

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

<b>UNITED STATES OF AMERICA</b>	)	
	)	
vs.	)	<b>Criminal Case No. 21-CR-274 RDM</b>
	)	
<b>JOHNNY HARRIS</b>	)	
<hr style="width: 100%;"/>	)	

**Defendants Sentencing Memorandum**

The defendant Johnny Harris (Harris) through his attorney, Samuel J. Randall, IV, pursuant to Federal Rule of Criminal procedure 32 and 18 U.S.C. § 3553(a), respectfully submits this memorandum to aid the Court at sentencing and hereby notifies the court that he has received and reviewed the Presentence report (PSR) prepared in this case. After carefully reviewing the PSR with Mr. Harris, there are no objections. For the reasons set forth herein, Mr. Harris requests that this Honorable Court impose a sentence of sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention.

**BACKGROUND**

Harris plead guilty to count two if the information, charging him with a violation of 18 U.S.C. § 1752(a)(2), Disorderly and disruptive conduct in a restricted building. As a class A misdemeanor the sentencing guidelines apply to this case and the guideline calculation contained in the PSR has Mr. Harris at an offense level of 11 with a criminal history category of I. The advisory guideline range is 8 to 12 months in zone B.

Mr. Harris understands that what he did on January 6 2021 was wrong and understands why the Government wants him sent to prison for what he did on January 6<sup>th</sup>. Harris doesn't want to go to prison, however given the rhetoric surrounding what was initially classified as a

protest, then a riot, an assault, a siege, and now the insurrection of January 6 makes him believe prison it is the only option.

### **CAUGHT UP IN THE HYPE**

After the presidential election, former president Donald Trump (Hereinafter “Trump”) and his “inner circle” began spreading the word that the election was “Stolen” from him by Democrats and others.<sup>1</sup> False claims by then President Trump that the election was rigged were made on media sources, as well as by the Trump himself, that the election system had been corrupted and that the integrity of the election should be questioned. Former President Trump refused to concede. Trump himself showed a willingness to undermine confidence in the democratic process and in time, managed to convince nearly three-quarters of his supporters (including Mr. Harris) that the loser was actually the winner.

Why would Mr. Harris travel from North Carolina to Washington DC to attend the Trump Rally on January 6<sup>th</sup>? After months of reports of our major cities burning people became convinced that vocal displays of outrage in the form of protesting was the only way to have their voices heard. There was a widespread belief, which turned out to be true, that very few Black Lives Matter (BLM) supporters were being prosecuted for criminal behavior while violently protesting. The media help perpetuate the notion that there would be little or no consequences for protestor actions.<sup>2</sup>

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<sup>1</sup> See [https://www.washingtonpost.com/politics/trump-election-voter-trust/2020/12/20/00282aa6-407a-11eb-8db8-395dedaaa036\\_story.html](https://www.washingtonpost.com/politics/trump-election-voter-trust/2020/12/20/00282aa6-407a-11eb-8db8-395dedaaa036_story.html)

<sup>2</sup> See <https://www.usatoday.com/story/news/2020/06/15/criminals-used-george-floyd-protests-cover-looting-police-say/5324881002/>

It seemed every time one turned on the news another media story was released. From the Federal Courthouse in Oregon where almost half of the cases were dropped, and other defendants received the equivalent of a slap on the wrist for their participation.

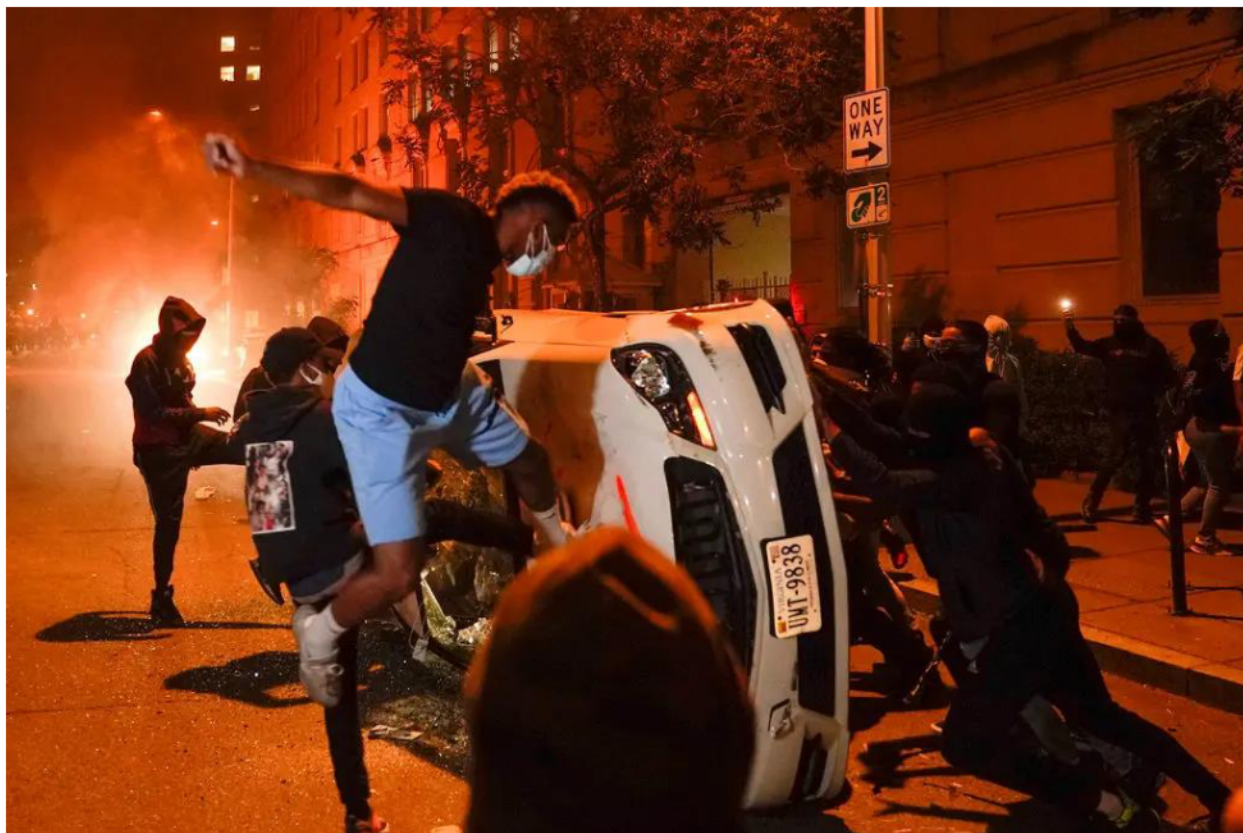


In the District of Columbia, during the George Floyd demonstrations, hundreds if not thousands of, “protesters” committed property crimes, burning, and breaking into businesses and painting federal statues, the number of prosecutions was negligible.<sup>3</sup>

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<sup>3</sup> See <https://nytimes.com2020/05/31/us/politics/washington-dc-george-floyd-protests.html>.





Former President Trump himself added to the tensions by declaring that he was trying to protect the democratic process and implied that ANTIFA would be in Washington for January 6<sup>th</sup>.<sup>4</sup>

Tweets from Former President Trump:

How can you certify an election when the numbers being certified are verifiably WRONG. You will see the real numbers tonight during my speech, but especially on JANUARY 6th.  
@SenTomCotton Republicans have pluses & minuses, but one thing is sure, THEY NEVER FORGET!

Retweets: 56945

Favorites: 211508

January 4, 2021

15:13:10 We've seen in the last few months, unprecedented amounts of Voter Fraud. @SenTedCruz True!

Retweets: 53966

Favorites: 249177

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<sup>4</sup> See <https://www.presidency.ucs.edu/documents/tweets-january-4-2021> See Also <https://www.presidency.ucs.edu/documents/tweets-january-5-2021>

January 4, 2021

15:23:50 We are not acting to thwart the Democratic process, we are acting to protect it.  
@SenRonJohnson

Retweets: 60779

Favorites: 272308

January 4, 2021

15:45:46 The Surrender Caucus within the Republican Party will go down in infamy as weak and ineffective guardians of our Nation, who were willing to accept the certification of fraudulent presidential numbers!

Retweets: 60242

Favorites: 235516<sup>5</sup>

January 5, 2021

14:50:49 Pleased to announce that @KLoeffler & @sendavidperdue have just joined our great #StopTheSteal group of Senators. They will fight the ridiculous Electoral College Certification of Biden. How do you certify numbers that have now proven to be wrong and, in many cases, fraudulent!

Retweets: 42347

Favorites: 177332

January 5, 2021

16:06:45 The Vice President has the power to reject fraudulently chosen electors.

Retweets: 90069

Favorites: 429984

January 5, 2021

18:18:24 Reports are coming out of the 12th Congressional District of Georgia that Dominion Machines are not working in certain Republican Strongholds for over an hour. Ballots are being left in lock boxes, hopefully they count them. Thank you Congressman @RickAllen!

Retweets: 54896

Favorites: 198868

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<sup>5</sup> ID.

January 5, 2021

22:05:56 Washington is being inundated with people who don't want to see an election victory stolen by emboldened Radical Left Democrats. Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!

Retweets: 82574

Favorites: 328137

January 5, 2021

22:12:20 I hope the Democrats, and even more importantly, the weak and ineffective RINO section of the Republican Party, are looking at the thousands of people pouring into D.C. They won't stand for a landslide election victory to be stolen. @senatemajldr @JohnCornyn @SenJohnThune

Retweets: 55852

Favorites: 210988

January 5, 2021

22:43:07 I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early — doors open at 7AM Eastern. BIG CROWDS! <https://t.co/k4blXESc0c>

Retweets: 51087

Favorites: 192930

January 5, 2021

22:25:08 Antifa is a Terrorist Organization, stay out of Washington. Law enforcement is watching you very closely! @DeptofDefense @TheJusticeDept @DHSgov @DHS\_Wolf @SecBernhardt @SecretService @FBI

Retweets: 71140

Favorites: 273329<sup>6</sup>

Mr. Harris, like millions of other Americans, ate up the online and televised media coverage of those events during the summer of 2020. He witnessed the rhetoric of mainstream

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<sup>6</sup> See <https://www.presidency.ucs.edu/documents/tweets-january-5-2021>

media coverage of “Protests” conducted by BLM and ANTIFA all of which had an impact on him.



On January 5, 2021, Mr. Harris and his two friends traveled from Gastonia, North Carolina to Washington DC to attend Trump’s “Stop the Steal Rally”

The morning of January 6<sup>th</sup>, Mr. Harris and his friends left their hotel and started to wander around DC. While near the Washington Memorial, Mr. Harris identified who he believed to be a group of “Proud Boys.” Mr. Harris followed that group around, photographed and video taped them on his GO-PRO camera<sup>7</sup> By the time Mr. Harris went to the Capital Grounds, the barrier fence had been taken down. Mr. Harris, like thousands of others, walked to the western side of the Capital Building. Mr. Harris proceeded to film and move closer and closer to the Capital Building. Mr. Harris climbed up to the lower terrace and then made his way to the top of the

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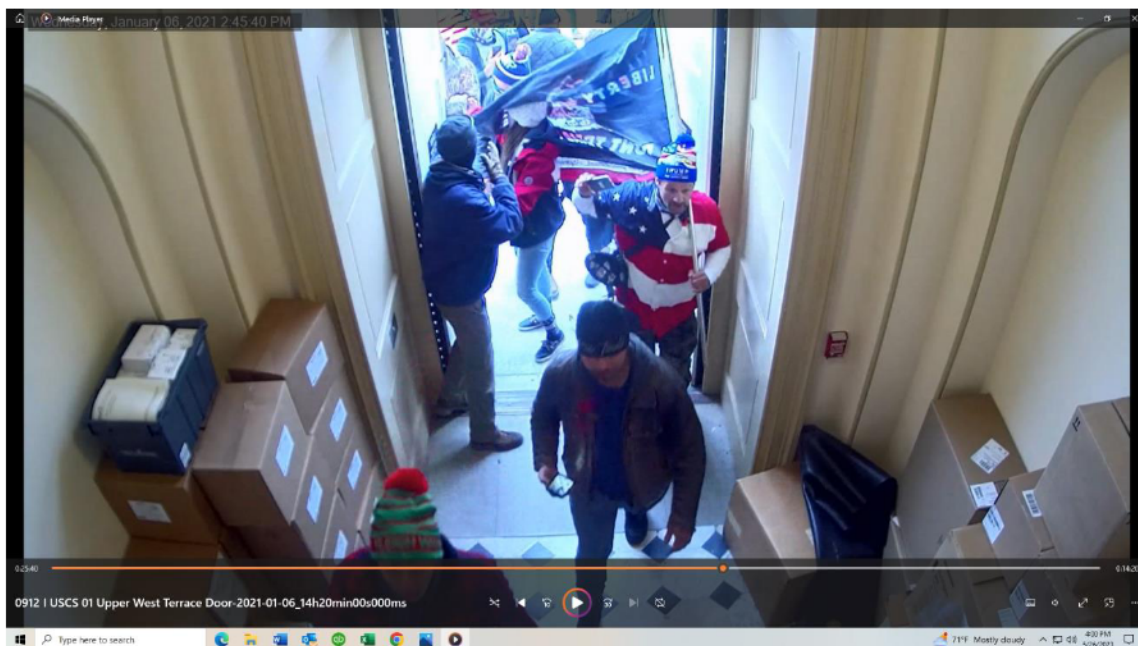
<sup>7</sup> Harris had purchased the Go\_Pro the day before and being unfamiliar had trouble getting the device to work.



bleachers. He then took photographs of the crowd. While on the bleachers Mr. Harris photographed a number of police officers massed to the right of the west terrace.



The upper west terrace door was opened, and people were walking in. Mr. Harris made his way down from the bleachers and entered the Capital Building at approximately 2:46. At that time there were no police officers at the upper west terrace door.





At no time when Mr. Harris was entering did any of the officers to the right of the upper west terrace door tell anyone not to enter.

## SENTENCING FACTORS

At sentencing, the court must impose a sentence that is “sufficient but not greater than necessary” considering the factors identified in 18 USC 3553(a). *United States v. Mendoza-Mendoza*, 597 F.3d 212, 216 (4<sup>th</sup> Cir. 2010), citing *Kimbrough v. United States*, 552 U.S. 85, 111(2007) (quoting § 3553(a))

The nature and circumstances of the offense and the history and characteristics of the defendant

The defense is not aware of any evidence that Mr. Harris destroyed or stole any property from the capital. Nor is there any evidence that Mr. Harris entered the Senate or House chamber or any other private office. Mr. Harris’ entry into the Capital was also non-violent. Mr. Harris was not dressed for “combat” like so many others that entered the Capital that day. He did not have a gas mask, nor did he cover his face or try to disguise his appearance.



Further Mr. Harris was not armed. And by the time harris arrived to the Capital most of the barriers that had been erected along the perimeter of the building were no longer present.

Mr. Harris’ background, life and employment history are laid out in the PSR and thus will not be repeated here. We have included character letters, See Exhibit A. Mr. Harris wants

this Court to understand that he is remorseful for his actions. Having been caught up the “stop the steal” frenzy and from what Mr. Harris personally witnessed outside and inside of the Capital, it has taken Harris a long time to process what happened (i.e. the officers didn’t let people in). Mr. Harris understands the significance of his actions and unequivocally regrets them. Having had time to reflect on the events of January 6. Mr. Harris understands that he made a number of grave mistakes that he would not repeat.

### **SENTENCING OPTIONS FOR THE COURT**

Given an offense level of 11 and a criminal history of I Mr. Harris falls in zone B with an advisory guideline range of 8 to 12 months. This court can impose:

- (1) a sentence of imprisonment; or
- (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e)<sup>8</sup>, provided that at least one month is satisfied by imprisonment; or
- (3) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment according to the schedule in subsection (e).

See USSG §5C1.1.

### **CONCLUSION**

Johnny Harris would respectfully ask this court to impose a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention.

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<sup>8</sup> USSG § 5C1.1(e)

- (1) One day of intermittent confinement in prison or jail for one day of imprisonment (each 24 hours of confinement is credited as one day of intermittent confinement, provided, however, that one day shall be credited for any calendar day during which the defendant is employed in the community and confined during all remaining hours);
- (2) One day of community confinement (residence in a community treatment center, halfway house, or similar residential facility) for one day of imprisonment;
- (3) One day of home detention for one day of imprisonment.

Respectfully submitted, this the 25<sup>th</sup> day of May 2023.

/s/ Samuel J. Randall, IV  
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Counsel for the Defendant



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the defendant's Sentencing Memorandum was served upon all parties via CM/ECF.

Will Widman  
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Washington DC 20530  
Will.widman@usdoj.gov

This the 25<sup>th</sup> day of May 2023.

/s/ Samuel J. Randall, IV  
SAMUEL J. RANDALL, IV  
Counsel for the Defendant