continued walking through the Statuary Hall area of the U.S. Capitol, until 2:43 p.m., when they moved toward the House Chamber and connecting hallways.

13. While Mr. Rosa and Ms. Cudd were inside the U.S. Capitol, Mr. Rosa saw and heard individuals engaging with law enforcement.

14. While inside of the U.S. Capitol, Mr. Rosa heard two gunshots and saw 15 to 20 men banging on assorted doors. These men were wearing "MAGA" gear. Mr. Rosa also saw law enforcement attempting to push people out of the Capitol, as well as smelled tear gas.

15. Mr. Rosa and Ms. Cudd departed the U.S. Capitol near the Upper House Door, at approximately 2:54 p.m.

16. After departing the U.S. Capitol, Mr. Rosa posted on Facebook a photo of himself and Jenny Cudd standing inside the U.S. Capitol.

17. Mr. Rosa acknowledges that he along with Ms. Cudd are captured in photo inside the U.S. Capitol as shown in Image 1 below. Image 2 is a cropped and enlarged portion of the photo showing Mr. Rosa and Jenny Cudd as they looked while inside the U.S. Capitol.

Image 1



Image 2



18. In a subsequent interview with the FBI, Mr. Rosa blamed himself for his unauthorized entry into the U.S. Capitol and stated that he was caught up in “mob rule” at the time.

19. The defendant knew at the time he entered the U.S. Capitol Building that neither he nor Jenny Cudd had permission to enter the building and when Mr. Rosa entered the U.S. Capitol, he unlawfully paraded, demonstrated, and/or picketed.

20. Mr. Rosa has reviewed the allegations in the indictment that relate to his co-defendant, Jenny Cudd, and admits that the allegations are true, or that he does not have sufficient information to dispute or disprove those allegations set forth the indictment. Specifically, this includes that Mr. Rosa does not have information as to Ms. Cudd’s motive and intent when she entered the U.S. Capitol on January 6, 2021 or whether Ms. Cudd had the intent to corruptly obstruct, influence, or impede an official proceeding before Congress – to wit: Congress’s Electoral College Certification on that date.

Respectfully submitted,


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

By: /s/ Amanda Fretto Lingwood
Amanda Fretto Lingwood
Assistant United States Attorney

DEFENDANT'S ACKNOWLEDGMENT

I, Eliel Rosa, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

Date: 07/25/21


Eliel Rosa
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: 7/26/2021


Shelli Peterson
Attorney for Defendant

Exhibit 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

ANDREW RYAN BENNETT,
Defendant.

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Criminal No. 21-CR-227 (JEB)

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence defendant Andrew Ryan Bennett to three months of home confinement, a probationary term of three years, 60 hours of community service, and \$500 in restitution.

I. Introduction

Bennett participated in the January 6, 2021, attack on the United States Capitol – a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured over 100 law-enforcement officers, and resulted in over \$1.4 million worth of property damage.

The government’s recommendation of three months of home confinement is based on a careful evaluation of the defendant’s conduct on January 6, and his statements before and after his breach of the Capitol. Bennett espoused conspiracy theories about the election, was an apparent admirer of the Proud Boys (several of whom have been charged for their conduct on January 6), and sent a boastful post regarding his unlawful entry into the Capitol. But he also admonished

others not to be destructive or fight with officers, cooperated fully from an early stage with federal authorities, and did not personally engage in violence or property destruction.

Bennett stands before this Court to be sentenced on a misdemeanor conviction, but his conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement, breach the Capitol, and disrupt the proceedings. But for his actions alongside so many others, the riot likely would have failed.

II. Factual and Procedural Background

The January 6, 2021, Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the Capitol in ECF No. 22, at 1-3. As this Court knows, a riot cannot occur without rioters, and each rioter's actions—from the most mundane to the most violent—contributed, directly and indirectly, to the violence and destruction of that day.

Bennett's Role in the January 6, 2021, Attack on the Capitol

According to evidence obtained from Facebook, on November 9, 2020, Bennett commented on a Facebook post, "Stop the steal! We love all no matter the age, race, sex, or political views if you feel something was wrong with this election please like and share!" In the weeks that followed, he posted and shared others' communications and conspiracy theories about how the election was fraudulent. On January 4, 2021, he posted to his Facebook page, "You better be ready chaos is coming and I will be in DC on 1/6/2021 fighting for my freedom!," as reflected in this screenshot from Facebook records pertaining to his account:

You better be ready chaos is coming and I will be in DC on 1/6/2021 fighting for my freedom! #FIGHTBACK ☐☐ for Lin Wood and his family! PS. #BidensLaptopMatters #FUCKCANCEL CULTURE #FUCKANTIFA #FUCKCOMMIESCUM #FUCKCHINA #STOPTHESTEAL This is my ___line___ ether you with me or against me FAFO! Keep thinking I'm crazy! Remember these dates 1/6, 1/11, 1/12 <https://www.fox5dc.com/news/dc-says-no-guns-allowed-during-maga-election-protest> MAGA Caravan heading from Cali to DC credit to the person who posted this pic in my discord chat they know who they are!

On January 6, 2021, Bennett made his way to the Capitol grounds and began livestreaming video to his Facebook page from outside the building at approximately 1:00 p.m. The video shows he situated himself within the growing crowd on the West Front of the Capitol, where individuals were engaging in a variety of conduct. As captured during this early stage of the Capitol attack, some conversed peacefully with a defensive line of police officers that was growing increasingly outnumbered, and chanted supportive things such as, “we support the blue.” But others taunted the officers with chants of “do your job,” and sporadically threw objects at them. Someone near Bennett exhorted others to “move forward.” Bennett joined chants of “U.S.A.” He yelled at an officer at an elevation who was aiming a less-than-lethal munition rifle at the growing mob, “What, are you gonna shoot?”

During the course of Bennett’s approximately 25-minute video, the crowd grew louder, more restless, and more raucous. At approximately the 20:40 mark, a bang sounded from a less-than-lethal munition U.S. Capitol Police had deployed. Near the end of the video, Bennett captured individuals tussling with officers and becoming increasingly violent as officers tried to hold their fragile line. All this reflects what Bennet saw before he made the decision to enter the Capitol itself.

Video evidence shows that at approximately 2:12 p.m., rioters breached the Capitol’s Senate Wing Door. At 2:14 p.m., Bennett unlawfully entered there along with hundreds of other individuals. By the time he entered, windows on either side of the doorway had been smashed,

and rioters began cascading through both the doorway and the windows. A few seconds after entering, he pumped his fist for a moment and embraced a woman who unlawfully entered the doorway shortly after him. At approximately 2:17 p.m., Bennett posted on Facebook, “We in this bitch.”

Over the course of approximately 29 minutes beginning at 2:17 p.m., Bennett livestreamed three additional videos from inside the building. During at least two points in those videos, Bennett admonished others not to be destructive inside the Capitol. At another point, he admonished others not to fight with officers. He captured rioters swarming into the Capitol Crypt, chanting “our house” and “stop the steal,” and screaming at police officers who quickly became woefully outnumbered. Officers had no choice but to fall back.

Bennett joined multiple chants of “U.S.A.” inside the building. At several points, he turned the camera on himself and captured himself wearing a hat with the letters “FAFO”—an abbreviation of a slogan, “F*** Around and Find Out,” popular among the Proud Boys, a far-right group—as depicted in this screenshot:



Bennett moved with the stream of the mob through multiple parts of the Capitol, including the Rotunda, Statuary Hall, and the vicinity of the Speaker's Lobby. He captured rioters attempting to breach doors near the Speaker's Lobby and the audio of the gunshot that fatally wounded another rioter. After hearing the shot, Bennett rushed to the area of that incident, and screamed at officers, "You f***ing killed her!" He admitted being emotionally shaken up and leaving the building shortly after.

There is no evidence Bennett was violent or destructive on the grounds of or inside the Capitol.

On January 11, 2021, the Federal Bureau of Investigation ("FBI") obtained a search warrant for Bennett's residence in Columbia, Maryland. During the execution of the warrant, the FBI recovered the hat bearing the "FAFO" slogan that Bennett wore inside the Capitol. Following the search, Bennett voluntarily interviewed with the FBI, admitted that he unlawfully entered the Capitol on January 6, 2021, and according to the FBI, admitted it was "wrong to be inside the building." He also provided the unlock code of his cellphone to the FBI so FBI could search the device, and has been entirely cooperative with the government's investigation since his arrest on January 26, 2021. Bennett also submitted to a second interview with the FBI after his arrest, during which he was forthcoming.

Upon further investigation, the FBI found that while Bennett attempted to contact a Maryland chapter of the Proud Boys about becoming a member, it did not find evidence that Bennett is a member of or associate of any organized chapter of the Proud Boys.

Bennett knew at the time he entered the Capitol that he did not have permission to enter the building and he paraded, demonstrated, or picketed inside the building. ECF 22 (Statement of Offense at ¶¶ 8-12); Presentence Report ("PSR") at 5-6.

The Charges and Plea Agreement

On January 21, 2021, Bennett was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1)-(4), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On January 26, 2021, he was arrested after self-surrendering to the FBI in Washington, D.C. On March 17, 2021, Bennett was charged by Information with four counts, violations of 18 U.S.C. §§ 1752(a)(1) and (2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On July 22, 2021, he pleaded guilty to Count Four of the Information, which charged a violation of 40 U.S.C. § 5104(e)(2)(G). In his plea agreement, Bennett agreed to pay \$500 in restitution to the Department of the Treasury.¹

III. Statutory Penalties

The defendant now faces sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, the defendant faces up to six months of imprisonment and a fine of up to \$5,000. As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply to it. 18 U.S.C. § 3559(a)(7); U.S.S.G. §1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, § 3553(a)(6).

¹ The actual payee of the restitution should be the Architect of the Capitol, as indicated in the PSR at 19.

A. The Nature and Circumstances of the Offense

The attack on the Capitol on January 6, 2021, is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events. So too does the conviction this defendant now faces. Picketing, demonstrating, or parading at the Capitol as part of the riot on January 6 was not like picketing at the Capitol some other day, without other or with relatively few rioters present.

All defendants should be sentenced based on their individual conduct. But this Court should note that each individual person who entered the Capitol on January 6 did so under the most extreme of circumstances, and Bennett is no exception.

Bennett began livestreaming a near-25-minute-long video from outside the Capitol at 1:00 p.m., and positioned himself on the West Front. As this video shows, it would have been evident to any reasonable person that the crowd massed there was devolving into a riotous mob. Bennett captured objects sporadically being thrown at officers, people chanting “do your job” at them, the bang from a less-than-lethal munition, and rioters growing increasingly loud and angry and beginning to fight officers. Despite what he witnessed about the nature of this event—and all the other things he would have likely observed, such as more extensive fighting with officers and the deployment of chemical irritants later on—Bennett still unlawfully entered the building. Further, he certainly would have seen evidence of the violent breach and smashing of windows at the Senate Wing Door just two minutes before his entry there. Make no mistake, neither Bennett nor any other rioter was a mere tourist that day.

Additionally, while looking at a defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical factors, including: (1) whether, when, and how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) the defendant's reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant's time inside the building, and exactly where the defendant traveled; (7) the defendant's statements in person or on social media; (8) whether the defendant cooperated with, or ignored, law enforcement; and (9) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are not exhaustive or dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

Bennett's participation in the riot was not made on a whim. From Election Day until January 6, 2021, he communicated through Facebook multiple times about the need to "Stop the Steal" and his and others' belief the election was fraudulent. He believed he needed to travel to Washington on January 6 to "fight[] for my freedom!" He observed the crowd on the West Front escalating to a violent mob, yet still joined it to unlawfully enter the building, briefly pumping his fist and later boasting, "We in this bitch." While he commendably admonished others not to be violent or destructive inside, he observed countless acts of disorderly conduct and police being overwhelmed, and still remained in the building for over a half-hour—not a short period—until just after the fatal shooting of the other rioter.

The government has no evidence that Bennett engaged in any violence or destruction of property. Multiple times, he admonished rioters not to fight with officers or be destructive, which is commendable. Nor does the government have reason to believe Bennett destroyed evidence.

To the contrary, he consented to an additional search of his cellphone to access additional data following the execution of a prior search warrant for that phone. He complied with both of FBI's requests for interviews. He also consented to checking in daily with FBI between the date of the search-warrant execution at his home and his self-surrender and arrest in Washington, D.C.

To his credit, Bennett expressed a very early desire to "get past" this prosecution and plead guilty. However, while Bennett admitted to FBI in January that it was "wrong to be inside the building," it is unclear whether he expressed remorse to the U.S. Probation Officer who prepared the presentence report. *See* PSR at 7 (Bennett "accepted responsibility for his criminal conduct in the instant offense by accepting the elements of the count of conviction and concurring with the factual summary as recited by the government at the time of his guilty plea," but "made no further statement about his criminal conduct on the advice of counsel").

The nature and circumstances of the offense supports a sentence of incarceration. However, for misdemeanor defendants who, like Bennett, engaged in conduct that was less egregious considering the nonexclusive factors listed above, the government is more likely to recommend a more lenient sentence.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Bennett's criminal history consists of five criminal convictions from 2003-11, all of which involved property and drug-possession crimes. For his "Theft Less Than \$500 Value" conviction in 2005, he received a sentence of "18 months custody," all suspended. PSR at 8-9. Due to the staleness of these offenses, he would likely have zero points if the Sentencing Guidelines did apply to his offense of conviction. USSG § 4A1.2(c)(2). Accordingly, he would be in Criminal History Category I. USSG §§ 4A1.1, 5A. Bennett is a

general manager at a casual, family chain restaurant, and will remain employed at sentencing. This factor supports a more lenient sentence.

The government also notes that from an early point in the case, through his attorney, Bennett expressed a desire to plead guilty, acknowledge his conduct, and promptly resolve and “get past” his case. When recommending an appropriate sentence, the government gives significant weight to Bennett’s early resolution of this case.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the Capitol building and grounds, and all that it involved, was an attack on the rule of law. “The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process.”² As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases arising out of the riot on January 6, 2021, including misdemeanor cases. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-00238 (TFH), Tr. at 3 (As Judge Hogan noted, “As to probation, I don’t think anyone should start off in these cases with any presumption of probation. I think the presumption should be that these offenses were an attack on our democracy and that jail time is usually – should be expected.”)

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir.

² FBI Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter “FBI Director Wray’s Statement”), available at: <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>.

2010). The demands of general deterrence weigh in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the transfer of power. As noted by Judge Moss during sentencing, in *United States v. Paul Hodgkins*, 21-cr-00188 (RDM):

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

Tr. at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70.

The gravity of these offenses demands deterrence. This was not a protest. *See id.* at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”). And it is important to convey to future rioters and would-be mob participants—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

Bennett’s conduct highlights the need for specific deterrence as well. In his pre-riot post on Facebook and on the hat he wore to the Capitol, he invoked the truculent “FAFO” rhetoric of the Proud Boys, a group he apparently admires and inquired about joining. His boast of “We in this bitch”—despite knowing full well that his and the other rioters’ incursion was unlawful—is

troubling, and he disregarded the escalating violence brewing all around him on the West Front and the destruction that had already occurred when he entered the Senate Wing Door.

The ambiguity of Bennett's contrition also underscores the need for his own specific deterrence. This factor favors incarceration.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on his or her individual circumstances, but with the backdrop of January 6 in mind. Moreover, each offender's case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the Capitol on January 6, 2021, were not minor crimes. A probationary sentence should not necessarily become the default. Indeed, the government invites the Court to join Judge Lamberth's admonition that "I don't want to create the impression that probation is the automatic outcome here because it's not going to be." *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL), Tr. 6/23/2021 at 19. At this time, no unwarranted sentencing disparities exist, nor does the government's request create one.

While the number of sentenced defendants is low, we have already begun to see meaningful distinctions between offenders. Those who engaged in felonious conduct are generally more dangerous, and thus, treated more severely in terms of their conduct and subsequent punishment. Those who trespassed, but engaged in aggravating factors, merit serious consideration of active

incarceration. While those who trespassed, but engaged in less serious aggravating factors, deserve a sentence more in line with minor incarceration or home confinement.

After a review of the applicable § 3553 factors, the government believes that Bennett's conduct falls in the latter category. Nevertheless, he invoked pugnacious rhetoric in posting his intention to travel to Washington on January 6, wore the "FAFO" hat to the Capitol, boasted of his trespass, and unlawfully remained for about 30 minutes inside the building. Thus, he should not be compared to those who obtained just a probationary sentence.

V. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, some of those factors support a sentence of incarceration and some support a more lenient sentence. Balancing these factors, the government recommends that this Court sentence Bennett to three months of home confinement, three years of probation, 60 hours of community service, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on his liberty as a consequence of his behavior, while recognizing his early acceptance of responsibility. Additionally, such a sentence recognizes that some, but not all of the factors enumerated in Section IV.A., above, apply to his case. It also allows continued monitoring of Bennett in the event of future participation in similar conduct—a concern occasioned by the myriad conspiracy theories and false statements about the election in his Facebook communications and his apparent affinity for the Proud Boys and their combative, baneful rhetoric.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

By: /s/ Seth Adam Meinero
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202-252-5847
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 21, 2021, I served a copy of the foregoing on all parties to this matter as listed in the Court's Electronic Case Files system.

/s/ Seth Adam Meinero
SETH ADAM MEINERO
Trial Attorney
Detailee

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

UNITED STATES OF AMERICA	:	Case No: 21-CR-227 (JEB)
	:	
	:	
	:	40 U.S.C. § 5104(e)(2)(G)
	:	(Parading Demonstrating, or Picketing in
v.	:	a Capitol Building)
	:	
ANDREW RYAN BENNETT,	:	
	:	
Defendant.	:	
	:	

STATEMENT OF OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Andrew Ryan Bennett, with the concurrence of his attorney, agree and stipulate to the below factual basis for the defendant’s guilty plea—that is, if this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

The Attack at the U.S. Capitol on January 6, 2021

1. The United States Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by 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 people with appropriate identification are allowed access inside the Capitol.

2. On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the Capitol. 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 Capitol to certify the vote count of the Electoral College of 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. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. 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 Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

6. At such time, the certification proceedings were still underway and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the Capitol, including by breaking

windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the Capitol, including the danger posed by individuals who had entered the Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

Bennett's Participation in the January 6, 2021, Capitol Riot

8. According to evidence obtained from Facebook, on January 4, 2021, Bennett posted the following to his Facebook page: “You better be ready chaos is coming and I will be in DC on 1/6/2021 fighting for my freedom!”

9. On January 6, 2021, Bennett made his way to the Capitol grounds and began livestreaming video to his Facebook page from outside the building at approximately 1:00 p.m. Bennett eventually unlawfully entered the Capitol along with hundreds of other individuals. At approximately 2:17 p.m., 2:37 p.m., and 2:42 p.m., Bennett livestreamed three videos from inside the building to his Facebook page. During one point in one of those videos, Bennett admonished

others not to be destructive inside the Capitol. At multiple points, Bennett turned the camera on himself and captured himself inside the building, wearing a hat with the letters “FAFO,” an abbreviation of a slogan popular among the Proud Boys, a far-right group. There is no evidence Bennett was violent or destructive on the grounds of or inside the Capitol.

10. On January 11, 2021, the Federal Bureau of Investigation (“FBI”) obtained a search warrant for Bennett’s residence in Columbia, Maryland. During the execution of the warrant, the FBI recovered the hat bearing the “FAFO” slogan that Bennett wore inside the Capitol. Following the search, Bennett voluntarily interviewed with the FBI, and admitted that he unlawfully entered the Capitol on January 6, 2021. He also provided the unlock code of his cellphone to the FBI so FBI could search the device, and has been entirely cooperative with the government’s investigation since his arrest on January 26, 2021.

11. Upon further investigation, the FBI found that while Bennett attempted to contact a Maryland chapter of the Proud Boys about becoming a member, it did not find evidence that Bennett is a member of or associate of any organized chapter of the Proud Boys.

12. Bennett knew at the time he entered the Capitol that he did not have permission to enter the building and he paraded, demonstrated, or picketed inside the building.

Respectfully submitted,

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

By: /s/ Seth Adam Meinero
SETH ADAM MEINERO
Trial Attorney
Detailee
D.C. Bar No. 976587

DEFENDANT'S ACKNOWLEDGMENT

I, Andrew Ryan Bennett, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

Date: 7/13/2021

Andrew R Bennett
Andrew Ryan Bennett
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: 7/13/21

Carlos Vanegas
Carlos Vanegas
Attorney for Defendant

Exhibit 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Case No. 1:21-cr-00238 (TFH)
v.	:	
	:	
JESSICA LOUISE BUSTLE,	:	
	:	
Defendant.	:	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence Jessica Bustle to three months of home confinement, a probationary term of three years, 40 hours of community service, and \$500 in restitution.

I. Introduction

The defendant, Jessica Bustle, and her codefendant, Joshua Bustle, participated in the January 6, 2021 attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred law enforcement officers, and resulted in more than a million dollars’ worth of property damage. The government recognizes that Jessica Bustle did not personally engage in or espouse violence or property destruction and accepted responsibility early. On the other hand, Jessica Bustle sought to minimize, and at times justify, the rioters’ conduct on January 6. Her language—as described herein—was incendiary. The defendant stands before this Court to be sentenced on a misdemeanor conviction, but her conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement;

breach the Capitol, and disrupt the proceedings. But for her actions alongside so many others, the riot likely would have failed.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the U.S. Capitol. *See* ECF No. 25, at 1-3. As this Court knows, a riot cannot occur without rioters, and each rioter's actions – from the most mundane to the most violent – contributed, directly and indirectly, to the violence and destruction of that day. With that backdrop we turn to the defendant's conduct and behavior on January 6.

Jessica Bustle's Role in the January 6, 2021 Attack on the Capitol

On January 6, 2021, Jessica Bustle and Joshua Bustle drove to Washington, D.C., from their home in Bristow, Virginia. They entered the Capitol together at approximately 2:50 p.m., through a second-floor door near the rotunda, and remained inside for about 20 minutes. That door had been breached by other rioters about 30 minutes before they entered. They walked directly into the rotunda, arriving at around the same time as a contingent of police, and eventually left, as police officers cleared the rotunda, through the same door where they entered.

Jessica Bustle wrote on Facebook about the events at the Capitol. Before the riot, she wrote that “[w]e don't win this thing sitting on the sidelines. Excited to stand for truth with my fellow patriots and freedom fighters in DC today.” After the riot, she wrote that Vice President of the United States was a “traitor.” She acknowledged her goal, and the goal of other rioters, when she wrote “we stormed the Capitol.”

In another, very long post, Ms. Bustle wrote:

The amount of misinformation I'm seeing is insane. Despite what you're being fed, the rally was nothing like what the media is portraying. ... When we finally decided

to head over to the capitol we were let in... like literally, my husband and I just WALKED right in with tons of other people. ... Yes, some Trump supporters were supposedly unruly ... pushed past police to take selfies in congress seats ... but seriously ... members of congress reassembled in the SAME place that was supposedly destroyed. ... People were simply making their presence known. Finally growing a backbone! This election has been undermined and stolen. People are tired of being LIED to and CHEATED. We need a Revolution! We can accept an honest and fair election but this is NOT fair and patriots don't want to see their country brought into communism and destroyed over a lie. And I'm proud of them from [*sic*] standing up!

Jessica Bustle has admitted that she knew she did not have permission to enter the Capitol building and that she acted with the intent to parade, demonstrate, and picket within the building. In part, she sought to parade, demonstrate, and picket against the certification of the electoral vote. *See* Statement of Offense ¶¶ 10-13; PSR (Jessica Bustle) at ¶¶ 18-21. At the change of plea hearing, Jessica Bustle admitted to writing several of the statements of above, which are memorialized in the Statement of Offense. She also noted that she also said other, kinder things on Facebook such as “Pray for America!”¹

The Charges and Plea Agreement

On March 4, 2021, Jessica Bustle was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On March 8, 2021, she was arrested at her home in Bristow, Virginia. On March 22, 2021, Jessica Bustle was charged by Information with the same crimes. On June 14, 2021, she pleaded guilty to Count Four of the Information, charging her with a violation of 40 U.S.C. § 5104(e)(2)(G). In her plea agreement, Jessica Bustle agreed to pay \$500 in restitution to the Department of the Treasury.

¹ Jessica Bustle likely was referring to the following post, which reads in full: “Pence is a traitor. We stormed the capital [*sic*]. An unarmed peaceful woman down the hall from us was shot in neck by cops. It's insane here. We're safe and heading home but have limited service. Video of woman will be shown on (banned.video) tune in now! Pray for America!!!!”

III. Statutory Penalties

The defendant now faces a sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, the defendant faces up to six months of imprisonment and a fine of up to \$5,000. As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply to it. 18 U.S.C. § 3559; U.S.S.G. §1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. § 3553(a)(6). We therefore turn to these factors.

A. The Nature and Circumstances of the Offense

The attack on the U.S. Capitol, on January 6, 2021 is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was the one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events. So, too, does the conviction this defendant now faces. Picketing, demonstrating, or parading at the Capitol as part of the riot on January 6 is not like picketing at the Capitol some other day, without other rioters present.

While each defendant should be sentenced based on their individual conduct, as we now discuss, this Court should note that each individual person who entered the Capitol on January 6 did so under the most extreme of circumstances. As a person entered the Capitol, they would—at

a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement and likely would have smelled chemical irritants in the air. Make no mistake, no rioter was a mere tourist that day.

Additionally, while looking at the defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical factors, to include: (1) whether, when, how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) the defendant's reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant's time inside of the building, and exactly where the defendant traveled; (7) the defendant's statements in person or on social media; (8) whether the defendant cooperated with, or ignored, law enforcement; and (9) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are not exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

Shortly after 2:50 p.m., Jessica Bustle entered the Capitol through a door on the east side of the Capitol Building's second floor, near the rotunda. She entered immediately ahead of Joshua Bustle, who followed closely behind her, appearing to film her with his cell phone. After entering, Jessica Bustle immediately walked toward the rotunda. She happened to enter the rotunda around the same time as a detachment of Metropolitan Police Department officers arrived and began to corral the rioters. Shortly thereafter, the Metropolitan Police Department officers and a group of U.S. Capitol Police officers began to tighten their lines, making the crowd of rioters more compact

and eventually forcing them from the rotunda. Jessica Bustle was among this crowd. After leaving the rotunda, she left the Capitol through the same doors where she had entered.

The government has no evidence that Jessica Bustle engaged in any violence or destruction of property; nor that she destroyed evidence after the riot. She entered the building approximately thirty minutes after other rioters first breached that door. By the time she entered, the doors were wide open, and police officers stood on either side of the door as a group of rioters crowded the opening. And yet, there were clear signs of damage. The doors through which she entered had their windows smashed in. She would have heard an alarm sounding throughout the Capitol rotunda and its antechamber: a loud, high-pitched, continuous beeping, similar to a smoke alarm.

While the nature and circumstances of the offense supports a sentence of incarceration, for misdemeanor defendants who, like Jessica Bustle, committed fewer of the non-exclusive factors listed above, the government is more likely to recommend a more lenient sentence.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Jessica Bustle's criminal history consists of several traffic infractions, with the disposition unclear as to some of these matters, plus a misdemeanor disorderly conduct charge. (Dkt. 27 ¶¶ 29-37.) If the Sentencing Guidelines did apply to her offense of conviction, she likely would have zero points. USSG § 4A1.2(c)(2). Accordingly, she would be in Criminal History Category I. USSG §§ 4A1.1, 5A. Jessica Bustle has held full-time employment in the past but is now a full-time parent. This factor supports a more lenient sentence.

The government also notes that from the outset, through her attorney, Jessica Bustle expressed a desire to plead guilty, acknowledge her conduct, and promptly resolve her case. When recommending an appropriate sentence, the government gives significant weight to the defendant's early resolution of this case.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the U.S. Capitol building and grounds, and all that it involved, was an attack on the rule of law. “The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process.”² As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases arising out of the riot on January 6, 2021, including in misdemeanor cases.

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). The demands of general deterrence weigh in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the transfer of power. As noted by Judge Moss during sentencing, in *United States v. Paul Hodgkins*, 21-cr-188-RDM:

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

² Federal Bureau of Investigation Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter “FBI Director Wray’s Statement”), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>

Tr. at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70.

The gravity of these offenses demand deterrence. This was not a protest. *See id.* at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”). And it is important to convey to future rioters and would-be mob participants—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

Jessica Bustle’s words highlight the need for deterrence. According to Jessica Bustle, the Vice President of the United States was a “traitor.” She acknowledged her goal, and the goal of other rioters, when she wrote “we stormed the Capitol.” She wrote that the media was misrepresenting the riot, which was flatly untrue: violence was obvious and abundant. She made the riot appear peaceful by claiming that “my husband and I just WALKED right in with tons of other people.” This ignored the violence that preceded the Bustles’ entry into the Capitol, and allowed them to enter, the effects of which they would have seen and heard: barricades that had been moved or destroyed; windows that had been smashed at their point of entry; and alarms sounding throughout the building. She described rioters as unruly, but their actions harmless, noting that “members of congress reassembled in the SAME place that was supposedly destroyed.” Those members of Congress did reassemble, but only after hours of sheltering in fear for their lives. The dissonance is startling.

Finally, of the argument that people “shouldn’t have gone into the capitol at all,” Jessica Bustle wrote,

People were simply making their presence known. Finally growing a backbone! This election has been undermined and stolen. People are tired of being LIED to and CHEATED. We need a Revolution! We can accept an honest and fair election but this is NOT fair and patriots don’t want to see their country brought into communism and destroyed over a lie. And I’m proud of them from [sic] standing up!

In Jessica Bustle’s view, the riot was justified, the rioters should be proud of their involvement, and the rioters’ conduct was beyond reproach. This provided a framework within which Jessica Bustle allowed herself to ignore the real evidence, which was easy to find, that all the violence was perpetrated by people who shared her goal of storming the Capitol and stopping the certification of the Electoral College vote. And, more seriously, she held out her own experience as a reason for others to ignore indisputable video evidence of violence.

On the one hand, for a defendant like Jessica Bustle who accepts responsibility early, the government expects that the goal of specific deterrence will be obtained by the prosecution and conviction itself. But on the other hand, the defendant’s failure to acknowledge the dangers and violence of January 6, 2021 underscore the need for her own specific deterrence. This factor favors incarceration.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on their individual circumstances, but with the backdrop of January 6 in mind. Moreover, each offender’s case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor

defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the Capitol on January 6, 2021 were not minor crimes. A probationary sentence should not necessarily become the default. Indeed, the government invites the Court to join Judge Lamberth's admonition that "I don't want to create the impression that probation is the automatic outcome here because it's not going to be." *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL), Tr. 6/23/2021 at 19. At this time, no unwarranted sentencing disparities exist, nor does the government's request create one.

V. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, some of those factors support a sentence of incarceration and some support a more lenient sentence. Balancing these factors, the government recommends that this Court sentence Jessica Bustle to three months of home confinement, three years of probation, 40 hours of community service, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on her liberty as a consequence of her behavior, while recognizing her early acceptance of responsibility. Additionally, such a sentence recognizes that some, but not all of the factors enumerated in Section IV.A., above, apply to her case. It also allows continued monitoring of Jessica Bustle in the event of future participation in similar conduct—a concern occasioned by the self-justification, and calls for revolution, as seen in her Facebook postings.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Case No. 1:21-cr-00238 (TFH)
v.	:	
	:	
JOSHUA KAHLE BUSTLE,	:	
	:	
Defendant.	:	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence Joshua Bustle to one month of home confinement, a probationary term of three years, 40 hours of community service, and \$500 in restitution.

I. Introduction

The defendant, Joshua Bustle, and his codefendant, Jessica Bustle, participated in the January 6, 2021 attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred law enforcement officers, and resulted in more than a million dollars’ worth of property damage. The government recognizes that Joshua Bustle did not personally engage in or espouse violence or property destruction and accepted responsibility early. The defendant stands before this Court to be sentenced on a misdemeanor conviction, but his conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement, breach the Capitol, and disrupt the proceedings. But for his actions alongside so many others, the riot-likely would have failed.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the U.S. Capitol. *See* ECF No. 25, at 1-3. As this Court knows, a riot cannot occur without rioters, and each rioter's actions – from the most mundane to the most violent – contributed, directly and indirectly, to the violence and destruction of that day. With that backdrop we turn to the defendant's conduct and behavior on January 6.

Joshua Bustle's Role in the January 6, 2021 Attack on the Capitol

On January 6, 2021, Joshua Bustle and Jessica Bustle drove to Washington, D.C., from their home in Bristow, Virginia. They entered the Capitol together at approximately 2:50 p.m., through a second-floor door near the rotunda, and remained inside for about 20 minutes. That door had been breached by other rioters about 30 minutes before they entered. They walked directly into the rotunda, arriving at around the same time as a contingent of police, and eventually left, as police officers cleared the rotunda, through the same door where they entered.

Joshua Bustle has admitted that he knew he did not have permission to enter the Capitol building and that he acted with the intent to parade, demonstrate, and picket within the building. In part, he sought to parade, demonstrate, and picket against the certification of the electoral vote. *See* Statement of Offense ¶¶ 10-13; PSR (Joshua Bustle) at ¶¶ 19-22.

The Charges and Plea Agreement

On March 4, 2021, Joshua Bustle was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On March 8, 2021, he was arrested at his home in Bristow, Virginia. On March 22, 2021, Joshua Bustle was charged by Information with the same crimes. On June 14, 2021, he pleaded guilty to Count Four of the Information, which

charged a violation of 40 U.S.C. § 5104(e)(2)(G). In his plea agreement, Joshua Bustle agreed to pay \$500 in restitution to the Department of the Treasury.

III. Statutory Penalties

The defendant now faces a sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, the defendant faces up to six months of imprisonment and a fine of up to \$5,000. As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply to it. 18 U.S.C. § 3559; U.S.S.G. §1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. § 3553(a)(6). We therefore turn to these factors.

A. The Nature and Circumstances of the Offense

The attack on the U.S. Capitol, on January 6, 2021 is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was the one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events. So, too, does the conviction this defendant now faces. Picketing, demonstrating, or parading at the Capitol as part of the riot on January 6 is not like picketing at the Capitol some other day, without other rioters present.

While each defendant should be sentenced based on their individual conduct, as we now discuss, this Court should note that each individual person who entered the Capitol on January 6 did so under the most extreme of circumstances. As a person entered the Capitol, they would—at a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement and likely would have smelled chemical irritants in the air. Make no mistake, no rioter was a mere tourist that day.

Additionally, while looking at the defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical facts, to include: (1) whether, when, how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) the defendant's reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant's time inside of the building, and exactly where the defendant traveled; (7) the defendant's statements in person or on social media; (8) whether the defendant cooperated with, or ignored, law enforcement; and (9) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are not exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

Shortly after 2:50 p.m., Joshua Bustle entered the Capitol through a door on the east side of the Capitol Building's second floor, near the rotunda. He entered immediately behind Jessica Bustle and followed closely behind her, appearing to film her with his cell phone. After entering, Joshua Bustle immediately walked toward the rotunda. He happened to enter the rotunda around the same time as a detachment of Metropolitan Police Department officers arrived and began to

corral the rioters. Shortly thereafter, the Metropolitan Police Department officers and a group of U.S. Capitol Police officers began to tighten their lines, making the crowd of rioters more compact and eventually forcing them from the rotunda. Joshua Bustle was among this crowd. After leaving the rotunda, Joshua Bustle left the Capitol through the same doors where he had entered. Again, he followed immediately behind Jessica Bustle.

The government has no evidence that Joshua Bustle engaged in any violence or destruction of property; nor that he destroyed evidence after the riot; nor that he wrote anything with respect to the riot on social media. He entered the building approximately thirty minutes after other rioters first breached that door. By the time he entered, the doors were wide open, and police officers stood on either side of the door as a group of rioters crowded the opening. And yet, there were clear signs of damage. The doors through which he entered had their windows smashed in. He would have heard an alarm sounding throughout the Capitol rotunda and its antechamber: a loud, high-pitched, continuous beeping, similar to a smoke alarm.

While the nature and circumstances of the offense supports a sentence of incarceration, for misdemeanor defendants who, like Joshua Bustle, committed fewer of the non-exclusive factors listed above, the government is more likely to recommend a more lenient sentence.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Joshua Bustle's criminal history is limited to several traffic infractions, with the disposition unclear as to some of these matters. (Dkt. 28 ¶¶ 29-35.) If the Sentencing Guidelines did apply to his offense of conviction, he would have no criminal history points. USSG § 4A1.2(c)(2). Accordingly, he would be in Criminal History Category I. USSG §§ 4A1.1, 5A. Joshua Bustle holds stable employment. This factor supports a more lenient sentence.

The government also notes that from the outset, through his attorney, Joshua Bustle expressed a desire to plead guilty, acknowledge his conduct, and promptly resolve his case. When recommending an appropriate sentence, the government gives significant weight to the defendant's early resolution of this case.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the U.S. Capitol building and grounds, and all that it involved, was an attack on the rule of law. "The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process."¹ As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases arising out of the riot on January 6, 2021, including in misdemeanor cases.

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). Here, the government expects that the goal of specific deterrence is obtained for the defendant by the prosecution and conviction itself. The personal and reputational consequences the defendant has suffered appear to be sufficient to discourage him from engaging in similar conduct.

¹ Federal Bureau of Investigation Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter "FBI Director Wray's Statement"), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>

The demands of general deterrence, on the other hand, weigh in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the transfer of power. As noted by Judge Moss during sentencing, in *United States v. Paul Hodgkins*, 21-cr-188-RDM:

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

Tr. at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70.

The gravity of these offenses demand deterrence. This was not a protest. *See id.* at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”). And it is important to convey to future rioters and would-be mob participants—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

In short, the question of deterrence, here, is multi-faceted. The demands of general deterrence favor incarceration, but the need for specific deterrence may be met with a less severe sentence.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on their individual circumstances, but with the backdrop of January 6 in mind. Moreover, each offender's case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the Capitol on January 6, 2021 were not minor crimes. A probationary sentence should not necessarily become the default. Indeed, the government invites the Court to join Judge Lamberth's admonition that "I don't want to create the impression that probation is the automatic outcome here because it's not going to be." *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL), Tr. 6/23/2021 at 19. At this time, no unwarranted sentencing disparities exist, nor does the government's request create one.

V. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, some of those factors support a sentence of incarceration and some support a more lenient sentence. Balancing these factors, the government recommends that this Court sentence Joshua Bustle to one month of home confinement, three years of probation, 40 hours of community service, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on Joshua Bustle's liberty as a consequence of his behavior, while recognizing his early acceptance of responsibility. Additionally, such a sentence recognizes that some but not all the factors enumerated in Section

IV.A., above, apply his case. It also allows continued monitoring of Joshua Bustle in the event of future participation in similar conduct.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

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

UNITED STATES OF AMERICA	:	
	:	Case No. 1:21-cr-00238 (TFH)
v.	:	
	:	
JOSHUA KAHLE BUSTLE, and	:	40 U.S.C. § 5104(e)(2)(G)
JESSICA LOUISE BUSTLE,	:	
	:	
Defendants.	:	

STATEMENT OF OFFENSE

1. The Government respectfully submits the following Statement of Offense in support of a plea of guilty by defendants JOSHUA KAHLE BUSTLE and JESSICA LOUISIE BUSTLE to Count Four of the Information in the above-captioned matter.

2. If this case were to go to trial, the government would prove the following facts beyond a reasonable doubt:

3. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by 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 people with appropriate identification are allowed access inside the U.S. Capitol.

4. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

5. On January 6, 2021, a joint session of the United States Congress convened at the United States 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 United States Capitol to certify the vote count of

the Electoral College of 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. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

6. 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 were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

7. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

8. 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 U.S. Capitol Police attempted to maintain order and keep the crowd from entering the 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 law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the U.S. Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

9. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

10. On January 6, 2021, defendant JESSICA LOUISE BUSTLE and her husband, defendant JOSHUA KAHLE BUSTLE, entered the U.S. Capitol building and remained within for at least approximately twenty minutes. Neither defendant had permission or authority to be inside.

11. Records obtained from Google and Verizon confirm that cell phones associated with JOSHUA KAHLE BUSTLE and JESSICA LOUISE BUSTLE were in or around the Capitol building beginning at around 2:30 p.m. Ms. Bustle's device was shown to be in or around the Capitol building from 2:32 p.m. to 2:50 p.m., and Mr. Bustle's device was shown to be in or around the Capitol building from 2:28 p.m. to 3:31 p.m.

12. Video surveillance footage from inside the Capitol building show JOSHUA KAHLE BUSTLE and JESSICA LOUISE BUSTLE enter the U.S. Capitol building via the east entrance to the Capitol rotunda. They remained in and around the Capitol rotunda, from at least about 2:53 p.m. to about 3:10 p.m. In these video segments, both of the BUSTLES carried signs

protesting the U.S. government's efforts to vaccinate the population against COVID-19. JESSICA LOUISE BUSTLE held aloft a double-sided sign as she walked through the Capitol building. One side read, in part, "Vaccine injury is the real pandemic," and the other read, in part, "Mandatory medical procedures have no place in a free society." JOSHUA KAHLE BUSTLE carried a similar sign. At times, he held this sign aloft; at other times, he appeared to record JESSICA LOUISE BUSTLE using his cell phone.

13. In addition, through their presence at the U.S. Capitol building, JOSHUA KAHLE BUSTLE and JESSICA LOUISE BUSTLE demonstrated against the certification of the vote count of the Electoral College of the 2020 Presidential Election. Through her Facebook account, both before and after the riot at the Capitol, JESSICA LOUISE BUSTLE wrote about her and her husband's purpose for entering the Capitol building. Before traveling to the Capitol, she posted a message that read, in part, "We don't win this thing sitting on the sidelines. Excited to stand for truth with my fellow patriots and freedom fighters in D.C. today." During or after the riot, she posted a message that read, in part, "Pence is a traitor. We stormed the capital [*sic*]. An unarmed peaceful woman down the hall from us was shot in the neck by cops. It's insane here." In another message, apparently written after the riot, she wrote "We need a Revolution! We can accept an honest and fair election but this is NOT fair and patriots don't want to see their country brought into communism and destroyed over a lie."

Exhibit 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Case No. 1:21-cr-00324 (TNM)
v.	:	
	:	
DANIELLE NICOLE DOYLE,	:	
	:	
Defendant.	:	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence Danielle Doyle to two months of home confinement, a probationary term of three years,¹ 60 hours of community service, and \$500 in restitution.

I. Introduction

The defendant, Danielle Doyle, participated in the January 6, 2021, attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred law enforcement officers, and resulted in more than one million dollars’ worth of property damage. The government is requesting a sentence of two months of home confinement and a probationary term of three years in this case.

The government recognizes that Danielle Doyle did not personally engage in or espouse violence or property destruction; however, Doyle entered the Capitol by climbing through a broken

¹ The plea agreement states that the offense of conviction in this case carries a term of supervised release. This is inaccurate. As this is a petty offense, the offense of conviction does not carry a term of supervised release. See 18 U.S.C. § 3583(b)(3).

window and subsequently stayed in the Capitol building for at least 24 minutes. Capitol CCTV footage from inside the building appears to show Doyle chanting near or yelling at a law enforcement officer. Also, Doyle photographed the destruction that occurred on January 6, including individuals climbing the scaffolding on the West Front of the building, individuals entering the Capitol building through a broken window, and individuals in military-style clothing inside the Capitol. Finally, she texted an open-source video from January 6, taken inside the Capitol and in which she appears, to another individual more than a month after the riot.

The defendant stands before this Court to be sentenced on a misdemeanor conviction, but her conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement, breach the Capitol, and disrupt the proceedings. But for her actions alongside so many others, the riot likely would have failed.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

To avoid exposition, the government refers to the general summary of the attack on the U.S. Capitol. *See* ECF 24 ¶¶ 1-7. As this Court knows, a riot cannot occur without rioters, and each rioter's actions – from the most mundane to the most violent – contributed, directly and indirectly, to the violence and destruction of that day. With that backdrop, we turn to the defendant's conduct and behavior on January 6.

Danielle Doyle's Role in the January 6, 2021, Attack on the Capitol

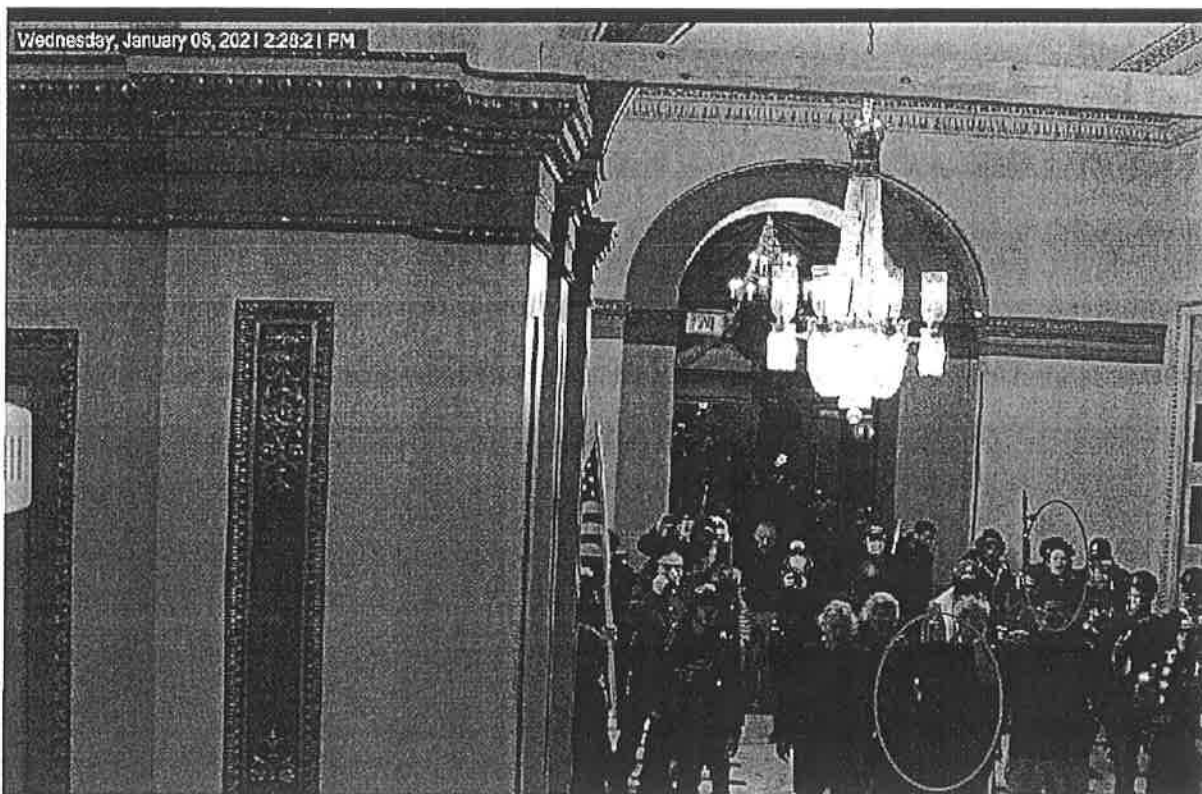
On January 6, 2021, Danielle Doyle entered the U.S. Capitol building at approximately 2:23 p.m., by climbing through a broken window located next to the Senate Wing Door. Prior to entering the building, Doyle walked by individuals holding signs with phrases such as “THE

STORM IS HERE.” She also witnessed individuals climbing statues and the scaffolding on the west front of the building, and she saw the torn fabric on the exterior of the scaffolding.

After witnessing this destruction, Doyle nevertheless entered the Capitol through the broken window near the Senate Wing Door at about 2:23 p.m. This window had been breached by other rioters about 10 minutes before she entered. Doyle remained in the Capitol building for at least 24 minutes. A still from the CCTV footage is below. Doyle is circled in red.



After entering, Doyle walked upstairs and entered the Rotunda, where she walked around from about 2:25 to 2:26 p.m. At approximately 2:28 p.m., Doyle entered the Statuary Hall Connector, where she and a group of other rioters were stopped by a law enforcement officer. Doyle then appears to chant or yell in the direction of the officer, but she left the area without otherwise engaging with the officer. A screenshot of Doyle chanting or yelling in the direction of the law enforcement officer is below. Doyle is circled in red, and the officer is circled in blue.



After, Doyle walked back through the Rotunda and descended the Supreme Court Chamber stairs at 2:31 p.m. From about 2:32 to 2:33 p.m. Doyle walked through the Capitol Visitor Center and Orientation Lobby. Doyle then walked through the Crypt from 2:47 to 2:48 p.m.

Photographs from Doyle's own phone demonstrate that she was a firsthand witness to the destruction at the U.S. Capitol. For instance, Doyle photographed individuals climbing the scaffolding on the West Front of the building, and she photographed the torn fabric on the exterior of the scaffolding. She also took photographs inside the Capitol building, including of individuals entering the Capitol building through what appears to be the same broken window near the Senate Wing Door that Doyle herself entered. In addition, she photographed individuals dressed in military-style clothing in the Rotunda. Also, on or about January 25, 2021, she texted a third-party individual, "I literally can't do anymore Q shit. Brandon Stracka was arrested today. He didn't

even go in the capitol. This is fucking insane.”² A few weeks later, she texted a 15-second clip from an open-source video of herself from inside the Capitol building to the same individual. These messages do not appear to be public messages.

Finally, Doyle has admitted that she knew she did not have permission to enter the Capitol building and that she acted with the intent to parade, demonstrate, and picket within the building. *See* ECF 24 ¶ 10.

Danielle Doyle’s Allocution Statement

Prior to the sentencing, defense counsel provided Doyle’s allocution statement to the government. In her allocution, Doyle states that January 6 began as an “exciting” day and that she later felt “disconnected.” Specifically, Doyle characterizes January 6, 2021, as a day where “[h]undreds of thousands of Americans came together in support of our President and the America that we love. . . . It was exciting and full of energy.” But, after, she heard the “sound of violence” and felt a “shifting energy,” and she became “disconnected to what was happening.” She recalls that she only began to “recognize[e] right from wrong” after “[s]omeone picked up a stanchion to break something” and she reminded that individual “that’s not what we’re here for.”

Doyle also states that she is “truly sorry for the decision [she] made that day and for the fear and sleepless nights that is has caused [her] family [sic].” She further states, “I acknowledge my wrongdoings and take full and absolute responsibility for them.” The government has also reviewed Doyle’s letters of support, in consideration of a just and necessary sentence.

² Although the message is not dated, Stracka was arrested on January 25, 2021. *See* 21-mj-134-RMM.

The Charges and Plea Agreement

On February 24, 2021, Danielle Doyle was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On February 25, 2021, she was arrested in Oklahoma City, Oklahoma. On April 28, 2021, Doyle was charged by Information with the same crimes. On July 14, 2021, she pleaded guilty to Count Four of the Information, which charged a violation of 40 U.S.C. § 5104(e)(2)(G). In the plea agreement, Doyle agreed to pay \$500 in restitution.³

III. Statutory Penalties

The defendant now faces sentencing on a single count of 40 U.S.C. § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, the defendant faces up to six months of imprisonment and a fine of up to \$5,000. As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply. 18 U.S.C. § 3559; U.S.S.G. § 1B1.9.

IV. Sentencing Factors Under 18 U.S.C. § 3553(a)

In this case, sentencing is guided by 18 U.S.C. § 3553(a). Some of the factors this Court must consider include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. § 3553(a)(6). We therefore turn to these factors.

³ The plea agreement mistakenly states that the defendant will pay restitution to the U.S. Department of the Treasury. The Architect of the Capitol is the correct payee.

A. The Nature and Circumstances of the Offense

The attack on the U.S. Capitol on January 6, 2021, is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was one of the only times in our history when the building was occupied by hostile participants. By its very nature, the attack defies comparison to other events. So, too, does the conviction this defendant now faces. Picketing, demonstrating, or parading at the Capitol as part of the riot on January 6 is not like picketing at the Capitol on any other day, without other rioters present. To portray this crime as routine unjustly downplays what actually happened.

While each defendant should be sentenced based on their individual conduct, this Court should note that each individual person who entered the Capitol on January 6 did so under the most extreme of circumstances. As a person entered the Capitol, they would—at a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement and likely would have smelled chemical irritants in the air. No rioter was a mere tourist that day.

Additionally, while looking at the defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical facts, to include: (1) whether, when, and how the defendant entered the Capitol building; (2) whether the defendant engaged in any violence or incited violence; (3) whether the defendant engaged in any acts of destruction; (4) the defendant's reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant's time inside of the building, and exactly where the defendant traveled; (7) the defendant's statements in person or on social media; (8) whether the defendant

cooperated with, or ignored, law enforcement; and (9) whether the defendant otherwise exhibited evidence of remorse or contrition. While these factors are neither exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

While the above list is not exhaustive, a review of some of the factors is helpful in this context. For example, Danielle Doyle entered the Capitol building at 2:23 p.m. by climbing through a broken window located next to the Senate Wing Door. Doyle entered approximately ten minutes after other rioters first breached the Senate Wing door and the nearby window. When Doyle entered the Capitol through the window, there were clear signs of damage. In fact, the window through which Doyle entered the Capitol was not a normal entry point; the window had been broken by rioters.

In addition, Doyle remained inside the building for at least 24 minutes. After entering, Doyle walked upstairs and entered the Rotunda, where she walked around from about 2:25 to 2:26 p.m. At approximately 2:28 p.m., Doyle proceeded to the Statuary Hall Connector, and she and a group of other rioters were stopped by a law enforcement officer. While in the Statutory Hall Connector, Doyle appears to have been chanting or yelling in the direction of the officer. Doyle then left the area without any further interaction with the law enforcement officer. She walked back through the Rotunda and descended the Supreme Court Chamber stairs at 2:31 p.m. Thereafter, from about 2:32 to 2:33 p.m. Doyle walked through the Capitol Visitor Center and Orientation Lobby. Then, Doyle walked through the Crypt from 2:47 to 2:48 p.m. Ultimately, Doyle walked through three levels of the U.S. Capitol building.

With respect to use of social media, Doyle used Telegram to communicate with another individual about the events on January 6, 2021. Around January 25, 2021, she texted a third-party individual, "I literally can't do anymore Q shit. Brandon Stracka was arrested today. He didn't

even go in the capitol. This is fucking insane.” On February 17, 2021, she sent an open-source video in which she appears, taken from inside the Capitol building on January 6, 2021, to the same individual. These messages do not appear to be public messages.

The government has no evidence that Danielle Doyle engaged in any violence or destruction of property, nor that she destroyed evidence after the riot. But Doyle was a firsthand witness to destruction at the Capitol. In fact, Doyle photographed much of the destruction on January 6, including individuals climbing on scaffolding, individuals climbing through windows to enter the building, and individuals dressed in military-style clothing. Rather than allow this conduct to deter the defendant from entering the building, she entered through the same broken window she photographed and then remained in the building for at least 24 minutes. Also, in her allocution statement, Doyle describes the attempted destruction of property that she witnessed. Specifically, she provides, “Someone picked up a stanchion to break something. I gently took their arm, looked into their eyes, and said, ‘that’s not what we’re here for.’” The government has no evidence, however, of this interaction.

Finally, Doyle has shown some remorse for her actions. In a written allocution statement, provided to the government before this sentencing, Doyle stated that she is “truly sorry for the decision [she] made that day” and “acknowledge[s] [her] wrongdoings.” On the other hand, in her only interview with law enforcement, which occurred upon her arrest, Doyle ended the interview when law enforcement asked questions about Doyle entering the Capitol building. While the government wants to credit the defendant’s remorse in her allocution statement, we also recognize that Doyle has not been fully transparent with law enforcement and that we have no support for Doyle’s remorse, other than her representations in her allocution statement. To boot, it is respectfully difficult to rationalize how someone so “disconnected” from the violence, the

destruction, or even the scaffold climbers made the conscious decision to enter the building. Nevertheless, we take into consideration her apology.

Thus, the nature and circumstances of the offense, as well as the aggravating factors described above, suggest that a purely probationary sentence is inappropriate in this case and support a sentence of two months home confinement and a probationary term of three years.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Danielle Doyle's criminal history is limited to traffic infractions and an arrest for Driving Under the Influence in November 2002, with the disposition unclear. Dkt. 26 ¶¶ 27-28. If the Sentencing Guidelines did apply to her offense of conviction, she would have no criminal history points. USSG § 4A1.2(c)(2). Accordingly, she would be in Criminal History Category I. USSG §§ 4A1.1, 5A. Danielle Doyle holds stable employment and appears to be in compliance with her conditions of release. Dkt. 26. This factor supports a more lenient sentence than would be the case otherwise.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law

The attack on the U.S. Capitol building and grounds, and all that it involved, was an attack on the rule of law. "The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process."⁴ As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases arising out of the riot on January 6, 2021, including in misdemeanor cases. *See United States v. Joshua Bustle and Jessica*

⁴ Federal Bureau of Investigation Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021) (hereinafter "FBI Director Wray's Statement"), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>

Bustle, 21-cr-238-TFH, Sent. Tr. at 3 (“As to probation, I don't think anyone should start off in these cases with any presumption of probation. I think the presumption should be that these offenses were an attack on our democracy and that jail time is usually -- should be expected.”).

D. The Need for the Sentence to Afford Adequate Deterrence

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this defendant. 18 U.S.C. § 3553(a)(2)(B), (C); *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). In terms of specific deterrence, while only time will tell, the defendant has offered her apologies to the government and the Court, and continues to have stable employment. This would lean towards a disposition more favorable to the defendant.

The demands of general deterrence, on the other hand, weigh overwhelmingly in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the transfer of power. As noted by Judge Moss during sentencing, in *United States v. Paul Hodgkins*, 21-cr-188-RDM:

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

Tr. at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70.

The gravity of these offenses demand deterrence. This was not a protest. *See id.* at 46 (“I don’t think that any plausible argument can be made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”). And it is important to convey to future rioters and would-be mob participants—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

In short, the question of deterrence, here, is multi-faceted. The demands of general deterrence favor incarceration, but the need for specific deterrence may be met in this case with a sentence of home confinement. The conduct of certain defendants – although not this defendant – may also warrant actual incarceration to serve as an appropriate deterrent.

E. The Need to Avoid Unwarranted Sentencing Disparities

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress. Each offender must be sentenced based on their individual circumstances, but with the backdrop of January 6 in mind. Moreover, each offender’s case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor defendants will generally fall on the lesser end of that spectrum, but misdemeanor breaches of the Capitol on January 6, 2021 were not minor crimes. A probationary sentence should not necessarily become the default. Indeed, the government invites the Court to join Judge Lamberth’s admonition that “I don’t want to create the impression that probation is the automatic outcome here because it’s not going to be.” *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL), Tr. 6/23/2021 at 19.

While the number of sentenced defendants is low, we have already begun to see meaningful distinctions between offenders. Those who engaged in felonious conduct are generally more dangerous and, thus, treated more severely in terms of their conduct and subsequent punishment. Those who trespassed, but whose conduct involved aggravating factors, merit serious consideration of active incarceration, while those who trespassed, but engaged in less aggravating factors, deserve a sentence more in line with minor incarceration or home confinement. After a review of the applicable § 3553 factors, the government believes that the defendant's conduct falls in the latter category. Regardless, Doyle entered the Capitol building through a broken window, remained in the building for at least 24 minutes, appears to have chanted at or yelled at or near a law enforcement officer, was a firsthand witness to some of the destruction at the Capitol and photographed it, and texted a video clip from inside the Capitol on January 6 to another individual more than a month after the riot. Thus, Doyle's case is not comparable to those who obtained a purely probationary sentence and a sentence of home confinement is appropriate.

V. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, some of those factors support a sentence of incarceration and some support a more lenient sentence. Balancing these factors above, the government recommends that this Court sentence Danielle Doyle to two months of home confinement, three years of probation, 60 hours of community service, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on Doyle's liberty because of her behavior, while still recognizing her early acceptance of responsibility. Additionally, such a sentence recognizes that some but not all the factors

enumerated in Section IV.A., above, apply to this case. It also allows continued monitoring of Danielle Doyle in the event of future participation in similar conduct.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Case No: 21-cr-324 (TNM)
v.	:	
	:	
DANIELLE NICOLE DOYLE,	:	40 U.S.C. § 5104(e)(2)(G)
	:	
Defendant.	:	

STATEMENT OF OFFENSE

Pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Danielle Nicole Doyle, with the concurrence of her attorney, agree and stipulate to the below factual basis for the defendant's guilty plea—that is, if this case were to proceed to trial, the parties stipulate that the United States could prove the below facts beyond a reasonable doubt:

The Attack at the U.S. Capitol on January 6, 2021

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by 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 people with appropriate identification are allowed access inside the U.S. Capitol.
2. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.
3. On January 6, 2021, a joint session of the United States Congress convened at the United States 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 United States Capitol to certify the vote count

of the Electoral College of 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. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. 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 were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

6. 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 U.S. Capitol Police attempted to maintain order and keep the crowd from entering the 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 law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the U.S. Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

7. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 p.m. after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

Danielle Doyle's Participation in the January 6, 2021, Capitol Riot

8. Danielle Nicole Doyle entered the U.S. Capitol building on January 6, 2021, at approximately 2:20 p.m., by climbing through a broken window located next to the Senate Wing Door.

9. Doyle walked through numerous areas of the U.S. Capitol building, including the Orientation Lobby, the Crypt, the Upper Orient Lobby, the Rotunda, and an interior staircase of the Capitol building known as the Supreme Court Chambers stairs.

10. Doyle subsequently stated that she remained in the U.S. Capitol building approximately 20-25 minutes before exiting the building.

10. When Doyle entered the U.S. Capitol building, Doyle knew that she did not have permission to enter the building and entered willfully and knowingly for the purpose of parading, demonstrating, or picketing in the Capitol Building.

Respectfully submitted,

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

By: */s/ Vivien Cockburn*
Vivien Cockburn
Assistant United States Attorney

DEFENDANT'S ACKNOWLEDGMENT

I, DND, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

Date: 06/29/21

Danielle Nicole Doyle
Danielle Nicole Doyle
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: 7/6/21

[Signature]
Irven Box
Attorney for Defendant