

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

KATHERINE STAVELY SCHWAB

Defendant.

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: Case No. 1:21-cr-50-CRC
: The Hon. Christopher R. Cooper
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DEFENDANT KATHERINE SCHWAB’S SENTENCING MEMORANDUM

COMES NOW the defendant, Katherine Stavely Schwab, by and through counsel, Jeffrey Zimmerman, pursuant to Federal Rule of Criminal Procedure 32 and 18 U.S.C. Section 3553(a), and respectfully submits this memorandum to aid the Court at sentencing and hereby notifies the Court that she has received and reviewed the Presentence Report (“PSR”) prepared in this case. For the reasons set forth herein, Ms. Schwab requests that this Honorable Court impose a sentence of a period of home confinement, a period of probation, 100 hours of community service, and restitution.

I. SENTENCING GUIDELINES

Ms. Schwab agrees that her sentencing guidelines are properly calculated at Total Offense Level of 8 with a Criminal History Category of I, for an advisory range of 0-6 months. See Presentence Investigation Report (ECF 89) at 23 ¶ 122 (filed 12/1/22) [hereinafter PSR]. She further agrees that, since the applicable guidelines range in is Zone A of the Sentencing Table, a sentence of imprisonment is not required under guidelines. Id at 23 ¶ 123.

**II. A GUIDELINES SENTENCE OF PROBATION, WITH A PERIOD OF HOME DETENTION, WOULD ACCOUNT FOR THE FACTORS SET FORTH IN 18 U.S.C § 3553(a)**

Section 3553(a) of Title 18 directs the Court to consider factors including “the nature and circumstances of the offense and the history and characteristics of the defendant” and then impose a sentence “sufficient, but not greater than necessary” to comply with the goals of sentencing. *See* 18 U.S.C. §3553(a)(1), (2). The Court is also to consider the kinds of sentences available and advisory sentencing range, as well as the need to avoid unwarranted sentence disparities among defendants with similar records convicted of similar conduct. *See* 18 U.S.C. §3553(a)(4), (6). In addition, the imposition of a term of imprisonment is subject to the Court “recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.” *See* 18 U.S.C. §3582(a).

**A. This History and Characteristic of Katherine “Katie” Schwab**

1. Katie Schwab is Devoted to Family and is Her Father’s Primary Caretaker

Katherine Schwab, who goes by “Katie,” was born in 1988 in Ft. Belvoir, Virginia. *See PSR* at 14 ¶ 63. She has two older brothers. *See id.* at 14 ¶ 64. Her mother, Leslie Schwab, writes that Katie has always been “willing to go the extra mile to help out family and friends.” *See Exhibit 1* (letters from family). When her grandfather was dying, she flew to Florida to be by his side. She stayed in a fold-out bed in his room, providing any assistance he needed. She would comfort him when he was in pain. Katie held her hand over her grandfather’s heart and prayed with him during his final breath.

Katie Schwab’s father, John Samuel Schwab, III, is a retired Lt. Colonel in the United States Army. He requires special and constant care as a result of complications from a brain bleed in 2020. *See id.*; *see also PSR* at 14 ¶ 67. Lt. Col. Schwab suffers from dementia and seizures.

Leslie Schwab describes how her daughter has “selflessly become a caregiver for him” since his surgery. She handles her father’s medications, assists him in daily activities, and takes him to doctors’ appointments. “Without her we would be lost.” Leslie Schwab writes, “She plays a very vital role in our daily lives.” *See Exhibit 1.*

In addition, Leslie Schwab recounts how her daughter was raped on two separate occasions when she was very young (ages 12 and 14). *See id.*; *see also PSR* at 17 ¶ 85. Years later at age 19, Katie would testify against one of her attackers, a serial rapist who was also a celebrity fashion designer. *PSR* at 17 ¶ 85. These were extremely difficult years for her and she would experience numerous mental and emotional health challenges that she continues to suffer from, and seek counseling for, to this day. *Id.*

Finally, Katie’s mother notes that: “Not one day has gone by since January 6, 2021, that my daughter has not grieved her actions, expressed deep remorse and has always, always accepted full responsibility for what she did that day.” *Id.*

John Schwab, IV, Katie’s oldest brother, notes that although his sister is a Virginian by birth, she was raised in Texas. *See Exhibit 1.* He notes that she worked for many years in the family insurance agency, before moving on to “a very promising & successful career” as a licensed real estate agent for Mike Bowman Century 21.<sup>1</sup> John notes that Katie is the primary caretaker for both of their parents. He notes that he and their brother, Tim, would not be able to provide the level of care that Katie provides. *See id.*

Tim Schwab, Katie’s other sibling, writes that his sister is a “passionate” person devoted to friends and family. *Id.* He says Katie’s “uncharacteristic” actions on January 6<sup>th</sup> have left her

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<sup>1</sup> As discussed *infra*, Section II. C., Ms. Schwab was terminated from this job as a result of her conduct in this case.

feeling “distraught, ashamed and regretful.” *Id.* “Since that day I have seen, heard, and even felt nothing but remorse from her.” *Id.* He notes that Katie provides great care to their parents.

Retired Command Sergeant Major Jimmie Riegel, who also served in the United States Army, writes of Katie’s devotion to her parents.<sup>2</sup> *See Exhibit 2* (letters from friends). He notes that Katie cares for her father on a daily basis, as well as her mother who is “a little fragile and somewhat forgetful.” *Id.* Katie makes sure her father engages, eats, and gets out of the house. She also gets her parents to all their appointments, and makes sure they take their medications. Katie also makes sure that their bills are paid and finances are handled correctly.



*Katie Schwab with her parents*

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<sup>2</sup> Sgt. Maj. Reigel refers to Katie’s father as “Sam,” a shorted version of his middle name that is typically used by his friends.



2. Katie is Devoted to Her Friends and Community

Emily Sowa and Katie knew each other from the same community in North Texas where they both grew up. *See Exhibit 2* (letters from friends). Ms. Sowa became close friends with Katie Schwab about eight years ago after Katie visited her newly opened salon as a client. “Katie was a big supporter of my small business and encouraged many friends and family to visit me, which helped me grow my clientele.” *Id.* Katie has also been there for her “when I have fallen on hard days.” Ms. Sowa has witnessed Katie’s devotion to her parents’ care. She also recounts how Katie provided comfort to a friend’s mother who was losing a battle with cancer. “She spent many hours with her, visited all that she could, and when she could no longer speak, she was there holding her hand to let her know she would not be alone.” *Id.* Finally, Ms. Sowa notes that Katie “has expressed deep remorse and responsibility” for her conduct in this case “and I have seen her work continuously to be a better person than she was the day before.” *Id.* “She is a beloved daughter to parents who depend on her, a reliable sister, an adored aunt, [and] and incredible friend.” *Id.*

Sharon Sowa brings a unique perspective as she was Katie’s third-grade Sunday School teacher. *See id.* “From the beginning, Katie was bright, engaging... inclusive of all the other students...[a]lways helpful and energetic.” *Id.* She notes that, into adulthood, Katie could always be counted on to show up “with a loving response at times of need” and would always bring a “shoulder of comfort.” *Id.* Douglas Moyer, a former high school teacher of Katie’s brother John, notes that she is a “talented young woman who genuinely cares to make a positive difference in her family and community.” *Id.* He notes that Katie has paid a “tremendous personal price” for her actions. *Id.*

Crystal Meehan, a friend for at least twelve years, describes Katie as kind, loving, and loyal. *See id.* “She has always been there for me and my kids.” *Id.* Ms. Meehan notes that Katie’s

parents depend on her physically and mentally. She also writes how Katie and her parents have helped her during hard times. She tells the Court, “I definitely know that Katie has learned a very hard lesson.” *Id.*

3. Katie Schwab has Struggled with Anxiety and Depression

At age twelve, Katie was raped by a friend of one of her brothers. *See PSR* at 17 ¶ 85. Two years later, while seeking to get into modeling, she was raped by a fashion designer. *Id.* A number of years after the second rape, when the law caught up with the fashion designer (who turned out to be a serial rapist), Ms. Schwab testified against him. *Id.* She was 14 years old when he raped her and 19 years old when she later testified. *Id.* All of these experiences resulted in anxiety, major depressive disorder, PTSD and various other diagnoses and mental health challenges. *Id.* at 17-19 ¶¶ 85-90. Ms. Schwab started receiving mental health counseling, as well as various medications, beginning as early as 2007 (when she was 19 years old). *Id.*

Brian Powers, a licensed professional counselor in Texas, has been treating Katie since 2016. *Id.* at 18 ¶¶ 88, 88a. She has completed at least 44 individual counseling sessions with him. *Id.* at 18 ¶ 88. She is attentive, engaged, and emotionally present in counseling. *Id.* Mr. Powers has opined that incarceration would be detrimental to her mental health and current emotional state. *Id.* at 18 ¶ 88a.

4. Katherine Schwab Has No Prior Record

Ms. Schwab, who is 34 years old, has no prior criminal record. No prior convictions, no juvenile adjudications, no prior arrests, not even a traffic infraction. *See PSR* at 13 ¶¶ 55-61. Her only prior interaction with the criminal justice system has been as a very young rape victim.

**B. The Nature and Circumstances of The Offense**

1. Katie Schwab Looks Back at Her Actions with Horror and Shame

On January 15, 2021, Katherine Schwab invited FBI agents into her home and answered their questions. During the interview, which lasted about an hour, Katie discussed her own actions, but was understandably not eager to implicate other people in her group. Katie expressed her regrets and stated that she would never go to another rally or march again.

On February 1, 2021, Ms. Schwab voluntarily self-surrendered to the United States Marshals in the Northern District of Texas. On August 18, 2022, she pleaded guilty pursuant to a written plea agreement to Engaging in Disruptive or Disorderly Conduct in a Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a)(2). *See Plea Agreement* [ECF 82]. As part of her plea, she agreed to a *Statement of Offense* [ECF 83] that described her unlawful conduct.

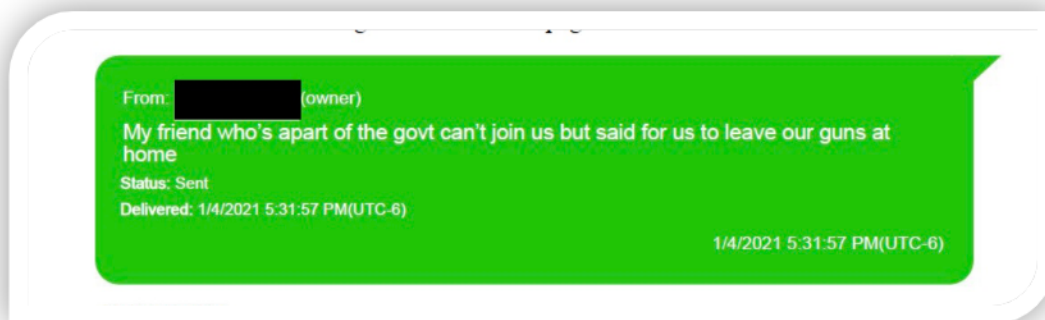
Reflecting on her actions, Katherine has written, in part, “I deeply regret my conduct in and around the Capitol on January 6, 2021. My actions were both wrong and illegal. I’ve never been riddled with so much remorse in my life, and my chosen actions are what caused that. I have no one to blame but myself....I was part of a crowd that threatened police officers and the peaceful transition of power. The crowd threatened elected officials and members of the media. I look back on my actions with horror and shame....That day I went against everything in which I stand for, and it makes me sick to my stomach every second I think about it.” *See PSR* at 11-12 ¶ 44.

The government, while acknowledging Ms. Schwab’s “strongly worded expressions of remorse,” nonetheless mischaracterizes her statement. *See Government’s Sentencing Memorandum* [ECF 92] at 26 (12/2/22) [hereinafter *Govt Memo*]. According to the government, Ms. Schwab attributed her unlawful actions to the crowd and not herself. *Id.* This is not true accurate. Ms. Schwab notes she was part of that crowd and that she has “no one to blame but

herself.” See *PSR* at 11-12 ¶ 44. The government also wrongly claims that Ms. Schwab “provides little acknowledgment of what she actually did.” *Govt Memo* at 26. To the contrary, she signed and adopted in this Court a *Statement of Offense* [ECF 83] that describes her conduct. Ms. Schwab is referring to all the conduct in the *Statement of Offense*, all of the conduct described in her letter, and everything unlawful she was involved in that day, when she states that only has herself to blame. She suffers from shame and guilt for her conduct that day and deeply regrets her actions, a fact also referenced by her family and friends in their letters to the Court. See *Exhibits 1 & 2*. It is inaccurate and unfair of the government to suggest otherwise.

2. Ms. Schwab Recommended the Group Leave Their Guns at Home

In seeking to justify a long, three-month jail sentence for Ms. Schwab — a sentence significantly higher than most similarly situated misdemeanor defendants received — the government erroneously states that: “She even contemplated breaking the law to prepare for the violence she predicted by bringing a concealed firearm to the District of Columbia.” *Govt Memo* at 24. No, she did not. It is clear from the government’s own exhibit that Ms. Schwab’s recommendation to her fellow travelers from Texas (a state where Second Amendment rights are widely exercised) was to “leave our guns at home.” See *Govt Memo* [ECF 92] at *Exhibit 1*, page 2 (screenshot below). Which they did.





In addition, there is an implication in the government's mischaracterization that Ms. Schwab was preparing for violence by even discussing guns. Rather, as she herself states, she was concerned about "protection." *See Govt Memo at Exhibit 1*, pages 1-2. In the period of time leading up to January 6, 2021, Ms. Schwab believed then-President Donald Trump that violence occurring at rallies and protests nationwide (particularly in the wake of the murder George Floyd) was the work of "left extremist groups" like "Antifa." *See, e.g., Kristine Frazao, President Trump Blames Antifa, But Who Is Really Behind The Violence*, BAKERSFIELD NOW EYEWITNESS NEWS (June 1, 2020).<sup>3</sup> In this worldview, Trump supporters were led to believe that they needed to protect themselves from "Antifa" when attending political rallies. Notably, again, this was a discussion about guns for protection (not for any offensive use) and, more significantly, Katie Schwab told others to "leave our guns at home."

3. Ms. Schwab was Inside the Capitol for Only Six Minutes

Ms. Schwab regrets stepping foot into the Capitol on January 6, 2021. On that day, she entered the Capitol through the East Rotunda Door at 3:21pm. *See Statement of Offense* [ECF 83] at 4 ¶ 14. Katie entered the Rotunda and then was directed by police officers out of the Rotunda, crossing the Statuary Hall connector hallway, and exiting the Capitol at 3:27pm. *Id.* at 5 ¶ 16. She spent only six minutes inside the Capitol. She never went into any Senate or House offices, nor did she enter the Senate or House Chambers or even attempt to do so. She was inside the Capitol for a very brief period of time.

Moreover, while the defense agrees with the government that Ms. Schwab did not engage in the pushing or the force that allowed the crowd to breach the East Doors, *see Govt Memo* at 25

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<sup>3</sup> <https://bakersfieldnow.com/news/nation-world/president-trump-blames-antifa-but-who-is-really-behind-the-violence>

n.7., it is not accurate to state that she “did not try to exit once inside.” *Id.* Ms. Schwab was subject to the same force and pushing of that crowd. She admits that she absolutely should not have been there and regrets being anywhere near the Capitol that day. Once inside, however, she was directed by police officers toward an exit which she took. Again, her entire time inside the Capitol was about six minutes.

#### 4. Ms. Schwab and the Media Equipment

The government’s primary argument for a sentence of 90 days incarceration for Katherine Schwab primarily comes down to literally five seconds of conduct by Ms. Schwab. These same five seconds are also the reason Ms. Schwab was not offered the standard plea to a petty offense of parading, under 40 U.S.C. § 5104(e)(2)(G), a plea offered to most individuals who entered the Capitol, including codefendants Ryan and Hyland.<sup>4</sup>

There is no excuse for any attack on the media or media equipment and Ms. Schwab offers none. She feels shame for every moment, every minute, every second of her unlawful actions on January 6, 2021. Her actions should be accurately characterized, however, so this Court can consider what she actually did.

After leaving the Capitol, Schwab, Hyland, and Ryan arrived at an Associated Press enclosure that had come under attack by others. *See PSR* at 9 ¶ 34. At one point, Ms. Schwab picks up a lighting pole that had already been knocked to the ground, throws it back onto the ground, and kicks it.

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<sup>4</sup> *See, e.g., Govt Memo* at 32 (“[U]nlike either of her codefendants, Schwab joined in the destruction of property and urged others in their efforts to do the same. Accordingly, while Schwab’s codefendants pleaded guilty to and were each sentenced for a petty offense under 40 U.S.C. § 5104(e)(2)(G), Schwab will be sentenced for her violation of 18 U.S.C. § 1752(a)(2), a more serious misdemeanor offense.”)

In the video screenshots below, Ms. Schwab can be seen (in the red circle) reaching down to pick up the light pole. Note the time index in the lower left of 5:29. She almost immediately throws it back on the ground (second screenshot, below) and appears to kick it. Note the time index in the second photo of 5:33.



Since this piece of equipment was already on the ground before Ms. Schwab arrived at the scene and picked it up, there is no way to know if she actually damaged it. In any event, she had no business touching it at all and would like to make full restitution for the value of that piece of lighting equipment. A media case in the first screenshot above is marked “AP,” the logo for the Associated Press. It is defense counsel’s understanding that the AP is not working with the government in seeking restitution through these proceedings.

Undersigned counsel's efforts to reach someone at AP about this matter have so far not been successful. Counsel was able to reach someone at AFP, believing it to be Associated Foreign Press. The defense learned it was actually Agence France-Presse, a French international news agency with a regional office in Washington, D.C. AFP advised counsel that they were not part of the attacked enclosure and did not suffer any equipment damage. Counsel will keep trying to find someone at Associated Press whom will respond regarding restitution in this matter.

6. Ms. Schwab and the Pushed Veteran

Ms. Schwab is ashamed when she watches video of her interaction with the police and recalls those moments. The government recognizes that, in those moments, she was motivated by anger that a veteran in the crowd was pushed and fell. *See Govt Memo* at 25 n.8. This had a strong impact on her as her father is a veteran of about the same age. It is clear, moreover, that her verbal interaction with the police was relatively limited.

7. President Trump "Lit the Flame"

Katie Schwab blames only herself for her conduct and knows that she is solely responsible for her actions. Context matters, however. As Representative Liz Cheney said the evening of January 6, 2021, "There is no question that President Trump formed the mob, the President incited the mob, the President addressed the mob. He lit the flame." *See* Justine Coleman, *Liz Cheney Blames Trump For Riots: "He Lit the Flame."* THE HILL (January 6, 2021).<sup>5</sup> Subsequently, after extensive work by the House Select Committee investigating January 6 on which she served as Vice Chair, Representative Cheney noted that, "President Trump invested millions of dollars of campaign funds purposely spreading false information, running ads he knew were false, and

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<sup>5</sup> <https://thehill.com/homenews/house/533024-liz-cheney-blames-trump-for-riots-he-lit-the-flame/>



convincing millions of Americans that the election was corrupt and that he was the true President.... [T]his misinformation campaign provoked the violence on January 6th.” *Here’s Every Word of the First Jan. 6 Committee Hearing on its Investigation*, NATIONAL PUBLIC RADIO (June 10, 2022).<sup>6</sup>

Through the House Select Hearings, as well as through extensive reporting by investigative journalists, we have learned that there were two types of protestors who came to Washington on January 6<sup>th</sup>. Many, like Katherine Schwab, assembled peacefully in order to attend a rally. Others, however, came with a plan to incite the crowd and breach the Capitol. *See, e.g.*, Natalie Reneau, Stella Cooper, Alan Feuer & Aaron Byrd, *Proud Boys Led Major Breaches of Capitol on Jan. 6, Video Investigation Finds*, THE NEW YORK TIMES (June 17, 2022).<sup>7</sup> Planners, such as the Proud Boys, referred to people such as Katie as “normies” to be used as unwitting pawns in their plans that day. *See id.*

The Proud Boys are “an organized and violent group, with a history of supporting Donald Trump, [who] came to his aid as he desperately tried to cling to power.” *Id.* (embedded video at 1:45). The Proud Boys have become known for facing off in prior protest against groups known generally as “Antifa” and, on January 6, planned to dress as members of those group as part of their plans to incite the crowd. *See id.* (Proud Boys leader Joe Biggs stating they would blend in like “Antifa”) (embedded video at 0:30); (On Jan. 6, Proud Boys blended in with the crowd) (video at 0:53); (Proud Boys were central to the attack, instigating critical break-throughs at the Capitol, by targeting access points and riling up the crowd) (video at 1:15). The Proud Boys claimed they

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<sup>6</sup> <https://www.npr.org/2022/06/10/1104156949/jan-6-committee-hearing-transcript>

<sup>7</sup> <https://www.nytimes.com/2022/07/12/us/politics/proud-boys-jan-6.html>

needed to prepare to defend against “Antifa” while at the same time they were planning the Capitol attack and to incite the crowd in plain clothes or disguised as “Antifa.” *Id.* (video at 0:30, 0:53, 3:40, 7:40). Afterwards, they celebrated on Telegram (an instant messaging service) that they got “the normies all riled up.” *Id.* (video at 16:18). “The Proud Boys played critical roles from the first moment of violence to multiple breaches of the Capitol, while leaving the impression that it was just ordinary protestors leading the charge.” *Id.* (video at 16:37).

Finally, it is worth emphasizing that former President Trump and groups such as the Proud Boys played upon the lie that most protests in the wake of George Floyd’s murder were violent, as well as the additional that the violence was caused at those protests was caused by outside left-leaning agitators. *See, e.g.*, Michael Biesecker, Michael Kunzelman, Jake Bleiberg & Alanna Durkin Richer, *As Trump Blames Antifa, Protest Records Show Scant Evidence*, THE ASSOCIATED PRESS (June 6, 2020);<sup>8</sup> Sanya Monsoor, *93% of Black Lives Matter Protests Peaceful, New Reports Finds*, TIME (September 5, 2020).<sup>9</sup> In an Orwellian twist after the Capitol riot, Trump and some right-wing media outlets suggested that Antifa or BLM (Black Lives Matter) protestors disguised as Trump supporters were behind the attack. *See, e.g.*, Michael M. Grynbaum, Davey Alba and Reid J. Epstein, *How Pro-Trump Forces Pushed a Lie About Antifa at the Capitol Riot*, THE NEW YORK TIMES (March 1, 2021).<sup>10</sup> We now know the opposite is true.

For anyone not immersed in the MAGA media ecosystem of social media and right-wing broadcasters, it can be a challenge to fully grasp to understand the breadth and depth at which the

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<sup>8</sup> <https://apnews.com/article/american-protests-donald-trump-ap-top-news-mn-state-wire-virus-outbreak-20b9b86dba5c480bad759a3bd34cd875>

<sup>9</sup> <https://time.com/5886348/report-peaceful-protests/>

<sup>10</sup> <https://www.nytimes.com/2021/03/01/us/politics/antifa-conspiracy-capitol-riot.html>

Big Lie of a stolen 2020 presidential election is relentlessly pushed and widely believed. *See, e.g.,* Tovia Smith, *Why is the “Big Lie” Proving So Hard to Dispel?*, NATIONAL PUBLIC RADIO (January 4, 2022).<sup>11</sup> One year after the Capitol riot, “[e]ven though countless courts, commissions, committees and clerks, including Republicans, have all concluded the election was not stolen, the NPR/Ipsos poll shows two-thirds of Republicans and just over one-third of all voters still cling to the false claims that voter fraud helped President Biden win.” *Id.* Many people chose to believe Trump, who was President at the time he began telling the Big Lie. They believed the President of the United States. Moreover, piled on top of the Big Lie, are numerous lies in service of it such as lies about “Antifa” advanced and leveraged by the Proud Boys.

The misinformation bubble burst for Katherine Schwab soon after January 6, 2021. That she believed the lies coming from the former president, misinformation constantly amplified by right-leaning media, adds to her shame. She knows now that her actions that day were actually in service of a pack of lies. In seeking an appropriate sentence, context matters. Undersigned counsel respectfully submits that it is fair and appropriate to consider the context in which Ms. Schwab was manipulated by the former president and by those (such as the Proud Boys) who carefully planned, methodically initiated, and continually encouraged the violence on January 6<sup>th</sup>.

### **C. The Need for the Sentence to Afford Adequate Deterrence**

The goals of sentencing include the need to deter crime (general deterrence) and the need protect the public from further crimes by the defendant (specific deterrence). *See* 18 USC §3553(a)(2)(B)-(C). Ms. Schwab has fully accepted responsibility for her actions before this Court. Here, again, the government wrongly suggests that she has not accepted responsibility simply because her statement to probation does not repeat verbatim all the language in her signed, sworn

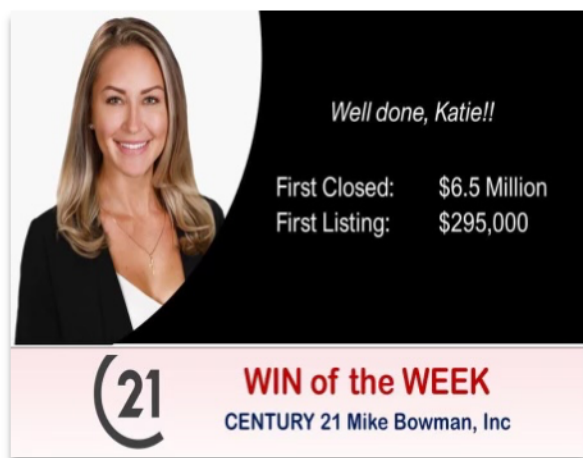
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<sup>11</sup> <https://www.npr.org/2022/01/04/1070337968/why-is-the-big-lie-proving-so-hard-to-dispel>

*Statement of Offense* before this Court. See *Govt Memo* at 28. Katie Schwab has expressed her sincere remorse for her conduct, conduct which is clearly described in a *Statement of Offense* on which she pled guilty and admitted is true and accurate. While it is undersigned counsel's job to provide clarity and context for the purposes of sentencing, Ms. Schwab has not sought to rationalize or minimize anything she has done. She is horrified and humiliated by her conduct.

Ms. Schwab, who has no prior criminal record, is not going to be involved in anything unlawful again. She was clear about that as little over a week after January 6, 2021, when she invited FBI agents into her home. She was not proud of her conduct and she stated she would not be involved in such activity again. She is ashamed of the Facebook Live video she made with Jenna Ryan on January 6th.<sup>12</sup> Unlike numerous other January 6th defendants (including codefendant Ryan), Ms. Schwab did not go on social media or any online or media outlets in the period after January 6<sup>th</sup> to try to make herself into some sort of MAGA celebrity.

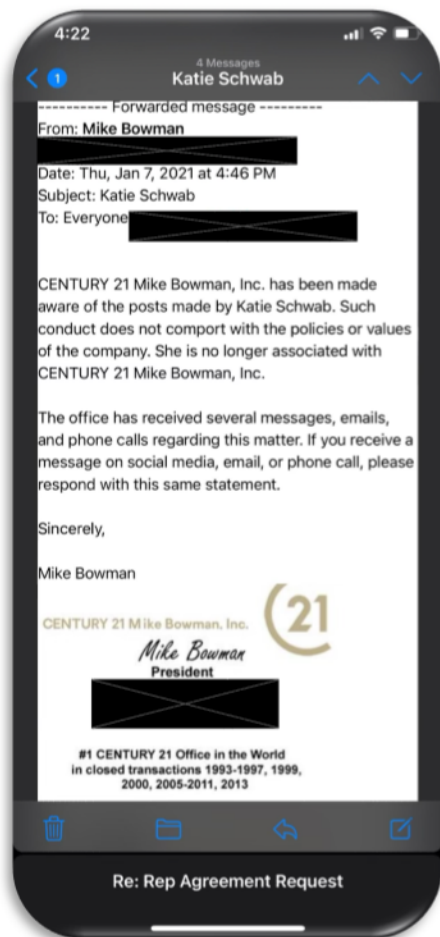
Moreover, the negative consequences of her actions were swift and brutal. Katie had been a rising, successful star in her dream career of being a realtor.



<sup>12</sup> Ms. Schwab is clearly intoxicated in that video. She is somewhat slurring her words and is fumbling in an effort to open a bottle of beer. This does not excuse her behavior and is another hard lesson she takes from her conduct that day.



That career, a long-time goal she worked very hard to achieve, came crashing down when she was fired the day after the events at the Capitol.



Katie was also apparently doxed as she started receiving hateful text messages on her phone, advising her to “blow her brains out,” calling her a “fucking terrorist bitch” and telling her to “[h]ave fun in federal prison.” The screenshots on the following page (from which the phone numbers have been cropped) are from two different numbers.

Jan 10, 2021, 3:09 PM

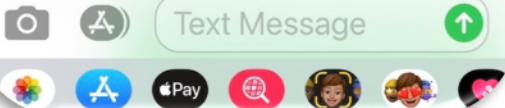
I just waited 2 hours on the phone with the FBI to talk to an actual person to report you. I gave them your address, phone number, the address of your familys home in Colleyville, your family businesses address, Tim's address, and John's address. Along with screen shots of you admitting to rioting. It's going to be so great to watch your perp walk you fucking terrorist bitch. Have fun in federal prison. Your daddy's money won't get you out of this one.

Right now there are many who are pushing to have your Realtor association membership revoked as well as your license

Thanks to the internet there is no place to hide and make this all go away

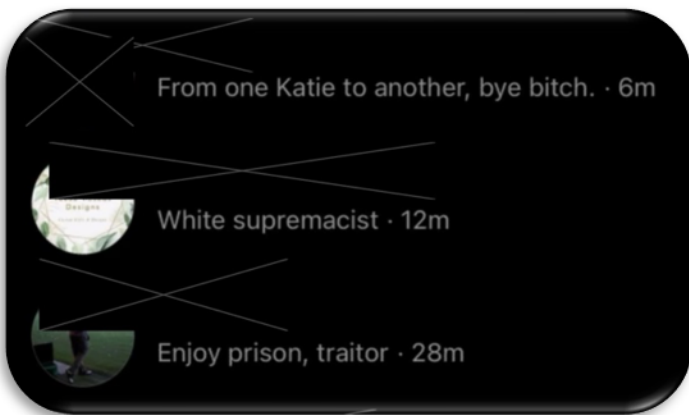
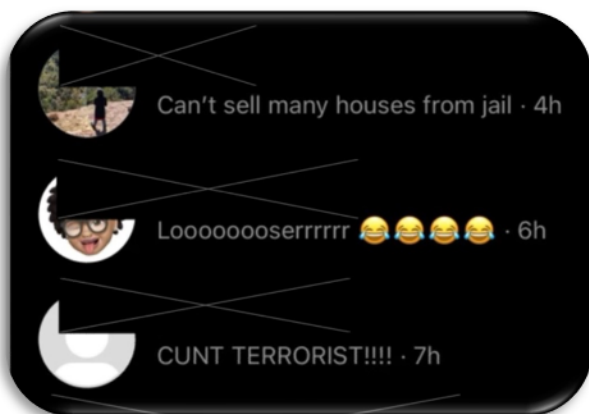
Your best option is to exercise your 2nd amendment rights to blow your brains out in the service of your community and humanity

Have a great day 😊



Ms. Schwab has also provided counsel with a number of hateful voicemail messages, including one in which the caller wished prison-rape would happen to Katie, stating “You fucking trash-ass cunt, I hope the only piece of real estate you are selling is your ass in prison. You fucking whore. You are a traitor to this nation... I hope you go to prison you fucking whore.”<sup>13</sup>

Katie has been harassed on social media, before she decided to leave those platforms. She has been called a “CUNT TERRORIST” and a “bitch.” She has received numerous messages that revel in the thought that she would lose her job and go to prison (redactions of screen names are by undersigned counsel).



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<sup>13</sup> In the event the Court, prosecution, or probation officer want to hear this – it is vicious and horrifying – counsel can provide it via email. It is a 58KB audio m4a file, twenty-three seconds long in its entirety.



Katherine Schwab feels shame and a loss of self-respect for what she did toward others on January 6, 2021. She is never going to break the law again. She knows in her heart, in her core, how wrong she was. It is also undeniably true, however, that her actions have cost her dearly and have dramatically altered the course of her life. Katie has lost her career. She is subject to harassment online and on her own cellphone. Any Google search of her name will forever associate her with this case and Jenna Ryan. Moreover, unlike her codefendants, she will forever carry the stigma and disability of not a petty offense, but a more serious Class A Misdemeanor conviction.

As for the need for general deterrence, the government suggests “weighs heavily in favor of incarceration in nearly every case” arising out of January 6. *See Govt Memo* at 27. Many January 6th defendants, however, received sentences that did not include incarceration and those sentences were appropriate for the defendants who received them. Moreover, the government suggests incarceration is warranted for Ms. Schwab so that others will know “that their actions have consequences.” *Id.* at 28.

Katie’s actions have already had very severe consequences. Her life is forever, negatively altered. Her career is over. Her formerly good name is ruined. She has destroyed it. In addition, she is now and forever a convicted criminal on every job application and to anyone who runs her name through Google. These are all high prices to pay that, themselves, serve as a general



deterrent. She is also now subject to horrific harassment. A repeated victim of rape, Ms. Schwab now gets hateful messages from people hoping she gets raped in prison.

There are alternative ways to impose punishment on her, which would be in addition to all of these consequences. It is worth noting that Ms. Schwab has always been in compliance with the conditions of her release for a period of almost two years. A period of probation will assure she continues to abide by the law. A period of home confinement can be added as a further sanction.

**D. The Need to Avoid Unwarranted Sentencing Disparities**

Defendants involved in more egregious conduct have received sentences that did not include incarceration.

1. Felipe Marquez

Felipe Marquez, like Katherine Schwab, pled guilty to one count one count of 18 U.S.C. § 1752(a)(2), disorderly or disruptive conduct in a restricted building or grounds. On December 13, 2021, he was sentenced to eighteen (18) months of probation. *See United States v. Felipe Marquez, No. 21-cr-136 (RC), Judgment [ECF 36]* at 1-2.

According to the government, Marquez posted a video to SnapChat in which he encouraged to scale a wall of the Capitol, yelling, “Yeah baby. Climb the wall.” *See United States v. Felipe Marquez, No. 21-cr-136 (RC), Government’s Sentencing Memorandum [ECF 28]* at 3. He was part of the mob that breached the Capitol through the Senate Wing Door at around 2:49pm. *Id.* at 4. “A line of police officers had been physically keeping the mob back, but at 2:48:41 p.m., the mob overpowered the officers, pushing them backwards.” *Id.* He was part of the mob that breached the Capitol through the Senate Wing Door at around 2:49pm. *Id.* “A line of police officers had been physically keeping the mob back, but at 2:48:41 p.m., the mob overpowered the officers, pushing them backwards.” *Id.* Marquez then moved to the front of the mob that had overpowered the

officers. "Obviously, the officers saw the mob (and Marquez) as a threat to their own safety and the safety of the building and the people they were sworn to protect." *Id.* at 6 (internal parenthetical in original). He posted "a selfie video of himself smiling in front of a mob screaming at the line of Capitol Police officers." *Id.* at 7. Marquez took various videos of himself inside Senator Merkley's office of others smoking and yelling and banging on the table. *Id.* at 8. "Marquez then held his vape pen up to the camera, as if to capture the arrogance of the rioters (himself included) smoking in a senator's office." *Id.* (internal parenthetical in original).

Subsequently, Marquez went down to the Capitol's Crypt "cheering and screaming as rioters roamed about." *Id.* at 10. "Narrating the scene, Marquez said, with lightness in his voice, 'We only broke a couple windows.'" *Id.* at 11. Marquez was escorted out of the building by police at 3:34pm, having spent about an hour inside the Capitol. *Id.* at 12. On January 6, Marquez posted a celebratory video on SnapChat about all he had done. *Id.* at 13. Two days later, back home in South Florida, he posted another video on YouTube in which he rapped about his experience. *Id.* at 14.

By contrast, Katherine Schwab spent only six minutes in the Capitol, only in public areas, in and around the Rotunda. She never occupied a Senator's office. She did not "break a couple of windows." Her conduct in the Capitol was far less extensive and far less egregious than Marquez's. Moreover, although she posted as regrettable video on social media that day (as had Marquez), she never subsequently went on social media to boast about what happened. Rather, she became a target of harassment online (and on her own cellphone) to which she did not engage or respond. She stopped using social media to avoid all the invective directed at her.

2. Matthew Wood

On May 27, 2022, Matthew Wood pled guilty to all counts in a six-count indictment charging Obstruction of an Official Proceeding and Aiding and Abetting in violation of 18 U.S.C. §§ 1512(c)(2) and 2; Entering or Remaining in any Restricted Building or Grounds in violation of 18 U.S.C. §§ 1752(a)(1); Disorderly and Disruptive Conduct in a Restricted Building or Grounds in violation of 18 U.S.C. § 1752(a)(2); Entering and Remaining in Certain Rooms in the Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(C); Disorderly Conduct in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(D); and Parading, Demonstrating, or Picketing in a Capitol Building in violation of 40 U.S.C. § 5104(e)(2)(G). Count One is a felony that carries up to twenty years in prison.

On November 28, 2022, Wood was sentenced to serve concurrent terms on all counts of thirty-six (36) months of probation with the first twelve (12) months on home detention with electronic monitoring. *See United States v. Matthew Mark Wood, No. 21-cr-223 (APM), Minute Entry dated 11/28/22.* According to the government, which had sought a sentence of 57 months incarceration, Mr. Wood had faced a Sentencing Guidelines range of 51-63 months. *See United States v. Matthew Mark Wood, No. 21-cr-223 (APM), Government's Sentencing Memorandum (11/7/22) at 1.*

The government summarized Wood's conduct as follows:

Wood was the tenth rioter to breach the Capitol specifically through the broken-out window north of the Senate Wing Door, and he would later boast about being "one of the first ones to storm inside." As soon as he got inside, Wood joined [others]...in pursuing police officers through the Brumidi corridors (1st floor), past the Senate Carriage Door (1st floor), up a staircase, and to the Ohio Clock corridor (2nd floor). Wood then left that group and backtracked to the first floor, back past the Senate Carriage Door, through the Brumidi corridors, and past the Senate Wing Door to the Capitol Crypt (1st floor). Wood then went through the Small House Rotunda (1st floor), up to the second floor Small House Rotunda, and once on the 2nd floor for the second time, Wood went through the House Speaker's suite of offices (entering at least three offices and the Speaker's conference room). Wood then entered the Capitol's Grand Rotunda, went towards the Senate

Chamber, back to the Rotunda, and towards the House Chamber. At the House Chamber, Wood was close enough to the front of the group to be able to tell others that he and other rioters “just broke through Capitol police” and that they were “going to bust into the house chambers.” He was also close enough to know that U.S. Capitol Police drew their firearms to protect the House Chamber, telling a group chat that “Alarms are blaring,” and “We are trying to take the house but they are pulling guns!” After being “hit with a tear gas bomb”, Wood returned to the Rotunda.

There, Wood very nearly left the Capitol through the East Rotunda Doors. Instead, he turned back and on separate occasions, directly pushed against MPD officers attempting to clear the Rotunda. Eventually, Wood was finally forced into the foyer between the Rotunda and the East Rotunda Doors and then out of the Capitol building. Wood spent a total of approximately eighty minutes in the Capitol, from 2:13 p.m. to 3:33 p.m., a very substantial period of time in the context of the January 6 riot.

*Id.* at 3-4 (internal footnotes omitted).

After exiting the Capitol, Wood posted a message to Facebook, stating:

This is the PEOPLES house. We sent those politicians running. We sent a resounding message to Washington. We the PEOPLE will fight for our country. Make no mistake, the Capitol Police were not our target. They stood between us and the ones we wanted. America has fallen into the ruins of division. When diplomacy doesn't work and your message has gone undelivered, it shouldn't surprise you when we revolt.

*Id.* at 41.

Wood also sent text messages on January 6, that stated, in part:

“I'm inside the building we busted the windows out and crawled through.”

“Yes, I broke through the window”

“I stormed the Capitol, I was one of the first ones to storm inside.”

“We just broke through Capitol police, we are going to bust into the house chambers.”

“We are trying to take the house but they are pulling guns! I was just hit with a tear gas bomb. Shots fired!!”

*Id.* at 52-53.

The government noted that, “Wood spent hours advancing with the mob, inciting others to join, and then once the police line was overwhelmed, moving on to the next point. As can be seen by his acts of dominance and destruction while inside the Capitol and by his resistance to leaving, Wood truly wanted to occupy the Capitol that day. *He was one of the first in and one of the last*



*out. Few people stayed longer or trespassed on more square footage of the Capitol than Wood did.” Id. at 60 (emphasis added).*

This conduct is significantly more egregious than the actions of Katie Schwab. Wood was in the Capitol for eighty minutes, Schwab was inside for six minutes. Schwab was only briefly in and around the Rotunda, Wood intruded on much of the Capitol, including the House Speaker’s suite of offices and conference room. Wood bragged about breaking windows. He and other rioters pursued police officers around the Capitol. He bragged about confronting police officers who responded by raising their firearms. Wood received a significant amount of home detention, but no incarceration.

3. Jenna Ryan and Jason Hyland

The government makes reference to the sentences received by the codefendants in this case, which is fair and needs to be addressed. We recognize that that Jason Hyland’s conduct was less serious than Ms. Schwab’s, although she has some mitigating factors that he did not. Jenna Ryan’s conduct overall, however, has been more egregious.

Jenna Ryan, as the government corrected summarizes, “broadcast that January 6 was a prelude to war, spread misinformation to her thousands of online followers, expressed the belief that she was above the law, celebrated the violence of others at the Capitol, was dishonest with the Court at sentencing, and failed to show remorse.” *Govt Memo* at 32. Beyond that, Ryan has portrayed herself as the victim (akin to “the Jews in Germany”) and has sought to leverage her criminal conduct to “gain more of a foothold in the right-wing media ecosystem.” *See, e.g.*, Didi

Martinez, Kate Snow and Anna Schecter, *Capitol Rioter Compares Attacks On Her To Treatment Of 'Jews In Germany,'* NBC NEWS (January 4, 2022).<sup>14</sup>

Following her release from prison in this case, Ryan tweeted that, “I am proud of my willingness to show up on January 6<sup>th</sup>. I feel zero shame.”<sup>15</sup>



This is in sharp contrast to Ms. Schwab, who feels both shame and remorse for her actions. Katie, unlike Jenna, has not sought MAGA celebrity status for her role in January 6. Rather, she has completely retreated from being in public (both in person and online) and is now a full-time caretaker for her parents.

In addition, the Court faces significantly more options when sentencing Katie Schwab on a Class A Misdemeanor, rather than a petty offense. Unlike a petty offense -- where the availability of a split sentence was a new and open question when Ryan was sentenced -- there is no question in the law that this Court can sentence Ms. Schwab to both a very short period of incarceration and a lengthy period of supervised release. We submit that incarceration is not appropriate for Ms. Schwab, who would be particularly vulnerable in prison due to her mental health issues. It also

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<sup>14</sup> <https://www.nbcnews.com/politics/donald-trump/capitol-rioter-compares-attacks-treatment-jews-germany-rcna10162>

<sup>15</sup> <https://twitter.com/dotjenna/status/1495250591886548992>

bears noting the painful irony that incarceration for someone like Ryan, who is “proud” of her conduct, serves only as a badge of honor to her and others in the MAGA media ecosystem. But for Katie Schwab, it would be humiliating and devastating, in part precisely because she is truly remorseful. Ryan continues to embrace the Big Lie, while Schwab realizes she had been lied to by President Trump, a leader who she had previously admired and believed in.<sup>16</sup>

The government suggests that the seven days incarceration imposed by this Court for Jason Hyland (the government had sought 30 days jail for him in this case) is fair because he “refrained from making statements on social media, appeared candid before the Court, acknowledged his offense conduct, and compellingly expressed remorse.” *Govt Memo* at 32. Katie, similarly, has made no social media statements since January 6 (and is horrified by the Facebook Live post she did make that day) and is genuinely remorseful. The Court will, of course, have the opportunity to hear from her in person at her sentencing.

While acknowledging Hyland’s lesser culpability, we respectfully submit that seven days would be an appropriate ceiling for any sentence consideration of Ms. Schwab. Undersigned counsel is concerned that, unlike Jason, Katie suffers from significant anxiety and depression. Brian Powers, her licensed mental health counselor, has opined that a prison sentence would be

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<sup>16</sup> Donald Trump is still pushing the Big Lie. On November 15, 2022, Trump announced he is running for president in 2024. *See, e.g.,* Isaac Arnsdorf and Michael Scherer, *Trump, Who As President Fomented An Insurrection, Says He Is Running Again*, Washington Post (Nov. 15, 2022). During that official announcement a few weeks ago, Trump continued spouting the Big Lie, insisting that subterfuge and fraud cost him re-election. *Id.*

<https://www.washingtonpost.com/politics/2022/11/15/trump-2024-announcement-running-president/>

detrimental her mental health and add a burden to her current emotional state. *See PSR* [ECF 89] at 18 ¶ 88a. Moreover, unlike when sentencing Ryan and Hyland, the Court has a wide range of clear options for split sentences.

### **III. CONCLUSION**

Katherine Schwab is truly remorseful and ashamed for her actions on January 6, 2021. She offers no excuses. Now, with the view outside the MAGA bubble, she can see what the rest of us see. It is fair, however, to seek to view things from the perspective of someone who believed the former president and everyone else on MAGA media. It does not in any way justify her actions, but it does contextualize them.

Katie Schwab has lost everything she has built, down to her good name. She knows she is to blame for these consequences. She is no longer an up-and-coming star realtor; instead, she is now referred to online as a “cunt terrorist.” She will forever be a convicted criminal. Strangers leave messages on her phone trying to cause more pain and gleefully suggesting she may get raped in prison. Unlike Ryan, she does not get to be a right-wing celebrity or martyr for the MAGA cause, and Schwab does not want to be. She was lied to by the most powerful person on Earth, a man she previously admired, and that makes it even worse for her.

Katherine Schwab has been in full compliance with her conditions of release over the past two years, showing she respects the law and is a good candidate for supervision. We respectfully submit that any period of incarceration – and particularly the extensive period of three months of jail time sought by the government – is unwarranted for all the reasons detailed herein.

Respectfully Submitted,

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By Counsel



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of December 2022, a true and accurate copy of the foregoing was electronically filed and served via the Court's CM/ECF system to all counsel of record. In addition, a copy was served via email on United States Probation Officer Hana Field.

\_\_\_\_\_/s/\_\_\_\_\_  
JEFFREY D. ZIMMERMAN