UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	**:**	
v.	**:**	**1:21-CR-204-BAH**
ERIC CHASE TORRENS	**:**	

DEFENDANT'S SUPPLEMENTAL RESPONSE TO GOVERNMENT'S SENTENCING MEMORANDUM (ECF 99) AND TO GOVERNMENT'S SUPPLEMENTAL SENTENCING MEMO IN CO-DEFENDANT GRIFFITH'S MATTER (ECF 109)

This supplement addresses similar cases in which the government has sought a non-incarceration sentence, as well as two cases that are on this Court's docket and scheduled for sentencing prior to Mr. Torrens' October 29, 2021 sentencing hearing.

A. Judge Walton's Sentencing of Lori and Thomas Vinson

Since Mr. Torrens filed his response to the government's sentencing memo (ECF 104) Judge Walton has sentenced two defendants, Lori and Thomas Vinson, convicted of the same offense as Mr. Torrens, 40 U.S.C. § 5104(e)(2)(G) in 21-CR-355. For each defendant, Judge Walton sentenced the defendant to probation, community service, a substantial fine, and restitution.

As with other defendants, the facts presented and relied upon by Judge Walton presented in the government's sentencing memoranda expanded greatly on the statement of the offense.[1] Lori and Thomas Vinson, who are married, were among those who unlawfully entered the U.S. Capitol on January 6, 2021. Before they left for Washington, D.C., Mr. Vinson posted a social

[1] The government's October 13, 2021 sentencing memoranda and the statement of the offense are attached cumulatively as Exhibit 1.

message media that identified himself as a veteran "whose oath will NEVER expire." After the rally, the defendants marched to the U.S. Capitol building. They posed for photographs and took videos immediately outside the Capitol. Cell phone video recorded by the Vinsons shows broken glass and alarms blaring as they entered. After they entered, they joined other rioters to chant "Our House!"

Members of their group inside the Capitol assaulted police officers. Mr. Vinson held his cell phone above his head and the crowd to videotape what was occurring. The two of them pushed to the front of the crowd, to the front of the line in a stand-off with officers, and then they joined others in rushing the officers. They continued to move throughout the Capitol, with the crowd facing-off against officers and with themselves taking videotape. They were inside the Capitol for 37 minutes.

Afterward, Mrs. Vinson made multiple social media posts about the incursion. In direct messages, she said that she would "do it again." In the days that followed, Mrs. Vinson dramatically played-down the violence inside the Capitol. She gave multiple media interviews. She said that what she had done was justified, that she would "do this all over again tomorrow," and that she was absolutely not sorry for what she had done and hoped to look back on it in 30 years to say that she had been there. During interviews, the Vinsons falsely claimed that the police had let them in. They obstructed the investigation by destroying digital evidence related to January 6th.

Each of these defendants present aggravating conduct well in excess of Mr. Torrens' conduct. The government requested a sentence of three months of home detention, three years of probation, 60 hours of community service, and $500 in restitution for Mr. Vinson. For Mrs. Vinson, the government recommended a sentence of 30 days of incarceration and $500 in

restitution. Judge Walton denied the government's requests and sentenced each to five years of probation, a $5,000 fine, $500 in restitution and 120 hours of community service. The Vinsons have the financial means to pay a fine. Judge Walton rejected the requested jail sentence for Mrs. Vinson "because of the 'additional costs imposed on taxpayers when somebody is detained' and due to the couple caring for several low-income and handicapped residents in their Western Kentucky community." US Capitol riot: Lori, Tom Vinson of Kentucky sentenced in Jan. 6 case (courier-journal.com).

B. Cases Identified by the Government in Which It Recommends Non-Incarceration Sentence

In counsel's response to the government's sentencing memorandum, counsel already addressed the cases of Valerie Ehrke, Anna Morgan-Lloyd, Donna Bissey, Jessica Bustle, Joshua Bustle, Danielle Doyle, Andrew Bennett, Matthew Mazzocco, Eliel Rosa, and Thomas Gallgher. In its supplemental memorandum, the government adds Brittany Dillon, 1:21-CR-360, as a defendant from whom it recommends a sentence other than incarceration.

As we have seen with the defendants listed in the above paragraph, Ms. Dillon's sentencing fact pattern is much more aggravating that that of Mr. Torrens.[2] Prior to January 6th, Ms. Dillon discussed "an all out civil war." "It will be fast because our side is more prepared." Ms. Dillon discussed the country's going into anarchy and the overturning of the election. On January 6th, Ms. Dillon came to Washington, D.C. with the specific intent to go to the Capitol after the Trump rally. She attempted to breach the Capitol, falling down at the threshold of the door as officers protected the entrance. Afterward, she called police officers "the devil' and deleted her Instagram account, obstructing the government's investigation. Later, upon obtaining

[2] The government's October 11, 2021 sentencing memorandum is attached as Exhibit 2.

counsel, she expressed a desire to accept responsibility and reach a plea agreement. For Ms. Dillon, the government recommends a sentence of 3 months of home detention, 36 months of probation, with 60 hours of community service and $500 in restitution. Ms. Dillon is scheduled for sentencing next month.

III. Cases on this Court's Docket for Sentencing Hearing Prior to Mr. Torrens' Sentencing Hearing

There are two misdemeanor sentencing events arising out of January 6th that are on this Court's docket prior to Mr. Torrens' sentencing. One is his co-defendant, Mr. Griffith, for whom the government requests a term of incarceration of 60 days. Mr. Griffith's sentencing posture is substantially more aggravating than that of Mr. Torrens.[3] The other is Leonard Gruppo, 21-CR-391. Mr. Gruppo is also scheduled for sentencing on October 29, 2021. Mr. Gruppo's sentencing facts are far more aggravating than those of Mr. Torrens.[4] Mr. Gruppo's status as a retired Lieutenant Colonel in the U.S. Army sets his case apart from most defendants. He also deleted evidence of his participation from his phone, obstructing the government's investigation. The

[3] Mr. Griffith's conduct may be less aggravating that that of other defendants who have received non-incarceration sentences and/or who the government has sought shorter periods of incarceration. *See* Edward Hemenway and Robert Bauer, 1:21-CR-49, Boyd Camper, 1:21-CR-325, and Mr. Gruppo. That is an argument for his counsel to make. For Mr. Torrens, these cases further reflect that the government's requests in this case are above what it has recommended in other case numbers and are well above the mainstream of sentences within the courthouse.

Among other aggravating factors, both Mr. Hemenway and Mr. Bauer have extensive criminal histories; the government recommended a term of 30 days of incarceration for each; Judge Chutkan sentenced them to 45 days.

The government recommended 2 months for Mr. Camper, who concealed evidence collected by his GoPro and who failed to express remorse. His sentencing hearing is scheduled for next month.

One thing is clear: Mr. Torrens' conduct is significantly less than each of them *and* is at the lowest end of the spectrum of 40 U.S.C. § 5104(e)(2)(G) defendants. He is someone who should not receive any term of incarceration.

[4] While the Court already has the documents, the government's October 15, 2021 sentencing memorandum and the statement of the offense are attached cumulatively as Exhibit 3 for purposes of this case's record.

government sets forth Mr. Gruppo's conduct in its sentencing memorandum at pages 3-9. The government identifies Mr. Gruppo's conduct as "more egregious" than other defendants and recommends 30 days incarceration and a $500 fine.

Conclusion

Mr. Torrens submits the above information for the Court's consideration and in support of Mr. Torrens' request that the Court impose him to a term of probation, with conditions that include home confinement if deemed appropriate by the Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Supplement was served ECF to the government and all registered recipients on this 23rd day of October, 2021.

/s/ EDWARD J. UNGVARSKY
Edward Ungvarsky

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**Case No. 21-CR-355 (RBW)**
v.	:	
	:	
LORI VINSON,	:	
	:	
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 the defendant, Lori Vinson, to 30 days' incarceration and $500 in restitution.

I. Introduction

The defendant, Lori Vinson, a licensed nurse, and her codefendant and husband, Thomas Vinson,[1] (collectively, "the Vinsons" or "the defendants") 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.

For her conduct that day, Lori Vinson pleaded guilty to one count of 40 U.S.C. § 5104(e)(2)(G), Parading, Picketing, and Demonstrating Inside a Capitol Building. The government afforded the defendant the opportunity to plead to that charge in part because it has no information

[1] A separate sentencing memorandum regarding Thomas Vinson has been filed contemporaneously in this case.

that she personally committed violent or destructive offenses. But the Court must 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. Without her actions alongside so many others', the riot likely would have failed. *See, e.g., United States v. Matthew Mazzocco*, 21-cr-00054 (TSC), Tr. 10/4/2021 at 25 ("A mob isn't a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers." (statement of Judge Chutkan)). Importantly, even after the riot, when its scope and consequences were well-known, the defendant publicized and defended her participation on Facebook and in multiple television interviews with news outlets across multiple states. Her recorded statements to news outlets include, "I hope that is something I remember and say, 'I'm glad I was a part of that' thirty years from now"; "People have asked are you sorry that you done that, absolutely I am not, I am not sorry for that, I would do it again tomorrow"; "I felt like I've done nothing wrong and I wouldn't change it"; and describing her conduct as "justified." Here, the defendant's participation in a riot that actually succeeded in halting the Congressional certification, combined with her consistent and troubling minimization and justification of the disastrous events of that day, warrant a sentence of incarceration.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

The government refers to the general summary of the attack on the U.S. Capitol. *See* Statement of Offense, ECF No. 31, 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.

Lori and Thomas Vinson's Role in the January 6, 2021 Attack on the Capitol

Lori and Thomas Vinson traveled to Washington, D.C., from their home in Kentucky to attend the "Stop the Steal" rally on January 6, 2021. On December 24, 2021, Thomas Vinson had posted on Facebook, "Room is booked for DC . . . I'm a Veteran who[se] Oath will NEVER expire, Stand Strong, and Stand Now! If you don't you May never have the chance again! Merry Christmas and plan Well! It Will be Wild! My President Proclaimed It So!"

After, the rally, they proceeded to the U.S. Capitol, where they posed for photographs and recorded video showing the crowd gathered outside the Capitol Building. Then, video recorded by another rioter shows Lori leading the way as they climb through scaffolding up to the Capitol Building.

At 2:13 p.m., rioters first breached the Senate Wing Door area by breaking out the glass in the windows and focusing open the doors from the inside:

Approximately five minutes after the entry depicted above, the Vinsons entered the U.S. Capitol through the Senate Door.

They turned to the right and walked past the shattered glass on the floor from the smashed-in window. In video recorded by Thomas and other rioters, alarms can be heard blaring as they chant with the crowd, "Our House!"

Video further shows that as they walked further into the building, Lori and Thomas encountered an individual standing in front of a doorway who said, "There's one guy in there and he's scared shitless and he has a fucking a gun . . . ." A woman's voice can be heard replying, "Let him shoot somebody, who gives a fuck!"

At approximately 2:25 p.m., a crowd filled into the Crypt and pushed back the line of officers protecting that area. As individuals at the front of the crowd assault officers, Lori and Thomas Vinson can be seen in the middle of crowd, with Thomas still holding his cell phone above his head.

The Vinsons pushed to the front of the crowd, with Lori directly at the police line. After a stand off lasting several minutes, the defendants rushed forward as officers were overwhelmed by the advancing crowd. *See* Exhibit 1.

At approximately 2:31 p.m., the Vinsons entered the "OAP Corridor" of the 1st Floor of the U.S. Capitol Building, where they were blocked from proceeding further by law enforcement. Thomas Vinson was still holding a cell phone above his head. A red bar indicating the phone was set to record video is visible at the top of the phone's screen.

As the officers walked backwards away from the crowd, the crowd – including Lori and Thomas Vinson – walked toward them.

At approximately 2:33 p.m., the Vinsons entered the Rotunda, where they used their phone to take photographs and record video for several minutes.

At approximately 2:37 p.m., Lori and Thomas Vinson exited the Rotunda but remained within the Capitol Building. They watched as a crowd pushed against the officers protecting the doors to the outside, where more rioters were attempting to enter the building, quickly overcoming the officers and forcing open the doors. Video recorded by Thomas captures part of the battle between rioters and police over this entry point. Alarms can be heard blaring as the crowd roars. *See* Exhibit 2.

At approximately 2:39 p.m., as even more rioters pushed inside the Capitol Building, the defendants simply walked back into the Rotunda. Phone location information indicates the defendants were inside the Capitol until approximately 2:50 p.m.

Both defendants have admitted that they knew at the time they entered the U.S. Capitol Building that they did not have permission to do so, and they paraded, picketed, and demonstrated.

Lori Vinson's Comments After the Attack on the Capitol

Lori Vinson immediately began publicizing her participation in the riot. Public statements made by the defendant after January 6, 2021, on Facebook include:

1. Lori Vinson: "I was probably one of the first 100 in there and I would say at the most there were several thousand in there."
2. Individual 1: "Lori Utley Vinson you went in the Capital??"

   Lori Vinson: "yes I did, That is exactly how I know what happened!"
3. Lori Vinson: "I was not in every room.but I was in that building an to an hour in a half [sic]. Trump stands for the exact opposition of Biden. Which would love to see this country a communist nation. He is a pedophile that wants to cover up all his son sick bullshit. But I guess that's ok?"
4. Lori Vinson: "You hear what main street media wants you to hear. I can tell you that they didn't stop us from going in. They stepped to the side and let us walk in. I have no idea what was going on outside but inside the only time any tear gas was used was when some idiots tried to tear shit up. The police didn't even have guns on them inside."
5. Lori Vinson: "We walked in with the police standing right there. There was No breaking going on."
6. Lori Vinson: "I was in the building."

   Individual 2: "lol I should have known u was up in there girl u aren't scared of anything lol"

   Lori Vinson: "LOL. Wasn't much to be scared of."

In direct messages after January 6, 2021, she told multiple people she would "do it again."

In addition, on January 8, 2021, the defendant told an acquaintance in person that she and her codefendant had entered the Capitol Building and showed that acquaintance photos and videos from inside. The defendant claimed that the police had let her into the building, but the acquaintance was doubtful given the obvious signs of forceful entry in the photos and videos.

Shortly after the attack on the Capitol, the defendant was let go from her job as a nurse at a medical center and began giving interviews to multiple news outlets across two states. On January 13, 2021, 44News in Evansville, IN, posted a video interview with the defendant, where she defended her involvement in the incident at the U.S. Capitol. Specifically, she claimed that if she and her co-defendant had met any resistance they would not have entered and they were never asked to leave.[2]

On January 13, 2021, Fox17 News in Nashville, TN, posted a different video interview with the defendant where she discussed her involvement in the incident at the U.S. Capitol on January 6, 2021.[3] The news story included video and pictures from January 6, 2021, that Lori Vinson had provided. In the interview, the defendant discussed being fired and stated, "I felt like what I had done was justified, and so I just said I would do this all over again tomorrow, I'm sorry that you don't see my worth." According to the news report, the defendant provided a video she took while entering the U.S. Capitol in which blaring alarms and loud chanting can be heard, but in the interview she said the doors were open and people were filing in and "there was no signs" and repeated her claim that if she had met some sort of resistance, she would have never entered the building.

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[2] The video of the interview is available here: https://www.wevv.com/content/video/573588422.html.

[3] The video of the interview is available here: https://fox17.com/news/local/kentucky-nurse-fired-for-entering-us-capitol-during-riot.

On January 14, 2021, 14News in Evansville, IN, posted a video on their website featuring a news story and yet another interview with the defendant.[4]

During the interview, the defendant acknowledged her involvement in the incident at the U.S. Capitol on January 6, 2021. Speaking to the camera, the defendant said, "I hope that is something I remember and say, 'I'm glad I was a part of that' thirty years from now." The defendant added, "People have asked are you sorry that you done that, absolutely I am not, I am not sorry for that, I would do it again tomorrow," and that "I felt like I've done nothing wrong and I wouldn't change it." The news story included video provided from the defendant's cell phone that was taken from inside the U.S. Capitol building on January 6, 2021, and features blaring alarms and multiple individuals chanting.

Lori and Thomas Vinson's FBI Interview

On January 8, 2021, the defendants were interviewed at the same time by law enforcement in a recorded telephone call. During the call, the defendant acknowledged she and her co-defendant entered the U.S. Capitol on January 6, 2021, but claimed they were "let in" and did not "bust in." She admitted she posted about entering the U.S. Capitol on Facebook and said that they were one

[4] The video of the interview is available here: https://www.14news.com/2021/01/15/ascension-st-vincent-nurse-loses-job-involvement-us-capitol-riots/

of the first one hundred people inside. She also indicated that she and Thomas Vinson attended a rally near the White House lawn and walked straight to the U.S. Capitol, ultimately following a stream of people inside. She denied they were waiting outside for someone to break down the doors or windows to get in and claimed they did not meet any kind of resistance while entering. She further stated that police officers did not ask them to leave. According to Lori Vinson, they also witnessed a person hitting a door with U.S. Senator Mitch McConnell's name on it with a crowd control stanchion three times. After seeing that, they decided to leave.

Thomas Vinson added that he also saw a person throw a water bottle and said they should not do that. He further stated they went to the Capitol as a "peaceful bunch of people there to express their views to Congress…," describing their conduct mainly as chanting and talking, and asserting that they did not damage or take anything.

Second FBI Interview with Lori Vinson

On January 15, 2021, Lori Vinson was re-interviewed and acknowledged she was featured in a local news story and indicated she entered on the Rotunda level and stayed on the same floor. She further claimed she knew there was something going on related to the certification of the electoral votes on January 6, 2021, but did not know that Congress was "in session" at that time and claimed that she expected that no Congressional officials would be in the building because they certainly would not have been allowed entry if they were in session. She also claimed that she did not hear the alarms going off inside the Capitol building during her initial entry into the Capitol but noticed it after recently reviewing the video. She provided law enforcement with one photo of her inside the Rotunda but did not provide law enforcement with the additional photos and videos from inside the U.S. Capitol that she provided to news outlets.

Charges, Arrest, and Post-Arrest Cooperation

On February 22, 2021, the defendants were 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), and on February 23, 2021, they were arrested in Kentucky and immediately retained an attorney. A search warrant had also been issued for the defendants' electronic devices but was not executed. Lori Vinson provided her phone to be imaged pursuant to a consent to search form, in which she withheld consent for any communications between her and her co-defendant, asserting marital privilege. Thomas Vinson stated to investigators that the phone he had used at the Capitol had been replaced due to damage. Phone records demonstrated that his registered device changed from an iPhone 8 to an iPhone 12 on January 16, 2021. Later, at the government's request, Lori Vinson consented to a fulsome search of the image of her phone, and Thomas Vinson provided his new phone (which contained information from his old phone) to investigators to conduct a physical search. Through his attorney, Thomas Vinson also provided several videos and photographs taken at the Capitol on January 6, 2021. No videos consistent with the recordings captured on CCTV as described above were provided; one video showing the defendants entering the Capitol was observed on his phone during the physical search. Through counsel, Thomas Vinson represented that he thought he was recording, but when he checked later he apparently did not hit the record button. As noted above, the CCTV shows clearly that the phone is set to record video at some point during the riot. Facebook records gathered pursuant to a search warrant revealed some (but not all) video consistent with the CCTV footage, which had been sent from Thomas Vinson's account to Lori Vinson's account after January 6, 2021.

Plea Agreement

On May 12, 2021, the defendants were charged by four-count Information with 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On July 27, 2021, Lori Vinson pleaded guilty to Count Four of the Information, charging her with a violation of 40 U.S.C. § 5104(e)(2)(G), Parading, Picketing, and Demonstrating in a Capitol Building. The government agreed to dismiss the remaining counts in the Information at sentencing. By plea agreement, the defendant agreed to pay $500 in restitution to the Department of the Treasury.

III. Statutory Penalties

Lori Vinson 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. The defendant must also pay restitution under the terms of his or 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). As set forth below, the Section 3553(a) factors weigh in favor of the government's recommendation.

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 neither exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

The defendant entered the building approximately five minutes after it was first breached at her location of entry. While no police officers directly blocked her path, there were clear signs of violent entry. The window adjacent to the door through which the defendants passed had just been smashed out. The defendants walked by a pile of shattered glass on the ground as they moved deeper into the U.S. Capitol. The defendant and her co-defendant heard the alarm sounding throughout the Capitol Rotunda and its antechamber: a loud, high-pitched, continuous beeping, similar to a smoke alarm, and they knew tear gas had been deployed. Most importantly, they saw officers being attacked in the Crypt and at the Rotunda doors, and were part of the crowd that continued to press forward despite this obvious dangerous and unlawful conduct toward law enforcement. Such callousness must not be taken lightly.

The defendant's statements in the aftermath of January 6 are a significant aggravating factor in this case. When interviewed by the FBI, she showed no remorse for her conduct, but asserted numerous falsehoods and mischaracterizations to justify her behavior. She claimed that she was "let in" by police officers – a claim for which there is no support in the evidence uncovered during the government's investigation – and encountered no "resistance" – a blatant mischaracterization of the circumstances of her entry into the U.S. Capitol. Providing misleading information to the FBI meets no definition of cooperation. On Facebook, she openly touted her conduct, admitting to having been among the first people in the building. The defendant and the others who first breached the U.S. Capitol bear a special responsibility for this unparalleled crime because they emboldened the rioters who came behind them and were therefore each vitally important and thus responsible for the large crowd that overwhelmed the police officers through both violence and sheer numbers. At the same time, she also made misleading statements about the nature of the riot. And she doubled down on her defiance in the face of being terminated from

her employment due to her criminal conduct, giving multiple video interviews to news outlets. In each of those interviews, she made demonstrably false claims about the nature of the riot and – most troubling – indicated repeatedly that she was "glad to be part of that," was "absolutely . . . not sorry for that," and "would do it again tomorrow." Her insistent pride in her behavior in the tragic aftermath of January 6 shows a profound lack of respect for the law, and the safety of others.

B. The History and Characteristics of the Defendant

Lori Vinson has a nursing license and, since being terminated due to her criminal conduct on January 6, 2021, has been able to regain employment as a nurse. Final Presentence Investigation Report ("PSR"), ECF No. 39, at ¶ 51. As set forth in the PSR, the defendant has no known criminal history. *Id.* at ¶¶ 24–30. She has been compliant thus far with the conditions of her pretrial release. *Id.* at ¶ 8. If the Sentencing Guidelines applied to her offense of conviction, she would have zero points, USSG § 4A1.2(c)(2), and she would be in Criminal History Category I, USSG §§ 4A1.1, 5A. In addition, while the defendant initially misled the FBI as to her conduct, after being charged, she 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."[5] In this case, in the immediate aftermath of the riot, the

[5] Federal Bureau of Investigation Director Christopher Wray, Statement before the House

defendant showed a complete lack of appreciation for her conduct and disregard for the law when she made numerous statements minimizing, obscuring, and excusing her criminal conduct – and the collective conduct of her fellow rioters.

Consequently, 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. 8/4/2021 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). Here, both goals will be best served by a sentence of incarceration.

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:

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]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.

Specific Deterrence

Lori Vinson's conduct, interviews with law enforcement, and statements on social media and to news outlets demonstrate the need for a sentence aimed toward specific deterrence of future similar conduct by this defendant. After the attack, the defendant asserted on Facebook that the media was misleading the public about the riot and while downplaying the violence of the day – despite having been present for multiple violent attacks on officers protecting the Capitol. Lori Vinson walked past shattered glass on the floor of the Capitol when she unlawfully entered with a horde of rioters, she knew the police had deployed tear gas, and she ignored – and then lied about hearing – the blaring alarm resonating through the Capitol. Knowing all this, the defendant still

spread misleading information on Facebook and to the FBI and described her behavior as "justified." It was not.

The government acknowledges that the defendant accepted responsibility early by entering into this plea agreement, but the need for deterrence remains. Just after the riot, the defendant told news outlets that her behavior was "justified," stating, "People have asked are you sorry that you done that, absolutely I am not, I am not sorry for that, I would do it again tomorrow," and that "I felt like I've done nothing wrong and I wouldn't change it." At the plea hearing, the defendant indicated those statements were the result of frustration over losing her job. Whatever their origin, her failures to acknowledge the inexcusable dangerousness of January 6, 2021, are deeply troubling. The Court should believe her repeated statements lacking remorse, and sentence her accordingly, in a manner that provides specific deterrence from future similar conduct.

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 interfering 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.[6] Indeed, the government invites the Court to join Judge Lamberth's

[6] 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-

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. Those who trespassed, but engaged in less serious aggravating factors, deserve a sentence more in line with minor incarceration or home detention. After a review of the applicable Section 3553(a) factors, the government believes that the defendant's conduct falls – just barely – in the latter category, warranting minor incarceration.

Here, to avoid unwarranted sentencing disparities, the Court should also consider the sentence to be imposed on Thomas Vinson, who is set to be sentenced on the same day. Their conduct on January 6, 2021, was similar, but multiple search warrants and interviews in this case did not reveal the kind of propaganda and minimization of the violence by Thomas Vinson that Lori Vinson engaged in. On the other hand, Thomas did not provide key videos he recorded of

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cr-00097(PFF); and *United States v. Donna Sue Bissey*, 1:21-cr-00165(TSC). The government is abiding by its prior agreement to recommend probation in these 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)(6) 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).

violence and disorder inside the Capitol, some of which were recovered pursuant to a warrant for his Facebook. While the government has no definitive proof that Thomas intentionally concealed evidence, the fact that the phone Thomas used at the Capitol was destroyed shortly after the FBI contacted the Vinsons raises concerns. Lori also agreed to cooperate with further investigation, and ultimately, both defendants accepted the first plea offer extended to them. On balance, the primary difference between these defendants is Lori Vinson's statements after the fact, which are of such an egregious nature as to merit a different kind of sentence for Lori Vinson than Thomas Vinson.

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 Lori Vinson to 30 days' incarceration 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 and lengthy supervision as a consequence of her behavior, while recognizing her early acceptance of responsibility.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**Case No. 21-CR-355 (RBW)**
v.	:	
	:	
THOMAS VINSON,	:	
	:	
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 the defendant, Thomas Vinson, to three months' home detention, three years' probation, to include 60 hours of community service, and $500 in restitution.

I. Introduction

The defendant, Thomas Vinson, a field supervisor for an oil company, and his codefendant and wife, Lori Vinson,[1] (collectively, "the Vinsons" or "the defendants") 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.

For his conduct that day, Thomas Vinson pleaded guilty to one count of 40 U.S.C. § 5104(e)(2)(G), Parading, Picketing, and Demonstrating Inside a Capitol Building. The government afforded the defendant the opportunity to plead to that charge in part because it has no information

[1] A separate sentencing memorandum regarding Lori Vinson has been filed contemporaneously in this case.

that he personally committed violent or destructive offenses. But the Court must 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. Without his actions alongside so many others', the riot likely would have failed. *See United States v. Matthew Mazzocco*, 21-cr-00054 (TSC), Tr. 10/4/2021 at 25 ("A mob isn't a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers." (statement of Judge Chutkan)). After the riot, it appears the defendant may have attempted to destroy or conceal the worst evidence from inside the Capitol. Here, the defendant's participation in a riot that actually succeeded in halting the Congressional certification warrants significant periods of home detention and probation.

II. Factual and Procedural Background

The January 6, 2021 Attack on the Capitol

The government refers to the general summary of the attack on the U.S. Capitol. *See* Statement of Offense, ECF No. 31, 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.

Lori and Thomas Vinson's Role in the January 6, 2021 Attack on the Capitol

Lori and Thomas Vinson traveled to Washington, D.C., from their home in Kentucky to attend the "Stop the Steal" rally on January 6, 2021. On December 24, 2021, Thomas Vinson had posted on Facebook, "Room is booked for DC . . . I'm a Veteran who[se] Oath will NEVER expire, Stand Strong, and Stand Now! If you don't you May never have the chance again! Merry Christmas and plan Well! It Will be Wild! My President Proclaimed It So!"

After, the rally, they proceeded to the U.S. Capitol, where they posed for photographs and recorded video showing the crowd gathered outside the Capitol Building. Then, video recorded by another rioter shows Lori leading the way as they climb through scaffolding up to the Capitol Building.

At 2:13 p.m., rioters first breached the Senate Wing Door area by breaking out the glass in the windows and focusing open the doors from the inside:

Approximately five minutes after the entry depicted above, the Vinsons entered the U.S. Capitol through the Senate Door.

They turned to the right and walked past the shattered glass on the floor from the smashed-in window. In video recorded by Thomas and other rioters, alarms can be heard blaring as they chant with the crowd, "Our House!"

Video further shows that as they walked further into the building, Lori and Thomas encountered an individual standing in front of a doorway who said, "There's one guy in there and he's scared shitless and he has a fucking a gun . . . ." A woman's voice can be heard replying, "Let him shoot somebody, who gives a fuck!"

At approximately 2:25 p.m., a crowd filled into the Crypt and pushed back the line of officers protecting that area. As individuals at the front of the crowd assault officers, Lori and Thomas Vinson can be seen in the middle of crowd, with Thomas still holding his cell phone above his head.

The Vinsons pushed to the front of the crowd, with Lori directly at the police line. After a stand off lasting several minutes, the defendants rushed forward as officers were overwhelmed by the advancing crowd. *See* Exhibit 1.

At approximately 2:31 p.m., the Vinsons entered the "OAP Corridor" of the 1st Floor of the U.S. Capitol Building, where they were blocked from proceeding further by law enforcement. Thomas Vinson was still holding a cell phone above his head. A red bar indicating the phone was set to record video is visible at the top of the phone's screen.

As the officers walked backwards away from the crowd, the crowd – including Lori and Thomas Vinson – walked toward them.

At approximately 2:33 p.m., the Vinsons entered the Rotunda, where they used their phone to take photographs and record video for several minutes.

At approximately 2:37 p.m., Lori and Thomas Vinson exited the Rotunda but remained within the Capitol Building. They watched as a crowd pushed against the officers protecting the doors to the outside, where more rioters were attempting to enter the building, quickly overcoming the officers and forcing open the doors. Video recorded by Thomas captures part of the battle between rioters and police over this entry point. Alarms can be heard blaring as the crowd roars. *See* Exhibit 2.

At approximately 2:39 p.m., as even more rioters pushed inside the Capitol Building, the defendants simply walked back into the Rotunda. Phone location information indicates the defendants were inside the Capitol until approximately 2:50 p.m.

Both defendants have admitted that they knew at the time they entered the U.S. Capitol Building that they did not have permission to do so, and they paraded, picketed, and demonstrated.

Lori Vinson's Comments After the Attack on the Capitol

Lori Vinson immediately began publicizing her participation in the riot. Public statements made by Lori Vinson after January 6, 2021, on Facebook include:

1. Lori Vinson: "I was probably one of the first 100 in there and I would say at the most there were several thousand in there."
2. Individual 1: "Lori Utley Vinson you went in the Capital??"

   Lori Vinson: "yes I did, That is exactly how I know what happened!"
3. Lori Vinson: "I was not in every room.but I was in that building an to an hour in a half [sic]. Trump stands for the exact opposition of Biden. Which would love to see this

country a communist nation. He is a pedophile that wants to cover up all his son sick bullshit. But I guess that's ok?"

4. Lori Vinson: "You hear what main street media wants you to hear. I can tell you that they didn't stop us from going in. They stepped to the side and let us walk in. I have no idea what was going on outside but inside the only time any tear gas was used was when some idiots tried to tear shit up. The police didn't even have guns on them inside."
5. Lori Vinson: "We walked in with the police standing right there. There was No breaking going on."
6. Lori Vinson: "I was in the building."

   Individual 2: "lol I should have known u was up in there girl u aren't scared of anything lol"

   Lori Vinson: "LOL. Wasn't much to be scared of."

In direct messages after January 6, 2021, she told multiple people she would "do it again."

In addition, on January 8, 2021, Lori Vinson told an acquaintance in person that she and the defendant had entered the Capitol Building and showed that acquaintance photos and videos from inside. She claimed that the police had let her into the building, but the acquaintance was doubtful given the obvious signs of forceful entry in the photos and videos.

Shortly after the attack on the Capitol, Lori Vinson was let go from her job as a nurse at a medical center and began giving interviews to multiple news outlets across two states. On January 13, 2021, 44News in Evansville, IN, posted a video interview with Lori Vinson, where she defended her involvement in the incident at the U.S. Capitol. Specifically, she claimed that if she

and the defendant had met any resistance they would not have entered, and they were never asked to leave.[2]

On January 13, 2021, Fox17 News in Nashville, TN, posted a different video interview with Lori Vinson where she discussed her involvement in the incident at the U.S. Capitol on January 6, 2021.[3] The news story included video and pictures from January 6, 2021, that Lori Vinson had provided. In the interview, she discussed being fired and stated, "I felt like what I had done was justified, and so I just said I would do this all over again tomorrow, I'm sorry that you don't see my worth." According to the news report, Lori Vinson provided a video she took while entering the U.S. Capitol in which blaring alarms and loud chanting can be heard, but in the interview she said the doors were open and people were filing in and "there was no signs" and repeated her claim that if she had met some sort of resistance, she would have never entered the building.

On January 14, 2021, 14News in Evansville, IN, posted a video on their website featuring a news story and yet another interview with Lori Vinson.[4]

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[2] The video of the interview is available here: https://www.wevv.com/content/video/573588422.html.

[3] The video of the interview is available here: https://fox17.com/news/local/kentucky-nurse-fired-for-entering-us-capitol-during-riot.

[4] The video of the interview is available here: https://www.14news.com/2021/01/15/ascension-st-vincent-nurse-loses-job-involvement-us-capitol-riots/

During the interview, Lori Vinson acknowledged her involvement in the incident at the U.S. Capitol on January 6, 2021. Speaking to the camera, Lori Vinson said, "I hope that is something I remember and say, 'I'm glad I was a part of that' thirty years from now." She added, "People have asked are you sorry that you done that, absolutely I am not, I am not sorry for that, I would do it again tomorrow," and that "I felt like I've done nothing wrong and I wouldn't change it." The news story included video provided by Lori Vinson that was taken from inside the U.S. Capitol building on January 6, 2021, and features blaring alarms and multiple individuals chanting.

Lori and Thomas Vinson's FBI Interview

On January 8, 2021, the defendants were interviewed at the same time by law enforcement in a recorded telephone call. During the call, Lori Vinson acknowledged she and the defendant entered the U.S. Capitol on January 6, 2021, but claimed they were "let in" and did not "bust in." She admitted she posted about entering the U.S. Capitol on Facebook and said that they were one of the first one hundred people inside. She also indicated that she and Thomas Vinson attended a rally near the White House lawn and walked straight to the U.S. Capitol, ultimately following a stream of people inside. She denied they were waiting outside for someone to break down the doors or windows to get in and claimed they did not meet any kind of resistance while entering. She further stated that police officers did not ask them to leave. According to Lori Vinson, they

also witnessed a person hitting a door with U.S. Senator Mitch McConnell's name on it with a crowd control stanchion three times. After seeing that, they decided to leave.

Thomas Vinson added that he also saw a person throw a water bottle and said they should not do that. He further stated they went to the Capitol as a "peaceful bunch of people there to express their views to Congress…," describing their conduct mainly as chanting and talking, and asserting that they did not damage or take anything.

Second FBI Interview with Lori Vinson

On January 15, 2021, Lori Vinson was re-interviewed and acknowledged she was featured in a local news story and indicated she entered on the Rotunda level and stayed on the same floor. She further claimed she knew there was something going on related to the certification of the electoral votes on January 6, 2021, but did not know that Congress was "in session" at that time and claimed that she expected that no Congressional officials would be in the building because they certainly would not have been allowed entry if they were in session. She also claimed that she did not hear the alarms going off inside the Capitol building during her initial entry into the Capitol but noticed it after recently reviewing the video. She provided law enforcement with one photo of her inside the Rotunda but did not provide law enforcement with the additional photos and videos from inside the U.S. Capitol that she provided to news outlets.

Charges, Arrest, and Post-Arrest Cooperation

On February 22, 2021, the defendants were 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), and on February 23, 2021, they were arrested in Kentucky and immediately retained an attorney. A search warrant had also been issued for the defendants' electronic devices but was not executed. Lori Vinson provided her phone to be imaged pursuant to a consent to search form, in which she withheld consent for any

communications between her and the defendant, asserting marital privilege. Thomas Vinson stated to investigators that the phone he had used at the Capitol had been replaced due to damage. Phone records demonstrated that his registered device changed from an iPhone 8 to an iPhone 12 on January 16, 2021. Later, at the government's request, Lori Vinson consented to a fulsome search of the image of her phone, and Thomas Vinson provided his new phone (which contained information from his old phone) to investigators to conduct a physical search. Through his attorney, Thomas Vinson also provided several videos and photographs taken at the Capitol on January 6, 2021. No videos consistent with the recordings captured on CCTV as described above were provided; one video showing the defendants entering the Capitol was observed on his phone during the physical search. Through counsel, Thomas Vinson represented that he thought he was recording, but when he checked later he apparently did not hit the record button. As noted above, the CCTV shows clearly that the phone is set to record video at some point during the riot. Facebook records gathered pursuant to a search warrant revealed some (but not all) video consistent with the CCTV footage, which had been sent from Thomas Vinson's account to Lori Vinson's account after January 6, 2021.

Plea Agreement

On May 12, 2021, the defendants were charged by four-count Information with 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On July 27, 2021, Thomas Vinson pleaded guilty to Count Four of the Information, charging him with a violation of 40 U.S.C. § 5104(e)(2)(G), Parading, Picketing, and Demonstrating in a Capitol Building. The government

agreed to dismiss the remaining counts in the Information at sentencing. By plea agreement, the defendant agreed to pay $500 in restitution to the Department of the Treasury.

III. Statutory Penalties

Thomas Vinson 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. The defendant must also pay restitution under the terms of his or 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). As set forth below, the Section 3553(a) factors weigh in favor of the government's recommendation.

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 neither exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to their fair and just punishment.

The defendant entered the building approximately five minutes after it was first breached at his location of entry. While no police officers directly blocked his path, there were clear signs of violent entry. The window adjacent to the door through which the defendants passed had just

been smashed out. The defendants walked by a pile of shattered glass on the ground as they moved deeper into the U.S. Capitol. They heard the alarm sounding throughout the Capitol Rotunda and its antechamber: a loud, high-pitched, continuous beeping, similar to a smoke alarm, and they knew tear gas had been deployed. Most importantly, they saw officers being attacked in the Crypt and at the Rotunda doors, and were part of the crowd that continued to press forward despite this obvious dangerous and unlawful conduct toward law enforcement. In fact, Thomas Vinson recorded these attacks. Such callousness must not be taken lightly.

Unlike Lori Vinson, the defendant did not publish misleading and false statements on social media or the news after January 6, 2021, and his statements to law enforcement involved less minimization than his co-defendant's. However, he stood by, on the same call, while his co-defendant misled the FBI. As noted above, Lori Vinson showed no remorse for her conduct, but asserted numerous falsehoods and mischaracterizations to justify her behavior. She claimed that they were "let in" by police officers – a claim for which there is no support in the evidence uncovered during the government's investigation – and encountered no "resistance" – a blatant mischaracterization of the circumstances of her entry into the U.S. Capitol. Providing misleading information to the FBI meets no definition of cooperation.

B. The History and Characteristics of the Defendant

Thomas Vinson is employed as a field supervisor at Country Mark, an oil company, and has been so employed for many years. Final Presentence Investigation Report ("PSR"), ECF No. 41, at ¶ 53. The defendant also served in the U.S. Air Force from 1984 to 1988. While laudable, his military service renders his decision to storm a protected government building during a Constitutional proceeding all the more shocking – and egregious. As set forth in the PSR, the defendant has two convictions for operating a vehicle while under the influence from 1992 and

1996, respectively. *Id.* at ¶¶ 24–31. He has been compliant thus far with the conditions of his pretrial release. *Id.* at ¶ 8. If the Sentencing Guidelines applied to his offense of conviction, he would have zero points, USSG § 4A1.2(c)(2), and he would be in Criminal History Category I, USSG §§ 4A1.1, 5A. In addition, the defendant through counsel quickly 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. This factor supports a more lenient sentence.

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."[5] Consequently, 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. 8/4/2021 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

[5] 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

defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010). Here, both goals will be best served by a significant sentence of home detention and probation.

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 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.

Specific Deterrence

The defendant's conduct demonstrates a need for specific deterrence. The defendant walked past shattered glass on the floor of the Capitol when he unlawfully entered with a horde of rioters, he knew the police had deployed tear gas, and he ignored the blaring alarm resonating through the Capitol. Even more troubling, he recorded these harrowing events on his cell phone. And he sat by while his wife and co-defendant made misleading statements to the FBI.

In addition, certain facts suggest that the defendant attempted to destroy or conceal highly incriminating videos taken inside the Capitol. As noted above, Thomas indicated through counsel that he was not actually recording video inside the Capitol, but some videos from Thomas inside the Capitol were recovered pursuant to a warrant for his Facebook, and his phone was purportedly destroyed shortly after the FBI contacted the Vinsons. The government has no definitive proof that Thomas intentionally concealed evidence. Nevertheless, these circumstances merit the Court's consideration.

On balance, the defendant's need for specific deterrence appears to be somewhat less than his co-defendant's, but a need remains.

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.[6] 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. Those who trespassed, but engaged in less serious aggravating factors, deserve a sentence more in line with minor incarceration or home detention. After a review of the applicable Section 3553(a) factors, the government believes that the defendant's conduct falls in the latter category.

Here, to avoid unwarranted sentencing disparities, the Court should also consider the sentence to be imposed on Lori Vinson, who is set to be sentenced on the same day. Their conduct

[6] 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). The government is abiding by its prior agreement to recommend probation in these 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)(6) 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).

on January 6, 2021, was similar, but multiple search warrants and interviews in this case did not reveal the kind of propaganda and minimization of the violence by Thomas Vinson that Lori Vinson engaged in. On the other hand, the facts surrounding the disappearance of the phone and videos Thomas took inside the Capitol raise concerns. Lori also agreed to cooperate with further investigation, and ultimately, both defendants accepted the first plea offer extended to them. On balance, the primary difference between these defendants is their statements after the fact, which warrant a more significant sentence for Lori Vinson than for Thomas Vinson.

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 Thomas Vinson to three months' home detention, three years' 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 and lengthy supervision as a consequence of his behavior, while recognizing his early acceptance of responsibility.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

By: Mary Dohrmann

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	**Case No: 21-CR-355 (RBW)**
	:	
v.	:	
	:	**40 U.S.C. § 5104(e)(2)(G)**
THOMAS VINSON,	:	
	:	
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, Lori Vinson, 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

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.

Lori and Thomas Vinson's Participation in the January 6, 2021, Capitol Riot

8. The defendants, Lori and Thomas Vinson, who are married, were among those who unlawfully entered the U.S. Capitol on January 6, 2021. The defendants traveled from their home in Kentucky to Washington, D.C., to participate in the "Stop the Steal" rally against the results of the 2020 Presidential Election. After the rally, the defendants marched to the U.S. Capitol building, where they entered the first floor at around 2:18 p.m. Cell phone video recorded by the defendants shows broken glass and alarms blaring as they entered. They were present in a first-floor corridor barricaded by law enforcement officers at approximately 2:31 p.m.

9. When interviewed by FBI agents, the defendants admitted being inside the U.S. Capitol on January 6, 2021, with Lori Vinson later telling local news outlets that she believed her actions were "justified" and that she would "do this all over again tomorrow."

10. The defendants knew at the time they entered the U.S. Capitol Building that that they did not have permission to enter the building and the defendants paraded, demonstrated, or picketed.

Respectfully submitted,

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

By: */s/ Mary L. Dohrmann*
MARY L. DOHRMANN
Assistant United States Attorney

DEFENDANT'S ACKNOWLEDGMENT

I, Thomas Vinson, 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: 7-19-21

Thomas Vinson
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: 7.19.21

Chris Wiest
Attorney for Defendant

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**Case No. 1:21-cr-00360 (DLF)**
v.	:	
	:	
BRITTIANY ANGELINA DILLON,	:	
	:	
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 Dillon to three months of home confinement, a probationary term of three years, 60 hours of community service, and $500 in restitution.

I. Introduction

The defendant, Brittiany Dillon, 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 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.

The government recognizes that Brittiany Dillon did not personally engage in or espouse violence or property destruction on January 6, and that she accepted responsibility early. On the

other hand, her presence at the Capitol, and her efforts to get inside, were clearly motivated by false information, as indicated by text messages she sent to another rioter. In these text messages, Dillon indicated that the new administration stole the election and planned to hand the country over to a foreign adversary. She anticipated that a civil war was coming, and her side—which wore the white hat—would win, decisively. And, as she later wrote to another rioter, she "fought hard" to get inside the Capitol on January 6. A period of home confinement, and a three-year term of probation, is appropriate here because Dillon's thinking demonstrates a willingness to countenance political violence and a risk of engaging in such violence going forward.

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 set forth in the Statement of Offense. 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.

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

Before the attack on the Capitol took place, Dillon exchanged text messages with another rioter in which they discussed false information about the 2020 Presidential election—which would, eventually, support Dillon's decision to commit offenses on January 6, 2021. On December 14, 2021, the other rioter texted Dillon to ask, "what you know so far," and Dillon explained:

> So..republican electors have been sent to a few of the states in question [presumably, Arizona, Georgia, Pennsylvania, and Wisconsin]. MI has had some voter fraud arrests. Declass may be imminent. With all the info on CCP [Chinese Communist Party] Members being outted and having infiltrated every govt and corp they won't be able to do much. Worse case scenario there will be a legit military coup..not against 45 [former President Trump] but against the deep state.

Dillon also added that "Ratcliffe [presumably John Ratcliffe, the Director of National Intelligence at the time] is working behind the scenes too." Dillon advised this other rioter to "make sure you and your mom have supplies," claiming that "the initial quarantine [presumably, Maryland's response to the COVID-19 pandemic] was a test run to get us all stocked up." She further claimed that "We may lose all communications. An all out civil war may start. It will be fast because our side is more prepared." When the other rioter asked who would fight that war, Dillon anticipated "potentially other military..maybe even foreign soldiers." She claimed to have heard a story from her father about Chinese soldiers who had infiltrated Canada and Maine, and who were bombed by the U.S. government. According to Dillon, the news media did not cover these supposed events because they "lie outright and by omission" and "keep everyone hypnotized." She further claimed that if Hillary Clinton had won the presidency in 2016, she and Democrats planned to "Shut the country down then let the UN or Chinese take over."

In that same chain of text messages, Dillon anticipated that their might soon be a brief period of anarchy, and that the American political situation was "Just like when you exorcise a demon..just before they are banished they fight the hardest." The other rioter asked Dillon if she thought "they" could overturn the election, to which Dillon replied, "they I guess already did, but it's about to be fully in our favor." The other rioter claimed to be angriest that "they" have abundant evidence of voter fraud, but "they" lie about the absence of fraud. Dillon replied, "They will never stop..their lifestyle is lies." All of this information reveals what Dillon hoped to accomplish when she traveled to the Capitol and participated in the riot.

On January 6, 2021, Dillon left her home in Maryland early in the morning to drive to Washington, D.C. As she explained to this other rioter in text messages, she had to plan a route through Arlington because of street closures, then park in Washington west of the closed streets.

Dillon planned to attend the former President's rally at the White House's Ellipse, then march to the Capitol. At approximately 2:18 p.m., Dillon attempted to enter the Capitol through the Senate Carriage Doors. These doors are on the northeast side of the building; they face due east, towards First Street N.E. and the Supreme Court of the United States. The doors enter onto the building's second level and are at the same elevation as the eastern doors leading to the Capitol rotunda.

By the time Dillon reached the Capitol building, a crowd had gathered on the steps leading to the Senate Carriage Doors. She worked her way through the crowd and reached the landing before the doors. There, over a period of about 40 seconds, Dillon struggled to get up to the door and—apparently—across the threshold. She fell as she approached the threshold, then immediately stood back up. As this happened, law enforcement officers were trying to secure the door. On video, Dillon appeared to try to talk with these officers. Then, the officers moved their line to allow a small group of rioters, who had already breached the Capitol, to leave the building. Dillon struggled to stay where she was but was pushed back and to the side by the moving police officers and the crowd of rioters. Shortly after this happened, the police successfully closed the Senate Carriage Doors.

Dillon walked away after this and did not make another attempt to enter the Capitol building. She later reported to the other rioter that "I was there. I got pepper sprayed at the door of the capital and tear gassed 3 times making my way up to it" and "I fought hard…I fell in the door and they tried to beat me with batons so I backed off and they pepper sprayed my eyes." When the other rioter wrote "Sorry but I used to back the blue but fuck them" and "They got their ass beat by Patriots," Dillon replied "Never again!!! They are devils." Dillon then told this other rioter that she was "semi-blind..don't mind the weird face lol" and sent a photograph of the top half of her face. The two discussed how each of them got home. The other rioter said he took the metro. Dillon

wrote that she was "anxious and pissed off walking back. I parked by the fish market and my vision was messed up and it took me a bit." Dillon then wrote about how she made it back to her house "after getting lost like 4 times walking and driving."

The next day, the other rioter asked Dillon why she deleted her Instagram account. Dillon told the other rioter that she had been reported, said that her bank account had been hacked, and her family was all on Instagram so it would be easy to find them if someone wanted to harm them. Dillon further explained:

> honestly at this point I am so done trying to wake people up. They all just want to be in an echo chamber..even the ones who claim to be the best truthers in the world. I want to be with my tribe..other lions..not sheep who can't see that we're all part of one giant psyop and this has been planned for years. Tired of settling for politicians who compromise their beliefs in the name of kissing ass and optics.

In an interview following her change of plea, Dillon said that she did not expect the violence at the Capitol on January 6. She claimed, at different times, that she thought someone was going to kill former President Trump, or would kill members of the crowd, like her. When asked why she did not leave, she said that she stayed because there were veterans present, and that now was the time to protest, or else the United States would end up without free speech, like China. She acknowledged talking with the other rioter but claimed she tried to keep their communications silly and lighthearted, and not discuss the Presidential election. At least during the period spanning December 14, 2020 through January 6, 2021, this was untrue: they almost exclusively talked about the election. Dillon also claimed that she did not support violence except in extreme circumstances like the Revolutionary War, but it is clear from her text messages that she viewed the Presidential succession as such an extreme circumstance. Dillon also said that she is tired of being a pawn in a political movement, and that she has disconnected herself from social media.

The Charges and Plea Agreement

On April 26, 2021, Dillon was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D). On May 11, 2021, Dillon surrendered herself to the FBI in Washington, D.C. On May 14, 2021, Dillon was charged by Information with the same crimes; a superseding information was filed on July 12, 2021, modifying the language of Count Three. On July 15, 2021, Dillon pleaded guilty to Count Three of the Superseding Information, charging her with a violation of 40 U.S.C. § 5104(e)(2)(D). In her plea agreement, Dillon 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)(D). 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.[1]

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

[1] The plea agreement also states that this count carried a maximum of one year of supervised release, pursuant to 18 U.S.C. § 3583(b)(3). This was incorrect. Section 3583(b)(3) authorizes a year of supervised release "for a misdemeanor (other than a petty offense)." The offense charged in Count Three is a petty offense. 18 U.S.C. §§ 19, 3559; 40 U.S.C. §§ 5104(e)(2)(D), 5109.

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.

Here, Dillon clearly associated herself with an effort that she anticipated would be violent. She described her opponents as treasonous, writing of a secret plan to surrender the United States to a foreign adversary. She compared efforts to block the inauguration of a legitimately-elected President with an exorcism, and wrote of a coup and a civil war. After the riot, she compared law enforcement officers to devils. It was clear that Dillon's approach to the Capitol building was based on a desire to halt the certification of the Electoral College vote. But beyond this, Dillon demonized those officers sworn to protect *any* members of Congress—regardless of party. These views are toxic, are of the sort used to support political violence, and demonstrate a potential for recidivism.

The nature and circumstances of the riot generally support a sentence of incarceration. While Dillon was pushed back and did not end up making it beyond the building's threshold, her violent statements before January 6 and her after-the-riot statement that she "fought hard" merit more than a probationary sentence.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Dillon has no criminal history. If the Sentencing Guidelines did apply to her offense of conviction, she would have zero points. USSG § 4A1.2(c)(2). Accordingly, she would be in Criminal History Category I. USSG §§ 4A1.1, 5A. Dillon has held different hourly employment positions in the past but now appears to be between jobs.

The government also notes that from the outset, through her attorney, Dillon expressed a desire to plead guilty 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. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-238-TFH, 8/4/2021 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). 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

[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.

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. And here, especially, the violence of Dillon's pre-riot rhetoric strongly suggests that a term of home confinement and a long probationary period are needed to promote the goal of specific deterrence. Dillon anticipated a civil war, the invasion of the United States by a foreign power, and that one of the United States' two major political parties was not just the opposition, but an adversary in league with that power. It is commendable—if it is true—that Dillon now wishes to disconnect herself from politics and has removed herself from the social media environment that fed these views. But it is impossible to separate that claim from the fact that Dillon has been arrested and prosecuted for her conduct. Simply put, her word is not enough

to ensure the Court that she will not repeat such criminal action. Home confinement, followed by a lengthy term of supervision, is the best way to ensure that Dillon does not repeat her conduct.

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 active incarceration. While those who trespassed, but engaged in fewer 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. Nevertheless, motivated by lies, Dillon associated herself with an effort that she saw as part of a civil war, and thus, 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, the nature and circumstances of the offense, need to promote respect for the law, and need to promote deterrence counsel for a less lenient sentence than have been imposed upon some other defendants who are charged with misdemeanor offenses arising out of the Capitol Attack. On the other hand, Dillon's lack of criminal history and early acceptance of responsibility support a more lenient sentence. Balancing these factors, the government recommends that this Court sentence Dillon 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 Dillon's liberty while also recognizing her early acceptance of responsibility.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

By: */s/ Michael J. Romano*

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EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	**Case No. 21-cr-00391 (BAH)**
v.	:	
	:	
LEONARD GRUPPO,	:	
	:	
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 Gruppo to thirty days' incarceration and $500 in restitution.

I. Introduction

The defendant, Leonard Gruppo, an Army veteran who once rose to the rank of Lieutenant Colonel, and his close friend Kenneth Kelly (Case No. 21-cr-331 (CKK)), 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.

Gruppo pled guilty to one count of 40 U.S.C. § 5104(e)(2)(G): Parading, Demonstrating, or Picketing in the Capitol Building. As explained below, a custodial sentence is appropriate in this case. Instead of upholding his military oath to support and defend the Constitution, Gruppo disgraced himself and his country by participating in a riot that sought to undermine one of the most fundamental and cherished tenets of our democracy—the peaceful transfer of power. His 28 years of prior military service renders his participation in the riot more egregious. Moreover, the

defendant deleted evidence of his participation in the riot from his phone, thereby obstructing the government's investigation into his conduct. Finally, the defendant's remorse did not come when he left the Capitol Building; it came four-and-a-half months later, and only after Kelly, who at that point had already been arrested and charged, urged him to come forward and turn himself in.

Gruppo made a conscious decision to enter the Capitol Building on January 6. In so doing, he ignored several opportunities to remove himself from the disorder and chaos around him. For example, instead of leaving the restricted grounds when he noticed the crowd begin to swell in size, he chose to join the fray of rioters who were climbing over a retaining wall and ascending the staircase from the Lower West Terrace to the Upper West Terrace. Instead of walking away when he noticed officers establishing a perimeter on the Upper West Terrace, he chose to walk *toward* the building. Instead of turning around when he noticed the broken windowpanes by the Senate Wing door, he chose to enter the building, and to film himself while doing so. Finally, instead of heeding an officer's advice to exit the Capitol Building through the Senate Wing door behind him, Gruppo chose to turn around and continue walking south through the Capitol.

As this Court has already recognized, the defendant's conduct on January 6th, like the conduct of other defendants, took place in the context of a large and violent riot in which sheer numbers combined with violence to overwhelm law enforcement, allowing rioters to breach the Capitol and disrupt the proceedings. The riot would not have happened but for his actions and the actions of so many others. Here, the defendant's participation in a riot that succeeded in delaying the Congressional certification, combined with his prior military service, his efforts to obstruct justice, his delayed remorse, and his failure to heed officer commands and instructions, renders a custodial sentence both necessary and appropriate.

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. 20 (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. The sheer number of people who chose to be a part of this attack on democracy overwhelmed the Capitol despite attempts by law enforcement to fight them off. Even those who did not attack others, destroy property, or threaten members of Congress themselves supported those who did by joining them. The presence and participation of each and every one of these people encouraged and enabled other rioters as they breached the grounds and the building.

Figure 1

Figure 2

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

Gruppo traveled with his wife from Clovis, New Mexico, to Washington D.C., to attend the "Stop the Steal" rally on January 6, 2021. There, he met up with his good friend and former colleague, Kenneth Kelly. Gruppo and Kelly attended the rally on January 6 and took a picture together in front of the Washington Monument. *See* Figure 3, below.

Figure 3

After former President Trump finished delivering his remarks, Gruppo, Gruppo's wife, and Kelly walked from the Ellipse toward the U.S. Capitol. According to Gruppo, he arrived at the Capitol approximately one-and-a-half to two hours before ultimately entering the building. He then stood in the grassy area bordering the northern staircase on the west side of the Capitol Building, as indicated by the red arrow in Figure 4, below.

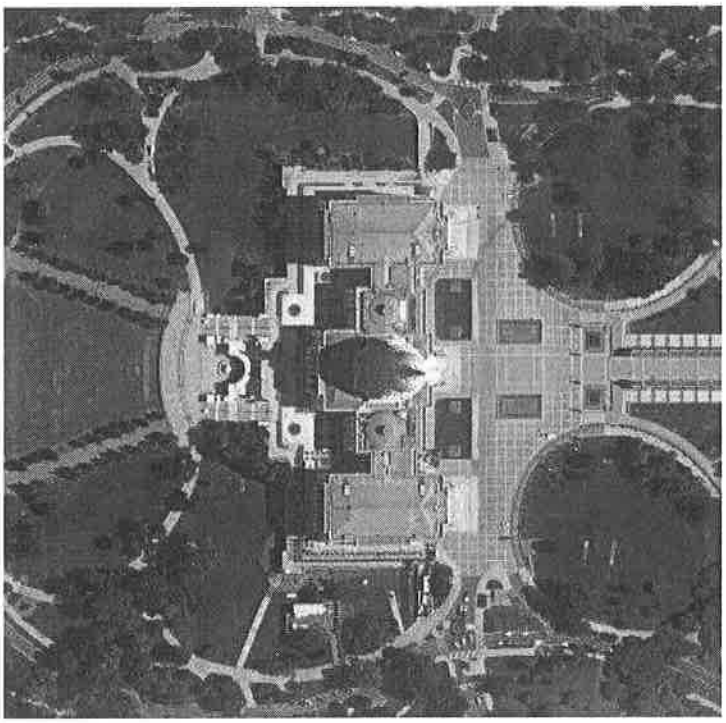

Figure 4

During a debrief with law enforcement, Gruppo maintained that he could not see much from where he was standing. He admitted to seeing a light blue puff of smoke and a pink puff of smoke, and to hearing individuals on bullhorns urging the crowd to keep moving forward. He also admitted to seeing a handful of rioters scaling the retaining walls and staircase beside him. Finally, while the defendant claimed that he did not see any clashes between rioters and law enforcement officers, he admitted to observing rioters, who at one point appeared to be stopped on the staircase, begin moving, en masse, up the stairs to the Upper West Terrace.

In addition to what the defendant admitted to seeing, he also likely would have heard the deafening sounds of flash bangs exploding as nearby rioters at the Lower West Terrace clashed with law enforcement officers. *See* Figures 1 & 2, above. Had he looked up, he would have seen rioters being pursued by law enforcement as they climbed the white scaffolding directly above

him. And he almost certainly would have heard the crowd chanting slogans like, "Our House," and "Stop the Steal," as thousands of rioters demanded that officers let them inside the building.

Gruppo eventually joined his fellow rioters and climbed the retaining wall at the bottom of the northern staircase. The retaining wall that Gruppo likely climbed is visible in a photograph that Kelly took on January 6th. *See* Figure 5, below.

Figure 4

Gruppo then ascended the steps to the Upper West Terrace, where he witnessed a large group of law enforcement officers attempting to establish a perimeter and push the crowd back. Instead of leaving the premises, Gruppo chose to enter the Capitol Building.

Upon approaching the Senate Wing door, Gruppo could see broken glass. That is because approximately 45 minutes prior, rioters wielding weapons and stolen riot shields shattered open the windows, climbed inside the building, and kicked open the door. In Gruppo's own words,

"especially when I got close, and I saw the broken [window]panes, you know I [thought] I probably shouldn't be doing this. But I did it anyway. And here we are."

Gruppo was carrying a mobile phone when he entered the Capitol Building. *See* Figure 6, below. As Gruppo admitted during his debrief, once he saw the negative press coverage of the January 6 attack, he deleted all evidence from his phone, including photographs and videos he had taken inside the Capitol Building.

Figure 5

After entering the Senate Wing door, Gruppo briefly walked south before turning back around to talk to a group of U.S. Capitol Police ("USCP") Officers stationed near the door. According to Gruppo, he returned to ask the USCP Officers for directions on how to leave the building. But as depicted in Figure 7, below, despite the officer instructing Gruppo to leave

through the same door from which he had entered,[1] Gruppo ignored those instructions and instead continued walking south through the building.

Figure 6

Gruppo spent approximately six minutes inside the Capitol Building. He walked through the Crypt and the Hall of Columns, and ultimately exited through the south door.

The Charges and Plea Agreement

Several weeks after Kelly was arrested, and at Kelly's urging, Gruppo's attorney contacted undersigned counsel to arrange for Gruppo's self-surrender. By that point, several tipsters had already identified Gruppo as the unidentified male ("UM1") from the photographs contained in Kelly's complaint. *See United States v. Kenneth Kelly*, 1:21-cr-00331 (CKK), ECF No. 1 (Apr.

[1] In the surveillance footage, the USCP Officer can be seen pointing toward the Senate Wing door three times over the course of his conversation with Gruppo.

21, 2021). At least one of the FBI tips also noted that Gruppo had tried to change his appearance by growing out his hair.

On May 24, 2021, Gruppo was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1), (a)(2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). ECF No. 1. Gruppo self-surrendered on June 1, 2021 and was released on pretrial bond. On June 7, 2021, Gruppo was charged by information with the same four offenses. ECF No. 6. On August 18, 2021, he pleaded guilty to a violation of 40 U.S.C. § 5104(e)(2)(G), Parading, Demonstrating, or Picketing in a Capitol Building. ECF Nos. 19, 20. By plea agreement, Gruppo agreed to pay $500.00 in restitution.

III. Statutory Penalties

The defendant is now scheduled to be sentenced 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 $5,000.00. As discussed below, the defendant must also pay restitution under the terms of his 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). In this case, all of the Section 3553(a) factors weigh in favor of incarceration.

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 literally occupied by hostile participants. By its very nature, the attack defies comparison to other events.

While each defendant should be sentenced based on his individual conduct as we now discuss, this Court should note that each individual person who entered the Capitol on January 6th did so under the most extreme set of circumstances and played a role in the larger riot by encouraging others with his presence and by straining law enforcement resources. *See United States v. Matthew Mazzocco*, 1:21-cr-00054 (TSC), Tr. 10/4/2021 at 25 ("A mob isn't a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers.") (statement of Judge Chutkan). As a person who entered the Capitol, each rioter would—at a minimum—have crossed through numerous barriers and barricades and heard the din of the mob. Depending on the timing and location of his approach, each rioter 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. These rioters did not go through a security screening. They did not receive an admission ticket or attend an introductory video about the history of our nation in the Capitol Visitors Center. They were not given instructions by a docent or staff member on what to do as a tourist in the Capitol. They did not move quietly through

public areas of the Capitol listening to their docent or staff member sharing insights about the building and its history and its importance to the American people.

While looking at the defendant's individual conduct, we must assess such conduct on a spectrum and with an eye towards its larger consequences. 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 neither exhaustive nor dispositive, they help to place each individual defendant on a spectrum as to his fair and just punishment.

The nature and circumstances of this offense are serious. Gruppo traveled from New Mexico to D.C.—a lengthy and costly trip—to attend the "Stop the Steal" rally. Once there, he joined the crowds of people who overwhelmed law enforcement and helped make the violent attacks and destruction possible. He walked to the restricted grounds of the Capitol, where he was in a position to observe the chaos as other rioters attacked law enforcement and climbed scaffolding. He joined in this chaos by scaling the retaining walls of the northern staircase and by entering the Capitol amidst law enforcement's efforts to establish a perimeter and clear rioters from the Upper West Terrace. In surveillance videos, Gruppo is seen deliberately ignoring instructions from law enforcement officers.

During his debrief with law enforcement, Gruppo maintained that he entered the Capitol Building to escape the surrounding chaos. But that *post hoc* rationalization overlooks the many ways in which Gruppo deliberately contributed to that chaos. If Gruppo's intent in traveling to Washington D.C. was merely to attend the "Stop the Steal" rally, then there was no reason for him to walk to the U.S. Capitol grounds after former President Trump's speech. No one forced Gruppo on to the restricted Capitol grounds. Nor did anyone force Gruppo to climb the retaining wall and ascend the northern staircase. To the contrary, climbing the northern staircase would have required considerable physical effort, considering how packed the staircase was with other rioters at the time.

Gruppo further claimed during his debrief that he entered the Capitol Building because he felt unsafe while the officers on the Upper West Terrace worked to establish a perimeter. But his 28 years of military training, not to mention his common sense, should have taught him that the officers establishing a perimeter were not doing so to encourage more rioters to enter the U.S. Capitol Building. Gruppo should have known that the only appropriate response at that time would have been to leave the premises as soon as possible.

In sum, there were many offramps that Gruppo chose to ignore before entering the U.S. Capitol Building. There is no question that he knew his actions were wrong and unlawful. Indeed, any reasonable person would have recognized the red flags that day: the puffs of smoke rising above the northern staircase, the deafening sounds of rioters clashing with law enforcement, the sight of rioters scaling the outer walls of the Capitol Building, the presence of officers clearing a perimeter on the Upper West Terrace, and the shattered glass at the entrance to Senate Wing door. As a veteran and as a physician's assistant, Gruppo was especially attuned to the risks that his and

other rioters' conduct posed to law enforcement and to members of Congress. His ability to cast aside his decades of training and his better instincts renders his conduct that much more egregious.

Gruppo does deserve some recognition for ultimately coming forward and turning himself in. Unfortunately, however, his remorse came far later than it should have. Had Gruppo been truly remorseful for his actions, he would have turned himself in in the days following the January 6th attack. Instead, however, Gruppo deleted all evidence from his phone and began growing out his hair to change his appearance. Even when Kelly was arrested in April, Gruppo did not immediately come forward. Instead, it took Gruppo three weeks (and some convincing from Kelly) before he approached the government about self-surrendering. And it's not as if Gruppo didn't know he was wanted; indeed, by the time he turned himself in, numerous tipsters had already reported him to the FBI based on the images contained in Kelly's public complaint. As Judge Chutkan observed while sentencing a Capitol Riot misdemeanant to a term of incarceration, "[The defendant's] remorse didn't come when he left that Capitol. It didn't come when he went home. It came when he realized he was in trouble. . . . It came when he realized that he could go to jail for what he did." *Mazzocco*, 1:21-cr-00054 (TSC), Tr. 10/4/2021 at 29-30. Thus, the defendant's prompt acceptance of responsibility, while mitigating, does not outweigh the lack of remorse he exhibited in the four-and-a-half months leading up to his self-surrender.

B. The History and Characteristics of the Defendant

As set forth in the PSR, Gruppo has no criminal history and has been employed continuously since enlisting in the U.S. Army in November 1986. ECF No. 23 ¶¶ 24-30, 33-35, 49-53. Gruppo has also complied with his conditions of pre-trial release according to the compliance reports that have been filed in this case. Nevertheless, as a well-educated veteran who served close to thirty years in the Army, including as a Lieutenant Colonel, Gruppo should have

known better. He should have recognized the threat that his conduct posed to the rule of law and the peaceful transfer of power—two democratic tenets that he repeatedly risked his life to defend during his multiple tours overseas.

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 6th 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 January 6th riot cases including in misdemeanor cases. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-238-TFH, Tr. 8/4/2021 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). A sentence of probation or home confinement would be insufficient here.

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).

[2] Statement of Christopher Wray, Director, Federal Bureau of Investigation, Statement Before the Committee on Oversight and Reform U.S. House of Representatives at a Hearing Entitled "Examining the January 6 Attack on the U.S. Capitol" Presented June 15, 2021, *available at* https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf (last accessed Oct. 14, 2021).

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. The violence at the Capitol on January 6th 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. 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. *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.") (statement of Judge Moss). 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

The government acknowledges the defendant's assistance in this investigation and his prompt acceptance of responsibility after being charged in this case. The government further acknowledges that unlike other rioters, the defendant does not appear to have boasted about his conduct on social media.[3]

A relatively short term of incarceration is nevertheless appropriate in light of the defendant's belated remorse and his various efforts to obstruct the government's investigation. Specifically, the defendant obstructed the government's investigation by: (1) deleting all potential evidence from his phone within days of seeing the negative portrayal of the January 6 attack in the media; and (2) attempting to change his appearance. He also waited three weeks after Kelly was arrested before turning himself in, even though his image was all over the news by that point. Finally, in addition to demonstrating poor judgment, the defendant has demonstrated a willingness to violate his military oath to support and defend the Constitution, and, in so doing, to ignore the commands of 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 his 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 necessitating years of imprisonment.

[3] The defendant did admit to sending friends and family members photographs that he took outside the Capitol on January 6th. Due to the defendant's obstructive conduct, however, the government was not able to review these text messages and photographs when searching the defendant's phone.

The misdemeanor defendants will generally fall on the lesser end of that spectrum, but that in no way means that misdemeanor breaches of the Capitol on January 6, 2021 were minor crimes. A probationary sentence should not become the default.[4] 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. And 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 has earned him a custodial sentence. The defendant's aggressive approach to the Capitol after observing the chaos for nearly two hours, his failure to obey various officers' command, his deletion of evidence from his phone, and his failure to turn himself in until three weeks after his companion had already been arrested, are aggravating factors that render

[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). The government is abiding by its prior agreement to recommend probation in these 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)(6) 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).

Gruppo's conduct more egregious, particularly when committed by a long-serving veteran who certainly knew better at every stage. His conduct warrants a sentence of incarceration

V. Restitution

As noted above, the defendant agreed under the terms of the plea agreement to pay $500 in restitution. At the plea hearing, the Court ordered the government to address restitution in anticipation of the defendant's sentencing; specifically, how the amount of restitution complies with 18 U.S.C. §§ 3556, 3663, and 3663A. ECF No. 22, at 21. We submit this explanation to aid the Court.

Under 18 U.S.C. § 3556, a sentencing court must determine whether and how to impose restitution in a federal criminal case. Because a federal court possesses no "inherent authority to order restitution," *United States v. Fair*, 699 F.3d 508, 512 (D.C. Cir. 2012), it can impose restitution only when authorized by statute, *United States v. Papagno*, 639 F.3d 1093, 1096 (D.C. Cir. 2011). Two general restitution statutes provide such authority. First, the Victim and Witness Protection Act of 1982 ("VWPA"), Pub. L. No. 97-291 § 3579, 96 Stat. 1248 (now codified at 18 U.S.C. § 3663), "provides federal courts with discretionary authority to order restitution to victims of most federal crimes." *Papagno*, 639 F.3d at 1096. Second, the Mandatory Victims Restitution Act ("MVRA"), Pub. L. No. 104-132 § 204, 110 Stat. 1214 (codified at 18 U.S.C. § 3663A), "requires restitution in certain federal cases involving a subset of the crimes covered" in the VWPA. *Papagno*, 639 F.3d at 1096. The applicable procedures for restitution orders issued and enforced under these two statutes is found in 18 U.S.C. § 3664. *See* 18 U.S.C. § 3556 (directing that sentencing court "shall" impose restitution under the MVRA, "may" impose restitution under the VWPA, and "shall" use the procedures set out in § 3664).[5]

[5] Several other criminal statutes authorize restitution for specific offenses. *See, e.g.*, 18 U.S.C. § 43(c) (damaging or interfering with an enterprise involving animals); 18 U.S.C. § 228(d) (child

The VWPA and MVRA share certain features. Both require that restitution "be tied to the loss caused by the offense of conviction." *Hughey v. United States*, 495 U.S. 411, 418 (1990) (interpreting the VWPA); *see United States v. Clark*, 747 F.3d 890, 897 (D.C. Cir. 2014) (restitution under the MVRA limited to the "offense of conviction" under *Hughey*). Both require identification of a victim, defined in both statutes as "a person directly and proximately harmed as a result of" the offense of conviction.[6] *See* 18 U.S.C. § 3663(a)(2); 18 U.S.C. § 3663A(a)(2). Both statutes identify similar covered costs, including lost property and certain expenses of recovering from bodily injury. *See Papagno*, 639 F.3d at 1096-97; § 3663(b); § 3663A(b). Finally, under both statutes, the government bears the burden by a preponderance of the evidence to establish the amount of loss suffered by the victim. *United States v. Bikundi*, 926 F.3d 761, 791 (D.C. Cir. 2019). The relevant inquiry is the scope of the defendant's conduct and the harm suffered by the victim as a result. *See Emor*, 850 F. Supp. 2d at 202. The use of a "reasonable estimate" or reasonable approximation is sufficient, "especially in cases in which an exact dollar amount is inherently incalculable."[7] *United States v. Gushlak*, 728 F.3d 184, 196 (2d Cir. 2013); *see United States v. Sheffield*, 939 F.3d 1274, 1277 (11th Cir. 2019) (estimating the restitution figure is permissible because "it is sometimes impossible to determine an exact restitution amount") (citation omitted); *United States v. James*, 564 F.3d 1237, 1247 (10th Cir. 2009) (restitution order

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support violations; 18 U.S.C. § 1593 (peonage, slavery, and trafficking in persons); 18 U.S.C. § 2248 (sex crimes); 18 U.S.C. § 2259 (sexual exploitation of children); 18 U.S.C. § 2264 (domestic violence); 18 U.S.C. § 2327 (telemarketing fraud); 18 U.S.C. § 853(q) (amphetamine and methamphetamine offenses). None of those statutes are at issue in Gruppo's case.

[6] The government or a governmental entity can be a "victim" for purposes of the VWPA and MVRA. *See United States v. Emor*, 850 F. Supp. 2d 176, 204 n.9 (D.D.C. 2012) (citations omitted).

[7] The sentencing court should "articulate the specific factual findings underlying its restitution order in order to enable appellate review." *Fair*, 699 F.3d at 513.

must identify a specific dollar amount but determining that amount is "by nature an inexact science" such that "absolute precision is not required") (citation omitted); *United States v. Burdi*, 414 F.3d 216, 221 (1st Cir. 2005) (same); *see also Paroline v. United States*, 572 U.S. 434, 459 (2014) (observing in the context of the restitution provision in 18 U.S.C. § 2259 that the court's job to "assess as best it can from available evidence the significance of the individual defendant's conduct in light of the broader causal process that produced the victim's losses . . . cannot be a precise mathematical inquiry").

The statutes also differ in significant respects. As noted above, the VWPA is a discretionary restitution statute that permits, but does not require, the sentencing court to impose restitution in any case where a defendant is convicted under Title 18 or certain other offenses in Title 21 or Title 49. 18 U.S.C. § 3663(a). In deciding whether to impose restitution under the VWPA, the sentencing court must take account of the victim's losses, the defendant's financial resources, and "such other factors as the court deems appropriate." *United States v. Williams*, 353 F. Supp. 3d 14, 23-24 (D.D.C. 2019) (quoting 18 U.S.C. § 3663(a)(1)(B)(i)). By contrast, as noted above, the MVRA applies only to certain offenses, such as a "crime of violence," § 3663A(c)(1)(A), or "Title 18 property offenses 'in which an identifiable victim . . . has suffered a physical injury or pecuniary loss,'" *Fair*, 699 F.3d at 512 (citation omitted), but it requires imposition of full restitution without respect to a defendant's ability to pay.[8]

While both statutes generally limit restitution to losses resulting from conduct that is the basis of the offense of conviction, they also authorize the court to impose restitution under the terms of a plea agreement. *See* 18 U.S.C. § 3663(a)(3); 18 U.S.C. § 3663A(a)(3); *see United States*

[8] Both statutes permit the sentencing court to decline to impose restitution where doing so will "complicat[e]" or "prolong[]" the sentencing process. *See* 18 U.S.C. § 3663(a)(1)(B)(ii); 18 U.S.C. § 3663A(c)(3)(B).

v. Zerba, 983 F.3d 983, 986 (8th Cir. 2020); *United States v. Giudice*, Case No. 13-cr-0495-01 (ES), 2020 WL 220089, at *5 (D.N.J. Jan. 15, 2020). As relevant to Gruppo's case, the sentencing court under the VWPA "may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement." 18 U.S.C. § 3663(a)(3). Under Section 3663(a)(3), a defendant may agree to pay restitution even where the offense of conviction falls outside of the statutes otherwise covered by the VWPA. *See United States v. Anderson*, 545 F.3d 1072, 1078-79 (D.C. Cir. 2008) (upholding restitution agreement under Section 3663(a)(3) where defendant was convicted under 26 U.S.C. § 7201). A defendant's agreement to pay restitution under Section 3663(a)(3) is a binding promise, *United States v. Pappas*, 409 F.3d 828, 830 (7th Cir. 2005), and the sentencing court is not required to independently evaluate the defendant's ability to pay when restitution is made part of the plea agreement under that provision, *United States v. Allen*, 201 F.3d 163, 167-68 (2d Cir. 2000).

Application of these restitution principles to Gruppo's case is straightforward. The defendant entered a guilty plea to one count of Parading, Demonstrating, or Picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G). That offense of conviction does not trigger the MVRA because it does not fall within the "subset" of crimes covered under that statute. *See* 18 U.S.C. § 3663A(c)(1)(A); *Papagno*, 639 F.3d at 1096. Gruppo's non-Title 18 offense of conviction also does not fall within the statutes covered by the VWPA. *See* 18 U.S.C. § 3663(a)(1)(A). Restitution here nonetheless properly falls within the scope of Section 3663(a)(3) because the plea agreement requires Gruppo to pay $500 in restitution. *See Anderson*, 545 F.3d at 1078-79. The Court thus is authorized to impose restitution "to the extent agreed to by the parties" in the plea agreement. 18 U.S.C. § 3663(a)(3).

The VWPA also provides that restitution ordered under Section 3663 "shall be issued and enforced in accordance with section 3664." 18 U.S.C. § 3663(d). Because this case essentially involves the related criminal conduct of hundreds of defendants, the Court has discretion to: (1) hold the defendants jointly and severally liable for the full amount of restitution owed to the victim(s), *see* 18 U.S.C. § 3664(f)(1)(A) (requiring that, for restitution imposed under § 3663, "the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant"); or (2) apportion restitution and hold the defendant and other defendants responsible only for each defendant's individual contribution to the victim's total losses. 18 U.S.C. § 3664(h).

The government and Gruppo, pursuant to the plea agreement, have requested the Court to apportion liability for restitution for damages arising from the riot at the United States Capitol. For this case, the parties have agreed that the Court may impose restitution in the amount of $500. This amount fairly reflects Gruppo's role in the offense and the damages resulting from his conduct. This amount properly reflects the defendant's role, but also considers the various legal and factual issues associated with calculating the actual losses for property damage to the United States Capitol and incurred by law enforcement agencies, additional costs incurred for security personnel, and bodily injuries sustained by law enforcement personnel. In consideration of these factors, the restitution amount reflected in the plea agreement fairly represents an apportionment of Gruppo's liability and, therefore, is proper in this case.

The Court has also asked the government in other cases to explain how it reached the restitution amount reflected in the plea agreement, which notes that, as of May 17, 2021, the riot at the United States Capitol had caused "approximately $1,495,326.55" in damages. ECF No. 23 ¶ 11. As noted above, determining the restitution amount is an "inexact science," *James*, 564 F.3d

at 1246, that must be based on a "reasonable approximation of losses supported by a sound methodology," *Gushlak*, 728 F.3d at 196. The nearly $1.5 million figure quoted in the defendant's plea agreement represented loss estimates provided by Architect of the Capitol as of mid-May 2021. The government continues to investigate losses that resulted from the breach of the Capitol on January 6, 2021, a process that involves several facets. As a factual matter, the government is continuing to collect evidence concerning, *inter alia*, (1) the cost of damage to the Capitol Building and Grounds, both inside (*e.g.*, doors, windows, offices, office equipment, hallways, the Rotunda, the Crypt, etc.) and outside (*e.g.*, doors, windows, barricades, scaffolding, etc.); (2) the costs associated with the deployment of additional law enforcement units to the Capitol on January 6th; (3) the cost of broken or damaged law-enforcement equipment; (4) the cost of stolen property; and (5) the costs associated with bodily injuries sustained by law enforcement officers and other victims. As a legal matter, *some* of these costs (such as property damage and medical injuries) clearly fall within the scope of the restitution statutes as applied to *some* defendants (*e.g.*, defendants who broke a window or committed aggravated assault against a law enforcement officer). But other costs, including employees' work time, *see United States v. Wilfong*, 551 F.3d 1182, 1184 (10th Cir. 2008), and the proper method for assessing value of damaged or destroyed property, *see United States v. Shugart*, 176 F.3d 1373, 1375 (11th Cir. 1999), raise more challenging questions that should be resolved as they arise. To the extent a victim's losses in a particular case are "not ascertainable" at the time of sentencing, Section 3664 permits an extension of up to 90 days for a "final determination" of those losses. 18 U.S.C. § 3664(d)(5); *see Dolan v. United States*, 560 U.S. 605, 611 (2010) (allowing a sentencing court to order restitution after the 90-day deadline under some circumstances). None of these questions, however, arise in Gruppo's case.

VI. Conclusion

Sentencing here requires that the Court carefully balance the various factors set forth in 18 U.S.C. § 3553(a). As detailed above, those factors on balance support a sentence of incarceration. The government recommends that this Court sentence Leonard Gruppo to thirty days' imprisonment 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.

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-391 (BAH)
	:	
v.	:	40 U.S.C. § 5104(e)(2)(G)
	:	
LEONARD GRUPPO,	:	
	:	
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, Leonard Gruppo, 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 ecurity officials.

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

Leonard Gruppo's Participation in the January 6, 2021, Capitol Riot

8. During the time relevant to the above described events, the defendant entered the U.S. Capitol with his friend, Kenneth Kelly ("Kelly"), and walked around the building. Specifically, at approximately 3:00 p.m., the defendant and Kelly entered the Senate Wing door on the northwest side of the U.S. Capitol. The defendant and Kelly then walked south through the Crypt, and eventually exited through the Hall of Columns on the south side of the U.S. Capitol at approximately 3:07 p.m. Prior to entering the U.S. Capitol, the defendant and Kelly attended the rally on the Ellipse and took a photograph together near the Washington Monument.

9. The defendant knew at the time he entered the U.S. Capitol Building that he did not have permission to enter the building and the defendant paraded, demonstrated, or picketed.

Respectfully submitted,

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DEFENDANT'S ACKNOWLEDGMENT

I, Leonard Gruppo, 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/AUG/2021

Leonard Gruppo
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: 10 Aug 2021

Daniel R. Lindsey, Esq.
Attorney for Defendant