

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

FRANK J. SCAVO,

Defendant.

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Criminal No. 21-CR-254 (RCL)

**MOTION FOR LEAVE TO FILE REPLY TO DEFENSE’S
RESPONSE TO GOVERNMENT’S SENTENCING MEMORANDUM**

The United States of America, by and through the United States Attorney for the District of Columbia, respectfully moves this Court for leave to file a reply to the defense’s response to the government’s sentencing memorandum in the above-captioned case. In support of this motion, the government now states the following:

1. On September 8, 2021, the Court set a sentencing date in this matter for November 22, 2021. The Court also set a deadline of November 15, 2021, for the parties to file sentencing memoranda.

2. On November 15, 2021, both parties timely filed their sentencing memoranda.

3. On November 17, 2021, at approximately 7:40 p.m., the defense filed a response to the government’s sentencing memorandum. The response made assertions about the relevance of a piece of video evidence on which the government relied in its sentencing memorandum.

4. In light of the assertions in the defense’s response, the government requests permission to file a reply that will clarify the relevance of that video evidence. In addition, the reply would also briefly discuss an additional fact related to the government’s requested sentence in this case.

WHEREFORE, for the foregoing reasons, the government respectfully requests that the Court GRANT its motion for leave to file a reply to the defense's response to the government's sentencing motion.

Respectfully submitted,

MATTHEW M. GRAVES
UNITED STATES ATTORNEY
D.C. Bar No. 481052

By: /s/ Seth Adam Meinero
SETH ADAM MEINERO
Trial Attorney (Detailee)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 18, 2021, I served a copy of this pleading on defendant's counsel through the Court's Electronic Case Files system.

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

**UNITED STATES DISTRICT COURT
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ORDER

Based upon the representations in the United States' Motion for Leave to File Reply to Defense's Response to Government's Sentencing Memorandum, it is on this _____ day of November 2021, hereby

ORDERED that the United States' motion is GRANTED; and it is

FURTHER ORDERED that the Government's Reply to Defense's Response to Government's Sentencing Memorandum shall be made part of the record in this case.

THE HONORABLE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
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 v. : Criminal No. 21-CR-254 (RCL)
 :
 FRANK J. SCAVO, :
 :
 Defendant. :

**REPLY TO DEFENSE’S RESPONSE TO
GOVERNMENT’S SENTENCING MEMORANDUM**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this reply to Defendant Frank J. Scavo’s response (ECF 42) to the government’s sentencing memorandum (ECF 37) in connection with the above-captioned matter.

I. The YouTube video depicting the siege at the Rotunda Doors is not “unrelated” to Scavo’s breach of the Capitol; in fact, it captures Scavo just as he is about to enter the building.

Scavo contends the YouTube video depicting the breach of the Rotunda Doors, which the government referenced in its sentencing memorandum (ECF No. 37 at 4-5), is “unrelated” to his breach at the same entryway (ECF 42 at 2). This claim lacks merit.

The YouTube video depicts the siege at and breach of the Rotunda Doors, located at the Capitol’s East Front, beginning at approximately 2:35 p.m. on January 6, 2021.¹ As noted in the government’s sentencing memorandum, Scavo crossed the threshold of those doors at approximately 2:40 p.m. (ECF 37 at 6); to be precise, Capitol surveillance video shows him

¹ This video is available at <https://www.youtube.com/watch?app=desktop&v=MVullQb-Lec>.

crossing the threshold at approximately 2:40:27 p.m. Thus, the YouTube video begins approximately five-and-a-half minutes before Scavo entered the building.

Scavo's cellphone video that recorded the breach at the Rotunda Doors (referenced in ECF 37 at 3, 6) begins at approximately the 02:32 mark of the YouTube video. Keep in mind, this is when Scavo *began recording his video*, not when he first got to that area. The metadata of other video evidence Scavo recorded and provided to the government indicate he was near the top of the stairs leading to the Rotunda Doors approximately six minutes before he began recording the breach video. It is highly unlikely he left the area for several minutes and then returned before he began recording the breach video. Thus, he still would have been in the vicinity for the conduct depicted from 00:00 to 02:32 in the YouTube video.

Multiple key markers in Scavo's breach video and the YouTube video prove they depict the same event.

At approximately 0:09 in Scavo's video and 02:41 in the YouTube video, the same voice can be heard chanting on a bullhorn, "Who's your president?" In Scavo's video (00:23) and the YouTube video (02:55), the same voice repeats that bullhorn chant, with the crowd beginning to respond, "Trump!" The chant continues for several more seconds. At approximately 00:40 in Scavo's video, the chant subsides, and a loud male voice close to Scavo's cellphone can be heard saying, "Tear that door down! Tear it the f*** down!"

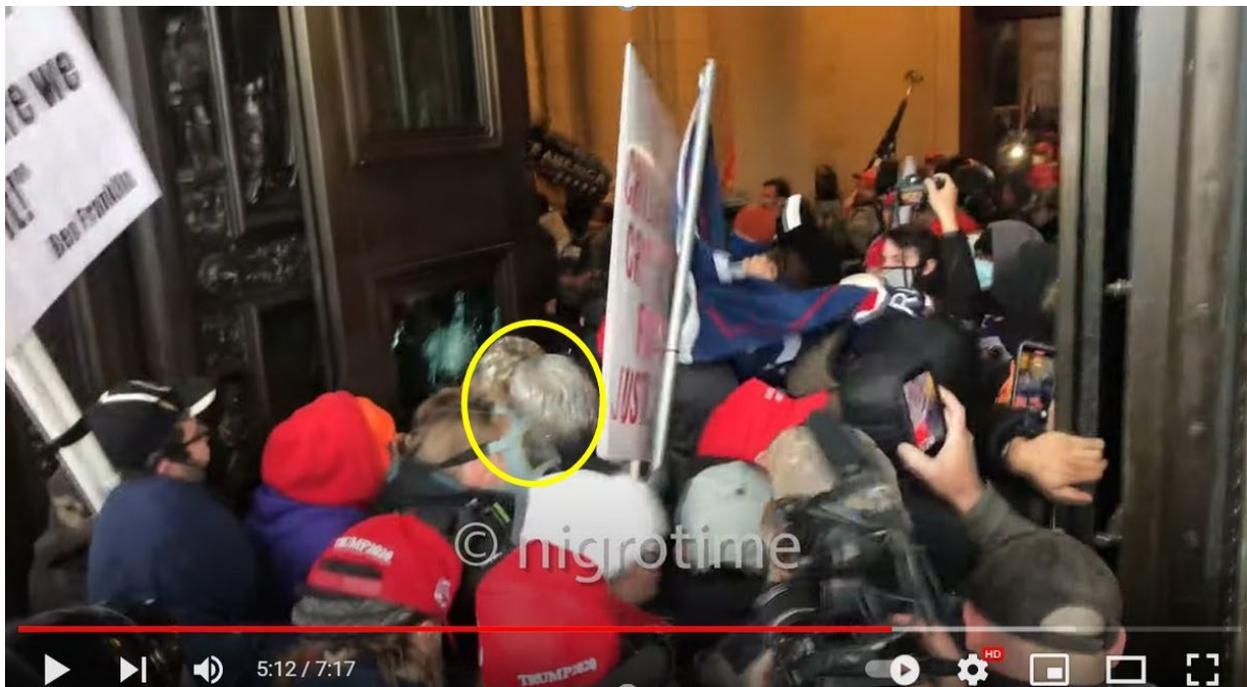
Another key marker is the depiction of the initial breaching of the Rotunda Doors by other rioters. Early in the YouTube video, the Rotunda Doors are closed. While the YouTube video does not show the doors as they open because the camera angle was briefly focused elsewhere, by 03:24, the camera returns to the doors, which have opened. Capitol surveillance video shows that rioters from inside the building began to force open the doors at approximately 2:38:34 p.m.

Scavo’s video shows the doors begin to open at approximately 00:46. Based on these and other markers in the videos, the videos at these indicated points are all roughly in sync.

Most pertinent, the YouTube video captures Scavo just before he crossed the threshold of the Rotunda Doors.² As noted in the government’s sentencing memo, Scavo turned his cellphone camera on himself shortly before entering the Capitol, capturing his full silver hair and a face mask reading “STOP THE RAIN TAX,” as depicted in this screenshot:

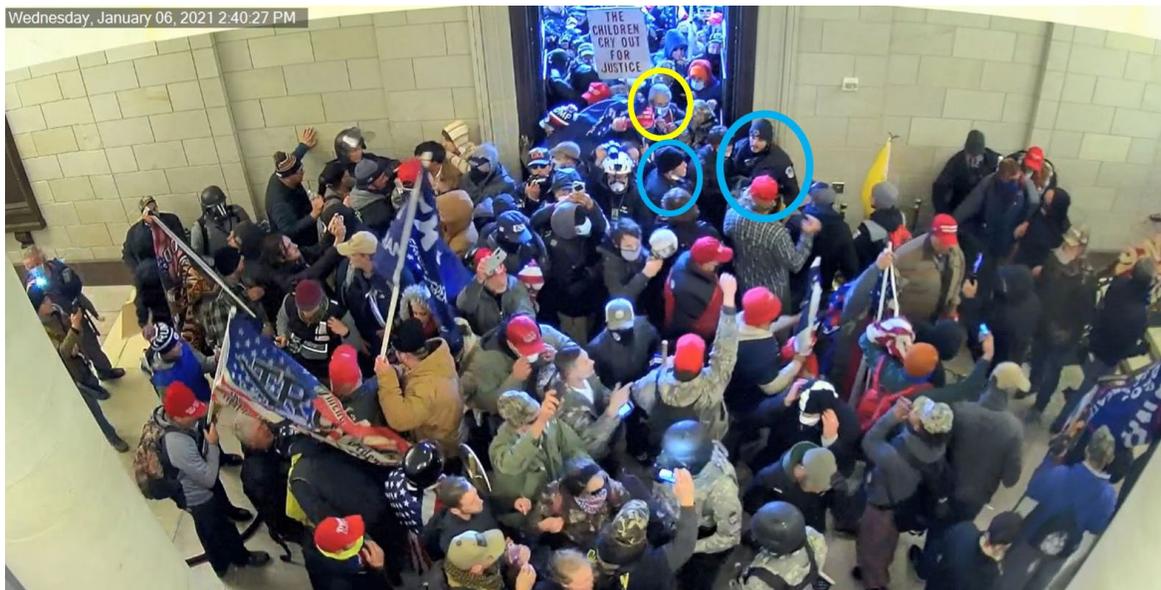


² Scavo’s cellphone video—which is not a continuous recording of his time outside through the time he entered the Capitol—does not capture him crossing the threshold. At 01:47, it captures him exclaiming, “Here we go,” while he is still outside, and at 01:50, it cuts to his first-person perspective as he is climbing the interior stairwell adjacent to the Rotunda Doors lobby.



Of note, Scavo’s head comes within arm’s reach of a sign that reads “WE THE PEOPLE TAKE BACK OUR COUNTRY” on one side, and “THE CHILDREN CRY OUT FOR JUSTICE” on the other side. The YouTube video then shows Scavo advance in front of the sign to the threshold.

Capitol surveillance video confirms the silver-haired man in the YouTube video is Scavo. As revealed in the following screenshot included in the government’s sentencing memorandum (and the zoomed-in portion below it), the surveillance video depicts Scavo, still wearing his facemask, crossing the threshold (circled in yellow), with the “THE CHILDREN CRY OUT FOR JUSTICE” side of the sign just inches behind him (police officers circled in blue):





Accordingly, the YouTube video depicts the siege and breach of the Rotunda Doors at *the same time* Scavo was there, recorded his own video of that brutal attack, and entered the building.

While the government is not alleging Scavo observed every single aspect of the attacks on the officers cornered at the Rotunda Doors or the entirety of other rioters' baneful conduct during that siege, it is not credible to claim that he was unaware of the peril to officers and others. His own cellphone video captured the screaming, the raucousness, smashed windowpanes on the doors, rioters brandishing a Capitol Police riot shield—directly in front of his cellphone—they had wrested from Capitol Police officers, and people using flag poles to gain access to the entryway; in other words, the throes of a violent mob. Further, the video shows only the angle his cellphone camera recorded, and not everything else he would have observed in the area.

Finally, the argument that Scavo merely “walked into the U.S. Capitol through an open door” (ECF 40 at 1) is outrageous and overlooks the violent context surrounding how the Rotunda Doors were forced open. Scavo’s careless or callous disregard for this context when he decided to join the mob and enter the building warrants a sentence of incarceration.

II. The defense response neglects to address other aspects of Scavo's conduct that also warrant incarceration.

The government's request for incarceration does not rest solely on Scavo's decision to enter the Rotunda Doors despite the violent siege that was occurring all around him. The defense response neglects to address Scavo's significant other aggravating behavior, which the government will detail at the sentencing.

One additional piece of information since the government filed its sentencing memorandum is that Scavo provided at least two media interviews in which he severely downplayed or mischaracterized his conduct. Besides the interview the government described in its sentencing memorandum in which he apparently told a news station he was not inside the Capitol (ECF 37 at 10), Scavo gave another interview to a different news outlet on January 7, 2021.³ Discussing the trip he organized that brought approximately 200 individuals to the rally earlier on January 6, the news station reported that Scavo stated he was too far away to see the breach occur. He asserted in recorded segments of the interview, "How could the Capitol fall within five minutes to a bunch of unarmed people? And that's what I'm saying. We weren't even really aware of the fact that this was all going on." Scavo also cast blame on others for the breach, claiming, "This was an Antifa-type event. . . . No matter what happened yesterday, they were going to riot, not us." Broadcasting these falsehoods about the nature of his conduct is a further aggravating fact.

³ The news report of this additional interview is available at <https://www.wnep.com/article/news/local/lackawanna-county/trump-supporter-from-old-forge-talks-about-experience-at-dc-rally-seeing-capitol-stormed/523-45361ac2-2859-4559-82cb-713699579c34>.

III. Conclusion

There is ample evidence here supporting a short term of incarceration under the sentencing factors enumerated at 18 U.S.C. § 3553(a). The government's recommended sentence credits Scavo's mitigating conduct, including his relatively short time in the Capitol, cooperation with law enforcement, early desire to accept responsibility, and ultimate expression of contrition. At the same time, it also holds him accountable for the seriousness of his conduct, including his entry at the Rotunda Doors, behavior inside the Capitol, and private and public statements about the Capitol riot. Balancing all the relevant factors, a sentence of 14 days of incarceration and \$500 in restitution is appropriate.

Respectfully submitted,

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I HEREBY CERTIFY that on November 18, 2021, I served a copy of the foregoing on all parties to this matter as listed in the Court's Electronic Case Files system.

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