

1 these cases.

2 All right. So I am going to rule on the
3 objections to the SOC's raised by the defense in terms of
4 application of those SOC's in 2J1.2 to the facts of this
5 case. These objections are overruled.

6 I will begin the discussion with the 8-offense
7 level increase by application of the SOC provided in the
8 guideline 2J1.2(b) (1) (B). The defendant objects to this --
9 application of this SOC for two reasons; stating, one: At
10 no time did Defendant cause or threaten physical injury to
11 any person; and, two, just as an important, the event at
12 issue does not involve the administration of justice as it
13 was not related to a judicial or grand jury proceeding.
14 Those are quotes from the defendant's memo -- original memo,
15 at pages 9 through 10.

16 I am going to address these reasons seriatim.

17 First, the defendant argues that the SOC, at
18 2J1.2(b) (1) (B), is inapplicable because he did not at any
19 time cause or threaten physical injury to any person, which
20 is a requirement or trigger for application of that SOC.

21 In support of his position, the defendant cites
22 dictionary definitions of the term "threat," including from
23 the *Oxford English Dictionary*, which says this means to:
24 Declare, usually conditionally, one's intention of
25 inflicting injury upon a person; *Webster's Third New*

1 *International Dictionary* definition, which describes a
2 "threat" as: Expression of an intention to inflict loss or
3 harm on another by illegal means and especially by means
4 involving coercion or duress of the person threatened; and
5 the *American Heritage* dictionary definition that a "threat"
6 means: An expression of an intention to inflict pain,
7 injury, evil, or punishment.

8 One of these definitions requires an actual verbal
9 communication of the threatening intent. Expression of a
10 threat can be physical, not verbal threats of harm.

11 Here, the defendant argues he did not make --
12 "make any threats to cause physical injury," though he
13 certainly did taunt and verbally harass police officers.

14 His assertion that, "there is no proof whatsoever
15 that he ever threatened to cause physical injury to anyone"
16 is contrary to the actual evidence in this case and appears
17 based on an overly limited understanding of threatening
18 conduct to require a verbal threat.

19 The defendant's physical movements inside the
20 Capitol communicated threats to law enforcement. This was
21 not one of the rioters who, on January 6th, merely walked
22 inside the Capitol for a few minutes or seconds and then
23 left with no encounter or engagement with any law
24 enforcement officers. The obstructive conduct to which this
25 defendant pled guilty included joining the mob and chasing

1 Officer Goodman up the stairs outside the Senate Chamber,
2 and then pointing and yelling at officers upstairs in the
3 Ohio Clock Corridor at a time when Officer Goodman and the
4 other officers were totally outnumbered.

5 This defendant was one in that crowd who disobeyed
6 Officer Goodman and the other police officers in the Ohio
7 Clock Corridor when they refused to disperse and leave the
8 building immediately.

9 His pursuit of Officer Goodman up the stairs into
10 the Ohio Clock Corridor, in blatant disregard for this
11 officer's instructions to stand back and leave, as the crowd
12 of angry, yelling rioters swelled around him, constituted a
13 clear and direct threat to the safety of Officer Goodman and
14 could have led to Officer Goodman's physical injury.

15 Officer Goodman describes this moment in what he
16 says, in his statement, was such a long day which, for him,
17 started at 5 a.m. that day, on January 6th. He had already
18 seen pandemonium that looked like something from medieval
19 times, fighting hand-to-hand combat at the west front of the
20 Capitol.

21 And as Officer Goodman describes his confrontation
22 with the rioters who had breached the building at the bottom
23 of the stairs outside the Senate Chamber, he says: The
24 rioters were yelling at me, screaming obscenities at me.
25 The rioters were saying they were for us; they just wanted

1 to take back our country. Others were being antagonistic,
2 asking what we were going to do, shoot them? One person
3 said: There is one of him, and a hundred of us.

4 Officer Goodman says: I had no idea what to
5 believe -- what to believe what their intentions were; and I
6 retreated to the top of the stairs where there was another
7 line of officers at the top of the stairs.

8 The defendant's yelling and taunting at the
9 officers, in the Ohio Clock Corridor, in an agitated manner
10 with his finger outstretched was threatening conduct,
11 regardless of what he precisely said and whether those words
12 contained threats of physical injury to those officers.

13 This is especially true given the surrounding
14 circumstances. These were officers, as I said, confronted
15 with a mob of angry people shouting, shaking their fingers
16 and fists at them, and refusing to comply with instructions
17 to vacate the area; this was threatening conduct. And that
18 is just what happened during Defendant's first illegal entry
19 inside the Capitol.

20 On his second illegal entry inside the Capitol, he
21 joined in the face-off confrontation with officers in the
22 Rotunda. In direct defiance of the officers' attempts to
23 clear the area, he swung a plastic bottle at an officer's
24 head; sprayed liquid from his bottle across multiple
25 officers who are seen on the video footage to flinch in

1 response. And given the amount of tear gas and other
2 chemical sprays being deployed, both by rioters and by the
3 police, you can imagine why the police officers were
4 flinching. This was also threatening conduct.

5 Angry members of the mob including the defendant
6 escalated the situation in the Rotunda. They refused to
7 follow the orders of the police, overwhelmed law
8 enforcement, and engaged in pushing and threatening -- the
9 bottom line is: This is threatening conduct.

10 The defendant suggests that his conduct involving
11 the water bottle in the Rotunda is not relevant to Count 2
12 because the acts constituting obstruction of an official
13 proceeding in Count 2 happened at a different time. As I
14 mentioned during my colloquy with Mr. Matera, this effort to
15 slice and dice his actions inside the Capitol on January 6,
16 2021, into separate little events misunderstands the overall
17 nature of Defendant's offense conduct, all of which
18 constitutes obstruction of the congressional proceeding
19 covered in Count 2.

20 The fact that 24 minutes separated Defendant's
21 first and second illegal entries into the Capitol Building
22 is inconsequential, especially given that the defendant
23 clearly stayed in close proximity to the Capitol Building
24 between initially leaving and going back in. His actions
25 during both illegal entries inside the Capitol could likely

1 have led to physical injury to Officer Goodman, the officers
2 in the Ohio Clock Corridor, the officers the defendant
3 assaulted with his water bottle, and as part of the mob
4 pushing against police lines in the Rotunda -- all of his
5 actions that day contributed to the delay of the
6 congressional certification proceeding.

7 And all of his conduct is relevant conduct under
8 the guideline at 1B1.1 [sic], and the Court agrees with the
9 government and probation office that the defendant's
10 threatening conduct toward and assaults on multiple law
11 enforcement officers protecting the Capitol and members of
12 Congress during the certification of the 2020 Electoral
13 College vote renders this provision applicable. And the
14 fact that he was not heard to utter explicit verbal threats
15 of physical violence towards law enforcement does not bar
16 application of the 8-level SOC in his case.

17 So, therefore, his objection to the SOC at
18 2J1.2(b) (1) (B) -- because he did not verbally threaten
19 serious injury to a person or property while engaging in his
20 obstructive conduct -- is overruled.

21 Second, he argues that the 8-offense level SOC
22 under the guideline at Section 2J1.2(b) (1) (B) does not apply
23 to him because -- and I quote, "The event in issue does not
24 involve the administration of justice as it was not related
25 to a judicial or grand jury proceeding." That's what he

1 stated in his memorandum at pages 9 through 10. But he also
2 subsequently expanded "administration of justice" to cover
3 both judicial and grand jury proceedings, as well as
4 quasi-judicial proceedings.

5 This objection overlaps with his objection to
6 application of the 3-offense level SOC at 2J1.2(b)(2); so I
7 am going to discuss those two SOC's in tandem, when it comes
8 to this objection of whether administration of justice
9 covers what occurred on January 6th.

10 Each SOC focuses on a distinct harm. The
11 8-offense level SOC, at 2J1.2(b)(1)(B), requires: Causing
12 physical injury or the threat thereof in order to obstruct
13 the administration of justice; while the 3-offense level
14 SOC, at the guideline Section 2J1.2(b)(2), requires:
15 Substantial interference with the administration of justice
16 in a manner that draws unsubstantial governmental resources.
17 Both SOC's require the offense conduct in some way hinder the
18 administration of justice, a critical phase, as I've said,
19 the defendant argues is inapplicable because the business of
20 Congress, on January 6, 2021, to certify the Electoral
21 College results did not involve the administration of
22 justice because it was not related to judicial grand jury or
23 quasi-judicial -- quasi-administrative proceedings.

24 I appreciate that the phrase used in the SOC's "the
25 administration of justice" most often calls to mind court

1 proceedings where the application of law is regularly, if
2 not always, at stake.

3 The defendant is incorrect that the phrase "the
4 administration of justice" is limited to the activities of
5 courts or grand juries, or even federal agency adjudicatory
6 proceedings.

7 The defendant cites several cases in support of
8 his argument that the phrase "administration of justice"
9 applies only to judicial or grand jury proceedings but those
10 cases do not prove his point. In particular, he relies on
11 the Supreme Court case of *U.S. v Aguilar*, 515 U.S. 593, from
12 1995, which addressed the definition of due administration
13 of justice used in 18 U.S.C. Section 1503. This is somewhat
14 ironic since *Aguilar* emphasized the breadth of processes
15 that fall under the umbrella of the phrase of "the
16 administration of justice," which is an omnibus clause in
17 18 U.S.C. Section 1503, which -- a statute that prohibits
18 persons from endeavoring to influence, obstruct or impede
19 the due administration of justice. And the challenge the
20 Supreme Court had in *Aguilar* was to take what they viewed as
21 a very broad phrase and to focus it more narrowly because,
22 as the Supreme Court explained, this catchall clause was far
23 more general in scope than the earlier clauses of the
24 statute, which focused on tampering with petit, grand
25 jurors, court officers, and magistrate judges.

1 In his concurrence in that case, Justice Scalia
2 explicitly rejected the idea that since all the rest of
3 Section 1503 refers only to actions directed at jurors and
4 court officers, the omnibus clause -- the catchall clause --
5 using the phrase "administration of justice" refers only to
6 actions directed at jurors and court officers. The omnibus
7 clause could not apply to actions directed at witnesses or
8 other agents not previously named in the statute.

9 Instead, Justice Scalia explained that the omnibus
10 clause was one of the several distinct and independent
11 prohibitions contained in 1503, and explained his
12 understanding that: The due administration of justice to
13 apply only to judicial and grand jury proceedings would
14 render it superfluous. Thus, both the majority opinion and
15 the concurrence by Justice Scalia, clearly understood the
16 due administration of justice to be a much broader category
17 that included but was not limited to judicial proceedings
18 referenced in this statute at Section 1503.

19 In any event, as the Supreme Court has noted,
20 terms may and regularly do carry different definitions when
21 appearing in a statute versus a guideline. See *DePierre v*
22 *United States*, 564 U.S. 70, jump cite 88, from 2011,
23 rejecting the argument that "cocaine base," as used in one
24 statute, must be given the same definition as it has under
25 the guidelines.

1 Relatedly, Mr. Matera, on behalf of the defendant,
2 cites to language in Judge Moss's decision in *U.S. v*
3 *Montgomery*, stating that: Congress does not engage in
4 adjudicative proceedings or even quasi-adjudicative
5 proceedings or in the administration of justice aside from
6 when it investigates and tries cases of impeachment and when
7 it acts as a judge of elections returns and qualifications
8 of its own members because, as a matter of separation of
9 powers, that is not what Congress does.

10 Defendant argues this language means that even in
11 this very courthouse -- and I'm quoting from the defendant's
12 briefing, "It has been held that Congress does not engage in
13 the administration of justice."

14 *Montgomery* is irrelevant to the question of
15 whether the SOCs in the guideline at 2J1.2 for interfering
16 with the administration of justice apply to obstruction of a
17 congressional proceeding. The issue in *Montgomery* was not
18 how to interpret the meaning of the phrase "administration
19 of justice," but to determine whether Congress's
20 certification of the Electoral College votes constituted an
21 official proceeding of Congress for purposes of the
22 obstruction statute at 18 U.S.C. Section 1512(c)(2) to
23 resolve a defendant's motion to dismiss that count of the
24 indictment.

25 The phrase "administration of justice" does not

1 even appear in the statute that was under scrutiny by Judge
2 Moss in *Montgomery*. Thus, *Montgomery* had nothing to do with
3 the guidelines.

4 As the government points out, the court in
5 *Montgomery* said nothing about the meaning of "administration
6 of justice" as used in the guideline at 2J1.2, which applies
7 to a broad swath of obstruction statutes that reach
8 obstruction of nonjudicial proceedings, or any other
9 guideline.

10 In fact, the same judge, Judge Moss, who issued
11 the *Montgomery* decision, has applied the 3-offense level SOC
12 to a defendant for his conduct at the Capitol on
13 January 6th, in *U.S. v Hodgkins*, 21-CR-188 and -- based on
14 the hearing this morning -- apparently, Judge Moss has also
15 applied it in another case earlier this week -- in *Miller*.

16 Notably, as I will discuss in more detail shortly,
17 in understanding the meaning of the phrase "administration
18 of justice," in the guideline at 2J1.2, where the actual
19 nature of the proceeding is relevant rather than the --
20 where the proceeding takes place. On this point, I want
21 to -- you point to another part of the *Montgomery* decision,
22 which I think is actually more probative here about the
23 nature of the proceeding that was at stake on January 6th.

24 *Montgomery* emphasizes the ways that the January 6,
25 2021, proceeding before Congress had, "All the trappings of

1 a formal hearing before an official body" engaged in a
2 fact-finding process.

3 Specifically, *Montgomery* notes that the
4 certification process, "Requires the Congress formally to
5 convene to conduct official business, to consider
6 objections, and to render a final decision" at a specific
7 "time, hour and place" with the Vice President as the
8 "presiding officer."

9 It also sets a process for opening, presenting,
10 and acting upon the certificates of the electoral votes, and
11 provides rules for propounding or resolving objections, with
12 each House withdrawing to its own chamber to debate the
13 objection and render a decision.

14 Furthermore, the certificates and papers
15 purporting to be certificates of the electoral votes are
16 akin to records or documents that are produced during
17 judicial proceedings, and any objections to these
18 certificates can be analogized to evidentiary objections.

19 All of these features of the congressional
20 proceeding to count Electoral College votes fall easily
21 within the contours covered by the phrase "administration of
22 justice."

23 Next, the defendant suggests that the SOC's in
24 Section 2J1.1 -- 1.2, originated before the official
25 proceeding provision was added to the statute in Section

1 1512 in 2002 with the Sarbanes-Oxley Act, and were never
2 amended to encompass the concept of an official proceeding
3 under Section 1512.

4 Based on this understanding of the legislative
5 history and chronological development of the guidelines, the
6 defendant concludes that the SOC's were not drafted to apply
7 to congressional proceedings. See the defendant's memo at
8 pages 13 and 14. This argument simply has the legislative
9 history for the statute and the guidelines wrong.

10 The term "official proceeding," in its definition
11 as a proceeding before the Congress, has appeared in the
12 statute 18 U.S.C. Section 1512 since the statute was enacted
13 in 1982, as part of the Victim and Witness Protection Act of
14 1982; two years before any guidelines were even first
15 promulgated.

16 A straightforward, chronological understanding of
17 the statute and the guideline leads to the contrary
18 conclusion that the defendant reaches; specifically, that
19 Section 2J1.2, and its SOC enhancements, are applicable to
20 all of the statutes to which it specifically references,
21 including all convictions under 18 U.S.C. Section 1512,
22 including those arising from obstruction of official
23 proceedings of Congress.

24 The legal arguments put forward by Defendant to
25 support the position that the phrase "administration of

1 justice" in the guideline at 2J1.2 does not apply to
2 obstruction of congressional proceedings, simply do not hold
3 up under scrutiny.

4 The defendant's position must be rejected for
5 several other reasons as well.

6 First, as I just mentioned, the offense to which
7 the defendant pled guilty in Count 2, obstructing,
8 including -- obstructing and impeding an official
9 proceeding, that is -- a proceeding before Congress under
10 Section 1512(c)(2), is explicitly referenced to and covered
11 by the guideline at 2J1.2 when the guidelines were first
12 promulgated.

13 And his understanding of "administration of
14 justice" is so limited that, if its narrower interpretation
15 were correct, this phrase pertains only to court and grand
16 jury proceedings and quasi-administrative proceedings; the
17 SOC enhancements would not apply to numerous other statutes
18 referred to this guideline.

19 As the government points out, if Defendant were
20 correct, this guideline and SOCs might not apply to a number
21 of other statutes covered by the guideline including:
22 18 U.S.C. Section 551, concealing or destroying invoices or
23 papers relating to imported merchandise; Section 1516,
24 obstruction of a federal audit; 1519, destruction of
25 documents in an agency investigation, or 26 U.S.C. Section

1 7212, interfering with administration of the internal
2 revenue code.

3 There is simply no indication in guideline
4 Section 2J1.2 that the SOCs containing the phrase
5 "administration of justice" were meant to apply to only some
6 of the statutes referenced to this guideline and not to
7 apply to all of the cases involving obstruction of
8 proceedings taking place outside of courts or grand juries;
9 that simply doesn't make sense.

10 So now let's turn to the phrase itself, "the
11 administration of justice," which Defendant argues is
12 limited to these judicial or quasi-judicial proceedings.

13 To be sure, no definition of this phrase,
14 "administration of justice" is set out in the guidelines.
15 And perhaps -- should the sentencing commission be fully
16 staffed again with actual commissioners who can conduct
17 business, perhaps the guideline at 2J1.2, in its
18 definitions, could be made clearer, and more explicitly
19 cover obstruction of official government proceedings,
20 including congressional proceedings that occur outside
21 courts, grand juries, or agency adjudications.

22 Yet, the lack of express reference to
23 congressional proceedings does not mean that the sentencing
24 commission meant to exclude such proceedings from the
25 coverage of the SOCs with use of the phrase "administration

1 of justice." This phrase is sufficiently broad to encompass
2 nonjudicial official proceedings, such as Congress's
3 certification of the Electoral College votes -- results.

4 And the background notes to the guideline at 2J1.2
5 explain that the nature of "obstruction of justice," is
6 intended to be understood broadly. There are numerous
7 offenses of varying seriousness that may constitute
8 obstruction of justice as the list of the referenced
9 offenses provided by the government already demonstrates.

10 The guideline -- the government cites several
11 cases where the SOC's have been applied to offense conduct
12 involving interference with nonjudicial proceedings and to
13 obstruction that led to the government's expenditure of
14 resources, including *U.S. v Ali*, a Seventh Circuit case from
15 2017; *U.S. v Atlantic States Cast Iron Pipe Company*, a
16 District of New Jersey case from 2009 where the J1.2
17 guideline SOC's were applied based on the defendant's
18 interference with OSHA investigations into a workplace
19 accident; and other cases.

20 The defendant points out that these cases are
21 related, however loosely, to judicial proceedings such that
22 the government has failed to show through its own cases
23 cited that the administration of justice was meant to
24 include nonjudicial proceedings. See the defendant's
25 supplemental memo at 2 and 5.

1 These cases do show that the SOC's have generally
2 been applied to proceedings that have some kind of nexus --
3 a close nexus to a judicial or administrative hearing; they
4 do not tell us that these SOC's cannot apply to the
5 defendant's conviction for obstruction of an official
6 congressional proceeding through his involvement in the
7 Capitol riot.

8 The events of January 6th were as novel as they
9 were serious, and so the lack of precedent applying this SOC
10 to similar congressional proceedings is unsurprising, and
11 not determinative.

12 The government points to other January 6th-related
13 cases where other judges on this court have applied either
14 or both SOC's based on the defendant's obstruction of the
15 congressional proceeding, citing the case of *Scott Fairlamb*,
16 at 21-CR-120; *Jacob Chansley*, at 21-CR-3; and *Paul Hodgkins*,
17 21-CR-188; and now, I guess at this hearing, *U.S. v Miller*
18 before Judge Moss. There is also *U.S. v Wilson*, 21-CR-345.

19 The defendant rightly notes that for the
20 defendants in all of these cases -- except *Miller*, which was
21 discussed and brought up today -- the defendants in the
22 cases were subject to plea agreements, and so the Court was
23 not presented with a dispute to resolve with respect to
24 application of those SOC's in those cases.

25 As I have mentioned, the guidelines themselves do

1 not provide a definition of "administration of justice"; and
2 *Black's Law Dictionary* defines the phrase "administration of
3 justice" broadly to mean, and I quote, "the maintenance of
4 right within a political community by means of the physical
5 force of the state; the state's application of the sanction
6 of force to the rule of right." In other words, that the
7 state would use mechanisms, such as the police or
8 prosecutors, to force compliance with or maintain a right;
9 that is not necessarily tied to a court or a particular
10 tribunal.

11 In a closely-related definition, *Black's Law*
12 *Dictionary* defines the phrase "due administration of
13 justice" to mean -- and I quote, "the proper functioning and
14 integrity of a court or other tribunal and the proceedings
15 before it in accordance with the rights guaranteed to the
16 parties." Again, this phrase is not necessarily tied to a
17 court of law, but also applies to any other tribunal.

18 The case law also provides some definitions of
19 administration of justice. One court, the Second Circuit,
20 in the *Rosner v United States* case described this phrase to
21 mean: Performing acts or duties required by law.

22 Another Fifth Circuit case from 2012, *U.S. v*
23 *Richardson*, defined, "due administration of justice," as I
24 quote, "The performance of acts required by law in the
25 discharge of duties such as, but not exclusively, appearing

1 as a witness and giving truthful testimony when subpoenaed."

2 Again, these case law definitions do not tie the
3 performance of acts or duties required by law to proceedings
4 in a courthouse.

5 The question for the Court to resolve then is the
6 kind of activity Congress was engaged in on January 6, 2021,
7 covered by the phrase "administration of justice"?

8 As the defendant concedes, the certification
9 process was a proceeding before Congress and, therefore, an
10 "official proceeding" for purposes of 18 U.S.C. Section
11 1512(c)(2), as I and other judges on this court have
12 uniformly held.

13 He argues that, and I quote, "No stretching of the
14 definition of justice could lead to the conclusion that
15 'administration of justice' was meant to apply to the
16 certification of an election because it was not sufficiently
17 judicial or quasi-judicial." See his supplemental memo at
18 page 3.

19 Clearly, the certification of the Electoral
20 College votes did not take place before a court of law or an
21 executive agency adjudicator, and for the defendant that
22 settles the matter.

23 Construing the phrase "administration of law," in
24 so limited a fashion as Defendant has done, is not that
25 simple. While the congressional certification of the

1 Electoral College results may not be the first thing that
2 comes to mind, as I've said, when one contemplates "the
3 administration of justice," the certification process
4 involves members of Congress convening to fulfill a duty
5 established under the Constitution and federal law. In
6 other words, to perform acts or duties required by law, as
7 the Second Circuit in *Rosner* and the Fifth Circuit in
8 *Richardson*, so defined the term.

9 The certification requirement is, in fact, a
10 formal peaceful process to resolve any disputes over the
11 counting of Electoral College votes for President.

12 As Judge Moss detailed eloquently in *Montgomery*,
13 and as I have already described, this process of dispute
14 resolution provides an opportunity for objections to be
15 raised to count any state's Electoral College votes, an
16 opportunity for discussion and adjudication before the
17 process is completed.

18 This has been, in the past, a largely *pro forma*
19 process, but it has always demanded that Congress engage in
20 the process according to set rules for resolving objections,
21 before the final vote is counted, the winner declared and
22 certified as the next President of the United States.

23 We may not always think about the administration
24 of justice and the democratic process being so closely
25 intertwined, but what Congress was doing on January 6, 2021,

1 was recognizing, protecting, and upholding the democratic
2 choices of millions of voters across each of the states, as
3 it heard and resolved objections to the certification of any
4 state's exercise of their electoral votes.

5 Congress was convened to ensure that the official
6 results of the presidential election accurately reflected
7 the choices that had been made weeks earlier at the ballot
8 box. The successful completion of that process is a stable
9 basis upon which the authority of the incoming President is
10 built.

11 Congress's tasks on January 6, 2021, fit easily
12 into the definition courts have given to the phrase
13 "administration of justice." When Congress convened to
14 count the Electoral votes, by "performing acts or duties
15 required by law," Congress was maintaining "the right within
16 a political community," as *Black's Law Dictionary* states, to
17 have votes counted in a particular manner, using "the
18 physical force of the state" in the form of law enforcement
19 officers located in and around the Capitol to secure the
20 proceedings; though that security was severely tested and
21 breached by the actions of the defendant and others who
22 illegally entered the Capitol that day.

23 The constitutionally mandated procedure falls
24 within the meaning of the phrase "administration of
25 justice."

1 Causing or threatening injury to persons or
2 property to obstruct justice is just as serious when the
3 justice involves the fair and proper administration of the
4 laws governing congressional proceedings as when it concerns
5 courtroom proceedings. For these reasons, both SOC's are
6 applicable to Defendant's conduct on January 6th.

7 I need to address the last argument or objection
8 that the defendant raised in the supplemental briefing that
9 the 3-offense level SOC under the guideline at 2J1.2(b) (2)
10 does not apply because there was no substantial interference
11 with the administration of justice.

12 The defendant argues it doesn't apply because, in
13 order for the enhancement to apply, the government must
14 identify a particular expenditure of governmental resources
15 which but for the defendant's conduct would not have been
16 expended, and which is substantial in amount. See the
17 defendant's supplemental memo, at page 12, citing *U.S. v*
18 *Tackett*, the Sixth Circuit case from 1999. And he argues
19 that the government has offered no support that it was his
20 conduct that specifically caused the need for these
21 resources to be expended.

22 *Tackett* itself -- the Sixth Circuit case from
23 1999 -- cites a district court case, *U.S. v Weissmann*, a
24 Southern District of New York case from 1998, as support for
25 its enumeration of these three requirements for application

1 of this SOC. In *Weissmann*, the court listed, without
2 citation, the same three requirements which it says it had
3 deduced from other decisions; and, in a footnote, explained
4 that the purpose of the second element -- the but-for
5 element -- was to give meaning to the requirement in the
6 guideline application notes that the expenditure of
7 substantial governmental resources be unnecessary.

8 This but-for requirement has not been interpreted
9 to create an inflexible cause-in-fact standard, where the
10 enhancement may only be applied where the government can
11 show that a defendant's own actions were the single direct
12 reason for the substantial government expenditure.

13 Rather -- based on the text of the guideline
14 itself -- there must be a general causal tie between the
15 defendant's actions and the otherwise unnecessary
16 expenditure. See *U.S. v Gray*, Sixth Circuit case from 2012,
17 affirming application of the 2J1.2(b)(2) SOC where the
18 defendant's falsification of documents "albeit" -- and I
19 quote, "Not standing alone, made the investigation into the
20 victim's death more difficult and delayed Defendant's trial
21 for four years."

22 This SOC is applied in cases where multiple
23 defendants engaged in obstructive conduct, where pure
24 but-for causality tied to a specific defendant's personal
25 actions would be difficult to prove. See, for example,

1 *U.S. v Atlantic States Cast Iron Pipe Company*, 627
2 F.Supp. 2d 188, District of New Jersey, 2009.

3 Where, as here, the defendant acted in concert
4 with hundreds of other rioters to obstruct congressional
5 proceedings; no one person in the crowd could have created
6 the same degree of havoc, chaos, and disruption as the
7 collective group did, and the government need not
8 demonstrate a specific defendant as singularly responsible
9 for the unnecessary expense.

10 Instead, the government need only show a direct
11 causal line from all of the participants in the mob, which
12 includes a specific defendant, that collectively resulted in
13 a situation causing the unnecessary expenditure of
14 substantial governmental resources.

15 As for the defendant's assertion there is no
16 "proof" -- quote, "that he was aiding and abetting any of
17 the other individuals present that day" or "had the same
18 intentions" of others who stormed the Capitol, this is
19 belied by the video evidence in this case.

20 During the melee in the Rotunda, for example, the
21 defendant used the means available to him -- his water
22 bottle, his voice, his body -- to contribute to the chaos
23 and continue the breach of the Capitol, thereby delaying the
24 completion of the Electoral College vote.

25 Whatever his intentions were when he arrived in

1 the Capitol that day, the videos make clear that this
2 defendant was an active participant in the breach,
3 contributed to the violence against police officers that
4 day; and but for the actions of the rioters that day, the
5 hundreds of law enforcement officers and National Guard
6 members called in to address the situation would not have
7 been necessary; nor would the hundreds of thousands of
8 dollars of repairs to the Capitol have been necessary.

9 His conduct contributed to this unnecessary
10 expenditure of substantial governmental resources during and
11 after the riot, and resulted in substantial interference
12 with the administration of justice. Therefore, his actions
13 sit firmly in the category of serious offense conduct which
14 the sentencing commission determined merited greater
15 punishment.

16 As a final point, even if this Court were to find
17 that SOC's predicated on the administration of justice did
18 not apply to a congressional proceeding to certify Electoral
19 College votes, this Court is fully authorized, under the
20 guidelines in determining the appropriate sentence to
21 impose, to consider, without limitation, any information
22 concerning the conduct of the defendant, unless otherwise
23 prohibited by law. See the guideline at 1B1.4.

24 The Court is not precluded from considering
25 information that the guidelines do not take into account in

1 determining a sentencing within the guideline range or from
2 considering that information determining whether and to what
3 extent to depart from the guidelines because the guidelines
4 were designed to address the heartland of typical cases
5 embodying the conduct each guideline describes.

6 Where conduct significantly differs from the norm,
7 the Court is not limited by what is provided in the
8 guidelines but may, in such unusual cases, impose a sentence
9 outside the recommended sentencing range. And what happened
10 on January 6, 2021, was outside the norm and outside the
11 heartland of cases -- in fact, the first time in our history
12 where the peaceful transition of power to a new
13 administration was disrupted by mob action attacking the
14 Capitol.

15 So even if defendant were correct -- which he is
16 not -- that the SOC's in the guideline 2J1.2 did not cover
17 congressional proceedings, these SOC's capture specific harms
18 warranting an increase in sentence severity, like causing or
19 threatening physical harm to another person or so
20 interfering with a proceeding as to result in the unexpected
21 expenditure of substantial government resources; and those
22 specific harms may, by analogy, apply equally to the offense
23 conduct that occurred against our legislative branch of
24 government on January 6, 2021, and warrant corresponding
25 increases in the severity of the sentence by way of a

1 departure or a variance.

2 Okay. Now, having resolved the objections to
3 those SOC's, that also resolves the defendant's objection
4 that the guideline at Section 2A2.2 applies because based on
5 my conclusion as to application of the two SOC's in 2J1.2,
6 that guideline produces the highest offense level and will
7 control the application of the guidelines and the
8 appropriate sentencing range here.

9 So with those objections resolved, before I turn
10 to the final calculation of the guidelines, I think I am
11 going to take a short break because my court reporter needs
12 to have a break, as well as I do.

13 Okay. So we'll take a five-minute break.

14 (Whereupon, a recess was taken.)

15 THE COURT: All right. So with those objections
16 to application of the guidelines resolved, I will now review
17 how the guidelines apply in this case.

18 The highest guideline offense level for the group
19 counts is the guideline at Section 2J1.2, which provides a
20 base offense level of 14 under 2J1.2(a); plus an additional
21 8 offense levels under the SOC at 2J1.2(b)(1)(B) because the
22 offense involved causing or threatening physical injury to a
23 person, or property damage, in order to obstruct the
24 administration of justice; and 3 offense levels under the
25 SOC at the guideline 2J1.2(b)(2) because the offense