

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	<b>Case No. 1:21-cr-00048 (ABJ)</b>
<b>v.</b>	:	
	:	
<b>DENNIS SIDORSKI,</b>	:	
	:	
<b>Defendant.</b>	:	

**GOVERNMENT’S SENTENCING MEMORANDUM**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this sentencing memorandum in connection with the above-captioned matter. For the reasons set forth herein, the government requests that this Court sentence Dennis Sidorski (“Sidorski”) to 12 months’ incarceration, 1 year of supervised release, 60 hours of community service, and \$500 restitution.

**I. Introduction**

The defendant, Dennis Sidorski, participated in the January 6, 2021, attack on the United States Capitol—a violent attack that forced an interruption of the certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred law enforcement officers, and resulted in more than 2.7 million dollars in losses.<sup>1</sup>

On January 25, 2022, Sidorski pleaded guilty to one count of 18 U.S.C. § 1752(a)(2): Disorderly and Disruptive Conduct at a Restricted Building. As explained herein, a sentence of 12

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<sup>1</sup> As of April 5, 2022, the approximate losses suffered as a result of the siege at the United States Capitol was \$2,734,783.15. That amount reflects, among other things, damage to the United States Capitol building and grounds and certain costs borne by the United States Capitol Police.

months' imprisonment, with supervision to follow, is appropriate in this case because: (1) the day before the attack on the United States Capitol, on January 5, 2021, on the Parler application, the defendant wrote or endorsed statements evincing his intent to disrupt the certification of the 2020 Electoral College vote count on January 6, 2021, including: "[t]hose idiot lawmakers in the Capitol building have no idea what civil unrest is till we the people march into that Capitol building and drag him out by the hair of their heads and boot their butts back home. That is the people's house of representatives. They're about to get served eviction notices."; (2) outside of the Capitol, while law enforcement officers were making their way toward the Capitol through a mob of violent rioters, Sidorski made unwarranted physical contact with an officer by putting his hand on the officer's shoulder and arm for approximately three seconds; (3) approximately one minute after the Senate Wing Door was kicked open by the mob, the defendant chose to enter the Capitol Building through that door; (4) this he chose after seeing the scene outside the Capitol, which he described as a "melee," including people shouting obscenities at, and clashing with, law enforcement officers; (5) while inside the Capitol Building, the defendant entered and remained in several locations, including the Rotunda, the Crypt, Statutory Hall, Upper House Doors, and the suite of offices of Nancy Pelosi, Speaker of the United States House of Representatives; and (5) after the riot, and after seeing his photograph on a television news program, Sidorski deleted his Facebook account and threw away the distinctive sweatshirt he was wearing on January 6, 2021 – a black sweatshirt that had "AMERICAN SUPREMACIST" written on it.

The Court must also consider that the defendant's conduct on January 6, like the conduct of scores of other defendants, took place in the context of a large and violent riot that relied on numbers to overwhelm law enforcement, breach the Capitol, and disrupt the proceedings. But for his actions alongside so many others, the riot likely would have failed. *See United States v.*

*Matthew Mazzocco*, 1:21-cr-00054 (TSC), Tr. 10/4/2021 at 25 (“A mob isn't a mob without the numbers. The people who were committing those violent acts did so because they had the safety of numbers.”) (statement of Judge Chutkan). Here, the defendant’s participation in a riot that actually succeeded in halting the Congressional certification combined with the defendant’s statements and subsequent actions renders a sentence of imprisonment both necessary and appropriate in this case.

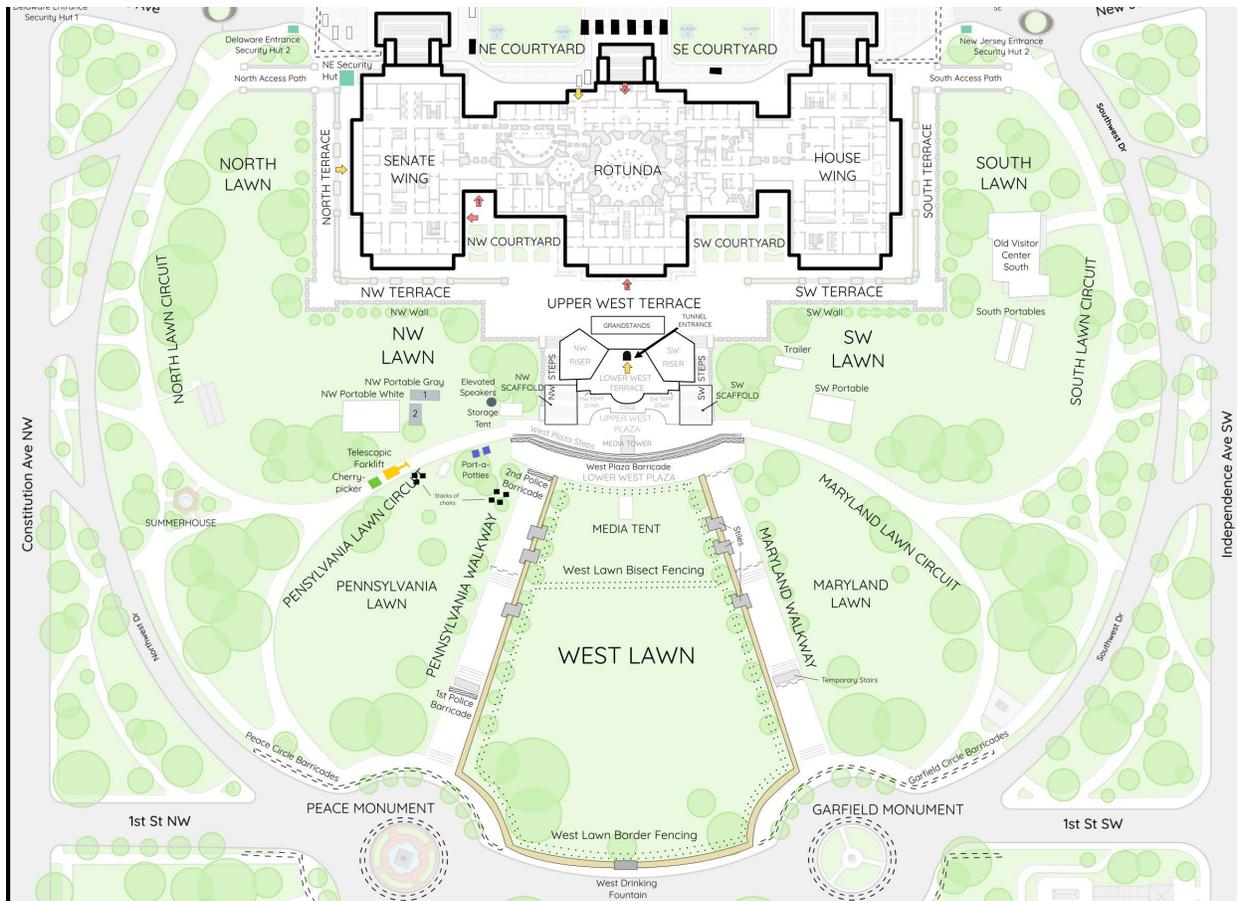
## **II. Factual and Procedural Background**

### *The January 6, 2021 Attack on the Capitol*

To avoid exposition, the government refers to the general summary of the attack on the U.S. Capitol. *See* ECF 36 (Statement of Offense), at ¶¶ 1-7. As this Court knows, a riot cannot occur without rioters, and each rioter’s actions – from the most mundane to the most violent – contributed, directly and indirectly, to the violence and destruction of that day. With that backdrop we turn to the defendant’s conduct and behavior on January 6.

### *Attempted Breach of the Capitol Building and Assaultive Conduct on the West Front of the Capitol Grounds*

Assaults against law enforcement on the West Front of the Capitol Grounds made the rioters’ entry into the United States Capitol Building on January 6, 2021, possible. Initiated by the most fervent smaller groups and individuals within the crowd and using the mob itself as a cloak for their actions, each blow helped the crowd penetrate further into the United States Capitol Police’s (“USCP”) defenses until the building itself was accessible and the occupants were at risk. The physical breaches of the building can therefore be traced directly back to the assaultive conduct on the grounds of the West Front.



*Exhibit 1: Open-Source Rendering of Capitol Building and Grounds as they appeared on January 6, 2021, credited to Twitter users @ne0ndistracton & @sansastark525.*

The outer perimeter of the Capitol Grounds, made up of bicycle-rack style fencing, bore numerous signs stating, “AREA CLOSED – By order of the United States Capitol Police Board[.]” These fences were not actively manned, but members of the USCP were stationed nearby as well as patrolling throughout the grounds. At approximately 12:45 pm, a crowd began to gather against the barricades near the Peace Monument, which led to the Pennsylvania Walkway. Seeing this, a half dozen USCP officers began to gather behind what is labeled in Government’s Exhibit 1 as “1st Police Barricade,” circled in red and marked as Area A. At 12:52 pm, the first breach of the outer perimeter occurred, with several members of the crowd jumping over and pushing down the unmanned bicycle-rack barricades at the Peace Circle and advancing into the restricted area to

engage with USCP officers at the first manned barrier. Less than a minute later, with the crowd already numbering in the hundreds, the handful of USCP police officers in and around the barrier were shoved out of the way by the mob. By 12:58, the rioters had crossed the unmanned barrier halfway down the Pennsylvania Walkway and overwhelmed the second manned police barrier, Area B on Government's Exhibit 1. They flooded the area labeled "Lower West Plaza," Area C on Government's Exhibit 1, pushing against the barricade there.



*Exhibit 1: Stills from USCP security footage showing the progression of the crowd, from the outer barricades (top left), to the first manned police barricade (top right), to engaging with USCP at the second manned police barricade (bottom left), and beginning to fill the Lower West Plaza (bottom right).*

Despite the more-permanent nature of the metal fencing at the West Plaza barricade and the growing number of USCP officers responding to the area, the crowd remained at this location for less than a minute, pushing through and over the fence to the front of the plaza. For the next hour and a half, a growing number of police officers were faced with an even faster growing number of rioters in the restricted area, the two sides fighting over the establishment and reinforcement of a police defensive line on the plaza with fists, batons, makeshift projectiles,

pepper spray, pepper balls, concussion grenades, smoke bombs, and a wide assortment of weaponry brought by members of the crowd or seized from the inaugural stage construction site.



*Exhibit 3: The breach of the West Plaza barricades (top left) was followed by the formation of a USCP officer wall (top right) until MPD officers arrived with bike rack barriers for a defensive line at the top of the West Plaza stairs (bottom left). In the photo of the nearly completed bicycle rack barrier line as of 1:39 pm, a large Trump billboard which would later be used against the police line like a battering ram is visible (bottom right).*

Following the conclusion of President Trump’s speech at approximately 1:15 pm, the crowd began to grow even more rapidly, supplemented by those who had walked the mile and a half from the Ellipse to the Capitol. At 2:03 pm, Metropolitan Police Department officers responding to USCP officers’ calls for help began broadcasting a dispersal order to the crowd. It began with two blaring tones, and then a 30-second announcement, which was played on a continuous loop:

This area is now a restricted access area pursuant to D.C. Official Code 22-1307(b). All people must leave the area immediately. This order may subject you to arrest and may subject you to the use of a riot control agent or impact weapon.

Despite the warning and the deployment of riot control agents and impact weapons, few members of the crowd left. On the contrary, the mob in the restricted area continued to grow as

crowds streamed towards the West Front, which looked like a battle scene, complete with an active melee and visible projectiles.

After having actively defended their line for over an hour, the hundreds of officers at the front of the inauguration stage were flanked, outnumbered, and under continuous assault from the thousands of rioters directly in front of them as well as members of the mob who had climbed up onto scaffolding above and to the side of them, many of whom were hurling projectiles. Because many of the thousands of people surrounding the officers were not engaged in assaultive conduct, it was difficult for officers to identify individual attackers or defend themselves. By 2:28 pm, with their situation untenable and openings in the perimeter having already led to breaches of the building, several large gaps appeared in the police defensive line at the West Front and a general retreat was called. With their defensive lines extinguished, several police officers were surrounded by the crowd. The rioters had seized control of the West Plaza and the inauguration stage. There were now no manned defenses between the crowd and several entrances into the United States Capitol Building, allowing the stream of rioters that had started entering the building around 2:13 pm to build to a torrent.





*Exhibit 4: Breakthroughs in the defensive line on both the left and right flanks (top) caused the entire police line to collapse and individual officers were swallowed by the crowd (middle) and many officers were assaulted as they waited in a group to retreat through doors and stairwells up onto the inaugural stage (bottom).*

#### *Injuries and Property Damage Caused by the January 6, 2021, Attack*

The D.C. Circuit has observed that “the violent breach of the Capitol on January 6 was a grave danger to our democracy.” *United States v. Munchel*, 991 F.3d 1273, 1284 (D.C. Cir. 2021). Members of this Court have similarly described it as “a singular and chilling event in U.S. history, raising legitimate concern about the security—not only of the Capitol building—but of our democracy itself.” *United States v. Cua*, No. 21-cr-107, 2021 WL 918255, at \*3 (D.D.C. Mar. 10, 2021); *see also United States v. Fox*, No. 21-cr-108 (D.D.C. June 30, 2021) (Doc. 41, Hrg. Tr. at

14) (“This is not rhetorical flourish. This reflects the concern of my colleagues and myself for what we view as an incredibly dangerous and disturbing attack on a free electoral system.”); *United States v. Chrestman*, No. 21-mj-218, 2021 WL 765662, at \*7 (D.D.C. Feb. 26, 2021) (“The actions of this violent mob, particularly those members who breached police lines and gained entry to the Capitol, are reprehensible as offenses against morality, civic virtue, and the rule of law.”).

In addition, the rioters injured more than a hundred police officers. *See* Staff of Senate Committees on Homeland Security and Governmental Affairs and on Rules and Administration Report, *Examining the Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (June 7, 2021)*, at 29, *available at* [https://www.hsgac.senate.gov/imo/media/doc/HSGAC&RulesFullReport\\_ExaminingU.S.CapitolAttack.pdf](https://www.hsgac.senate.gov/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf) (describing officer injuries). Some of the rioters wore tactical gear and used dangerous weapons and chemical irritants during hours-long hand-to-hand combat with police. *See id.* at 27-30.

Moreover, the rioters inflicted significant emotional injuries on police officers and others on scene that day who feared for their safety. *See id.*; *see also* Architect of the Capitol, J. Brett Blanton, Statement before the House of Representatives Committee on House Administration (May 19, 2021), *available at* [https://www.aoc.gov/sites/default/files/2021-05/AOC\\_Testimony\\_CHA\\_Hearing-2021-05-19.pdf](https://www.aoc.gov/sites/default/files/2021-05/AOC_Testimony_CHA_Hearing-2021-05-19.pdf) (describing the stress suffered by Architect of the Capitol employees due to the January 6, 2021, attack).

Finally, the rioters stole, vandalized, and destroyed property inside and outside the Capitol Building. They caused extensive, and in some instances, incalculable, losses. This included wrecked platforms, broken glass and doors, graffiti, damaged and stolen sound systems and photography equipment, broken furniture, damaged artwork, including statues and murals, historic

lanterns ripped from the ground, and paint tracked over historic stone balustrades and Capitol Building hallways. *See id*; *see also* United States House of Representatives Curator Farar Elliott, Statement Before the House Appropriations Subcommittee on the Legislative Branch (Feb. 24, 2021), *available at* <https://docs.house.gov/meetings/AP/AP24/20210224/111233/HHRG-117-AP24-Wstate-ElliottF-20210224.pdf> (describing damage to statues). The attack resulted in substantial damage to the Capitol, resulting in losses of more than 2.7 million dollars.

*Dennis Sidorski's January 5, 2021, Social Media Posts*

The day before the attack on the United States Capitol, on January 5, 2021, on the Parler application, the defendant wrote “Wait for the patriots from MD/PA/NC/VA (where I’m from) get there. It’s going to be wild. See you all there!!!” On that same date, Sidorski endorsed the following Parler comment – “Those idiot lawmakers in the Capitol building have no idea what civil unrest is till we the people march into that Capitol building and drag him out by the hair of their heads and boot their butts back home. That is the people’s house of representatives. They’re about to get served eviction notices.”

*Dennis Sidorski's Role in the January 6, 2021, Attack on the Capitol*

On January 6, 2021, Dennis Sidorski traveled to Washington, D.C., from his home in Virginia to attend the “Stop the Steal” rally. For the rally, Sidorski decided to wear a green hat with a “III” written on it (referencing the Three-Percenter, a militia group)<sup>2</sup>, as well as a black sweatshirt with the term “AMERICAN SUPREMACIST written across it.

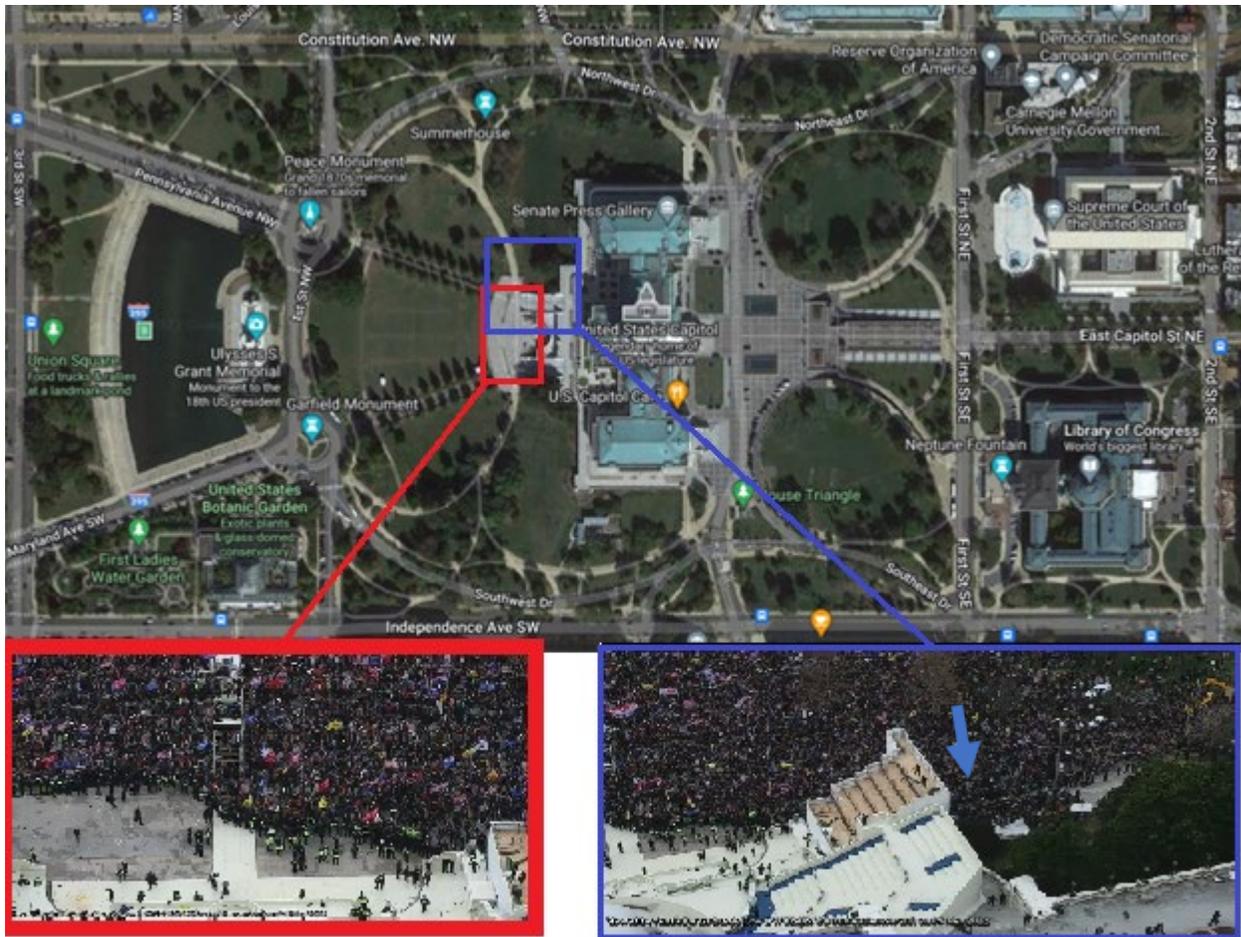
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<sup>2</sup> A group of individuals, some of whom associate with militias, identify as “Three Percenters” (also called “III%” or “3%” or “Threepers”), based on their view that only three percent of American colonists took up arms against the British during the American Revolution. Some Three Percenters liken the present-day U.S. Government to British authorities that infringed on civil liberties in the period leading up to and during the American Revolution. Many independent or multi-state militia groups incorporate “III%” in their unit names.



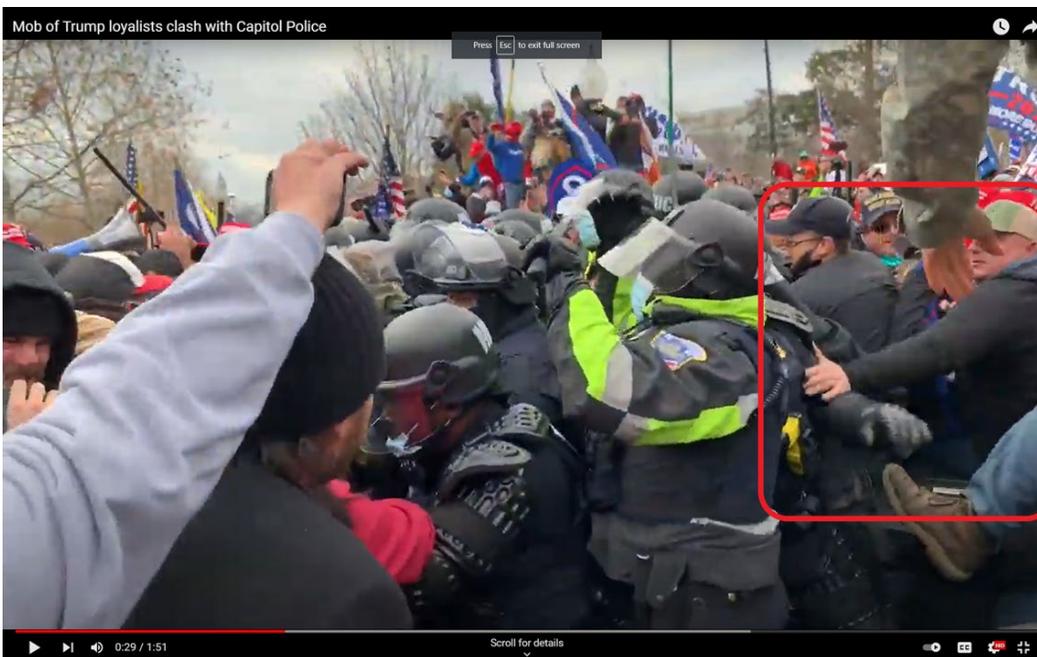
*Exhibit 9. (The above-photo is taken from the following image available in the public domain at <https://www.facebook.com/photo.php?fbid=284974437857722&set=pb.100006265625109.-2207520000.&type=3> (last accessed May 6, 2022))*

After attending the former President’s rally, Sidorski went to the United States Capitol, making his way there through the West Front. Just before 2:00 p.m. a Metropolitan Police Department Civil Disturbance Unit arrived to help assist the United States Capitol Police. They formed a line and moved down a pathway towards the inauguration stage area (see red rectangle below). The rioters by the scaffolding covering the northwest stairs (see blue square below) had been attacking the United States Capitol Police in an attempt to get access to the building while the rioters on the ground below cheered them on. Sidorski watched as chaos unfolded outside the building, including these active skirmishes with law enforcement officers.



*Exhibit 10*

As MPD moved into their midst, the rioters on the ground turned their rage on those officers yelling “Traitors!” and “Fuck you!” The police officers moved closer to each other holding onto each other’s vests to keep together. The rioters began physically attacking the officers who then stopped walking forward turning to protect each other from the rioters. At one point, during a skirmish between a law enforcement officer and another individual, Sidorski, completely unwarranted and without justification, put his hand on the officer’s arm and shoulder.



*Exhibits 11.1 and 11.2 (The above-screengrabs of this contact are taken from Exhibit 11, the following video entitled "Mob of Trump Loyalists clash with Capitol Police," available in the public domain at <https://www.youtube.com/watch?v=F9Ru6wKDj-s> (last accessed May 6, 2022). Sidorski can be seen from the :25-:38 second mark of the video.)*

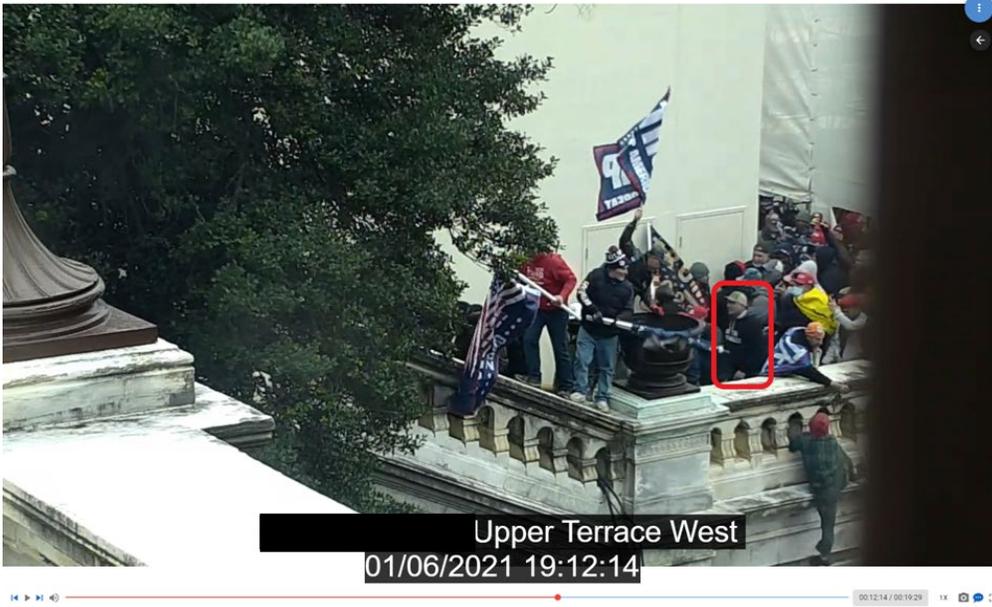


*Exhibit 12.1 (Another angle of this contact, as shown in the above-screengrab, is from Exhibit 12, the following video entitled "My DC Experience - Capitol," available in the public domain at: <https://www.youtube.com/watch?v=tN18-SKNrPA> (last accessed May 6, 2022). Sidorski can be seen from the 6:44-7:19 second mark of the video.)*

After this contact, Sidorski made his way toward the Capitol, scaling a wall near the NW scaffold, and making his way toward the Senate Wing Doors.



*Exhibit 13.1 (The above-screengrab is from Exhibit 13, the following video which is available in the public domain at [https://ia904504.us.archive.org/19/items/WAgBNHcKjMzeLoZTx/stephen\\_horn\\_hd.mpeg4](https://ia904504.us.archive.org/19/items/WAgBNHcKjMzeLoZTx/stephen_horn_hd.mpeg4) (last accessed May 6, 2022). Sidorski can be seen from the 12:00-12:14 second mark of the video.)*



*Exhibit 14*

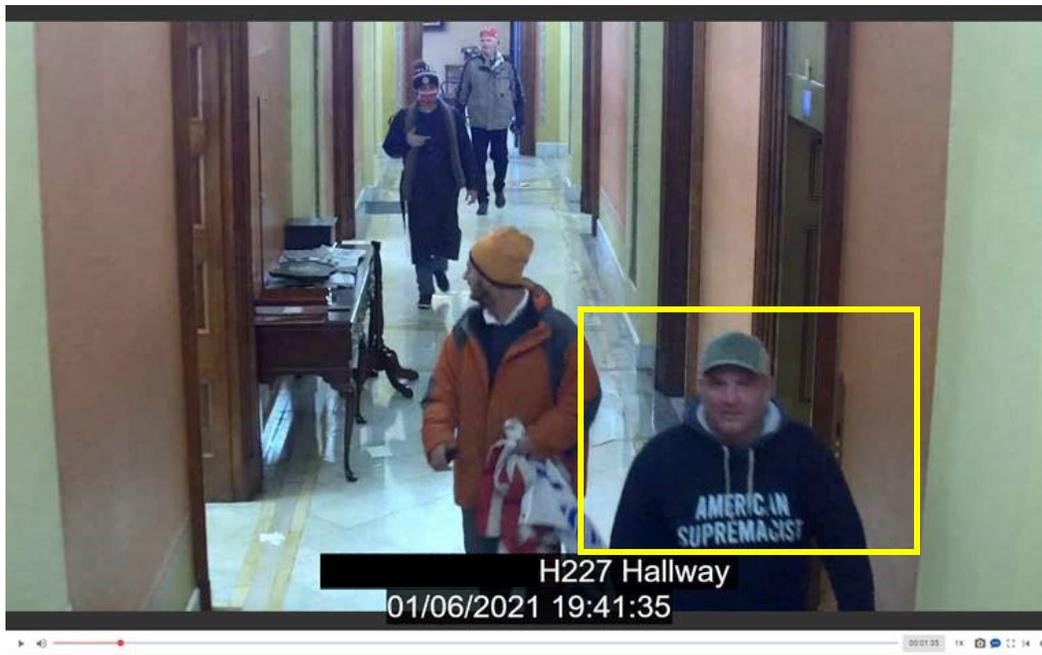
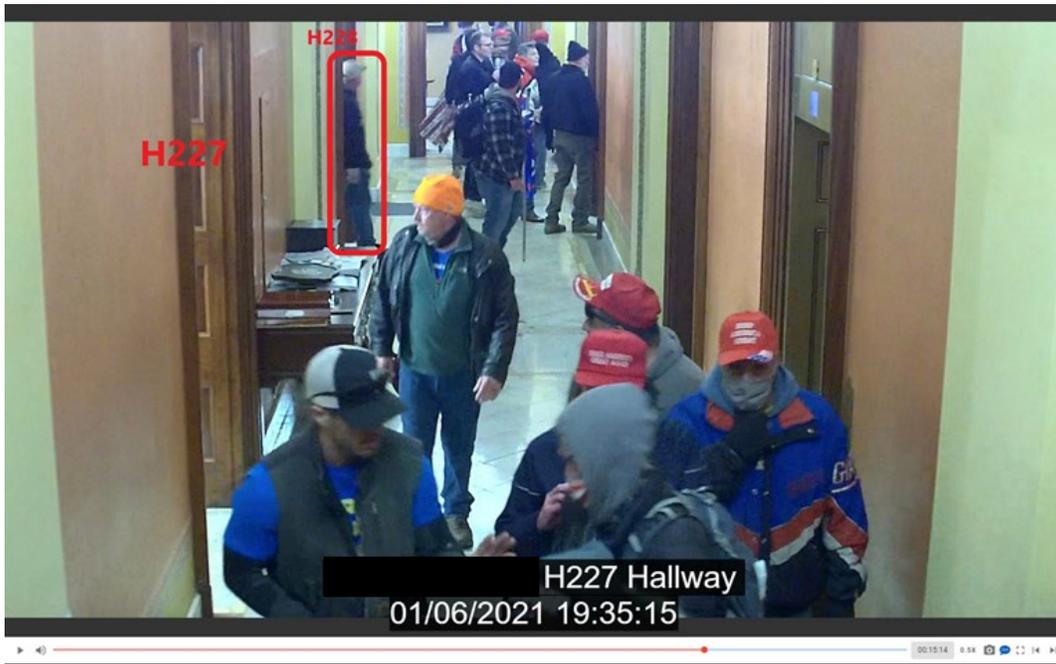
Sidorski entered the building through the Senate Wing Door at 2:14pm, approximately one minute after the door had been kicked in.



*Exhibit 15*

While inside, Sidorski walked through and/or remained in several areas of the Capitol Building, including the Rotunda, the Crypt, Statutory Hall, Upper House Doors, as well as the

suite of offices of Nancy Pelosi, Speaker of the United States House of Representatives, as shown below – going through those offices for over six minutes.



*Exhibits 16.1 and 16.2*

Worth noting is that Sidorski was present in the Crypt when a line of police officers was forced to fall back due to the unruly mob.



Exhibit 17.1 (The above-screengrab from *The Crypt* is taken from Exhibit 17, the following video entitled “Extended Footage Charts Rioters Breaking Into Capitol And Battling Police,” available in the public domain at <https://www.youtube.com/watch?v=E-6bRNfx2c&t=1555s> (last accessed May 6, 2022). Sidorski can be seen from the 25:58-26:04 second mark of the video.)



Exhibit 18.1 (The above-screengrab from *The Crypt* is taken from Exhibit 18, the following video entitled “An EXTREMELY up close view of the Capitol Riot,” available in the public domain at <https://www.youtube.com/watch?v=L5EfNYprOuo&t=1070s> (last accessed May 6, 2022). Sidorski can be seen at the 18:00 second mark of the video.)

While inside, Sidorski recorded two videos of people shouting at law enforcement officers. Sidorski was inside the Capitol Building for approximately 37 minutes, leaving at 2:51 p.m. through the East Front House Doors.



*Exhibit 19*

Sidorski admitted that he knew at the time he entered the U.S. Capitol Building that he did not have permission to do so, and he engaged in disorderly and disruptive conduct in the Capitol Building with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress.

After returning home, at some point, Sidorski saw his image on a television news program. In response, he deleted his Facebook account and threw away his sweatshirt.

### *The Charges and Plea Agreement*

On January 14, 2021, Dennis Sidorski was charged by complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2). On January 15, 2021, he was arrested. On January 27, 2021, Dennis Sidorski was charged by four-count Information with 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). On January 26, 2021, he pleaded guilty to Count Two of the Information, charging him with a violation of 18 U.S.C. § 1752(a)(2),

Disorderly and Disruptive Conduct at a Restricted Building. By plea agreement, Dennis Sidorski agreed to pay \$500 in restitution to the Department of the Treasury.

### III. Statutory Penalties

The defendant now faces a sentencing on a single count of 18 U.S.C. § 1752(a)(2). As noted by the plea agreement and the U.S. Probation Office, the defendant faces up to 1 year of imprisonment, supervised release of up to 1 year, and a fine of up to \$100,000. The defendant must also pay restitution under the terms of his plea agreement. *See* 18 U.S.C. § 3663(a)(3); *United States v. Anderson*, 545 F.3d 1072, 1078-79 (D.C. Cir. 2008).

### IV. The Sentencing Guidelines and Guidelines Analysis

As the Supreme Court has instructed, the Court “should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *United States v. Gall*, 552 U.S. 38, 49 (2007). “As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark” for determining a defendant’s sentence. *Id.* at 49. The United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) are “the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions” and are the “starting point and the initial benchmark” for sentencing. *Id.* at 49.

The government agrees with the Sentencing Guidelines calculation set forth in the final PSR, with both parties in agreement on the base offense level. *See* PSR at ¶ 84. According to the PSR, the U.S. Probation Office calculated the adjusted offense level under the Sentencing Guidelines as follows:

Base Offense Level (U.S.S.G. §2A2.4(a))	10
Specific Offense Characteristics (U.S.S.G. §2A2.4(b)(1)(A))	+3
Specific Offense Characteristic (USSG § 3C1.1):	+2
Acceptance of Responsibility (USSG §3E1.1(a))	-2

Total Adjusted Offense Level

13

See PSR at ¶¶ 33-42.

The U.S. Probation Office calculated Sidorski's criminal history as a category I, which is not disputed. PSR at ¶ 45. Accordingly, the government believes Sidorski's total adjusted offense level, after acceptance, at 13, and his corresponding Guidelines imprisonment range at 12-18 months.

“The Guidelines as written reflect the fact that the Sentencing Commission examined tens of thousands of sentences and worked with the help of many others in the law enforcement community over a long period of time in an effort to fulfill [its] statutory mandate.” *Rita*, 551 U.S. at 349. As required by Congress, the Commission has ““modif[ied] and adjust[ed] past practice in the interests of greater rationality, avoiding inconsistency, complying with congressional instructions, and the like.”” *Kimbrough v. United States*, 552 U.S. 85, 96 (2007); 28 U.S.C. § 994(m). In so doing, the Commission “has the capacity courts lack to ‘base its determinations on empirical data and national experience, guided by professional staff with appropriate expertise,’” and “to formulate and constantly refine national sentencing standards.” *Kimbrough*, 552 U.S. at 108. Accordingly, courts must give “respectful consideration to the Guidelines.” *Id.* at 101. As the Third Circuit has stressed:

The Sentencing Guidelines are based on the United States Sentencing Commission's in-depth research into prior sentences, presentence investigations, probation and parole office statistics, and other data. U.S.S.G. §1A1.1, intro, comment 3. More importantly, the Guidelines reflect Congress's determination of potential punishments, as set forth in statutes, and Congress's on-going approval of Guidelines sentencing, through oversight of the Guidelines revision process. See 28 U.S.C. § 994(p) (providing for Congressional oversight of amendments to the Guidelines). Because the Guidelines reflect the collected wisdom of various institutions, they deserve careful consideration in each case.

Because they have been produced at Congress's direction, they cannot be ignored.

*United States v. Goff*, 501 F.3d 250, 257 (3d Cir. 2005). “[W]here judge and Commission *both* determine that the Guidelines sentence is an appropriate sentence for the case at hand, that sentence likely reflects the § 3553(a) factors (including its ‘not greater than necessary’ requirement),” and that *significantly* increases the likelihood that the sentence is a reasonable one.” *Rita*, 551 U.S. at 347 (emphasis in original). In other words, “the Commission’s recommendation of a sentencing range will ‘reflect a rough approximation of sentences that might achieve § 3553(a)’s objectives.” *Kimbrough*, 552 U.S. at 89.

Here, while the Court must balance all of the § 3553 factors to fashion a just and appropriate sentence, the Guidelines, as agreed to, in part, by the parties, unquestionably provide the most helpful benchmark. As this Court knows, the government has charged a considerable number of persons with crimes based on the January 6 riot. This includes hundreds of felonies and misdemeanors that will be subjected to Guidelines analysis. In order to reflect Congress’s will—the same Congress that served as a backdrop to this criminal incursion—the Guidelines will be a powerful driver of consistency and fairness moving forward.

#### **V. Sentencing Factors Under 18 U.S.C. § 3553(a)**

In this misdemeanor case, sentencing is also guided by 18 U.S.C. § 3553(a), which identifies the factors a court must consider in formulating the sentence. Some of those factors include: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, *id.*; the need for the sentence to reflect the seriousness of the offense and promote respect for the law, § 3553(a)(2)(A); the need for the sentence to afford adequate deterrence, § 3553(a)(2)(B); and the need to avoid unwarranted sentence disparities among defendants with

similar records who have been found guilty of similar conduct. § 3553(a)(6). In this case, as described below, all of the Section 3553(a) factors weigh in favor of incarceration.

**A. The Nature and Circumstances of the Offense**

The attack on the U.S. Capitol, on January 6, 2021 is a criminal offense unparalleled in American history. It represented a grave threat to our democratic norms; indeed, it was the one of the only times in our history when the building was literally occupied by hostile participants. By its very nature, the attack defies comparison to other events.

While each defendant should be sentenced based on their individual conduct, as we now discuss, this Court should note that each person who entered the Capitol on January 6 without authorization did so under the most extreme of circumstances. As they entered the Capitol, they would—at a minimum—have crossed through numerous barriers and barricades and heard the throes of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting with law enforcement officials and smelled chemical irritants in the air. No rioter was a mere tourist that day.

Additionally, while looking at the defendant's individual conduct, we must assess such conduct on a spectrum. This Court, in determining a fair and just sentence on this spectrum, should look to a number of critical factors, to include: (1) whether, when, how the defendant entered the Capitol building; (2) whether the defendant encouraged violence; (3) whether the defendant encouraged property destruction; (4) the defendant's reaction to acts of violence or destruction; (5) whether during or after the riot, the defendant destroyed evidence; (6) the length of the defendant's time inside of the building, and exactly where the defendant traveled; (7) the defendant's statements in person or on social media; (8) whether the defendant cooperated with, or ignored commands from law enforcement officials; and (9) whether the defendant demonstrated

sincere remorse or contrition. While these factors are not exhaustive nor dispositive, they help to place each defendant on a spectrum as to their fair and just punishment.

To be clear, had the defendant personally engaged in violence or destruction, he or she would be facing additional charges and/or penalties associated with that conduct. The absence of violent or destructive acts on the part of the defendant is therefore not a mitigating factor in misdemeanor cases, nor does it meaningfully distinguish the defendant from most other misdemeanor defendants.

Sidorski came to Washington D.C. on a mission – to disrupt the peaceful transfer of power after the 2020 Presidential election. In so doing, and step-by-step along the way, he demonstrated little regard for the law, the officers charged with safeguarding the United States Capitol Building, or the people who work inside of it.

Sidorski was prepared for violence. Only one day prior, on January 5, 2021, he endorsed a statement that on January 6, 2021, “[t]hose idiot lawmakers in the Capitol building have no idea what civil unrest is till we the people march into that Capitol building and drag him out by the hair of their heads and boot their butts back home. That is the people’s house of representatives. They’re about to get served eviction notices.” In lockstep with this endorsement, the very next day Sidorski is part of a violent mob that assaulted law enforcement officers, and proudly stormed the Capitol. Bolstering his own contention about lawmakers is the fact that once inside the Capitol, Sidorski made his way to the office suites of the Speaker of the House. Furthermore, Sidorski stayed within the Capitol for over 37 minutes, going from location to location, floor to floor. As he admits, his goal was to disrupt the orderly conduct of a session of Congress.

Then, in the days that followed, Sidorski destroyed evidence of his crime in the form of his Facebook account and sweatshirt he wore on January 6, 2021.

Accordingly, the nature and the circumstances of this offense establish the clear need for a sentence of incarceration in this matter.

**B. The History and Characteristics of the Defendant**

As set forth in the PSR, Sidorsk's criminal history consists of only a misdemeanor conviction for Driving Under the Influence of Alcohol. PSR at ¶ 44. Other than some traffic citations (PSR at ¶¶ 46-47), Sidorski does not appear to have had any contact with the police since 2004. PSR at ¶ 50.

**C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense and Promote Respect for the Law**

The attack on the U.S. Capitol building and grounds was an attack on the rule of law. "The violence and destruction of property at the U.S. Capitol on January 6 showed a blatant and appalling disregard for our institutions of government and the orderly administration of the democratic process."<sup>3</sup> As with the nature and circumstances of the offense, this factor supports a sentence of incarceration, as it will in most cases, including misdemeanor cases, arising out of the January 6 riot. *See United States v. Joshua Bustle and Jessica Bustle*, 21-cr-238-TFH, Tr. 08/24/21 at 3 ("As to probation, I don't think anyone should start off in these cases with any presumption of probation. I think the presumption should be that these offenses were an attack on our democracy and that jail time is usually -- should be expected") (statement of Judge Hogan).

**D. The Need for the Sentence to Afford Adequate Deterrence**

Deterrence encompasses two goals: general deterrence, or the need to deter crime generally, and specific deterrence, or the need to protect the public from further crimes by this

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<sup>3</sup> Federal Bureau of Investigation Director Christopher Wray, Statement before the House Oversight and Reform Committee (June 15, 2021), available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Wray%20Testimony.pdf>

defendant. 18 U.S.C. § 3553(a)(2)(B-C), *United States v. Russell*, 600 F.3d 631, 637 (D.C. Cir. 2010).

*General Deterrence*

The demands of general deterrence weigh in favor of incarceration, as they will for nearly every case arising out of the violent riot at the Capitol. Indeed, general deterrence may be the most compelling reason to impose a sentence of incarceration. For the violence at the Capitol on January 6 was cultivated to interfere, and did interfere, with one of the most important democratic processes we have: the peaceful transfer of power to a newly elected President. As noted by Judge Moss during sentencing, in *United States v. Paul Hodgkins*, 21-cr-188-RDM:

[D]emocracy requires the cooperation of the governed. When a mob is prepared to attack the Capitol to prevent our elected officials from both parties from performing their constitutional and statutory duty, democracy is in trouble. The damage that [the defendant] and others caused that day goes way beyond the several-hour delay in the certification. It is a damage that will persist in this country for decades.

Tr. at 69-70. Indeed, the attack on the Capitol means “that it will be harder today than it was seven months ago for the United States and our diplomats to convince other nations to pursue democracy. It means that it will be harder for all of us to convince our children and our grandchildren that democracy stands as the immutable foundation of this nation.” *Id.* at 70; *see United States v. Thomas Gallagher*, 1:21-CR-00041 Tr. 10/13/2021 at 37 (“As other judges on this court have recognized, democracy requires the cooperation of the citizenry. Protesting in the Capitol, in a manner that delays the certification of the election, throws our entire system of government into disarray, and it undermines the stability of our society. Future would-be rioters must be deterred.”) (statement of Judge Nichols at sentencing).

The gravity of these offenses demands deterrence. This was not a protest. *See United States v. Paul Hodgkins*, 21-cr-188-RDM, Tr. at 46 (“I don’t think that any plausible argument can be

made defending what happened in the Capitol on January 6th as the exercise of First Amendment rights.”) (statement of Judge Moss). And it is important to convey to future potential rioters—especially those who intend to improperly influence the democratic process—that their actions will have consequences. There is possibly no greater factor that this Court must consider.

### *Specific Deterrence*

Though Sikorski has expressed remorse since his actions on January 6, 2021, Sidorski’s statements on social media, as well as his actions during and after the riot, demonstrate the need for specific deterrence for this defendant. Sidorski engaged in a course of conduct that numerous other Capitol riot defendants did not – he advocated violence on soial media, and he put his hands on law enforcement in what he himself described as “a melee” on the West front of the Capitol. This is no “ordinary” Capitol riot defendant. As time goes on, there will, inevitably, be political statements, occurrences, and events, for which Sidroski will hold a difference of opinion. Sidorski must face consequences for his crime here so that it will not happen again.

### **E. The Need to Avoid Unwarranted Sentencing Disparities**

As the Court is aware, the government has charged hundreds of individuals for their roles in this one-of-a-kind assault on the Capitol, ranging from unlawful entry misdemeanors, such as in this case, to assault on law enforcement officers, to conspiracy to corruptly interfere with Congress.<sup>4</sup> Each offender must be sentenced based on their individual circumstances, but with the backdrop of the January 6 riot in mind. Moreover, each offender’s case will exist on a spectrum that ranges from conduct meriting a probationary sentence to crimes necessitating years of imprisonment. The misdemeanor defendants will generally fall on the lower end of that spectrum,

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<sup>4</sup> Attached to this sentencing memorandum is a table providing additional information about the sentences imposed on other Capitol breach defendants. That table also shows that the requested sentence here would not result in unwarranted sentencing disparities.

but misdemeanor breaches of the Capitol on January 6, 2021 were not minor crimes. A probationary sentence should not necessarily become the default.<sup>5</sup> Indeed, the government invites the Court to join Judge Lamberth’s admonition that “I don’t want to create the impression that probation is the automatic outcome here because it’s not going to be.” *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164 (RCL), Tr. 6/23/2021 at 19; *see also United States v. Valerie Ehrke*, 1:21-cr-00097 (PFF), Tr. 9/17/2021 at 13 (“Judge Lamberth said something to the effect . . . ‘I don’t want to create the impression that probation is the automatic outcome here, because it’s not going to be.’ And I agree with that. Judge Hogan said something similar.”) (statement of Judge Friedman).

The government and the sentencing courts have already begun to make meaningful distinctions between offenders. Those who engaged in felonious conduct are generally more dangerous, and thus, treated more severely in terms of their conduct and subsequent punishment. Those who trespassed, but engaged in aggravating factors, merit serious consideration of institutional incarceration. Those who trespassed, but engaged in less serious aggravating factors, deserve a sentence more in line with minor incarceration or home detention.

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<sup>5</sup> Early in this investigation, the Government made a very limited number of plea offers in misdemeanor cases that included an agreement to recommend probation in *United States v. Anna Morgan-Lloyd*, 1:21-cr-00164(RCL); *United States v. Valerie Elaine Ehrke*, 1:21-cr-00097(PFF); *United States v. Donna Sue Bissey*, 1:21-cr-00165(TSC), *United States v. Douglas K. Wangler*, 1:21-cr-00365(DLF), and *United States v. Bruce J. Harrison*, 1:21-cr-00365(DLF). The government is abiding by its agreements in those cases, but has made no such agreement in this case. *Cf. United States v. Rosales-Gonzales*, 801 F.3d 1177, 1183 (9th Cir. 2015) (no unwarranted sentencing disparities under 18 U.S.C. § 3553(a)(6) between defendants who plead guilty under a “fast-track” program and those who do not given the “benefits gained by the government when defendants plead guilty early in criminal proceedings”) (citation omitted).

The defendant has pleaded guilty to Count Two of the Information, charging him with a violation of 18 U.S.C. § 1752(a)(2). The sentencing factors set forth in 18 U.S.C. § 3553(a), including “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” 18 U.S.C.A. § 3553(6), do apply.

For one thing, although all the other defendants discussed below participated in the Capitol breach on January 6, 2021, many salient differences—such as how a defendant entered the Capitol, how long she remained inside, the nature of any statements she made (on social media or otherwise), whether she destroyed evidence of his participation in the breach, etc.—help explain the differing recommendations and sentences. And as that discussion illustrates, avoiding unwarranted disparities requires the courts to consider not only a defendant’s “records” and “conduct” but other relevant sentencing criteria, such as a defendant’s expression of remorse or cooperation with law enforcement. *See United States v. Hemphill*, 514 F.3d 1350, 1365 (D.C. Cir. 2008) (no unwarranted disparity regarding lower sentence of codefendant who, unlike defendant, pleaded guilty and cooperated with the government).

Moreover, assessing disparities, and whether they are unwarranted, requires a sufficient pool of comparators. In considering disparity, a judge cannot “consider all of the sentences not yet imposed.” *United States v. Godines*, 433 F.3d 68, 69–71 (D.C. Cir. 2006). “The most a judge can do is consider those other sentences that do exist,” and “[t]he comparable sentences will be much smaller in the early days of any sentencing regime than in the later.” *Id.*; *see generally United States v. Accardi*, 669 F.3d 340, 346 (D.C. Cir. 2012) (“Without more, two allegedly similar cases constitute too small a sample size to support a finding of an ‘unwarranted disparity’ in sentences.”). In cases for which the Sentencing Guidelines apply, “[t]he best way to curtail ‘unwarranted’ disparities is to follow the Guidelines, which are designed to treat similar offenses and offenders

similarly.” *United States v. Bartlett*, 567 F.3d 901, 908 (7th Cir. 2009). *See id.* (“A sentence within a Guideline range ‘necessarily’ complies with § 3553(a)(6).”).

Sentencing courts are permitted to consider sentences imposed on co-defendants in assessing disparity. *E.g.*, *United States v. Knight*, 824 F.3d 1105, 1111 (D.C. Cir. 2016); *United States v. Mejia*, 597 F.3d 1329, 1343-44 (D.C. Cir. 2010); *United States v. Bras*, 483 F.3d 103, 114 (D.C. Cir. 2007). The Capitol breach was *sui generis*: a mass crime with significant distinguishing features, including the historic assault on the seat of legislative branch of federal government, the vast size of the mob, the goal of impeding if not preventing the peaceful transfer of Presidential power, the use of violence by a substantial number of rioters against law enforcement officials, and large number of victims. Thus, even though many of the defendants were not charged as conspirators or as codefendants, the sentences handed down for Capitol breach offenses is an appropriate group for purposes of measuring disparity of any future sentence.

As the number of sentences in the Capitol breach misdemeanor cases increase and the pool of comparators grows, the effect on sentences of obviously aggravating considerations should become more apparent. The same is true for obviously mitigating factors, such as a defendant’s efforts to prevent assaults on police.

While no previously sentenced case contains the same balance of aggravating and mitigating factors present here, other judges of this court have sentenced Capitol breach defendants who spent time in other sensitive places within the Capitol. A defendant’s entry into a sensitive space, such as the Senate Floor or a member’s office, places that defendant in a more serious category of offenders than defendants who remained in hallways or central, more public spaces, such as the Rotunda. A defendant who entered a sensitive space took an extra step to occupy the Capitol and displace Congress and to display the dominance of the mob over the will of the people.

That person's presence is even more disruptive. An unauthorized individual in a private office poses a greater threat and creates a greater impediment to members of Congress and staffers just trying to do their jobs than would a trespasser passing through a hallway.

One of the most famous photographs from January 6 is that of a rioter in Speaker Pelosi's office, with his feet on her desk. *See* Amended Complaint, *United States v. Richard Barnett*, 21-cr-38, ECF No. 3, at 2. That photograph has become notorious likely for exactly this reason, because of what invading the office of a member of Congress represents: a show of intimidation, an attempted display of power, above and beyond entering the building. As noted above, while Senator Merkley's office was not labeled as such, it was clearly recognizable as a private office, and thus implicates similar concerns. Another rioter, Brandon Fellows, recognized it as some sort of "Oregon room." Affidavit, *Fellows, supra*, ECF No. 1 at ¶ 15.

In *United States v. Derek Jancart and Erik Rau*, 21-cr-148 (JEB) and 21-cr-467 (JEB), the defendants pled guilty to misdemeanor charges of 40 U.S.C. § 5104(e)(2)(D) (disorderly conduct in the Capitol building) in connection with penetrating the Capitol building all the way to the Speaker's Conference Room. Judge Boasberg sentenced the defendants each to 45 days of incarceration. A misdemeanant who reached the Senate Floor, even though she does not appear to have known where she was, also received a sentence of incarceration. *United States v. Courtright*, No. 21-cr-72 (CRC) (30 days incarceration, one year supervised release).

Like Jancart and Rau, Andrew Ericson went to the Speaker's Conference Room; he posed for a selfie there, as well as for a photograph resting his feet on the conference table. Bonet smoked marijuana; Ericson took a beer from a mini-fridge. Gov. Sentencing Mem., *United States v. Andrew Ericson*, 21-cr-506 (TNM), ECF No. 37 at 3. Like Bonet, Ericson posted his involvement to social media. *Id.* at 4. Like Bonet, Ericson was aware of the crowd outside. See *id.*

at 3, 7-8, 13. The government recommended 60 days' jail time, and Judge McFadden imposed a sentence of 20 days' imprisonment, discussing the defendant's entry into an office as follows: "That's a private area and your violation of that space suggests a certain brazenness and intentionality that requires consideration in your sentence. You could have caused a very dangerous and fearful scene had the speaker or her staff been present in the office when you and others entered it." *Ericson*, Tr. 12/10/21 at 21. Judge McFadden concluded that entering offices put Ericson in a "different category" than people "who were only in areas that would normally be open for tours." *Id.*

In *United States v. Matthew Mazzocco*, 21-cr-54 (TSC), the defendant pled guilty to a misdemeanor charge of 40 U.S.C. § 5104(e)(2)(G) (parading, demonstrating or picketing in a Capitol Building) in connection with spending time inside the Spouse's Lounge of the Capitol, and Judge Chutkan sentenced the defendant to 45 days of incarceration. While inside the Spouse's Lounge, Mazzocco warned others not to take or destroy anything and said that they were probably going to get in trouble for what they were doing—unlike Bonet, who lit a joint. Gov. Sentencing Mem., *Mazzocco*, 21-cr-54, ECF No. 28 at 6. Like Bonet, however, Mazzocco took smirking photographs of himself during the riot. *Id.* at 2, 12. He was also aware of the crowd outside the Capitol and entered through the Senate Wing Door not long before Bonet did. *See id.* at 3, 7-8, 13.

Another defendant who entered an office space, Charles Pham, also recently received a sentence of 45 days' imprisonment. *United States v. Charles Pham*, No. 21-cr-109 (TJK). While Pham was an active-duty police officer who downplayed his conduct to the FBI, other facts of his case resemble Bonet's: he saw confrontations between rioters and police before entering; he yelled "we're taking the house back!," he was inside the building for approximately 20 minutes. Gov. Sentencing Mem., *Pham*, ECF No. 36, at 2.

The government acknowledges that Felipe Marquez, who also entered Senator Merkley's office, received a sentence of three months' home detention; the government had recommended four months' incarceration. *United States v. Marquez*, 21-cr-136 (RC). Judge Contreras, however, explained that Marquez's documented mental-health issues had a "significant influence" on his sentence, and believed that probation would best allow Marquez to receive mental-health treatment. *Marquez*, Tr. 12/10/21 at 32, 34, 37. One other defendant who entered Senator Merkley's office also received a probationary sentence, but he was a 68-year-old retiree with no criminal record who was there for less than a minute, and there was no evidence that he engaged in any flagrant conduct while there. *See United States v. Edwards*, 21-cr-366 (JEB).

In any event, the goal of minimizing unwarranted sentencing disparities in § 3553(a)(6) is "only one of several factors that must be weighted and balanced," and the degree of weight is "firmly committed to the discretion of the sentencing judge." *United States v. Coppola*, 671 F.3d 220, 254 (2d Cir. 2012). The § 3553(a) factors that this Court assesses are "open-ended," with the result that "different district courts may have distinct sentencing philosophies and may emphasize and weigh the individual § 3553(a) factors differently; and every sentencing decision involves its own set of facts and circumstances regarding the offense and the offender." *United States v. Gardellini*, 545 F.3d 1089, 1093 (D.C. Cir. 2008). "[D]ifferent district courts can and will sentence differently—differently from the Sentencing Guidelines range, differently from the sentence an appellate court might have imposed, and differently from how other district courts might have sentenced that defendant." *Id.* at 1095.

## **VI. Conclusion**

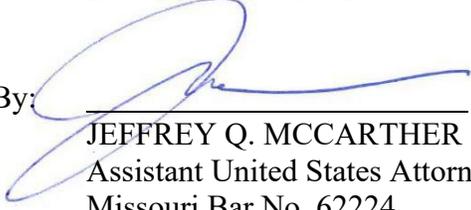
Sentencing requires the Court to carefully balance the § 3553(a) factors. As explained herein, some of those factors support a sentence of incarceration and some support a more lenient

sentence. Balancing these factors, the government recommends that this Court sentence Dennis Sidorski to 12 months' incarceration, one year of supervised release, and \$500 in restitution. Such a sentence protects the community, promotes respect for the law, and deters future crime by imposing restrictions on his liberty as a consequence of his behavior, while recognizing his early acceptance of responsibility.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On this 9<sup>th</sup> day of May 2022, a copy of the foregoing was served upon all parties listed on the Electronic Case Filing (ECF) System.

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