

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

**UNITED STATES OF AMERICA**

**v.**

**KYLE FITZSIMONS**

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**Case No. 21-CR-158**

**EXHIBIT TO DEFENDANT’S SENTENCING MEMORANDUM  
RELEVANT CASE COMPARISON**

Defense counsel respectfully submits the following list of relevant cases to aid the court in determining an appropriate sentence that avoids unwarranted sentencing disparities among defendants with similar records who have been convicted of similar conduct pursuant 18 U.S.C. § 3553(a)(6). Mr. Fitzsimons has zero criminal history points, and his guidelines should be calculated under criminal history category I. Defendants with significant criminal history will be noted in footnotes below.

**I. Case Comparison Based on Actual Conduct**

**1. Josiah Kenyon, Criminal Case No. 21-726, 72 months incarceration**

Josiah Kenyon entered a guilty plea to two counts of 18 U.S.C. § 111(a) and (b). The government summarized his conduct as follows:

Kenyon, an unemployed, 35-year-old man, travelled by car to Washington, D.C. from Reno, Nevada with his wife and young children. On January 6, 2021, he joined other rioters who breached the U.S. Capitol and spent approximately 30 minutes walking through the building. He used his fist and a flagpole to damage a large exterior window. Finally, in what was undisputedly his most egregious behavior, Kenyon joined and participated in assaulting police officers with a large and violent group of rioters at the Capitol’s Lower West Terrace tunnel. There, Kenyon used several large objects to violently assault officers attempting to the guard the tunnel area. At one point, Kenyon used a table leg with a protruding nail

to strike an officer in the leg and then to strike a second officer on the head such that Kenyon's weapon became lodged in the officer's face shield and helmet.

1:21-CR-726, ECF Doc. No. 32, p 2.



1:21-CR-726, ECF Doc. No. 32, p 13.

## 2. Mark Ponder, Criminal Case No. 21-259, 63 months incarceration<sup>1</sup>

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<sup>1</sup> Ponder has a long history of arrests and convictions, including for crimes of violence. Most significantly, in 2008, following a guilty plea, Ponder was convicted in this court of bank robbery and robbery. Case no. 1:07-cr-00236-RWR. Ponder pleaded guilty to two separate robberies in the District of Columbia committed a week apart. On July 9, 2007, Ponder entered a PNC Bank on Columbia Avenue, Northwest, handed the teller a note demanding money, and left with currency totaling \$2,469. PSR ¶ 56. A week later, on July 15, 2007, Ponder robbed a taxi driver of his vehicle after forcing the driver and passenger out of the vehicle. As he attempted to get away, he drove into a second vehicle and then reversed, driving the stolen taxi backwards and up onto a police cruiser. *Id.* Ponder was sentenced to a total of 36 months imprisonment for each robbery, to be served concurrently, and 36 months of supervised release. *Id.* Because these offenses were included in the same charging instrument and the sentences for both were "treated as a single sentence," they result in four criminal history points in this case. U.S.S.G. § 4A1.1(a), (e). 1:21-CR-259, ECF Doc. No. 54, p 25.

Mark Ponder entered a guilty plea, pursuant to a plea agreement, to 18 U.S.C. § 111(a)(1) and (b). The government summarized his conduct as follows:

Ponder, a Washington, D.C. resident, assaulted police officers in the Capitol's West Plaza after rioters broke through the police line. He swung a pole at an officer and, after his pole broke against the officer's shield, he re-armed himself with a sturdier pole, then committed another assault on a different officer. About fifteen minutes later, in the Capitol's Upper West Terrace, Ponder assaulted another officer with that same, sturdier pole. He was taken down and detained by police officers who attempted to arrest him but was released after the officers were unable to get a transport vehicle to the Capitol grounds. Told to leave the Capitol, Ponder instead traveled to the Lower West Terrace so that he could again join the mob confronting officers at the mouth of the tunnel.

1:21-CR-259, ECF Doc. No. 54, p 2.



1:21-CR-259, ECF Doc. No. 54, p 12.

**3. Robert Palmer, Criminal Case No. 21-358, 63 months incarceration**

Robert Palmer entered a guilty plea to 18 U.S.C. § 111(b). The government summarized his conduct as follows:

...After watching other rioters repeatedly assaulting the officers defending the Lower West Terrace entrance to the Capitol – a scene that horrified the rest of the world – Palmer chose to join in. Palmer made his way to the front line of the rioters and proceeded to attack the officers. Palmer first threw a wooden plank at

the officers. He then sprayed the contents of a fire extinguisher at the officers, and when it was empty, hurled it at the officers. Palmer then rooted around for additional materials with which to assault the police, including throwing the fire extinguisher a second time. At this time, after his assaults had occurred, Palmer was pepper sprayed by law enforcement.

But the pepper spray only deterred Palmer for a short while. A few minutes later, on the West Plaza, Palmer assaulted another group of law enforcement officers with a 4-5 foot pole. As he threw the pole like a spear at the officers, one of them fired a non-lethal projectile at Palmer, hitting him in the abdomen. Palmer retreated and lay on the ground for a few minutes. When he got up, Palmer showed off his injury to the crowd, shouting falsely that he had been shot merely for yelling at the police, when in fact he had provoked the injury by his own assault.

1:21-CR-00328, ECF Doc. No. 30, p 2-3.



1:21-CR-00328, ECF Doc. No. 30, p 15.

**4. Donald Hazard, Criminal Case No. 22-117, 57 months incarceration**

Donald Hazard entered a guilty plea, pursuant to a plea agreement, to 18 U.S.C. § 111(a)(1) and (b). The government summarized his conduct as follows:

In the weeks leading up to January 6, 2021, Hazard, with encouragement and assistance from his co-defendant Lucas Denney, acquired protective gear and weapons, recruited comrades in arms, and arrived in Washington, D.C. eager for violence. On January 6, as police officers attempted to hold back rioters from breaching the Capitol, Hazard engaged with them, grabbing an officer, pulling him down a set of concrete steps, and falling on top of another officer. One of those

officers sustained extensive, significant, and long-lasting injuries. Hazard continued to confront officers on the west side of the Capitol, yelling at them and spraying a chemical substance at them. He then entered the Capitol building, proclaiming that he was “storming” the Capitol.

1:21-CR-00117, ECF Doc. No. 40-1, p 2.



1:21-CR-00117, ECF Doc. No. 40-1, p 13.

The following quotes, which are attributed to the defendant, were made prior to the January 6<sup>th</sup> riot, and demonstrate an intent to engage in physical violence:

“Wanna go bust some head’s with us??”<sup>2</sup>

“We probably got body armor for you and probably a pair of knuckle gloves. You’ll want a helmet and maybe eye protection.”<sup>3</sup>

“Yeah brother I’m ready. I got a helmet today I got knuckle gloves I got goggles I got a body armor. And I just checked we have a helmet for you we have gloves we have body armor only thing you might need is some safety glasses...”<sup>4</sup>

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<sup>2</sup> Quote from Facebook Messenger on 1/2/23. 1:21-CR-00117, ECF Doc. No. 40-1, p 10.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

“And you can bet I’m gonna bust as many antifa and BLM skulls as I possibly can for you.”<sup>5</sup>

“So the time to sit back and be peaceful is over. There’s a Civil War coming and I for one will be on the front lines taking out as many of those sons of bitches as I possibly can.”<sup>6</sup>

The following images depict items brought and worn by the defendant, demonstrating the defendant’s intent to engage in physical violence prior to his arrival on January 6, 2021.

**Hazard:**



**Hazard:**



1:21-CR-00117, ECF Doc. No. 40-1, p 11.

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<sup>5</sup> Quote is from a comment posted on Facebook. 1:21-CR-00117, ECF Doc. No. 40-1, p 12.

<sup>6</sup> *Id.*



1:21-CR-00117, ECF Doc. No. 40-1, p 23.

**5. Geoffrey Sills, Criminal Case No. 21-40-6, 52 months incarceration**

Geoffrey Sills was found guilty of after a stipulated bench trial for violations of 18 U.S.C. § 111(a) and (b), of 18 U.S.C. § 2111, and of 18 U.S.C. § 1512(c)(2). The government summarized his conduct as follows:

Sills, a 3D artist from Mechanicsville, Virginia, traveled to Washington, D.C. on January 6, 2021, to attend the “Stop the Steal” rally at the Ellipse in downtown D.C. Wearing a black “Make America Great Again” (MAGA) hat, a distinctive striped shirt, black goggles, and a black gas mask, Sills joined the crowd illegally gathering on the West Front of the U.S. Capitol grounds at approximately 2:13 p.m. Over the next hour, Sills participated in the continuous assault on officers defending the West Front and at the Lower West Terrace tunnel at the U.S. Capitol. Sills threw several pole-like objects at the officers as they retreated from the West Front, and then entered the Lower West Terrace tunnel, where he -pointed a flashing strobe light at the police line, stole a department-issued baton from a Metropolitan Police Department officer, and used the extended baton to repeatedly strike at multiple officers on the police line. All the while, Sills was filming the events and posting them to the app Instagram under his username @geoff\_sills.

1:21-CR-00040, ECF Doc. No. 574, p 2.



1:21-CR-00040, ECF Doc. No. 574, p 19.

The following images depict items brought and worn by the defendant, demonstrating the defendant's intent to engage in physical violence prior to his arrival on January 6, 2021.<sup>7</sup>



1:21-CR-00040, ECF Doc. No. 574, p 14.

<sup>7</sup> Financial account records show Sills made multiple purchases at stores in November 2020 (including “Infidel Body Armor,” “Freedom Fighters Tactic,” and “Cheaper than Dirt”), which sell body armor, weapons, gas masks, and other combat equipment. Indeed, on January 6, Sills arrived in the nation’s Capital armed with such a gas mask, and wearing a black “Make America Great Again” (MAGA) hat, a distinctive grey striped shirt, tactical gloves, ear protection, and black goggles. 1:21-CR-00040, ECF Doc. No. 574, p 14.



**6. Robert Sanford, Criminal Case No. 21-86, 52 months incarceration**

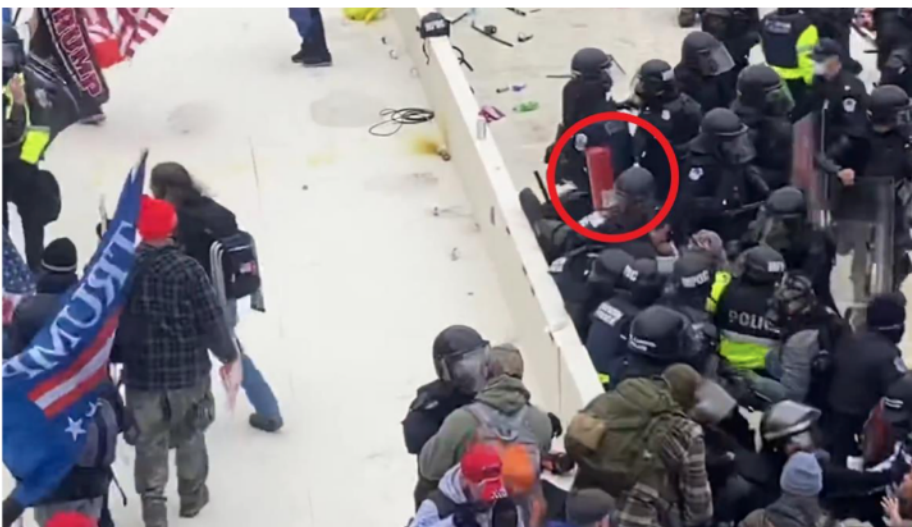
Robert Sanford entered a guilty plea to one count of 18 U.S.C. § 111(a)(1) and (b). The government summarized his conduct as follows:

Sanford approached the Lower West Terrace of the Capitol building, one of the most violent locations of the Capitol riot. After rioters breached the police line on the Lower West Terrace, Sanford threw a fire extinguisher at a group of officers. Sanford struck three police officers in the head with the fire extinguisher. Sanford also threw an orange traffic cone at a police officer.

1:21-CR-00086, ECF Doc. No. 50, p 2.



1:21-CR-00086, ECF Doc. No. 50, p 4.



1:21-CR-00086, ECF Doc. No. 50, p 5.

**7. Lucas Denney, Criminal Case No. 21-70, 52 months incarceration<sup>8</sup>**

Lucas Denney entered a guilty plea without agreement to 18 U.S.C. § 111(a)(1) and (b).

The government summarized his conduct as follows:

For weeks leading up to the January 6, 2021 attack on the United States Capitol, Denney, a former military police officer and the self-declared President of a militia group called the Patriot Boys of North Texas (“PBONT”), gathered protective gear and weapons, recruited comrades in arms, and arrived in Washington, D.C. eager for violence. His stated purpose that day was to prevent Congress, by physical violence, from certifying that Joseph Biden had won the Electoral College vote two months earlier. Hellbent on achieving that unlawful and indeed unconstitutional result on January 6, Denney joined the storming of the police lines on the West Plaza and Northwest Staircase of the U.S. Capitol, deploying pepper spray in the direction of officers, assaulting them – including with a pole -- and attempting to disarm them. He then made his way to the Lower West Terrace of the Capitol building, the scene of some of the most barbaric violence on January 6. There, brandishing a baton or a stick, Denney joined in the mob’s efforts to push their way through a line of police officers, including by pushing a riot shield into the officers, and shortly thereafter, swung at a police officer who had been separated from the police line. He still suffers from substantial physical injuries inflicted on him that day...

Thereafter, Denney lied to FBI agents about his knowledge of the assault and deleted information from a social media account. Denny’s service as a military police officer in the United States army makes his attack on the police who valiantly sought to protect the Capitol on January 6 more aggravating: he knew or should have known that his participation in the riot when thousands of persons, many armed with weapons, overran the vastly outnumbered police officers would result in numerous injuries to the officers.

1:21-CR-00070, ECF Doc. No. 46, p 1-2.

The following images depict items brought and worn by the defendant, demonstrating the defendant’s intent to engage in physical violence prior to his arrival on January 6, 2021.<sup>9</sup>

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<sup>8</sup> The 52 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 87-108 months. 1:21-CR-00070, ECF Doc. No. 46, p 57 (52 months represents just 60% of the bottom of the standard range of the adjusted guidelines).

<sup>9</sup> “On Jan 6 itself, Lucas Denney was wearing full battle attire including a helmet, knuckled gloves, and what appears to be a ballistic vest with body armor under his jacket.” 1:21-CR-00070, ECF Doc. No. 46, p 22.



1:21-CR-00070, ECF Doc. No. 46, p 24.

The following quotes, which are attributed to the defendant, were made prior to the January 6<sup>th</sup> riot, and demonstrate an intent to engage in physical violence personally and with a larger group of rioters:

“We are linking up with thousands of Proud Boys and other militia that will be there. This is going to be huge. And it’s going to be a fight.”<sup>10</sup>

“If you know anyone like us that can go and will actually fight, then we could use them.”<sup>11</sup>

“Me and my guys leave Sunday for DC to be in the fight on the 6th. It will get Western I can tell you that.”<sup>12</sup>

“I need guys willing to fight ANTIFA back.”<sup>13</sup>

“bought a couple cans of pepper spray earlier and one vest.”<sup>14</sup>

[In response to a Facebook user asking Denney what his group needed to Jan 6]: “2 helmets, 3 stab proof vest, cans of pepper spray, medical supplies and gloves. And our own food and water because places might get shut down. . . . If I have enough

<sup>10</sup> Quote from Facebook messages to various individuals between 12/26/20 and 12/29/20. 1:21-CR-00070, ECF Doc. No. 46, p 19.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at p 20.

<sup>14</sup> *Id.*

left over I'll need to get batteries and a few more communication radios (walkie talkies)”.<sup>15</sup>

**8. Justin Jersey, Criminal Case No. 21-35, 51 months incarceration**

Justin Jersey entered a guilty plea, pursuant to a plea agreement, to 18 U.S.C. § 111(a) and (b). The government summarized his conduct as follows:

Jersey, carrying a large, gnarled stick, positioned himself at the front of a large mob on the Lower West Terrace (“LWT”) of the United States Capitol building. From this location, he attacked a line of police officers guarding an entrance to the building. Jersey viciously assaulted one of the officers with his hands, grabbing his face and knocking him to the ground, leaving him vulnerable to attack by other rioters who subsequently dragged the officer out of an archway, down a set of steps, and into a crowd of rioters. Jersey then obtained a weapon – a police baton – and used it to strike at other officers in the line. After retreating back into the crowd, Jersey remained in the area and collected the helmet of the officer he had brutally knocked down as a trophy. The officer sustained serious injuries as a result of the attacks on the LWT, including from Jersey’s assault.

1:21-CR-00035 ECF Doc. No. 275, p 2.



1:21-CR-00035 ECF Doc. No. 275, p 11 (Mr. Jersey is circled in red.)

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<sup>15</sup> *Id.*



1:21-CR-00035 ECF Doc. No. 275, p 9.



1:21-CR-00035 ECF Doc. No. 275, p 10.

**9. Christian Manley, Criminal Case No. 21-691, 50 months incarceration**

Christian Manley entered a guilty plea, pursuant to a plea agreement, to one count 18

U.S.C. § 111(a) and (b). The government summarized his conduct as follows:

Manley, a former United States Marine, joined the storming of the Capitol at the Lower West Terrace (“LWT”) and assault on officers at the LWT tunnel. Manley was one of the first rioters to arrive at the LWT, at approximately 2:45 p.m., wearing a flak jacket, armed with two cans of bear spray and a collapsible police baton, and carrying handcuffs. After preparing himself by retrieving bear spray from his backpack, Manley moved directly to the tunnel where, within less than ten

minutes, he sprayed both cans of bear spray at officers, helped pass stolen police shields to other rioters, threw a pipe towards officers, and wedged his body between a wall and door so that he could push the door into officers trying to secure the tunnel.

1:21-CR-00691, ECF Doc. No. 45, p 2.



1:21-CR-00691, ECF Doc. No. 45, p 13.

**10. Logan Barnhart, Criminal Case No. 21-35, 36 months incarceration<sup>16</sup>**

Logan Barnhart entered a guilty plea to one count of 18 U.S.C. § 111(a) and (b). The government summarized his conduct as follows:

Barnhart and his co-defendants were violent actors amidst the large mob on the Lower West Terrace (“LWT”) of the United States Capitol Building. The mob in this location – and, in particular, Barnhart and his co-defendants -- attacked a line of police officers who were positioned in an archway at the front of a passageway that led to the interior of the building (the “Archway”), assaulted officers and knocked them to the ground. During the course of this attack, Barnhart grabbed an officer’s neck and torso and dragged him in a prone position from the police line, out of the Archway, and down a set of stairs into the violent mob, where the officer was further attacked with weapons, including a flagpole

<sup>16</sup> The 36 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 51-63 months. 1:21-CR-00035, ECF Doc. No. 284, p 2 (36 months represents just 70% of the bottom of the standard range of the adjusted guidelines).

and a baton, and sustained physical injuries. Minutes later, Barnhart returned to the police line in the Archway where other rioters were assaulting the line of officers by slamming riot shields into them, striking them, and throwing objects at them. Barnhart joined these rioters in charging against the police line. Barnhart then approached the line of officers wielding a flagpole and used it to strike the officers.

1:21-CR-00035, ECF Doc. No. 284, p 1-2.



1:21-CR-00035, ECF Doc. No. 284, p 10 (Barnhart circled in yellow.)

**11. Robert Dennis, Criminal Case No. 21-679, 36 months incarceration<sup>17</sup>**

Robert Dennis, after a bench trial, was found guilty of two counts of 18 U.S.C. § 111(a)(1), one count of 18 U.S.C. § 231(a)(3), one count of 18 U.S.C. § 1752(a)(1), one count of 18 U.S.C. § 1752(a)(4), and one count of 40 U.S.C. § 5104(e)(2)(D). The government summarized his conduct as follows:

The core of Dennis's criminal conduct occurred at approximately 2:50 p.m., when the Capitol had already been breached and police were under siege. Dennis, who had already climbed through the scaffolding and ignored the warning sign of

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<sup>17</sup> The 36 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 51-63 months. 1:21-CR-00035, ECF Doc. No. 284, p 2 (36 months represents just 70% of the bottom of the standard range of the adjusted guidelines).

tear-gassed rioters, climbed down from the inaugural stage to the Upper West Terrace, where he attempted (unsuccessfully) to gather other rioters with him. He then advanced up a set of steps to confront a line of Metropolitan Police Department (MPD) officers. Dennis—unprovoked—grabbed an officer’s baton and wrestled another officer to the ground, creating a terribly dangerous situation for the victim, Officer J.S. More than half a dozen MPD officers were required to restrain Dennis as he kicked, fought, and resisted arrest.

1:21-CR-00679, ECF Doc. No. 69, p 2.



1:21-CR-00679, ECF Doc. No. 69, p 7.



1:21-CR-00679, ECF Doc. No. 69, p 8.



**12. Alan Byerly, Criminal Case No. 21-527, 34 months incarceration**

Alan Byerly entered a guilty plea to one count of 18 U.S.C. § 111(a)(1) and one count of 18 U.S.C. §113(a)(4). The government summarized his conduct as follows:

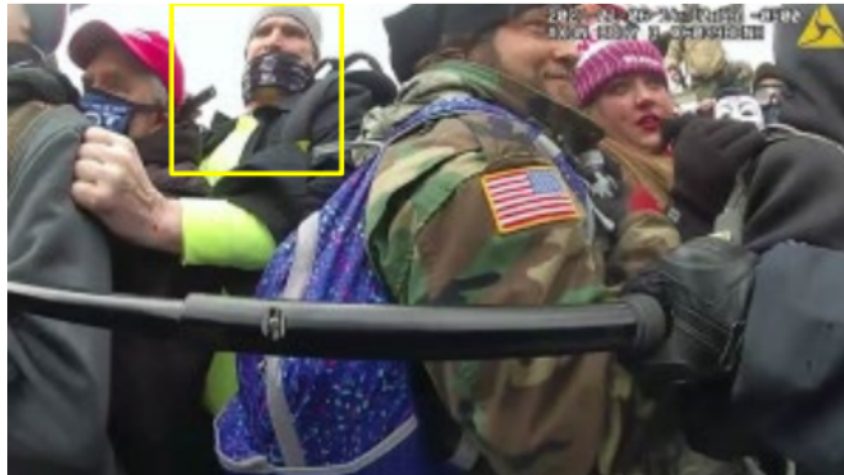
Prior to January 6, 2021, Byerly purchased a stun gun, capable of emitting an electronic shock to a victim. Byerly carried the stun gun with him when he traveled from his home in Pennsylvania to the District of Columbia, and had it with him as he, like thousands of others, marched on the Capitol on January 6. Byerly engaged in three separate assaults on the west side of the Capitol Building, two against police and one against a news reporter. First, he assisted a group of rioters who used a large Trump sign inside a heavy steel frame with steel caster wheels as a battering ram against barricades and a line of police officers that separated the rioters from the Capitol on the stairs leading to the Capitol Building. Second, Byerly participated in a vicious assault against an Associated Press reporter, identified as such by a prominent lanyard he was wearing, who was dragged up and down the stone staircase on the Lower West Terrace of the Capitol's grounds. Later still, Byerly used his stun against United States Capitol Police ("USCP") and Metropolitan Police Department ("MPD") officers who had formed a line of bike racks to act as a barrier between themselves and against the crowd forming on the Capitol grounds. After officers removed the stun gun from Byerly's hands, he continued to charge toward the officers, physically striking and pushing against them. He also grabbed an officer's baton.

1:21-CR-527, ECF Doc. No. 47, p 2.



1:21-CR-527, ECF Doc. No. 47, p 17.

The following images depict items brought and worn by the defendant, demonstrating the defendant's intent to engage in physical violence prior to his arrival on January 6, 2021.



1:21-CR-527, ECF Doc. No. 47, p 19 (stun gun pictured in yellow square).

**13. David Lee Judd, Criminal Case No. 21-40-3, 32 months incarceration<sup>18</sup>**

David Lee Judd was found guilty of one count of 18 U.S.C. § 111(a) and one count of 18 U.S.C. §1512(c)(2). The government summarized his conduct as follows:

David Lee Judd was a leader. He was an instigator, a coordinator, an encourager, and a relentless participant. For nearly an hour and a half at and around the Lower West Terrace tunnel— the epicenter of violence on January 6, 2021— Judd assumed a role of responsibility. He acted as an on-the-ground commander of other rioters, directing, encouraging, and instigating the violence, chaos, and destruction in and around the tunnel as those rioters attempted to breach the line of

<sup>18</sup> The 32 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 87-108 months. 1:21-CR-00040, ECF Doc. No. 527, p 1 (32 months represents just 36.7% of the bottom of the standard range of the adjusted guidelines).

police officers and enter the Capitol building. Judd spent over an hour using hand gestures to direct rioters into the tunnel, yelling commands to organize rioters, passing items into the tunnel to be used as weapons, assisting rioters exiting the tunnel by washing chemical irritant from their faces, pumping his fist in the air, and providing encouragement to rioters joining the chaos inside the tunnel.

When Judd felt like his coaching and organizing wasn't enough, he joined the efforts to attack police officers. Judd entered the tunnel several times and joined the mob's efforts to break through the police line using coordinated pushes. When pushing did not work, Judd lit a firecracker and threw it at the police line – landing near at least ten police officers. Judd then brazenly turned and walked out of the tunnel. From there, he did not skip a beat and continued directing rioter traffic inside and around the tunnel for another hour. Finally, the police line gained ground in the tunnel and successfully pushed the rioters out. Still nearby, Judd relentlessly joined the mob for his final effort to collectively push against the line of officers guarding the tunnel.

1:21-CR-40, ECF Doc. No. 527, p 2.



*Figures 13, 14, & 15 (left to right): Screenshots of Capitol surveillance footage showing Judd lighting a firecracker and throwing it at police officers*



*Figure 16: Screenshot of Capitol surveillance footage showing firecracker flying in the air toward police officers*

1:21-CR-40, ECF Doc. No. 527, p 10.

**14. Mark Leffingwell, Criminal Case No. 21-5, 6 Months Incarceration<sup>19</sup>**

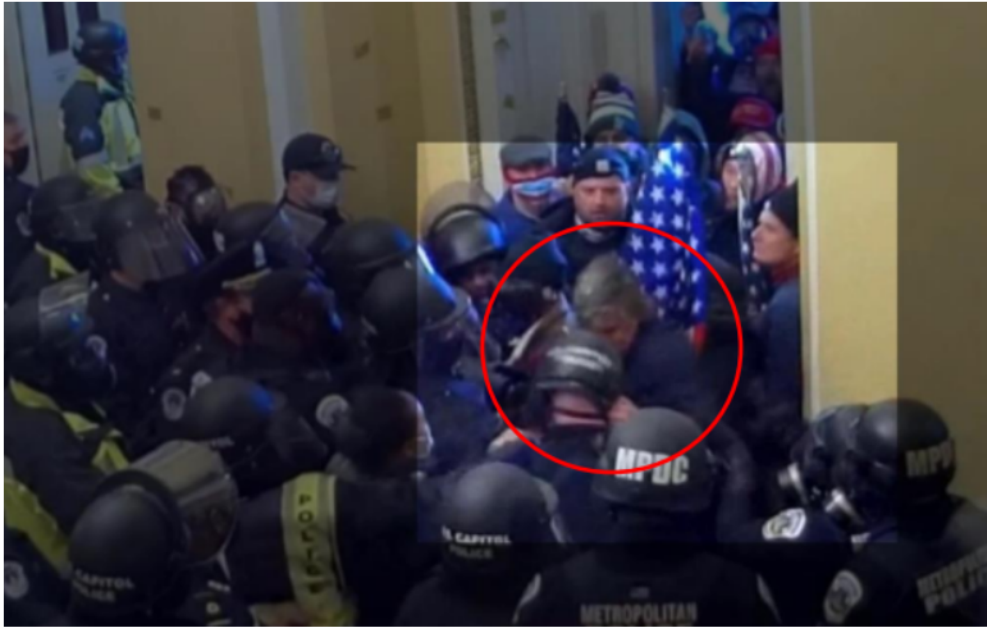
Mark Leffingwell entered a guilty plea to one count of 18 U.S.C. § 111(a)(1). The government summarized his conduct as follows:

Leffingwell, a military veteran who once defended the Constitution from all enemies, foreign and domestic, willingly betrayed his nation and became an enemy of the United States on January 6. He flew across the country from his home in Seattle and made his way to the District of Columbia, where he, like thousands of others, marched on the Capitol. He made it as far as the entrance to the Senate Wing where lawmakers and their staffers were secreted away from their own workplace, fleeing the violence and destruction wrought by the rioters. By the time Leffingwell made it to the Senate Wing entrance, U.S. Capitol Police Officers and Metropolitan Police Department Officers had formed a protective line to prevent further entry into the Capitol. Before Leffingwell made his way to the breach, that same entrance had been overrun by rioters who streamed through the Capitol, looting, vandalizing, and otherwise terrorizing a temple of American democracy. But Leffingwell was not content to merely stand inside the threshold. Positioned at the front of the line of rioters stacked hundreds deep behind him, Leffingwell chanted at the officers standing before him to “join us!” in the rioters’ efforts to assault the Capitol. When some in the crowd shouted for the rest of the crowd to “back up,” Leffingwell rebuked them, shouting “If you back up, you’ll never get back in!” When U.S. Capitol Police Officers D.A and W.H tried to repel Leffingwell and the gathering crowd, Leffingwell struck both officers in the head. Before Leffingwell could escape back into the crowd, he was apprehended.

1:21-CR-05, ECF Doc. No. 31, p 1-2.

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<sup>19</sup> The 6 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 24-30 months. 1:21-CR-00035, ECF Doc. No. 284, p 2 (6 months represents just 25% of the bottom of the standard range of the adjusted guidelines).



*Figure 4: Leffingwell punching Officer D.A.*

1:21-CR-05, ECF Doc. No. 31, p 9.

**15. Gregory Nix, Criminal Case No. 21-678, 42 Months Incarceration<sup>20</sup>**

Gregory Nix entered a guilty plea to 18 U.S.C. § 111(a) and (b). The government summarized his conduct as follows:

Before coming to the Capitol, Nix anticipated, and even looked forward to, violence. He was undeterred when his cousin advised that it “may get violent,” responding that he had “no problem with tar and feathering,” and that he planned to “get my pistol permit.” While at the Capitol, Nix was aggressive and violent. He berated U.S. Capitol Police Officers guarding a door to the Capitol building and then assaulted one of them. Nix hit officer B.A. in the head with this flagpole, causing bodily injury, and continued to thrust the flagpole at officer B.A. After Nix and the mob drove the officers away, Nix attempted to breach the unguarded doors to the Capitol, banging a baton against the East House Doors. When the doors were opened, Nix entered the Capitol along with other rioters, spending about ten minutes inside.

1:21-CR-678, ECF Doc. No. 51, p 2.

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<sup>20</sup> The 42 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 63-78 months. 1:21-CR-000678, ECF Doc. No. 51, p 1 (6 months represents just 25% of the bottom of the standard range of the adjusted guidelines).



1:21-CR-678, ECF Doc. No. 51, p 6.

**16. Patrick McCaughey, Criminal Case No. 21-40, 90 Months Incarceration<sup>21</sup>**

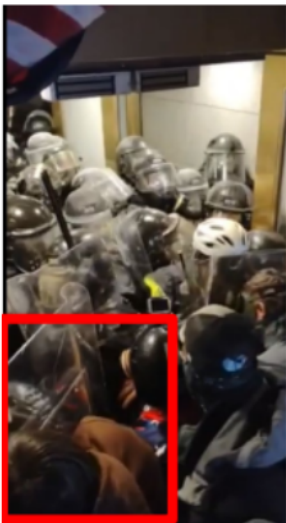
Patrick McCaughey was convicted of one count of 18 U.S.C. § 111(a)(1); two counts of 18 U.S.C. § 111(a) with a deadly weapon; two counts of 18 U.S.C. § 111(b); one count of 18 U.S.C. § 1512(c)(2); one count of 18 U.S.C. § 231(a)(3); one count of 18 U.S.C. § 1752(a)(2) and (b)(1)(A); one count of 18 U.S.C. § 1752(a)(4); one count of 40 U.S.C. § 5104(e)(2)(D); and one count of 40 U.S.C. § 5104(e)(2)(F) . The government summarized his conduct as follows:

McCaughey illegally entered the grounds of the U.S. Capitol on January 6, 2021 at approximately 2:00 p.m., and made his way to the bike rack barricade, manned with overwhelmed police officers, on the Southwest Lawn. For approximately 20 minutes, McCaughey joined other rioters in taunting officers manning the police line and then joined the mob that ultimately overwhelmed that line when it fell at approximately 2:28 p.m. McCaughey then climbed the stairs in the southwest scaffolding and took a selfie on top of the scaffolding. From there, he went to the inaugural platform, entered the Lower West Terrace tunnel at approximately 2:51 p.m., and participated in a “heave-ho” push by dozens of rioters against the police line defending the door to the U.S. Capitol building. McCaughey then left the tunnel and returned a few minutes later to rejoin the rioters still

<sup>21</sup> The 90 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 51-63 months. 1:21-CR-00040, ECF Doc. No. 611, p 2 (90 months represents just 60% of the bottom of the standard range of the adjusted guidelines).

attempting to break into the building. He gained control of a police riot shield and headed to the front of the mob in the tunnel. Now face to face with the officers, McCaughey used his stolen shield to push against Officer Daniel Hodges for over two minutes, trapping him against the door frame while another rioter assaulted Officer Hodges. Moments later, McCaughey used his shield to swipe at Officer Henry Foulds, landing blows on the officer's arms as Officer Foulds attempted to close the tunnel door. McCaughey left the tunnel at approximately 3:15 p.m.

1:21-CR-40, ECF Doc. No. 611, p 1-2.



1:21-CR-40, ECF Doc. No. 611, p 11.

**17. Robert Morss, Criminal Case No. 21-40, 66 Months of Incarceration<sup>22</sup>**

Robert Morss was found guilty of one count of 18 U.S.C. § 2111 and 2; one count of 18 U.S.C. § 111(a)(1) and (2); and one count of 18 U.S.C. § 1512(c)(2). The government summarized his conduct as follows:

On January 6, 2021, Morss drove from Pennsylvania to Washington D.C. with the expectation that there would be violence, and he came ready for the fight. As a former Army Ranger, Morss dressed for battle, wearing camouflage clothing and a tactical vest filled with armored plates weighing over 20 lbs. After attending the Stop the Steal rally on the Ellipse, Morss was part of the crowd that aggressively challenged police on the West Front of the Capitol, ultimately causing the police line to collapse and enabling the rioters to flood onto the Lower West Terrace. As police attempted to keep the crowd at bay, Morss added to the chaos and violence

<sup>22</sup> The 66 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 97-121 months. 1:21-CR-00040, ECF Doc. No. 622, p 2 (66 months represents just 68% of the bottom of the standard range of the adjusted guidelines).



by attempting to steal a police baton from an officer and then, later, working with others to rip a portion of bike rack fencing away from officers who were holding the police line across the terrace. Once the police line collapsed, Morss scuffled with retreating police officers, engaging in a tug of war with a police officer over a visor. He then made his way to the Lower West Terrace tunnel, where he participated in numerous violent acts, including ripping a shield away from an officer stationed inside of the tunnel, creating a “shield wall” from stolen police riot shields and joining in a “heave ho” effort with other rioters to push through the police line. Morss later also entered the Capitol through a broken window and passed items out to others to be used as weapons against the police.

1:21-CR-00040, ECF Doc. No. 622, p 2.



1:21-CR-00040, ECF Doc. No. 622, p 7.

The following images depict items brought and worn by the defendant, demonstrating the defendant’s intent to engage in physical violence prior to his arrival on January 6, 2021.



1:21-CR-00040, ECF Doc. No. 622, p 4-5.

## II. Case Comparisons Based on the Government’s Request for a Sentence Between 188 to 235 Months of Incarceration<sup>23</sup>

The only sentences that have been issued consistent with this range are associated with the defendants who were sentenced in accordance with the “Oath Keepers” jury trial verdict.<sup>24</sup>

The government summarized the conduct of the Oath Keepers as follows:

These defendants were prepared to fight. Not for their country, but against it. In their own words, they were “willing to die” in a “guerilla war” to achieve their goal of halting the transfer of power after the 2020 Presidential Election. As a co-conspirator recognized, their actions made these defendants “traitors.”

Using their positions of prominence within, and in affiliation with, the Oath Keepers organization, these defendants played a central and damning role in opposing by force the government of the United States,

<sup>23</sup> Or 151 to 188 months.

<sup>24</sup> See Docket for the District of Columbia 1-22-CR-00015.

breaking the solemn oath many of them swore as members of the United States Armed Forces. To support their operation, they amassed an arsenal of firearms across the Potomac River and led a conspiracy that culminated in a mob's attack on the United States Capitol while our elected representatives met in a Joint Session of Congress. Two juries found all nine defendants guilty of participating in this grave conduct. ***These defendants are unlike any of the hundreds of others who have been sentenced for their roles in the attack on the Capitol.*** Each defendant therefore deserves a significant sentence of incarceration.

1:22-CR-00015, ECR Doc. No. 565, p 1-2 (internal footnotes omitted) (emphasis added); see also *Id.* at 5-10 for more complete Summary of Evidence.

The government seized the following weaponry and accoutrements:

Firearms

- 1 AR pistol (300BO)
- 1 AR-15 (5.56)
- 2 AR Upper Receivers

Firearms Attachments

- 1 EOTech holographic weapons sight
- 1 EOTech 3x magnifier
- 1 Magpul bipod
- 11 back up iron sights
- 3 sling mounts
- 1 rifle foregrip
- 1 XD pistol grip
- 1 Digital/Night camera sight
- 1 weapons cleaning kit

Ammunition

- Approximately 2000 rounds of ammunition
- 1300 rounds of 300 Blackout
- 8 rounds of .270
- Various ammunition consisting of 12ga shotgun, 9mm, and 5.56
- 4 Magazines filled with 300BO rounds along with loose 300BO ammunition
- 11 rifle magazines for AR platform
- 3 Rifle Scopes, variable power

Armor

- 1 Plate Carrier with ballistic plates
- 1 Body armor with soft ballistic armor
- 2 Ballistic panels (1 set)

1 Ballistic Helmet

Other Gear

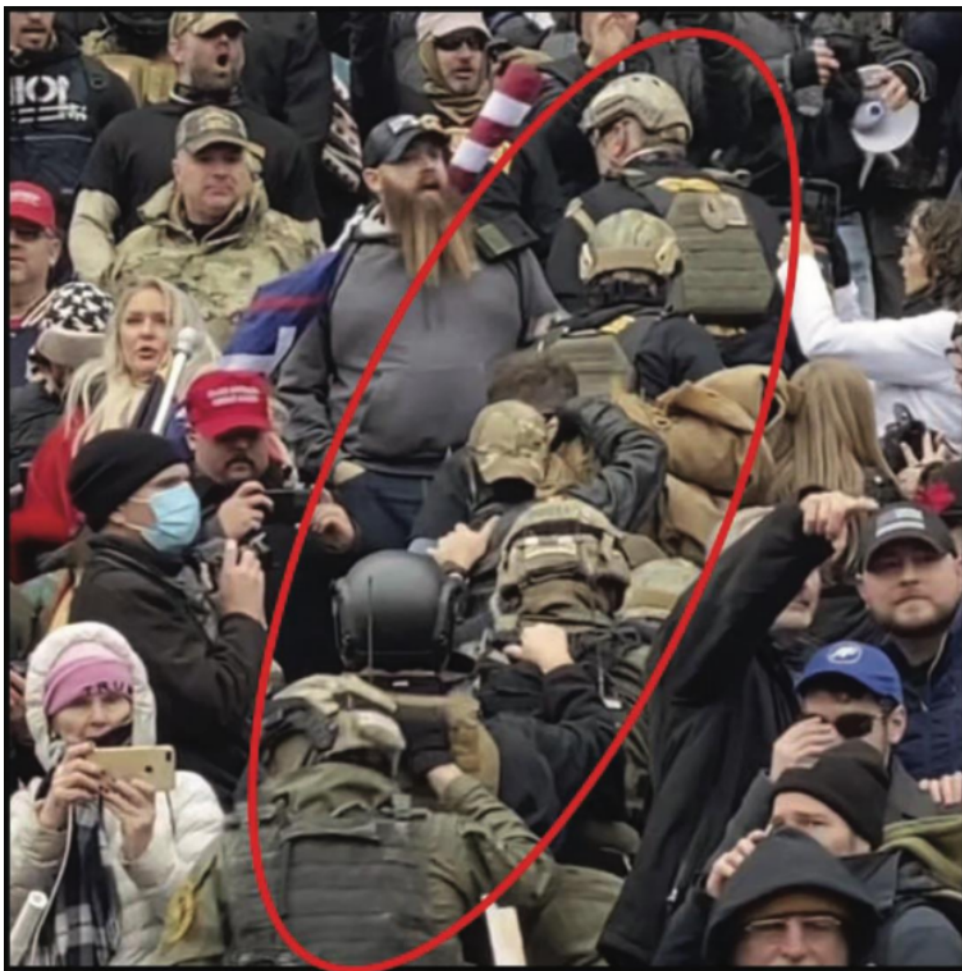
- 2-3 prepaid phones
- Oath Keepers patches and hats
- 2 backpacks
- CB radio package
- 3 bandages with quickclot
- 1 tourniquet

The following images depict assault rifles, grenades and other tactical equipment transported to the Washington D.C. area by members of the Oath Keepers under Rhodes leadership, demonstrating the organizations preparations to engage in organized violent warfare on or about January 6, 2021.



1:22-CR-15, ECF Doc. No. 565, p 9.

The following images depict items worn by the Oath Keepers, and organized military tactics deployed, demonstrating the organizations intent to engage in organized violent attacks prior to their arrival on January 6, 2021.



1:22-CR-00015, ECF Doc. No. 565, p 7.

**1. Stewart Rhodes, Criminal Case No. 22-15-1, 216 Months of Incarceration<sup>25</sup>**

The following quote attributed to the defendant prior to January 6<sup>th</sup> demonstrates his intent to coordinate an organized violent attack using military grade artillery:

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<sup>25</sup> The 216 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 262-327 months. 1:21-CR-00015, ECF Doc. No. 565, p 83 (216 months represents just 82% of the bottom of the standard range of the adjusted guidelines).

“They don’t give a shit how many show up and waive a sign, pray, or yell. They won’t fear us till we come with rifles in hand.”<sup>26</sup>

The government summarized Rhodes role in organizing and preparing for a violent attack and obtaining military grade tactical gear and weaponry as follows:

“At Rhodes’s instruction, James took with him multiple firearms, thousands of rounds of ammunition, multiple burner phones, scopes, magazines, night-vision equipment, and other tactical gear” and that “Rhodes told James to be prepared to transport and distribute the equipment to others upon Rhodes’s instruction and to be prepared for violence in the event of a civil war.”<sup>27</sup>

From January 1 through 5, 2021, *alone*, including on his way to D.C., Rhodes purchased or arranged to purchase tens of thousands of dollars’ worth of firearms and related tactical equipment, including 2 rifles, 15 magazines, 4 cases of ammunition, 10 sights, 2 optics, optic plates, 2 bipods, 1 scope leveling kit, 2 scope mounts, 1 sling, 2 mounts, 1 gun maintenance kit, 2 uppers for rifles, 2 triggers, a ladder rail panel, charging handles, 2 night vision devices, 1 night vision weapon compatible sight, and other related equipment.

1:22-CR-00015, ECF Doc. No. 565, p 9, n 2 (emphasis added).

## **2. Kelly Meggs, Criminal Case No. 22-15-2, 144 Months of Incarceration<sup>28</sup>**

In addition to being convicted of the overarching conspiracy, the government summarized Meggs role leading up to and during the January 6<sup>th</sup> riot, to emphasize his role in coordinating an organized violent attack using military grade tactics, firearms, and armor:

Indeed, before the election, Meggs organized firearms training for himself, Harrelson, Hackett, and others, focused on “how to gunfight at close distance with a rifle in a fast and effective manner.”<sup>29</sup>

Meggs was also the boots-on-the-ground liaison with the QRF. Meggs told Young that Meggs would arrange for the QRF to have an extra AR-15 firearm for Young’s use.<sup>30</sup>

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<sup>26</sup> 1:22-CR-00015, ECF Doc. No. 565, p 86-87.

<sup>27</sup> *Id.* at p 87 (citing Joshua James’ Plea Statement of Facts).

<sup>28</sup> The 144 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 210-262 months. 1:21-CR-00015, ECF Doc. No. 565, p 103 (144 months represents just 69% of the bottom of the standard range of the adjusted guidelines).

<sup>29</sup> 1:22-CR-15, ECF Doc. No. 565, p 105.

<sup>30</sup> *Id.* (internal citations omitted)

Meggs rhetoric convinced followers that they needed to take violent action or “die.”<sup>31</sup>

Planned an armed force component involving the transportation of firearms across the county.<sup>32</sup>

Surveillance video from the Comfort Inn shows Meggs with a luggage cart with at least 1 firearms case.<sup>33</sup>

December 22 Message states, “It’s easy to chat here. The real question is who’s willing to DIE, that’s what the Patriots did by the thousands.”<sup>34</sup>

### **3. Kenneth Harrelson-3, Criminal Case No. 22-15-3, 48 Months of Incarceration<sup>35</sup>**

In addition to being convicted of the overarching conspiracy, the government noted that Harrelson served as the groups “ground team leader” on January 6<sup>th</sup> and coordinated with groups at the Capitol and told them what equipment to wear and bring – personally providing a co-conspiracy with a ballistic helmet.<sup>36</sup> Harrelson also chanted “treason” as he entered the building because he “wanted them [Members of Congress] to be afraid of me.”<sup>37</sup> He lamented that his co-conspirators erred by not bringing their guns and gas masks so they could have pushed farther into the building in search of Members of Congress<sup>38</sup> and that they needed to have planned better to use rifles on the Capitol Police’s relatively weak body armor.<sup>39</sup>

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<sup>31</sup> *Id.* at 110.

<sup>32</sup> *Id.* at 104.

<sup>33</sup> *Id.* at 107.

<sup>34</sup> *Id.* at 108.

<sup>35</sup> The 48 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 168-210 months. 1:21-CR-00015, ECF Doc. No. 565, p 114 (48 months represents just 29% of the bottom of the standard range of the adjusted guidelines).

<sup>36</sup> 1:22-CR-00015, ECF Doc. No. 565, p 114.

<sup>37</sup> *Id.* at 118-119.

<sup>38</sup> *Id.* at 119.

<sup>39</sup> *Id.* at 119-120.

**4. Jessica Watkins, Criminal Case No. 22-15-4, 102 Months of Incarceration**<sup>40</sup>

In her part of the overarching conspiracy, Watkins recruited individuals to her Ohio-based militia and drove multiple firearms to the D.C. area to be used as part of the Quick Reaction Force.<sup>41</sup> She held basic trainings and invited men from other groups.<sup>42</sup> She encouraged recruits to get comfortable with the idea of death, because that is what she does.<sup>43</sup> She texted on January 4<sup>th</sup> her desire to have the weapons in place prior to the Op for the following day.<sup>44</sup>

**5. Roberto Minuta, Criminal Case No. 22-15-6, 54 Months of Incarceration**<sup>45</sup>

Prior to January 6<sup>th</sup>, Minuta stated his beliefs in Facebook posts and messages:

“I know that I have developed a moral obligation to continue to fight, preach, warn others. Make no mistake, this is a battle of the soul. This is spiritual warfare, the most rudimentary form of Good VS Evil. You must chose a side. You must either fight for humanity, and a future of shared prosperity, or sell your soul to the prince of darkness, and a future of serfdom. My soul is prepared. Fear . . . only remains in the prospect of failing my children and humanity in this glorious, biblical battle. I am aligned with the Prince of Peace, and have accepted that there is NO PEACE WITHOUT WAR. . . . Mount the fuck up.”<sup>46</sup>

“The last line in the sand is the Second Amendment,” he warned, “[and] we are fucking past midnight with the tyranny and it is just time to restore freedom.” He continued, “Millions will die. So what? Get your fucking soul ready. Get right with God. . . . I’m not afraid, and I’m ready to fucking go. . . . don’t just sit there and bitch. Do something about it.”<sup>47</sup>

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<sup>40</sup> The 102 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 188-235 months. 1:21-CR-00015, ECF Doc. No. 565, p 122 (102 months represents just 54% of the bottom of the standard range of the adjusted guidelines).

<sup>41</sup> 1:22-CR-00015, ECF Doc. No. 565, p 120-121.

<sup>42</sup> *Id.* at 124.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 125.

<sup>45</sup> The 54 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 168-210 months. 1:21-CR-00015, ECF Doc. No. 565, p 132 (54 months represents just 29% of the bottom of the standard range of the adjusted guidelines).

<sup>46</sup> Facebook post from April 2020. 1:22-CR-00015, ECF Doc. No. 565, p 138.

<sup>47</sup> *Id.* at 136.



Prior to January 6<sup>th</sup>, Minuta purchased 5,500 rounds of ammunition.<sup>48</sup> On January 6<sup>th</sup>, he backed up his rhetoric and showed up to the Capitol wearing tactical gear, including protective vests, ballistic gloves, and goggles to join what he called “the fucking war in the streets,”<sup>49</sup> and later assaulted officers using a stolen riot shield.<sup>50</sup>

**6. Joseph Hackett, Criminal Case No. 22-15-7, 42 Months of Incarceration<sup>51</sup>**

In addition to being convicted of the overarching conspiracy Hackett was alleged have assisted Meggs and Harrelson in the training for Offensive Firearm Deployment,<sup>52</sup> possessed at least one rifle in the D.C. area with,<sup>53</sup> helped arm backup forces with the Quick Reaction Force,<sup>54</sup> and advocated for showing up at the doorsteps of politicians.<sup>55</sup> On January 6<sup>th</sup>, like his co-conspirators, Hackett donned military gear and forced his way inside of the Capitol.<sup>56</sup>

**7. David Moerschel, Criminal Case No. 22-15-8, 36 Months of Incarceration<sup>57</sup>**

In his part of the overarching conspiracy, Moerschel travelled with the caravan,<sup>58</sup> staged an Ar-15 rifle in the Quick Reaction Force Hotel and boasted “[m]y battle pistol is a glock 21 in .45 caliber. I want the extra knock down power.”<sup>59</sup> On January 6<sup>th</sup>, like his co-conspirators, Moerschel donned military gear and forced his way inside of the Capitol.<sup>60</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 88.

<sup>50</sup> *Id.* at 15 and 133.

<sup>51</sup> The 42 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 132-168 months. 1:21-CR-00015, ECF Doc. No. 565, p 144 (42 months represents just 31% of the bottom of the standard range of the adjusted guidelines).

<sup>52</sup> 1:22-CR-00015, p 145.

<sup>53</sup> *Id.* at 144.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 147.

<sup>56</sup> *Id.* at 142.

<sup>57</sup> The 36 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 97-121 months. 1:21-CR-00015, ECF Doc. No. 565, p 150 (36 months represents just 37% of the bottom of the standard range of the adjusted guidelines).

<sup>58</sup> 1:22-CR-00015, p 148.

<sup>59</sup> 148-150.

<sup>60</sup> *Id.* at 149.

**8. Edward Vallejo, Criminal Case No. 22-15-11, 36 Months of Incarceration**<sup>61</sup>

In his part of his conspiracy Vallejo drove from Arizona to D.C. and upon arrival unloaded rifle bags, a machete, a drone and 11 large totes of unknown goods.<sup>62</sup> On the morning of January 6, 2023, Vallejo broadcasted a podcast, and stated: “We’re going to be told, the American people are going to be told today that we have liberty and justice for all, or they’re going to be told, ‘Fuck you.’ Okay? And if they’re told, ‘Fuck you,’ that’s going to be the declaration of a guerilla war”<sup>63</sup> and added “because I’m the motherfucker that’s gonna fix it for them.”<sup>64</sup> During the storming of the Capitol, Vallejo remained stationed at the heavily armed Quick Reaction Force hotel and reminded the co-conspirators who breached the Capitol that the “QRF [was] standing by at hotel. Just say the word...”<sup>65</sup>

Respectfully Submitted,

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<sup>61</sup> The 36 months of incarceration ordered in this matter reflects a significant downward variance from the sentencing guideline range calculated by Probation of 168-210 months. 1:21-CR-00015, ECF Doc. No. 565, p 166 (36 months represents just 21% of the bottom of the standard range of the adjusted guidelines).

<sup>62</sup> 1:22-CR-00015, p 167.

<sup>63</sup> *Id.* at 170.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 168.