

## EXHIBIT E:

Shawn Bradley Witzemann  
406 4th Street CV  
Mountain View, Missouri  
65548

November 1, 2022

Senior Judge Thomas F. Hogan District of Columbia  
United States District Court

Honorable Judge Hogan,

In my initial letter to the Court, my hope was to provide a sincere statement of remorse for my confessed crimes on January 6th, as well as provide specific details in regards to my greater intentions and personal character. While that hope remains unchanged, I have identified multiple inaccuracies and unwarranted assertions in the Government's Sentencing Memoranda that unfortunately must be addressed. To that end, it is with great solemnity that I find myself compelled to provide this addendum to my previous letter.

For clarity I will arrange my rebuttals in chronological order, in tandem with the Government's Sentencing Memorandum.

## **I. Introduction**

1. In paragraph 1 the Government states: "Defendant Shawn Bradley Witzemann, a 40-year-old resident of Missouri, participated in the January 6, 2021 attack on the United States Capitol—a violent attack that forced an interruption of Congress's certification of the 2020 Electoral College vote count, threatened the peaceful transfer of power after the 2020 Presidential election, injured more than one hundred police officers, and resulted in more than 2.8 million dollars in losses."

### **Rebuttal**

As was painstakingly negotiated and agreed to by AUSA Amore on June 11, 2021, I did not have any part in an "attack on the United States Capitol". In good faith as well as in accordance with the signed Statement of Offense, I've admitted my failures and role in the January 6th Capitol Riot. In complete disregard for signed agreements on facts in the Statement of Offense, the Government has made an abhorrent and reprehensible mischaracterization of my actions that day.

I've admitted that I willfully and knowingly entering the Capitol Building without permission to do so, and while there, I willfully and knowingly demonstrated, paraded or picketed. Nowhere in the agreed upon Statement of Offense have I admitted or agreed to what the Government is alleging in this statement.

Furthermore, I have never stated that I played a part in the interruption of Congressional proceedings. In fact, I fully understood that the process of certification would include formal objections and associated debate; a procedure which I would've rather seen carried out without interruption.

The peaceful transfer of power requires that Constitutional procedure be followed and any issues be fully heard and adjudicated before certification. At no point have I expressed interest in threatening this process.

I did not participate in any action that led to officers or others being injured. Any action I took while on Capitol grounds was in fact, opposite in effect. I helped a police officer to his feet as a crowd pushed forward unexpectedly, and I fought to help police make room for a woman who had passed out in the rotunda. As I will further explain, I refrained from giving into provocation from bad actors, and video I captured and turned over to the FBI was employed in the furtherance of their investigation.

I accept the fact that my failures as a journalist have necessitated my acceptance of responsibility in regards to the costs associated with the day. I'm fully prepared to do what I must to appropriately satisfy that debt. Any assertion that I've not taken full responsibility or shown sincere remorse for my mistakes is categorically and demonstrably false. I began plea negotiations immediately after I retained counsel and any associated delays were necessitated only by a dedication to ensuring that a truthful and accurate Statement of Offense would be submitted to this court ahead of sentencing.

2. In paragraph 2 the government states: “ (1) entered the United States Capitol Building through the Senate Wing Doors just six minutes after the initial breach after observing police officers who were protecting the Capitol firing tear gas at rioters; (2) remained in the Capitol Building for nearly an hour and twenty minutes, despite the obvious presence of police; (3) pleaded with a police officer to join the cause of the rioters; and (4) made statements on social media following January 6, 2021 that show a lack of remorse for his actions and support for those who stormed the Capitol that day to disrupt the certification of the 2020 election.”

### **Rebuttal**

1: My role as a journalist and correspondent has many times required me to be in situations where I suppress the need for perfect safety or self-preservation. I've admitted to knowingly and willfully entering the Capitol Building without permission to do so. I am not the only journalist who did so that day, as the large majority lacked Congressional press credentials and also failed to submit to a security screening.

2: I remained in the building due to confusion about where I was allowed to be. Having covered numerous situations with police presence, ahead of January 6, 2021, I have

always depended on police to give clear instruction as to where I can and cannot be. There is no reason to assume that the mere presence of police or altercations with civilians would serve as an adequate reason for me to stop following my objective as a journalist. Whenever I was given orders or instruction by police on January 6, 2021, I complied. This fact is corroborated by video that the government has provided, and it is almost certain that more video exists which would only bolster the truth of this matter.

3: I accept full responsibility for my failure in saying “brother, stand with us!” To a Capitol police officer. I recognize the context of my misdemeanor offense as well as the wider context in which it occurred.

4: At no point have I expressed support for “those who stormed the Capitol”, nor have I expressed support for any disruption of Congressional proceedings. In fact, have repeatedly said that prosecution in many January 6, 2021 cases (including my own) is warranted, and the need to provide Constitutional due-process is of paramount importance. I have accepted that my failures as a journalist constituted a breach of law, and continue to take full responsibility for the misdemeanor offense to which I pleaded guilty.

3. In Paragraph 3 the government states: “The Court must also consider that Witzemann’s conduct on January 6, like the conduct of hundreds of other rioters, took place in the context of a large and violent riot that relied on numbers to overwhelm police officers who were trying to prevent a breach of the Capitol Building, and disrupt the proceedings. As Judge Bates explained at the sentencing hearing in another January 6 case, “The defendant was an active participant in a mob assault on our core democratic values and our cherished institution. And that assault was intended by many and by the mob at large in general to interfere with an important democratic processes of this country. I cannot ignore that, cannot pull this misdemeanor out of that context.” *United States v. Thomas Fee*, 1:21-cr-00131 (JDB), Tr. 04/01/2022 at 17. Weitzmann’s actions and those of his fellow rioters enabled the breach of the Capitol, threatened the lives of the police officers, legislators, and their staffs, and disrupted the certification vote for several hours. 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).”

### **Rebuttal**

In referencing *United States v. Thomas Fee*, 1:21-cr-0031 the Government makes speculative statements that intentionally mischaracterize my previously agreed upon purpose for being at the Capitol on January 6, 2021. The government’s statement assigns guilt for crimes I’ve neither been accused nor convicted of and the agreed upon Statement of Facts does not support their assertion.

There is no objective analysis of the preponderance of evidence in my case that would serve to adequately support the false statement that my individual presence at the Capitol “enabled the breach of the Capitol, threatened the lives of police officers, legislators, and their staffs, and disrupted the certification vote for several hours.” For this argument to have merit, every journalist present in the building would also hold culpability in adding to the “numbers to overwhelm police officers who were trying to prevent a breach of the Capitol Building, and disrupt the proceedings.”

Another point of contention in this paragraph is that in their ill-conceived and mostly copy-pasted effort to portray me as a threat to “police officers, legislators, and their staffs”, the Government failed to spell my surname correctly.

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

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

1. In paragraph 1 the government states: “To avoid unnecessary exposition, the government refers to the general summary of the attack on the U.S. Capitol. See ECF 41 (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 Witzemann’s conduct and behavior on January 6.”

#### **Rebuttal**

The language here employed as a framework for presenting a Factual and Procedural background is unnecessarily presumptive and excessive. As I’ve explained thoroughly, I do not concede to that characterization. The Government previously agreed to remove such language from the signed Statement of Offense associated with my plea agreement. In direct contradiction to their reasons for omitting referenced statements, the repeated use of this language in their Sentencing Memorandum is an unnecessary exposition in regards to my individual case.

### *Witzemann’s Pre-January 6th and Social Media Statements*

1. In paragraph 1 the government states: “Witzemann made many comments that called into question the 2020 presidential election and addressed the need for action in Washington, D.C. For example, on November 3, 2020, while referring to mail-in ballots, he falsely stated at least twice that ballots were being thrown away.”

#### **Rebuttal**

It is true that I called into question the 2020 presidential election. There is a daunting amount of evidence to support my stated lack of confidence, and provided adequate time to address this falsehood, I would be pleased to present much evidence of this, as well as

other acts of treason to the Court. The Government's claim that my statements on November 3, 2020 are false is woefully under-informed and lacks necessary evidence to support their assertion.

2. In paragraph 2 the government states: "On December 16, 2020, Witzemann increased his rhetoric, stating, "This election was stolen. . . . There is no 2024. . . . I'm not waiting that long. . . . [Trump] won this election. If we let it slide this time, that is the end." On December 20, 2020, while referring to an upcoming trip to Washington, D.C., Witzemann said, "True believers" and "people of action" believe the Constitution "is worth fighting for. . . . The cops are going to have to make a choice."

### **Rebuttal**

As I've previously made clear, I have extremely good reason to report that the 2020 election was fraudulent. When one looks at the condition our country has been placed in the aftermath, it shouldn't be hard to ascertain what I had alluded to when saying, "If we let it slide this time, that is the end." Thankfully, a majority of Americans have no interest in letting the matter rest, and are rightfully concerned about election integrity. In fact, as we move into the 2022 mid-terms, Rasmussen polls show that 61% of Americans consider Election Integrity to be "Very Important". and a large number of Americans continue to work diligently to solve the problems which have been painstakingly identified by multiple government agencies at both the federal and state level. I am personally aware of investigations which are ongoing in both private and government sectors.

The referenced Rasmussen poll can be found here:

[https://www.rasmussenreports.com/public\\_content/politics/general\\_politics/september\\_2022/election\\_integrity\\_61\\_say\\_issue\\_is\\_very\\_important](https://www.rasmussenreports.com/public_content/politics/general_politics/september_2022/election_integrity_61_say_issue_is_very_important)

Out of 92 cases which were filed to challenge different aspects of the 2020 election, 30 of those eventually made their way to an evidentiary hearing to be decided on merit. Of the 30 that were decided on merit, 22 ruled in favor of the plaintiff. It remains the opinion of many that the widely reported issues in the 2020 election have yet to be fully investigated and/or adjudicated through evidentiary hearings.

A link to referenced cases can be found here:

[https://election-integrity.info/2020\\_Election\\_Cases.htm](https://election-integrity.info/2020_Election_Cases.htm)

It is beyond disturbing that the Government would choose to disparage clear expressions of patriotism to the court. To be clear: True believers and people of action believe the Constitution is worth fighting for. As we continue to confront rampant corruption within state and federal government, law enforcement at all levels will certainly be faced with difficult choices in regards to how they will best protect and defend our Constitution. I

have full faith and confidence that all who've committed acts of espionage, fraud, or treason in their efforts to illegally influence our democratic processes will be brought to Justice and the integrity of our elections will be fully secured.

*Defendant Witzemann's Role in the January 6, 2021 Attack on the Capitol*

**Rebuttal**

In regards to what the government characterizes as "Defendant Witzemann's Role in the January 6, 2021 Attack on the Capitol" it must once again be noted that during plea negotiations, the government agreed to remove all language referring to "Attack of the Capitol" from Statement of Facts associated with my confessed misdemeanor. As the Government previously agreed, I had no role in any attack on the Capitol and the signed Statement of Facts does not serve to support this repeated abuse of language.

1. In paragraph 1 The government states: "According to Witzemann, he arrived in Washington, D.C. on January 4, 2021 to attend a security briefing for the Sons of Liberty, a group from New Jersey that was there to support then-President Donald Trump."

**Rebuttal**

It should be noted that even though I had been invited, I never attended the referenced briefing. My interest in such a briefing was motivated by the desire to increase my situational awareness in regards to any potential threats that may have been identified by members of "Sons of Liberty." It is unclear as to why the Government deemed it necessary to selectively mention a briefing that I did not attend.

2. In paragraph 2 the government states: "In the morning of January 6, 2021, Witzemann attended the rally for then-President Trump. At approximately 1:00 p.m., Witzemann started to walk towards the Capitol Building. When he got to the Capitol Building, he could see that a large group of rioters had pushed their way towards the steps of the West Front of the building while Capitol Police fired tear gas to keep them back. He then observed the rioters push towards the door of the Capitol Building."

**Rebuttal**

This statement is appropriately factual even though there continues to be debate and ongoing investigation into the purpose behind the decision to fire tear gas into a crowd that was at the time, predominantly non-confrontational with police. At no point during my time at the Capitol was a clearly audible declaration of a riot made. Furthermore it could be argued that the Capitol Police's use of force was indiscriminate, excessive and unwarranted. It could also be argued that indiscriminate use of force directly and unnecessarily contributed to the agitation of the large crowd that had assembled at the Capitol. In fact, it is publicly alleged with corroborating evidence that the deaths of Benjamin Phillips, Kevin Greeson, Roseanne Boyland, Ashli Babbitt, and Officer Brian Sicknick were caused by indiscriminate use of excessive force, as well as negligence.

More information on all five deaths can be found here:

<https://stophate.com/mash/capitol-offense-the-ugly-truth-behind>

My own first-hand experience near the northwest stairs leads me to understand that the crowd became much more agitated after many witnessed as Derick Vargo was seemingly pushed from the stairs by Capitol Police. Many, including myself, believed him to be dead as he lay motionless and unresponsive in the grass. Eventually, protesters repurposed a bike rack as a makeshift stretcher and carried him away. Shortly after that occurred, the situation became considerably more intense.

Video of the aforementioned incident can be seen here at about the 17 minute mark:

<https://rumble.com/v18c7ya-righting-history-the-journalistic-battle-of-january-6th.html>

Here is a screen-captured image from Journalist Tayler Hansen's footage in which I can be seen documenting things as they occur in front of me with Derrick Cargo's legs visible near a flag on the ground:



Furthermore, I can be seen in a screen-captured image from January 6th Defendant John Sullivan's video which shows me doing my job as a journalist while conversing with an unidentified female Capitol Police officer. None of the officers present considered me a threat or impediment to their duty as I complied with every command I was given in regards to where I could be while documenting.





A recent lawsuit, won by plaintiffs in Denver, Colorado, bears many similarities to the issues I observed first-hand and as well as those I've discovered through review of the massive amount of video and testimony related to January 6, 2021. I witnessed many similar abuses while covering protests against police brutality in Denver in real time, working as a producer on live-streams that were broadcast through multiple Tribune Media International LLC assets, including "The Armenian Council for Truth in Journalism", "Denver Tribune", and "Farmington Tribune".

Here is a link to an article on the matter:

<https://www.arnoldporter.com/en/perspectives/news/2022/03/racial-justice-advocates-prevail-in-landmark>

3. In paragraph 3 the government states: "Recordings from the U.S. Capitol's closed-circuit video ("CCV") system show that at approximately 2:13 p.m., rioters had breached the Senate Wing Doors by smashing and entering through the windows adjacent to the doors and then kicking the doors open from inside to allow more rioters to enter. As shown in Image 1, below, just six minutes after that initial breach, at approximately 2:19 p.m., Witzemann, circled in red and wearing a Pittsburgh Pirates baseball cap, walked through the Senate Wing Doors and entered the Capitol Building."

### **Rebuttal**

The government has curiously omitted facts which were given to the FBI during my initial interview, regarding my initial entry into the Capitol building. In doing so, they conceal the fact that my initial entry was through a door that was opened from the inside and I observed no windows being broken in the immediate vicinity of that doorway. The female Capitol Police officer I referenced in my original letter clearly stated that those present in the hallway near the stairs would not be "locked up".

Video footage which corroborates my testimony can be seen here:

<https://www.instagram.com/tv/Cc6grOIAvsK/?igshid=YmMyMTA2M2Y=>

After observing the above mentioned interaction, I explained to that officer that I was there as a journalist and should document things as they happened. She explained that she understood but that I still needed to leave that area. I complied and thanked officers who were present for their professionalism. Specifically, I recall saying in a lighthearted manner, “Thanks for not kicking my ass”.

4. In paragraph 4, the government states: “Shortly after entering the Capitol Building, at approximately 2:28 p.m., Witzemann, along with several other rioters, approached two police officers who were trying to prevent the rioters from walking further down a hallway. Witzemann filmed this incident using his cell phone. In the video, filed with the Court as Government Video Exhibit 1 for sentencing, Witzemann can be heard saying to one of the officers, “Brother, stand with us.”.

#### **Rebuttal**

It is factually inaccurate to state that the officers in question were “trying to prevent the rioters from walking further down a hallway”. In fact, referenced video shows quite the opposite. Although police were initially static, they failed to issue any commands or give clear instruction to those who were present. After a short time, they began leading those present further down the hallway and consequently gave protesters a more direct route to the Rotunda, on their way to the Senate Chamber. Among them was “The New Yorker” journalist Luke Mogelson (who had entered the building by climbing through a broken window) and January 6th defendant U.S. Army Captain Gabriel Garcia. As I’ve previously stated, something about the situation didn’t feel right to me, so I went in another direction.

Further video of one of the officers who is alleged by the Government to have been “trying to prevent the rioters from walking further down the hallway” shows him standing near exterior doors saying, “I don’t agree with it, but I respect it.”; All the while standing by and providing no shortage of tacit approval for protesters to continue moving further into the building.

<https://rumble.com/vjnzml-more-jan.-6-footage-capitol-police-opening-doors-for-rally-goers.html>

I have extensively addressed my heartfelt plea to police in my previous letter.

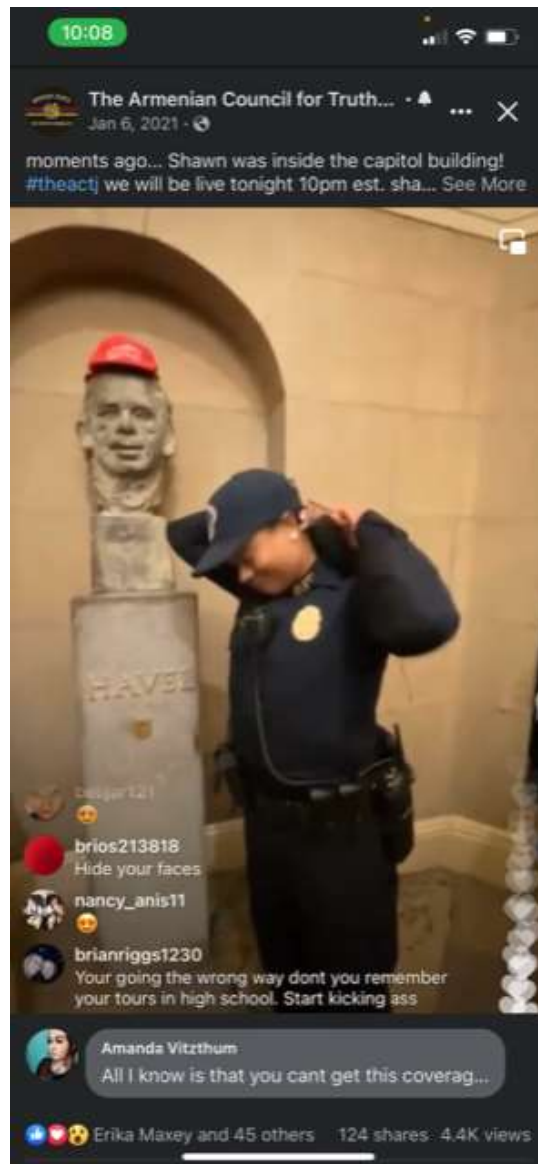
5. In paragraph 5 the government states: “As shown in the images below, between approximately 2:32 p.m. and 3:28 p.m., Witzemann trespassed through several sections of the Capitol Building,

including the Small House Rotunda, the Rotunda, and Statuary Hall, using his cell phone to record video from inside the Capitol Building.”

**Rebuttal**

Per my plea agreement, I agree that the charge of trespassing was indeed based in fact. Nevertheless, nothing in that section of the agreement should not be misunderstood as an outright or explicit admission of guilt. It should once again be noted that many journalists (congressionally credentialed or otherwise) went through several sections of the Capitol Building while documenting the events as they unfolded, including the aforementioned Luke Mogelson who after failing to submit to a security screening, crawled through a broken window, rather than using a door as I did. I see no factual inaccuracies in this paragraph but it does serve as yet another example of the Government’s dishonest and selective process in deciding what information they highlight.

As can be seen in this screenshot from the publicly available video I previously provided the Government, I repeatedly engaged in lighthearted conversation with police as I have always done in my coverage of tense altercations.



6. In paragraph 6 the government states: “As can be seen in Image 7, and as discussed further below, the video recorded by Witzemann in the Capitol Building was later posted to the Facebook page of The Armenian Council for Truth in Journalism, where Witzemann would discuss what he observed in a webcast.”

**No Rebuttal Necessary**

This statement is adequately factual.

7. In paragraph 7 the government states: “Shortly after 3:00 p.m., while Witzemann was still loitering in the Rotunda, dozens of Metropolitan Police Department (“MPD”) officers, wearing riot gear, entered the Rotunda and tried to clear the rioters out of that room. At approximately 3:05 p.m., several rioters confronted the MPD officers, and some physically assaulted the officers. Witzemann remained in the Rotunda during this time. As shown in Images 8, 9, 10, and 11, below, between approximately 3:24 p.m. and 3:26 p.m., Witzemann was part of the mob that the MPD had to contain and escort from the Rotunda.”

**Rebuttal**

Publicly available bodycam footage shows that police were unclear as to what their orders were as they entered the rotunda. Therefore: any suggestion that DCMPD or others had a clear plan when they entered is extremely questionable. As was discussed in my previous letter, I was “loitering” in the rotunda after being commanded by a Capitol Police Officer to do so. Therefore, it is inaccurate to suggest that MPD “had to contain and escort” me from the Rotunda. Had I been ordered and provided clear instruction by law enforcement to leave the building entirely, I would have done so. Unfortunately, no orders were given. Furthermore, as I’ve described in my previous letter, law enforcement’s confusingly sudden and haphazard decision to engage in violence with protesters in order to clear the Rotunda left me pinned against a bench until enough pressure relented, allowing me to stand up and begin recording. During the large majority of the timeframe referenced by the Government, I was unable to move freely, thus rendering any will I may have had to escape a moot point. These demonstrable discrepancies between reality and the Government narrative serve to further illustrate the idea that there was a disturbing absence of clear communication and proper coordination between USCP, DCMPD, and the many other law enforcement agencies who were present at the Capitol on January 6, 2021.

Corroboration for my testimony can be found in my Rotunda footage previously referenced by the government, as well as this link to above referenced publicly available body-cam footage:

<https://t.me/ShawnBradleyWitzemann/704>

For the Court's further understanding of what happened in the Rotunda as well as the manner in which it is common for journalists to cover "these types of events":

<https://youtu.be/Aq41CsnwRk8>

8. In paragraph 8 the government states: "At approximately 3:38 p.m., Witzemann exited the Capitol Building through the Memorial Doors, and continued to use his cell phone to record video that would later be posted to a webcast on Facebook. He was inside the Capitol Building for nearly 80 minutes."

**No Rebuttal Necessary**

This statement is adequately factual.

*Witzemann's FBI Interview*

1. In paragraph 1 the Government states: "To his credit, on January 15, 2021, several months before any formal charges were filed against him, Witzemann voluntarily agreed to an interview with the FBI. Witzemann claimed to work as an independent journalist, running a media company called Tribune Media International. He stated that he often travels to demonstrations and protests to livestream video from the events. Although he claimed to remain independent from the groups he has recorded, he admitted that his own views often coincide with those groups. For example, he denied being associated with the Proud Boys or other "Patriot" groups, but he did admit to being sympathetic to their cause. Witzemann stated that both Enrique Tarrío and Joe Biggs, well-known Proud Boys, know him from his coverage of Proud Boys events."

**No Rebuttal Necessary**

2. In paragraph 2 the Government states: "According to Witzemann, on December 12, 2020, he was in Washington, D.C. to record Proud Boys protests. During these protests, he observed violence between "Patriot" groups and other groups he believed to be Black Lives Matter or Antifa. Witzemann stated that he would livestream his videos from these types of events on Facebook until Facebook prevented him from doing so. He claimed Facebook blocked him from doing this because he once posted a flier that set forth the tenets of the Proud Boys. Witzemann believes the Proud Boys are mischaracterized by the media."

**Rebuttal.** Although there are no factual inaccuracies in this section of the Government's Sentencing Memorandum, I would like to elaborate on the matter of "Proud Boys Tenets" and why I believe the organization has been broadly mischaracterized by corporate media. I find it telling that Facebook would actively prevent the dissemination of factual materials such as the flier I posted. Corporate decision making, in cooperation with Federal Law Enforcement Agencies to obstruct the free flow of factual information has had a direct bearing on public understanding of fact. Furthermore, and in support of statements I have made about interference with the 2020 election, documentation was recently leaked which proves the relationship between Department of Homeland Security

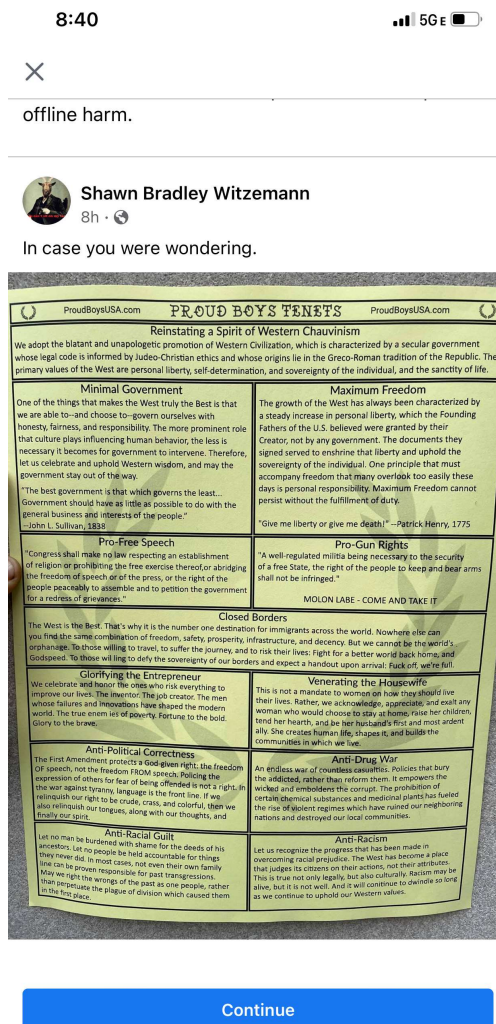
and Facebook, wherein a special portal was created for government partners to report anything they deemed to be “disinformation” directly to the social media platform.

Here is a link to the story from “The Intercept”.

<https://theintercept.com/2022/10/31/social-media-disinformation-dhs/>

This uncovered reality is especially disturbing when I recall multiple instances where Facebook was actively working to censor factual reporting. In fact, is now well-known that federal law enforcement worked hand in hand with social media giants to suppress factual information about Covid-19, Hunter Biden’s laptop, legitimate allegations of fraud in the 2020 election, and a myriad of other matters which were vital to public understanding. A perfect example of this Orwellian nightmare is exemplified by the demonstrable fact that a simple flier I had posted for the education of my audience was removed for being “hate speech”.

For the Court’s understanding, a screenshot of the flier and the associated censorship of my Facebook account is shown below:



Although I have yet to obtain any direct evidence that any federal agencies were actively working to suppress my individual work, as well as the efforts of my team with Tribune Media International LLC, it now seems much more likely. Interestingly enough, I find it to be strangely convenient for the Government that the near entirety of the data associated with my original Facebook and Instagram accounts remains inaccessible to me after my account was permanently deactivated in the aftermath of being charged in relation to January 6, 2021. While meeting with AUSA Amore in Newark, New Jersey for the reverse proffer, I inquired about the possibility of regaining access to my data in order to access potentially exculpatory and other relevant and/or sensitive material. My attorney reminded him of Brady/Giglio rules regarding the Government's obligation to provide exculpatory evidence, and AUSA Amore said he would look into it. I was eventually provided with a hard drive that contained a small amount of the data in question but it was nowhere near complete. My assumption at the time was that the data was in the hands of a private corporation and the Government had no reasonable way to honor my request. Given the recent revelations concerning the relationship between federal agencies and Facebook, it seems plausible that certain parties may have intentionally worked to have my data destroyed. If proven to be true, it would at the very least be a grievous breach of law and a blatant deprivation of Constitutional rights to due process, necessitating a full investigation on the behalf of all who've potentially been affected by what appears to be malicious and unethical prosecution at the hands of the Department of Justice. In fact, the ACLU is already planning to take appropriate legal action in order to ensure the protection of our Constitutionally guaranteed rights.

Regardless, the censorship of a flier that is surprisingly in-line with mainstream American values would lend itself as support for my opinion that Proud Boys are intentionally mischaracterized by the media and other organizations that would seek to demonize their intent, in order to frame those in the organization for crimes they have not committed.

While addressing the recent exposure of the improper and illegal relationship between private corporations and federal law enforcement agencies, it should also be pointed out that NPR and many others have recently reported that "A Washington state judge fined Facebook parent company Meta nearly \$25 million for repeatedly and intentionally violating campaign finance disclosure law, in what is believed to be the largest campaign finance penalty in U.S. history." These developments further support my statements that there was widespread interference, fraud, and treason involved in the 2020 election.

A link the the above mentioned article may be found here:

<https://www.npr.org/2022/10/27/1131907041/facebook-meta-campaign-finance-fine>

**3.** In paragraph 3 the Government states: "With respect to January 6, 2021, Witzemann admitted to entering the Capitol Building. He stated that he attended the rally for then-President Trump that morning but was too far away to hear anything. At approximately 1:00 p.m., he began walking towards the Capitol Building. He acknowledged that by the time he got to the building,

he saw that a large crowd of protestors had gathered outside and pushed their way towards the steps. He observed Capitol Police firing what appeared to be tear gas at the protestors. He claimed that as a group of protestors pushed towards a door, it appeared as though the police had stood down. Witzemann stated that he climbed a scaffolding to get a better view with his cell phone but got down after a police officer instructed him to do so.”

**Rebuttal**

As was clarified and agreed to by the Government in the Statement of Offense, it should be understood that I ascended stairs to the top of the inauguration stage scaffolding.

4. In paragraph 4 the Government states: “Witzemann recalled the events in the Rotunda described above. He recounted being stuck between a group of rioters pushing towards the police and the police pushing back towards the rioters. He stated he feared for his life and was concerned that if he fell to the ground, he might get trampled. Witzemann recalled exiting the Capitol Building and returning to his hotel room.

**Rebuttal**

The first sentence references the inaccurate and highly subjective version of events in the Rotunda that were proven to be false in my more complete and objective description of what happened before and during my time in the Rotunda, both in this addendum and the letter I previously provided to the Court. The rest of the paragraph is a factual, although it once again selectively omits any information that would serve to provide the Court with a better understanding of what actually happened.

***Post-January 6th and Social Media Statements***

1. In Paragraph 1 the government states: “On January 6, 2021, after Witzemann left the Capitol area and returned to his hotel room, he appeared on an Internet radio show to discuss what he observed at the Capitol. (The video is available here: [https://fb.watch/dlnrxi\\_wJh/](https://fb.watch/dlnrxi_wJh/)). During the interview Witzemann stated that then- President Trump needed “to invoke the Insurrection Act . . . Now more than ever.” He told the interviewer that while inside the Capitol, “I screamed at the cops in the Capitol. And I said, ‘Don’t you realize . . . if they take over, it could be 100 years before the lights come back on.’ . . . The police officer, he looked at me and said, ‘I know.’”

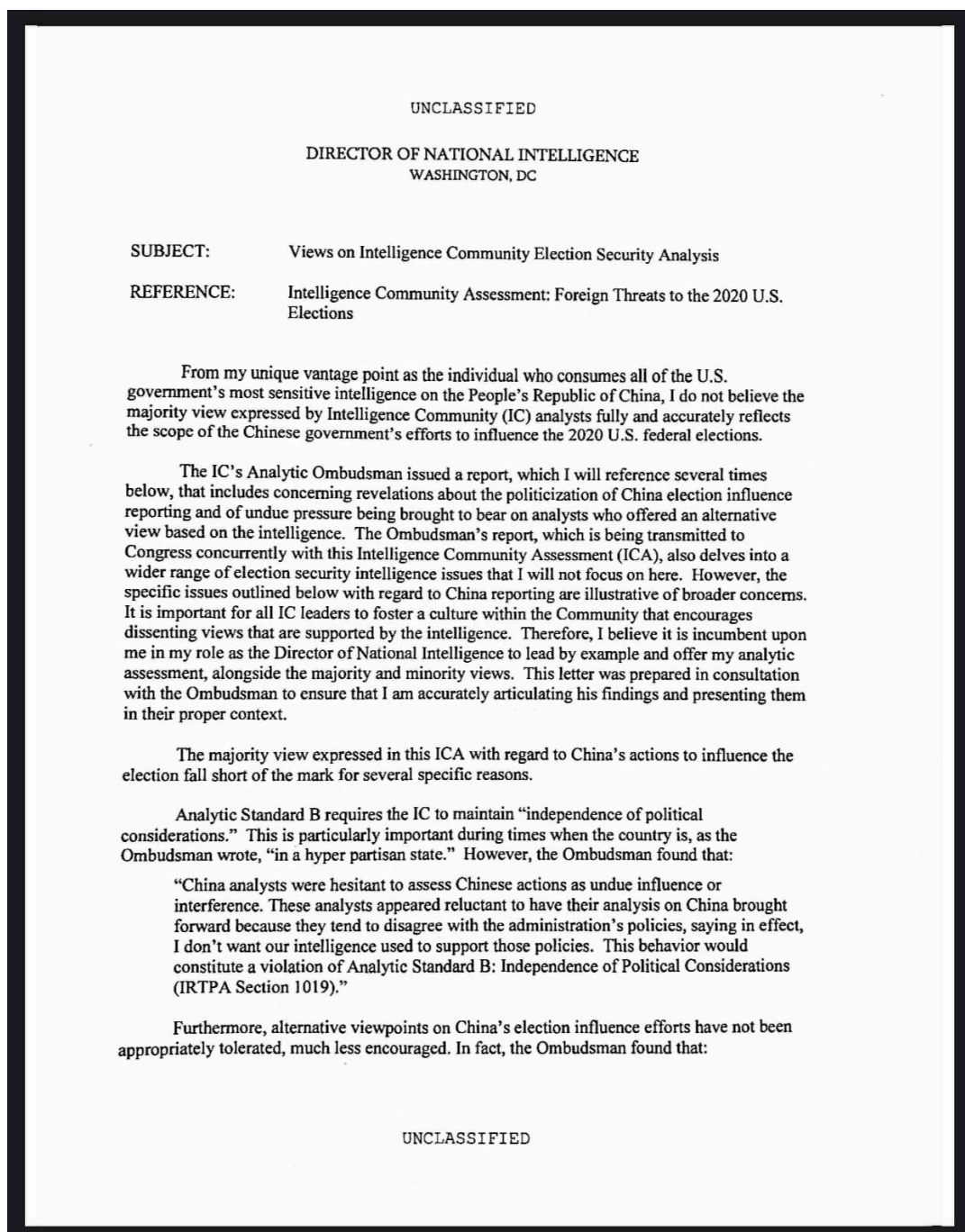
**Rebuttal**

It should be understood that it was my position based on open-source intelligence available to me at the time that then-President Donald Trump should invoke the insurrection act in order to deal with the foreign election interference that had transpired. Many high-level officials were seriously considering this as a potential necessity due to their own analysis of the available intelligence which showed foreign influence in the 2020 election. My own understanding of the situation led me to believe it was the appropriate course of action. In corroboration of my fact-based concerns, on January 7,



2021, Director of National Intelligence Ratcliffe released the following statement: “I am adding my voice in support of the stated minority view - based on all available sources of intelligence, with definitions consistently applied, and reached independent of political considerations or undue pressure -- that the People's Republic of China sought to influence the 2020 U.S. federal elections, and raising the need for the Intelligence Community to address the underlying issues with China reporting outlined above.” This statement was in conclusion to many different concerns in regards to politicization of analysis that DNI Ratcliffe laid out as part of the “Intelligence Community Assessment: Foreign Threats to the 2020 U.S. Elections”.

The Court can find the full unclassified document below:



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SUBJECT: Views on Intelligence Community Election Security Analysis

“There were strong efforts to suppress analysis of alternatives (AOA) in the August [National Intelligence Council Assessment on foreign election influence], and associated IC products, which is a violation of Tradecraft Standard 4 and IRTPA Section 1017. National Intelligence Council (NIC) officials reported that Central Intelligence Agency (CIA) officials rejected NIC coordination comments and tried to downplay alternative analyses in their own production during the drafting of the NICA.”

Additionally, the Ombudsman found that CIA Management took actions “pressuring [analysts] to withdraw their support” from the alternative viewpoint on China “in an attempt to suppress it. This was seen by National Intelligence Officers (NIO) as politicization,” and I agree. For example, this ICA gives the false impression that the NIO Cyber is the only analyst who holds the minority view on China. He is not, a fact that the Ombudsman found during his research and interviews with stakeholders. Placing the NIO Cyber on a metaphorical island by attaching his name alone to the minority view is a testament to both his courage and to the effectiveness of the institutional pressures that have been brought to bear on others who agree with him.

Intelligence Reform and Terrorism Prevention Act (IRTPA) Analytic Standard D requires that coordinated analytic products be “based on all available sources of intelligence.” However, because of the highly compartmented nature of some of the relevant intelligence, some analysts’ judgements reflected in the majority view are not based on the full body of reporting. Therefore the majority view falls short of IRTPA Analytic Standard D.

Tradecraft Standard 1 requires the analytic community to be consistent in the definitions applied to certain terminology, and to ensure that the definitions are properly explained. Having consumed election influence intelligence across various analytic communities, it is clear to me that different groups of analysts who focus on election threats from different countries are using different terminology to communicate the same malign actions. Specifically, definitional use of the terms “influence” and “interference” are different between the China and Russia analytic communities. The Analytic Ombudsman found that:

“Terms were applied inconsistently across the analytic community... Given analytic differences in the way Russia and China analysts examined their targets, China analysts appeared hesitant to assess Chinese actions as undue influence or interference.”

As a result, similar actions by Russia and China are assessed and communicated to policymakers differently, potentially leading to the false impression that Russia sought to influence the election but China did not. This is inconsistent with Tradecraft Standard 1.

In the Ombudsman’s report, he accurately acknowledged my commitment “to provide an independent avenue for analysts to pursue unbiased analysis.” My approach here is not without precedent. In 1962, a National Intelligence Estimate stated that the Soviet Union was unlikely to place missiles in Cuba. Then-CIA Director John McCone forcefully disagreed with the analysts,

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and later ordered the U-2 reconnaissance flights that discovered that missiles had in fact been deployed.

In that same spirit, I am adding my voice in support of the stated minority view -- based on all available sources of intelligence, with definitions consistently applied, and reached independent of political considerations or undue pressure -- that the People's Republic of China sought to influence the 2020 U.S. federal elections, and raising the need for the Intelligence Community to address the underlying issues with China reporting outlined above.

  
\_\_\_\_\_  
John Ratcliffe

*January 7, 2021*  
\_\_\_\_\_  
Date

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Furthermore, it should be clearly understood that other statements made on the Situation Room with Rocci Stucci, as referenced by the Government, are indeed factual and based on my understanding of available intelligence at that time. It should also be noted and understood that the idea of invoking the Insurrection Act was being discussed at the highest level within the sitting Commander in Chief's advisory apparatus, as well as in senior levels of the intelligence community. President Trump ultimately disagreed with the opinions of those who believed he should invoke the Insurrection Act and decided to address thoroughly identified issues in another manner, as was his prerogative. Executive power was peacefully transferred to President Biden on January 20, 2021.

2. In Paragraph 2, the Government states: "Later that evening, Witzemann appeared in another video webcast, which will be filed with the Court as Government Video Exhibit 2. This one was posted on the Facebook page of The Armenian Council for Truth in Journalism. Before Witzemann appeared, the other participants started the webcast by showing some of the video Witzemann record in the Rotunda that day. As shown in Image 13, below, when Witzemann first appeared, he started by saying, "Let's just get this right out of the way," and flaunted his shirt, which read, 'Enrique Tarrío Did Nothing Wrong!'."

#### **Rebuttal**

This section is factual. However, it should be fully understood by the Court that in their selective choice of statements from the referenced broadcast, the Government is once again attempting to insinuate negative connotation that has been shown to be without merit.

3. In paragraph 3 the government states: "Witzemann appeared clearly agitated by the events of January 6, 2021. He expressed anger towards a politician who spoke out against the riot: "These fucking cocksuckers. So then when they resume their activities up there, there's this fucking guy, and I don't even know his name. I tuned in for a couple of minutes, and he's got this fucking smirk on his face about it. And he's lecturing us about morality, and what it means to be an American, and all this other bullshit, while he was hiding in a fucking tunnel underneath the Capitol."

Video Exhibit 2, at 9:42. As they played the video Witzemann recorded in the Rotunda, Witzemann continued to spread false information about the election: "They stole the election! Let's just clarify that right now. How much more evidence do you need to see?" Video Exhibit 2, at 12:57.

#### **Rebuttal**

I should be clearly understood and taken into consideration that my agitation was influenced by a few too many drinks and consequently, my words were a candid and uncensored expression of my frustration with the false narratives I was beginning to see. I was upset over the violence I had seen, upset that the process of certification had been interrupted, and incensed with the idea that our election had been compromised by foreign adversaries. I was fully aware of the potential consequences our country was

facing as a result and it was heartbreaking to consider that I may have very well been a first-hand witness to the death of democracy. In the face of known government corruption, I remain uninspired by any leadership that would choose to hide from a public redress of grievances. I recognize that my choice in words was both obscene and offensive to some. Regardless, my statements were purely observational, and in no way was I making calls for violence or destruction and they should in no way be construed as an attempt to justify criminal acts that occurred prior to, during, or after January 6, 2020. Once again, it must be pointed out that there is a lack of evidentiary hearings that would support the Government's premise that any statements about a stolen election are false.

4. In paragraph 4 the government states: "Witzemann also falsely claimed during the webcast that "[t]here was no vandalism," Video Exhibit 2, at 16:50, even though he entered through the Senate Wing Doors, where the doors had been breached and the windows had been smashed open by the rioters. Witzemann also cryptically stated, "There were so many times when I wanted to do something besides film." Video Exhibit 2, at 19:14."

### **Rebuttal**

Although I see no factual inaccuracies in the government's statement, they are once again choosing to be unfairly selective in their choice of reference material. I recognize that I made a false statement when I claimed there was no vandalism but I honestly can't recall seeing broken glass when I entered. Also, I've made many statements in the months that followed that have acknowledged the criminal acts that occurred. In hindsight, it's easy to understand what occurred but I did not personally witness the moment of breach. In fact, as I've previously explained, my initial entry came after doors were opened from the inside.

Also, I want to clarify what was meant when I said, "There were so many times when I wanted to do something besides film." As I explained to Your Honor, my intention that day was to show people the truth, regardless of what happened to me. As a red-blooded American male, it's very difficult to stand by when I see injustice or confrontation. There were times during January 6th when I felt I should've done something to prevent violence from all manner of people who were involved; both rioters and police alike. It doesn't warm my heart to think about the situation with Derick Vargo where so many were claiming that police had intentionally pushed him from the stairs. I watched that man hit the ground right in front of me. Also, when police began haphazardly pushing everyone into a bottleneck in the rotunda, an officer took his baton and intentionally began jamming it into my ribs. In an inescapable position, it was an act of incredible self-control not to give in to reflex action and take physical action to stop the MPD officer who was unnecessarily and maliciously hurting me. In my video, I can be heard asking him kindly to remove it from my ribs and saying thank you afterward. There were many times that day when I could've lost complete control and done things that I would've regretted far more than the misdemeanor to which I've admitted guilt and taken responsibility for.

5. In paragraph 5 the government states: “As Witzemann’s cell phone video continued to play on the webcast, Witzemann continued to provide commentary as to what he saw that day. He acknowledged with respect those police officers that nodded at him as he was exiting the Capitol Building but made disparaging comments about those officers that did not nod towards him. See Video Exhibit 2, at 19:55 (“Ninety percent of them would give you a nod. . . . This guy doesn’t. This guy wants to be a dick, and he could fuck off, that fucking fat pig fuck.”).”

### **Rebuttal**

The government’s statement is factually accurate. This situation and the things I expressed were a furtherance of the situational conditions and associated frustrations which I’ve already discussed in great detail. I make no excuses or apologies. I was respectful to police when the situation demanded respect out of a need for self-preservation. In retrospect, it is quite clear that some were deserving, while others were not. Police who were present are not infallible and any assertion made by the Government that they are can easily be proven to be false.

6. In paragraph 6 the government states: “In the weeks and months following January 6, 2021, Witzemann continued to take to social media to express his support for the actions of the rioters and show a lack of remorse for his own actions that day. On March 6, 2021, he stated that he “still think[s] [the election] was fraudulent.” And on August 30, 2021, he stated the following: On January 6th, I witnessed as hundreds of thousands of Americans went to the Capitol to protest the stolen election. I saw years of disillusionment and steady gaslighting come to a head that day, as protestors moved up the stairs on the west side of the inauguration stage. I inhaled tear gas as it was shot into the crowd.

... .

The following week, the FBI came knocking at my door. I agreed to meet with them, to discuss what I had seen. I had nothing to hide. Journalism is a public business.

Later that month, I watched as Biden was installed I watched as the lie unfolded.

On April 1st of this year (a fitting date for this old fool), I too was charged with crimes I did not commit. I was contacted by the FBI and instructed to turn myself in.

Witzemann’s entire statement is available at:”

### **Rebuttal**

The Government is once again mischaracterizing my statements out of a need to support their own false narrative. My fact-based understanding of the fraudulent occurrences in the election of 2020 has absolutely no bearing on my remorse for any individual mistakes I made on January 6th, 2021.

Furthermore: The statements I made in my speech remain accurate, and I will stand by them until I am shown adequate evidence of any alleged inaccuracies.

### *The Charges and Plea Agreement*

1. In paragraph 1 the government states: “On April 1, 2021, the United States charged Witzemann by criminal complaint with violating 18 U.S.C. §§ 1752(a)(1) and (2), and 40 U.S.C. §§ 5104 (e)(2)(D) and (G). On April 6, 2021, law enforcement officers arrested him in New Mexico. On May 16, 2022, the United States charged Witzemann by a four-count Superseding Information with violating: (1) in Count One, 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted Building or Grounds); (2) in Count Two, 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds); (3) in Count Three, 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in a Capitol Building); and (4) in Count Four, 40 U.S.C. § 5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building). On July 21, 2022, pursuant to a plea agreement, Witzemann pleaded guilty to Count Four of the Information, charging him with a violation of 40 U.S.C. § 5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building). By plea agreement, Witzemann agreed to pay \$500 in restitution to the Department of the Treasury.

#### **Rebuttal**

Because the government has once again chose to omit facts from their statement, It must be pointed out and should consequently be understood that I was contacted by phone and given the opportunity to voluntarily surrender at the FBI Field Office in Farmington, NM. I did so on April 6, 2021.

### **III. Statutory Penalties**

1. In paragraph 1 the government states: “Witzemann now faces a sentencing on a single count of violating 40 U.S.C. § § 5104(e)(2)(G). As noted by the plea agreement and the U.S. Probation Office, Witzemann faces up to six months of imprisonment and a fine of up to \$5,000. Witzemann 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). As this offense is a Class B Misdemeanor, the Sentencing Guidelines do not apply to it. 18 U.S.C. § 3559; U.S.S.G. §1B1.9.”

#### **No Rebuttal Necessary**

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

1. In paragraph 1 the government states: “In this misdemeanor case, sentencing is 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, the Section 3553(a) factors weigh in favor of 30 days' imprisonment, 36 months' probation, 60 hours of community service, and \$500 in restitution."

### **No Rebuttal Necessary.**

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

1. In paragraph 1 the government states: "The attack on the U.S. Capitol, on January 6, 2021 was a crime unparalleled in American history and defies comparison to other violent riots. It represented a grave threat to our democratic norms and practices. Indeed, it was one of the only times in our history when the building was literally occupied by hostile participants."

#### **Rebuttal**

Once again the Government is flagrantly changing the terms of the original language in our plea agreement by mischaracterizing my misdemeanor offense as being party to "The attack on the U.S. Capitol." In direct contradiction to the spirit of our agreement, this unsupported statement unnecessarily serves to mischaracterize my misdemeanor offense as being somehow hostile to democratic norms and practices.

2. In paragraph 2 the government states: "While each defendant must be sentenced based on their own conduct, this Court should take into account that each person who entered the Capitol on January 6 without authorization did so under extreme circumstances. As they entered the Capitol, they very likely crossed through numerous barriers and barricades and heard the violent outcries of a mob. Depending on the timing and location of their approach, they also may have observed extensive fighting between the rioters and police and smelled chemical irritants in the air. No rioter was a mere tourist that day."

#### **Rebuttal**

To their credit, the government begins by recognizing that each defendant "must be sentenced based on their own conduct", but that factual and just recognition is followed by more speculative statements that do not have any bearing in this particular case. At no point have I suggested that I was a "mere tourist". The government has previously agreed that I am a journalist who in the process of doing my job, mistakenly committed a misdemeanor offense.

3. In paragraph 3 the government states: "Additionally, while assessing Witzemann's individual conduct and fashioning a just sentence, this Court should look to a number of critical aggravating and mitigating factors, including: (1) whether, when, and how the defendant entered the Capitol building; (2) whether the defendant encouraged violence; (3) whether the defendant encouraged property destruction; (4) 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 police officers; and (9) whether the defendant demonstrated sincere remorse or contrition. While these factors are not exhaustive, they help to place each defendant on a spectrum as to their fair and just punishment. Had Witzemann personally engaged in violence or destruction, he would be facing additional charges and/or penalties associated with that conduct. The absence of violent or destructive acts on Witzemann's part is therefore not a mitigating factor in misdemeanor cases.

### **Rebuttal**

1: I entered the building as a journalist. My misdemeanor offense does not serve to completely negate that fact.

2: I did not encourage violence before, during, or after my time in the Capitol.

3: I did not encourage property destruction before, during, or after my time in the Capitol.

4: My reaction to acts of violence or destruction has been one of consistent sorrow.

5: I've destroyed no evidence.

6: The length and scope of my travel is well documented and fully admitted.

7: My statements while in the building are well documented. My statements on social media are well documented, based in fact, and well within the bounds of my unalienable right to speak freely, which is enshrined in the 1st Amendment to the U.S. Constitution.

8: I cooperated with and complied with all commands from police officers.

9: My remorse for my failures in objectivity as a journalist are of the most sincere nature.

As I've stated clearly, I understand why the absence of violent or destructive behavior is unlikely to be considered as a mitigating factor. I have pleaded guilty to a class B misdemeanor and am fully cognizant of any potentially aggravating factors involved.

4. In paragraph 4 the government states: "Witzemann entered the Capitol Building a mere six minutes after the initial breach at the Senate Wing Door. While no police officers blocked his path into the building, there were clear signs of violent entry. Indeed, he acknowledged to the FBI that he observed officers firing tear gas at the rioters that were approaching the Capitol Building before he entered. Additionally, the window adjacent to the door through which Witzemann passed had just been smashed out and Witzemann would have walked directly by a pile of shattered glass on the ground and heard alarms as he moved into the Capitol Building.

Witzemann did eventually encounter police officers blocking rioters from moving further down a hallway. Rather than retreat, Witzemann attempted to persuade the officers to let them through by stating, "Stand with us." Witzemann was then part of a large crowd that overwhelmed the Rotunda. While there is no evidence that he pushed any officers, his presence alone in the mob created an overwhelming and unmanageable situation for those officers. It took many officers in riot gear to completely clear the mob in the Rotunda, of which Witzemann was a part. Witzemann was inside the Capitol Building for approximately one hour and twenty minutes, a long time relative to the time that most of the rioters spent inside the building."

### **Rebuttal**

Although it is correct that I entered the Capitol Building "a mere six minutes after the initial breach", the government has repeatedly chosen to ignore my recorded testimony to the FBI, and as I've previously explained my initial entry was through a door that had been opened from the inside. Furthermore, my primary objective was the same as every other honest journalist who was present that day. I was there to make sure the truth was told. Throughout months of covering tense conditions between police and protesters from all ideologies, I had become quite accustomed to proper spray, gas, and violence. At no time have I acted contrary to law enforcement instruction and my time in the Capitol was no different in that regard.

In regards to the encounter with police in the hallway, I've recognized my statement to police as the mistake that it was. Nevertheless, the Government's continued assertion that police were "blocking rioters from moving further down a hallway" is demonstrably false. At no point did they issue clear instruction as to what direction I should go. Furthermore, my retreat from what I innately perceived to be a trap is well documented and supported by the fact that those police seem to have led others to more sensitive areas in the building.

The government's assertion that I "was part of a large crowd that overwhelmed the Rotunda is false. I was commanded by Capitol Police to go to the Rotunda and I complied with that command until I was issued further instruction to which I also complied. I take full responsibility for obeying all lawful orders.

Much the same as every other journalist present, my time in the Capitol Building was driven purely by my desire to document historical events as they unfolded before me.

In fact, other journalists have assessed my behavior and in contradiction to my own assessment, have concluded that the Department's of Justice may have made a mistake.

The following video serves to corroborate:

<https://youtu.be/uwGJhtbPrV0>

5. In paragraph 5 the government states: “Perhaps most troubling are the statements Witzemann made on the evening of January 6, 2021, and the weeks and months after. Witzemann immediately took to social media to portray the events of that day as a peaceful protest with “no vandalism,” despite the clear signs of violence and property destruction that he observed. He mocked a Congressperson who was forced to hide in the Capitol’s tunnels and disparaged police officers who did not acknowledge him as he was exiting the building. Months after January 6, 2021, Witzemann continued to use social media to promote his belief that the election was stolen and justify the actions of himself and the rioters.”

### **Rebuttal**

In laying out what they believe is “perhaps most troubling” in their statements, the government serves to illustrate their apparent agenda of silencing free speech and lawful dissent in the United States of America. As anyone with a rudimentary intelligence can understand, determining what constitutes a “peaceful protest” is an entirely subjective process. To cherry-pick a statement that was made in the aftermath of a near-death-experience is both malicious and irresponsible. In the many months since January 6th, I’ve repeatedly corrected my incorrect statement that there was “no vandalism”. Nevertheless, the large majority of those who were at the Capitol did in fact remain peaceful and there is no shortage of adjudicated cases that serve to support my factual statement.

I will not express remorse for mocking an unnamed and unidentified Congressperson as those statements were made hours afterward and are well within the bounds of my unalienable right to criticize the government in whatever peaceful manner I see fit. Furthermore, any disparaging remarks I made on my broadcast in regards to police are also well within the legal bounds of acceptable criticism.

Months after January 6, 2021, I continue to use whatever means necessary to speak freely as my Creator has intended. Promoting my fact-based understanding that the election was stolen is my natural-born, unalienable right. At no point have I suggested it to be an excuse for my confessed misdemeanor. Consequently, I reject the government’s assertion as being categorically false, as well as a politically motivated, malicious and direct threat to the 1st Amendment to the United States Constitution.

### **B. The History and Characteristics of Witzemann**

1. In paragraph 1 the government states: “While Witzemann does not have any criminal history points, the presentence report (“PSR”) shows that this matter is not his first encounter with the criminal justice system. In June 2004, Witzemann was sentenced to 364 days’ imprisonment (suspended) and 544 days’ probation for resisting, evading, and obstructing an officer. PSR ¶ 28. Additional charges of aggravated assault upon a peace officer and assault against a household member were dismissed. Id. In April 2012, Witzemann was arrested for battery, but that charge was subsequently dismissed.”

**Rebuttal**

The Government's statements are factual and additional relevant information has been previously provided to Your Honor in my initial letter.

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

1. In paragraph 1 the Government states: "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."3 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. This Court made that very point during the sentencing hearing of another January 6 defendant. "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." United States v. Joshua Bustle and Jessica Bustle, 21-cr-238-TFH, Tr. 08/24/21 at 3."

**Rebuttal**

As has been explained ad nauseam, any suggestion that I was part of an "Attack on the U.S Capitol building and grounds" or an "attack on the rule of law" is not in accordance with the agreed upon language in the Statement of Offense.

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

1. In paragraph 1 the government states: "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 defendant. 18 U.S.C. § 3553(a)(2)(B-C), United States v. Russell, 600 F.3d 631, 637 (D.C. Cir. 2010)."

**No Rebuttal Necessary**

***General Deterrence***

1. In paragraph 1 the Government states: "The need for general deterrence weighs heavily in favor of incarceration in 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. "Future would-be rioters must be deterred." (statement of Judge Nichols at sentencing, United States v. Thomas Gallagher, 1:21- CR-00041 Tr. 10/13/2021 at 37)."

**Rebuttal**

Although it is agreed that there is a need for general deterrence in favor of incarceration in specific cases arising from the events of January 6, 2021, it is likely that unnecessary harshness in sentencing will only serve to increase distrust for the Government, leading to societal fractures which would serve to diminish any intended desire for general deterrence and the preservation of respect for law and order in our Republic.

2. In paragraph 2 the Government states: “General deterrence is an important consideration because many of the rioters intended that their attack on the Capitol would disrupt, if not prevent, 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 [[Defendant Last Name]] 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.”

#### **Rebuttal**

Although it is agreed that certain parties intended to influence or disrupt or prevent the peaceful transfer of power, it should be noted that many investigations are currently underway which could vastly impact public understanding of who was ultimately responsible for such events. It is further agreed that Democracy requires the cooperation of the governed. As is stated in the Declaration of Independence, “Governments are instituted among Men, deriving their just powers from the consent of the governed”. In consideration of this irrefutable fact, the need for the United States Government to ensure election integrity to the satisfaction of the governed becomes of the utmost importance to any intended General Deterrence, as well as the continued legitimacy of our Republic.

3. In paragraph 3 the Government states: “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.”

#### **Rebuttal**

It is agreed that the gravity of offenses demands deterrence. Nevertheless, to cast a blanket assertion that all who were present at the Capitol on January 6th were intent on

improperly influencing the democratic process is a dangerous assumption which ignores the many individual motives the people had for being present that day and has already had a chilling effect on 1st Amendment expression. All who have faced prosecution as a result of January 6th have experienced severe consequences. Furthermore, a majority of Americans have an acute understanding of the many abuses of our Constitution that have transpired in our country both before and after January 6, 2021. Many who are inclined to peacefully petition their government for a redress of grievances have been silenced out of fear of reprisal and politically motivated, malicious prosecution. If the governed are afraid to speak their minds, the necessary and appropriate balance of power in our Republic is dangerously compromised. As the stated need for General Deterrence is considered, any adjudicating powers should also consider the strong possibility that a politically motivated and malicious weaponization of the Department of Justice could very well work to the contrary, further threatening democratic processes in our Republic.

### *Specific Deterrence*

1. In paragraph 1 the government states: “Witzemann’s conduct on January 6, 2021, and his statements following the attack on the Capitol demonstrate the need for specific deterrence. Witzemann sympathized with the Proud Boys and others protesting against the lawful 2020 election. Despite the police’s attempts to tear gas approaching rioters, Witzemann persisted and entered the Capitol Building a mere six minutes after the initial breach. He tried to persuade police to join the side of the rioters and made insulting comments about the officers that appeared to disapprove of the rioters conduct. Witzemann provided a truthful statement to the FBI, but in that statement acknowledged his sympathy for the Proud Boys movement and seemed to justify his presence in the Capitol Building by asserting his position as a journalist. In the months after January 6, 2021, he continued to promote his belief that the election was stolen and, as recently as August 2021, he described the events of January 6, 2021 a “caricature of the truth” and believes that “hundreds” have been “rounded up and charged with crimes they did not commit.”

### **Rebuttal**

I humbly submit that any specific deterrence has been duly satisfied. I have admitted my misdemeanor and taken corrective action to ensure that a similar mistake is never repeated. Any stated sympathies I have expressed are well within the bounds of my unalienable liberty to speak. The Government’s inaccurate statement that the 2020 election was lawful is entirely subjective and lacks sufficient evidence to be considered as factual. It is well understood through objective analysis, that I entered the Capitol out of a justifiable intent to perform my duty as a journalist, and have accepted responsibility for misdemeanor mistakes that I made while there. I’ve admitted that my statements while in the building were inappropriate and I’ve repeatedly recognized that my failure to strictly adhere to my intended objective constitutes a breach of law. Any insulting comments about police were made hours after I had left the building and are therefore perfectly legal. The Government’s assertion that certain officers “appeared to disapprove of the

rioters conduct” is entirely subjective and lacks sufficient evidence to be considered as factual. My statements to the FBI were truthful because I’m a man who stands upon the truth. The Government’s veiled and malicious suggestion that in my assertion of my position as a journalist, I’ve somehow been dishonest or disingenuous is entirely subjective and lacks any necessary evidence to consider it as factual. In the months after January 6, 2021, I’ve done an enormous amount of soul-searching, investigation, and all other manner of work to improve my situation while learning from the mistakes I made on January 6th. My objective description of the prevailing partisan narrative as a “caricature of the truth” remains highly accurate. Among the defendants are many who should be held accountable for crimes they’ve committed and I have faith that those cases will be appropriately adjudicated. As to the hundreds of Americans who’ve been rounded up and charged with crimes they did not commit, I will continue to pray that Justice is eventually served. In the interest of the preservation of United States of America it is of the utmost importance that any ongoing investigation of the matter remains dedicated to objective and non-partisan truth.

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

##### **Rebuttal**

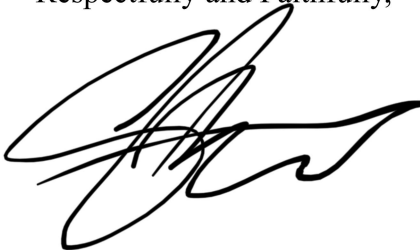
The need for unwarranted sentencing disparities is well understood. I would only ask that my intentions for being at the Capitol, my clear acceptance of responsibility for my confessed crime, and my ongoing service and dedication to the United States of America be properly considered as uniquely mitigating factors which would serve to alleviate any perceived disparities in sentencing.

#### **VI. Conclusion**

##### **Rebuttal**

As was stated in my initial letter, I trust Your Honor’s full consideration as you determine what sentence will best serve the interests of Justice in our beloved Republic.

Respectfully and Faithfully,

A handwritten signature in black ink, appearing to read 'Shawn Witzemann', with a stylized, cursive flourish extending to the right.

Shawn Bradley Witzemann