

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

**UNITED STATES OF AMERICA**

**v.**

**AUDREY ANN SOUTHARD-RUMSEY,  
a/k/a Audrey Ann Southard,**

**Defendant.**

**Case No. 21-cr-387 (APM)**

**GOVERNMENT’S REPLY SENTENCING MEMORANDUM**

The United States respectfully submits this reply sentencing memorandum to address two issues: Audrey Southard-Rumsey’s claim that she assaulted officers throughout the Capitol because she suffered from OC-induced hypoxia in the Capitol (ECF No. 59 ¶¶ 31-38) and her citation of various January 6 cases that she asserts are comparable (ECF No. 59 ¶¶ 58-67).

The idea that OC spray transformed Southard-Rumsey from a peaceful protestor to someone she could not recognize, that it worked in the exact opposite way from how it is designed (to subdue aggressors), is incredible. Southard-Rumsey’s intimation that she is the victim of assault, that she was a peaceful protestor who was “attacked by law enforcement,” is an insult to the officers who defended the Capitol. (ECF No. 59 ¶ 31). These officers, many of whom were seriously injured, showed restraint in their use of force to contain a violent mob descending on the Vice President and Congress. Having led that mob, Southard-Rumsey should not be able to cast herself as the officers’ victim. That she believes she was victimized by the officers only underscores that she has no remorse and emphasizes the need for specific deterrence.

The behaviors and judgment that Southard-Rumsey attributes to hypoxia were on display before she was ever allegedly sprayed. She used extreme rhetoric, calling for violent revolution and the execution of “traitors.” ECF No. 57 at 5-7. At the East Front, she got in a fight with another rioter who was trying to return a bicycle rack (*id.* at 9), and she stood by the police line broadcasting her intent to “storm the Capitol building, it’s gonna be fun,” and “take the line.” *Id.* Exs. 1-2. She also assaulted Officer R.S. on her way up the stairs. He described her as incensed, the “craziest” person he saw that day. All this happened before she was allegedly sprayed. Her later actions simply reflect conduct consistent with and in furtherance of her goals and her earlier actions that day.<sup>1</sup>

Nor does Southard-Rumsey’s conduct inside the Capitol suggest that she lost control of her faculties.<sup>2</sup> After entering the Capitol, she moved with purpose, heading straight for the House Chamber. The video of Southard-Rumsey in Statuary Hall Connector (*Id.* Ex. 4) also suggests that she was in full control; she was not confused, did not appear to be struggling with her breathing or have any difficulty controlling her movements. She paused to listen to those

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<sup>1</sup> Her aggressive demeanor was also in keeping with what local police and other individuals interviewed by the *Tampa Bay Times* had observed at previous protests. ECF No. 57 at 4, 59.

<sup>2</sup> A cursory review of the symptoms of hypoxia, including the authority Southard-Rumsey provides, indicates that the symptoms do not involve becoming enraged and assaultive, but rather, loss of control of faculties. See ECF No. 59 Ex. C; see also Cleveland Clinic, “Hypoxia,” <https://my.clevelandclinic.org/health/diseases/23063-hypoxia>. Moreover, Southard-Rumsey’s own authority says that, if lasting more than five minutes, hypoxia can cause coma and death. ECF No. 59 Ex. C. By the time the crowd surged forward toward the House Chamber, with Southard-Rumsey at the front, she had been inside the Capitol for over ten minutes. If her brain was still deprived of oxygen at this point, as she claims, one would expect more severe effects. Instead, she was physically capable of pushing back a large police officer and stood at the House Main Door, where she was able to yell loudly for several minutes. Nor did she appear to exhibit memory loss: after leaving the Capitol, she filmed a video where she recalled the confrontation with officers at the House Main Door.

who tried to calm the crowd, both other rioters and officers, and then responded to them. She deliberately turned back toward the crowd multiple times to exhort them to oppose the police. She held a flagpole in place across Sergeant N.V.'s chest until the time to push arrived—she was in control of her body. Her words had a coherent, though violent, message: she called for Congress, and she saw the police as traitors. As another example, she again clearly exhibited full control of her faculties in the Rotunda when she pointed straight at Sergeant M.H. and said, “you’re an asshole. And you’re going to get your ass kicked.” *Id.* Ex. 7.

Finally, Southard-Rumsey’s statements after January 6 also do not suggest that her actions inside the Capitol were the product of some oxygen-deprived hallucination. If it is true that she could not remember what happened inside the Capitol, and that her judgment was chemically altered, causing her to act in ways she otherwise would not have, one would expect her to later express shock and regret once accounts of her conduct emerged. But when the *Tampa Bay Times* ran an article describing her statements inside the Capitol, she expressed no such thing. Instead, she said “im just soo famous now!” ECF No. 57 at 41. Her online fundraiser proclaims “I DO NOT APOLOGIZE.” *Id.* at 42. Never, not in response to the news coverage, or the three indictments brought against her, or in her interview with Probation, has she ever claimed she was suffering some kind of hypoxic episode. That claim has emerged only now, in her request for a lower sentence, and plentiful evidence in the case undermines it.

Second, a table below lists the cases Southard-Rumsey identifies as comparable, with the key facts distinguishing each. In short, none of the cases she cites involved the breadth of assaults, the direct threat to the House Chamber (while members and staff sheltered inside), the

effort to incite others, and the breadth of evidence of calls for violent revolution. Other defendants also much more promptly accepted responsibility, expressed remorse, and/or cooperated with the government. And courts imposed guidelines sentences in most of the cases Southard-Rumsey cites, just as the government requests here.

| <b>Appendix A: Analysis of Comparator Cases Submitted by Southard-Rumsey</b> |                                       |   |
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| <b>Defendant</b>   | <b>Sentence</b>                       | <b>Distinguishing Factors</b>   |
| Jason Charter, 20-cr-135 (DLF)   | Probation (Guidelines)                | Not a January 6 case (was part of a crowd whose members dismantled a fence and vandalized a statue; did not threaten Congress or the peaceful transfer of power); misdemeanor only; no assault (See ECF No. 45 at 2-3).   |
| Jacob Fracker, 21-cr-34 (CRC)  | Probation (Guidelines with 5K motion) | Significant cooperation: Testified against co-defendant Thomas Robertson, his mentor on the Rocky Mount Police Department whom he referred to as “dad,” at trial, provided information leading to additional obstruction charges being brought; no assault; did not directly threaten the House Chamber (See ECF No. 127 at 5-10, 19).  |
| David Lee Judd, 21-cr-40 (TNM)   | 32 months                             | Court did not apply +3 or +8 enhancements under §2J1.2; one assault conviction, involving a sparkler that Court concluded could not have caused harm; Court found there was no evidence of planning to do anything other than attend rally on January 6; Court credited defendant’s “real remorse”; did not enter the Capitol Building; did not directly threaten the House Chamber (See Ex. A (Sent. Tr. at 77-86)). |
| Glen Mitchell Simon, 21-cr-346 (BAH)   | 8 months (Guidelines)                 | Misdemeanor only; no assault; did not directly threaten the House Chamber (See ECF No. 59 at 13, 19).   |
| Matthew Mark Wood, 21-cr-223 (APM)   | Home detention                        | This Court found no “assaultive or threatening conduct”; defendant did not push back on officers in the Rotunda; did not apply +8 enhancement under §2J1.2; granted substantial downward variance because defendant was only 23 years old; went to area of House Chamber only after the breach of the Statuary Hall Connector (See ECF No. 164 at 63-66)).  |
| Scott Fairlamb, 21-cr-120 (RCL)  | 41 months (Guidelines)                | First defendant to plead guilty to assault; one assault; spent only a few minutes inside the Capitol Building, staying near the Senate Wing Door area, almost zero evidence of preparation; participated in multi-hour debrief, where he expressed remorse; did not directly threaten the House   |

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|  |                        | Chamber. (See ECF No. 50 at 6-20, 31).   |
| Devlyn Thompson, 21-cr-461 (RCL)               | 46 months (Guidelines) | Not charged with obstruction; did not enter Capitol; did not call for violence or brag on social media; proactively approached FBI once he learned it was looking for information about him; participated in three debriefs to assist the government, submitted evaluation documenting serious mental health issues from board-certified PhD; did not directly threaten the House Chamber. (See ECF No. 30 at 29, 33-34).  |
| Nicholas Languerand, 21-cr-353 (JDB)           | 44 months (Guidelines) | Not charged with obstruction; did not enter Capitol; little evidence of planning; (See ECF No. 34 at 9-19, 32-34); court noted “unusually difficult childhood” and credited defendant for military service and acknowledgment that his conduct was not patriotic; did not directly threaten the House Chamber (ECF No. 42 at 35-36, 39, 40)  |
| Mark Leffingwell, 21-cr-05 (ABJ)               | 6 months               | Arrived at Capitol after hours after breach; assaulted two officers in one area; promptly apologized to victim officer (well before sentencing); no use of weapons; no obstruction; did not directly threaten the House Chamber; only briefly inside the Capitol, remained near Senate Wing Door; debriefed with the government and expressed remorse; wounded military veteran; no evidence of planning or incendiary communications before January 6 (ECF No. 31 at 5-9, 15; ECF No. 53 at 39-40, 49, 54). |
| Lonnie Coffman, 21-cr-04 (CKK)/21-cr-614 (CKK) | 46 months (Guidelines) | Did not even enter the restricted area; did not commit assault or obstruction –was arrested and convicted for possession of weapons in D.C. (ECF No. 28 at 3-4).   |

Finally, the government corrects its citation to *United States v. Grider* (ECF No. at 64-65). The correct case number is 21-cr-22 (CKK), and Grider received a sentence of 83 months’ imprisonment, not 87 months. The government regrets the error.



Respectfully submitted,

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